

Exhibit A

to filing under California Rules of Court 9.13 (d), (e), and (f)

THE STATE BAR OF CALIFORNIA
COMPLAINT FORM
Read instructions before filling in this form.

Date 12-28-05

(1) Your name and address David P. O'Donnell, 72 Van Reipen Avenue, Suite 37
Jersey City, NJ 07306

(2) Telephone number: Residence 917-553-7899 (cell) Work 201-659-0209

(3) The name, address and telephone number of the attorney being complained about. (See note below.)
Joshua M. Mester, Sidney P. Levinson, Steve Mitchell, James O. Johnston, Linda A. Kontos, Joshua D. Morse,
Karen L. Kupetz, Michael A. Morris, all of whom are present or former attorneys with the firm Hennigan, Bennett &
Dorman LLP, 601 South Figueroa Street, Suite 3300, Los Angeles, CA 90017, phone # 213-625-390

(4) Have you or a member of your family complained about this attorney previously?
Yes , No . If yes, please state to whom the previous complaint was made, its approximate date and disposition.

I have not previously complained about H&B to the CA Bar. I have alleged misconduct on the part of H&B in court filings (5/3/03); the court determined the allegations of misconduct on the part of H&B were not relevant to the issue before it.

(5) Did you employ the attorney? Answer yes or no and, if "yes," give the approximate date you employed him or them and the amount, if any, paid to him.

No.

(6) If your answer to 5 above is "no," what is your connection with the attorney? Explain briefly.
I am President of Next Factors, Inc., a creditor in Aureal, Inc.'s Chapter 11 bankruptcy case.
The named attorneys in this complaint served as reorganization counsel for Aureal, Inc.

(7) Write out on a separate piece of paper and send-with this form a statement of what the attorney did or did not do that you are complaining about. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney, state what you employed him to do. Sign and date such separate piece of paper. Further information may be requested. (Attach copies of pertaining documents.)

(8) If your complaint is about a law suit, answer the following, if known:

a. Name of court (For example, Superior Court or Municipal - in what county)
United States Bankruptcy Court, Northern District of California

b. Title of the suit (For example, Smith against Jones).
In re Aureal, Inc. ("Aureal") [a Chapter 11 bankruptcy case]

c. Number of the suit No. 00-42104 T

d. Approximate date the suit was filed April 5, 2000

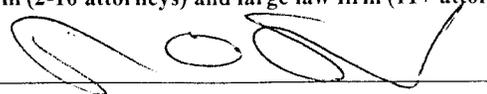
e. If you are not a party to this suit, what is your connection with it? Explain briefly.
I am President of Next Factors, Inc., a creditor in this bankruptcy case.

(9) Size of law firm complained about (*) 1 Attorney 2 - 10Attorneys 11 + Attorneys Don't know

NOTE: If you are complaining about more than one attorney, write out the information about each in answer to questions 3 through 8 above on separate sheets if necessary. Answers to questions 3-8 apply to each named attorney.

Mail to:
Office of the Chief Trial Counsel/Intake
State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

(*) Section 6095.1 of the Business and Professions Code mandates that the State Bar compile statistics concerning the size of the attorney's law firm - solo practitioners small law firm (2-10 attorneys) and large law firm (11+ attorneys).

Signature 

3.0 Request

Given that H&B's conduct appears to violate the California Rules of Professional Conduct, 3-310, I respectfully request that the Office of the Chief Trial Counsel investigate this matter to see if the CA Attorneys should be subject to sanctions for their actions.

In order to ensure transparency in the Bar investigatory process, and to aid members of the Bar in determining what constitutes a disclosure in conformity with the definition in CRPC 3-310(A) in bankruptcy practice, I would ask that any purported written waiver produced by H&B be made available for public inspection. Further, I ask that H&B provide a complete statement of Relationship Conflicts, available for public inspection.

The simple facts giving rise to the complaint regarding the concurrent adverse representation of H&B and Oaktree appear straight-forward. Significant effort was expended in focusing this complaint solely on that topic in hopes that your investigation could proceed quickly. I look forward to learning about the outcome of your investigation in the near future. Meanwhile, I am available to answer any questions you may have.

Sincerely,



David P. O'Donnell, President

Date: 12-28-2005

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filings (5/3/03); the court determined the allegations of misconduct on the part of H&B were not relevant to the
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are complaining about. Please state the facts as you understand them. Do not include opinions or arguments. If you
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e. If you are not a party to this suit, what is your connection with it? Explain briefly.
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1149 South Hill Street
Los Angeles, California 90015-2299

(*) **Section 6095.1 of the Business and Professions Code mandates that the State Bar
compile statistics concerning the size of the attorney's law firm – solo practitioner,
small law firm (2-10 attorneys) and large law firm (11+ attorneys).**

Signature _____

December 28, 2005

Office of the Chief Trial Counsel/Intake
State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

RE: California Bar Complaint Against Members of Hennigan, Bennett & Dorman LLP as Reorganization Counsel for Aureal, Inc. and Adverse Counsel for Oaktree.

Dear Chief Trial Counsel, California Bar:

This is my answer to question #7 on the accompanying California Bar ("Bar") Compliant Form against the named California-licensed attorneys ("CA Attorneys"), all of whom are present or former attorneys with the firm Hennigan, Bennett & Dorman LLP ("H&B"), in your state.

1.0 Nature of Complaint

The sole concern of this complaint is the CA Attorney's apparent failure to adhere to the California Bar Rule 3-310 which requires attorneys to obtain written informed consent of each client in circumstances where the interests of those clients are adverse to each other, in order to avoid the representation of adverse interests of those clients. The apparent failure to act in accordance with CRPC 3-310 is evidenced by specific events surrounding the initial retention of H&B by Aureal. It further apparently resulted in the impairment to Next Factors ("Next") and other unsecured creditors in the Aureal case, as discussed in section *2.9 Apparent Harm to Next and Other Unsecured Creditors*.

I complain that while the circumstances requiring attorneys to obtain written informed consent were present in the Aureal case, it appears that H&B neither obtained the required written informed consent nor obtained a blanket waiver that the conflicted parties could knowingly and intelligently enter into. I further complain that any consent obtained by H&B must follow a written disclosure of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client¹, in accordance with CRPC 3-310(A).

¹This complaint is in regards to the apparent failure of H&B to obtain a written informed consent from their concurrent adverse clients: Aureal, the debtor-in-possession; Oaktree and the Oaktree Funds, the largest creditor in the Aureal case, as detailed in section *2.3 Adverse Representation (CRPC 3-310)* of this complaint; and the Creditors Committee as detailed in section *2.4 Relevance of CRPC 3-310 to CA Attorneys as Creditors Committee Fiduciary*, with respect to the initial retention of H&B by Aureal.

First I will set out what I believe to be the relevant portion of the California Rules of Professional Conduct (“CRPC”), followed by a brief note on ethics opinions, laws, rules, opinions of California courts, and standards regarding disclosure requirements of any actual or potential conflict under bankruptcy law that I ask to be considered when evaluating the conduct that forms the basis of this complaint; the apparent failure to obtain written informed consent at the outset of the Aureal case as required by CRPC 3-310. I do not know whether any other CRPC requirements may also be connected with the particular facts I set out below.

1.1 CRPC 3-310

The CA Attorneys apparently violated California Bar Rule 3-310 by failing to obtain written informed consent of each client, and other parties entitled to such related disclosure. This apparent failure would have occurred on the initial retention of H&B in the Aureal case, and in every subsequent instance when new potential or actual adverse issues arose between clients, as discussed in sections *2.3 Adverse Representation* and *2.8 Failure to Seek Renewed Consent*.

Rule 3-310. Avoiding the Representation of Adverse Interests.

(A) For purposes of this rule:

(1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by the resolution of the matter; or

(C) A member shall not, without the informed written consent of each client:

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

1.2 Bankruptcy Proceedings

The need for full disclosure, as a prerequisite to valid consent among conflicted parties, is an integral element of CRPC 3-310 and the prime concern of this complaint. It is a necessary element of federal bankruptcy practice as well; and central to the context in which the conduct complained of takes place.

Full disclosure is of paramount import because it enables creditors and the US Trustee to be informed of the facts necessary to determine whether they should object to the employment of a debtor's attorney. Such possible objection to debtor's retention of an attorney by creditors or the US Trustee is provided for within 11 U.S.C. 327(a) and (c):

11 USC § 327. Employment of professional persons

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

The statute does not automatically cause a conflicted attorney to be disqualified as debtor's counsel, but rather requires disapproval of such employment if an actual conflict exists, after there has been an "*objection by another creditor or the United States trustee*". This begs the question: How will another creditor or the United States trustee know that an objection should be made?

The answer to this question lies in part with the CA Attorneys requirements of CRPC 3-310: the full disclosure required by this rule provides another creditor or the United States trustee with the information needed to determine if an objection should be made. This determination would be based on knowledge of an actual or apparent lack of

disinterestedness² or holding of any interest, or representing any interest adverse to the bankruptcy estate. Such a determination is dependent upon the disclosure provided to the court by the appointed lawyer or firm.

A full written disclosure and informed consent required by CRPC 3-310 thereby helps protect the members of the public who are creditors in bankruptcy proceedings in California, while further engendering confidence in the legal system by ensuring that bankruptcy lawyers provide the broad³, full⁴, and candid disclosure of all facts and connections which may be relevant in determining their eligibility for employment under § 327. Who then must come forward with the information concerning the conflict?

It is the duty of the attorney to make full disclosure of the conflict in a meaningful manner⁵. This is so regardless of the legal arena within which a conflict arises, whether it is bankruptcy or other law. An effective consent to waive a conflict must be in writing, and must fully inform the client⁶ about the nature and extent of the conflict.

2.0 Facts to My Understanding

2.1 About Next Factors

Next is a claims trader. Claims trading has become “big business” and has attracted a wide variety of players. However, as the scope of the claims trading activity has increased, so too has the potential for corrupt practices and actions involving the professionals retained in those related proceedings. Despite the rampant claims trading

² In re Sullivan, 1992 U.S. Dist. LEXIS 3954, at *14 (E.D. Pa. 1992) (“It is not sufficient that the trustee and his counsel actually be disinterested; the appearance of interestedness must also be avoided”).

³ See *Diamond Lumber v. Unsec'd Creditors' Comm.*, 88 B.R. 773, 777 (N.D. Tex. 1988) (noting that the disclosure duty is so broad because the court, rather than the attorney, must decide whether the facts constitute an impermissible conflict).

⁴ See *In re Bolton-Emerson*, 200 B.R. 725, 731 (D. Mass. 1996); *In re Blinder, Robinson & Co.*, 131 B.R. 872 (cautioning that, in bankruptcy cases, full disclosure of all potential adverse interests should be a principle of first magnitude).

⁵ *In re California Cannery and Growers (Bkrcty)*, N.D. Cal. 1987) 74 B.R. 336. See also *Image Technical Services, Inc. v. Eastman Kodak Company* (N.D. Cal. 1993) 820 F. Supp. 1212, 1217. See also *Schmitz v. Zilveti* (9th Cir. 1994) 20 F.3d 1043, 1048-1049 (a lawyer has a duty to investigate for his own potential conflicts of interest).

⁶ See *Image Technical Services, Inc. v. Eastman Kodak Company* (N.D. Cal. 1993) 820 F. Supp. 1212, 1216-1217 (Consent to waive a conflict under CRPC 3-310 was not effective where it was not in writing and where the client was not informed (i) how the proposed representation would be adverse to the client's interest, (ii) that the law firm was actually going to appear on a brief against the client or (iii) of the potential exposure to the client.).

involved in large bankruptcy cases, there are few precautions in place to avoid corrupt practices and actions involving bankruptcy professionals.

Next is engaging itself in the national debate for federal bankruptcy reformation as a result of the harm that Next and similarly situated creditors have as a result of a number of such practices. Our first area of focus relates to state bar ethical requirements of bankruptcy lawyers in connection to their disclosure requirements under federal bankruptcy practice.

2.2 About H&B

A substantial portion of H&B's business involves the representation of large corporate 11 debtors. The CA Attorneys named in this complaint served as reorganization counsel for Aureal, Inc.

2.3 Adverse Representation (CRPC 3-310)

H&B engaged in concurrent representation of the debtor and an entity which was both the secured creditor and majority shareholder in the Aureal case. The CA Attorneys apparently did so without adhering to the requirements of CRPC 3-310. The employment began with Aureal, Inc, filing their "Application Of Debtor And Debtor In Possession For Authority To Employ Hennigan & Bennett As Reorganization Counsel" on April 5, 2000 with the US Bankruptcy Court for the Northern District of California attached as Exhibit A (the "Application"), and the CA Attorney James O. Johnston Declaration in support of that Application on April 5, 2000, attached as Exhibit E (the "First Declaration").

The First Declaration disclosed that H&B was representing an affiliate of the largest secured creditor and shareholder. The First Disclosure further informed the Court about an unrelated court case in which H&B was serving as counsel for Oaktree Capital Management, LLC ("Oaktree"). The CA Attorney's were thereby concurrently serving as adverse counsel for a firm that was affiliated with the largest creditor and equity holder in the case, the Oaktree Funds. The information in this declaration clearly required the CA Attorneys to seek written informed consent of each client. A subsequent declaration by CA Attorney Johnston provided new disclosure.

On April 13, 2000, a Supplemental Declaration of CA Attorney James O. Johnston was filed with the court. This declaration provided additional information about

H&B's representation of Oaktree attached as Exhibit B (the "Oaktree Disclosure"). The information in this declaration, omitted from the First Declaration, clearly required the CA Attorneys to seek, for the second time, written informed consent of each client.

The Oaktree Disclosure informed the court that Oaktree was an affiliate of, related to, or manager of various funds (the "Oaktree Funds") that asserted secured claims against Aureal, Inc. in the amount of approximately \$18,151,739.00. This amount constituted the majority of the liabilities of the Aureal. An enumeration of the entities constituting the Oaktree Funds was also disclosed.

The Oaktree Funds represented 8 separate entities: 1) OCM Opportunities Fund II, L.P., 2) PCW Special Credits Funds IIIb, 3) TCW Special Credits Trust, 4) TCW Special Credits Trust IIIb, 5) The Board of Trustees of the Delaware State Employees' Retirement Fund, 6) Weyerhaeuser Company Master Retirement Trust, 7) Columbia/HCA Master Retirement Trust, and 8) OCM Administrative Services II, LLC. The Oaktree Disclosure represented that one or more of the Oaktree Funds were affiliates of, related to, or managed by Oaktree. The conflicts that did or could arise between Aureal and Oaktree required that the CA Attorneys obtain the informed written consent required in CRPC 3-310 for each of their clients affected by this actual or potential adversity: Aureal, Oaktree, and each of the Oaktree Funds.

2.4 Relevance of CRPC 3-310 to CA Attorneys as Creditors Committee Fiduciary

Aureal was the debtor-in-possession ("DIP") in their bankruptcy case, a fact which impacts their attorney's requirements under CRPC 3-310⁹. This impact stems from the special trustee powers that a DIP enjoys under the bankruptcy code, and the attached responsibility the DIP inherits to act as a fiduciary for creditors. A lawyer who undertakes to fulfill instructions of the client in cases where the client is a fiduciary may actually assume a relationship not only with the client but also with the client's intended beneficiaries¹⁰. In this way, the CA Attorneys owe a duty to third-party creditor beneficiaries when representing a debtor-in-possession with fiduciary duties. Therefore, the CA Attorneys should have provided a written disclosure to the Creditors Committee.

⁹ A debtor-in-possession in Chapter 11 bankruptcy cases acts as the bankruptcy trustee in the case, with all of the attendant duties of a fiduciary toward each creditor in the case. *In re Kelton Motors Inc.*, 109 B.R. 641, 645 (Bankr. D. Vt. 1989). *Cf. In re Grabill Corp.*, 113 B.R. at 970.

¹⁰ *See Lucas v. Hamm* (1961) 56 Cal.2d 583, 15 Cal.Rptr. 821, 364 P.2d 685 (when a lawyer is retained to draft a will, the document's very purpose is to create a benefit for a legatee, and hence a duty is owed to the legatee even though the legatee and the lawyer are not in privity of contract); *Morales v. Field, DeGoff, Huppert & MacGowan* (1st Dist. 1979) 99 Cal.App.3d 307, 160 Cal.Rptr. 239 (a lawyer representing a trustee assumes a relationship with the beneficiary akin to that between trustee and beneficiary and thus assumes a duty of care toward the beneficiary).

2.5 Facts Illustrating Egregious Nature of Conflict¹¹

To the extent that H&B may have failed to adhere to CRPC 3-310 with respect to Aureal, Oaktree, Oaktree Funds, and the Creditors Committee, it is a potential willful breach made more egregious by the surrounding facts and circumstances. I understand that an overview of the factual context in which the possible unethical conduct complained of occurred is not a prerequisite to the applicability of CRPC 3-310. However, this context does illuminate the need to obtain the clients informed written consent in this case¹².

Aureal may have had a cause of action with one or more of Oaktree and the Oaktree Funds, or Aureal may have wanted to subordinate Oaktree or the Oaktree Funds claims behind that of the other creditors in the case, either of which would certainly place the CA Attorney client's interests adverse to those of the debtor. Such a cause of action may be found within the facts surrounding Aureal's entry into bankruptcy. According to the Aureal ex-CEO, Kenneth Kokinakis, as reported by Ziff Davis Media and attached here as Exhibit C (the "Aureal Power Struggle"):

"Management hoped to sell to avoid bankruptcy, while the shareholders thought we should hold out for a better deal. So we left"

According to the Aureal Power Struggle article, there was a management walkout at Aureal involving all eight corporate officers listed in Aureal's annual report. Moreover, four out of the five members of the board of directors also left the company. The sole remaining board member was a principal at Oaktree. At the time, Oaktree held the majority interest in Aureal.

By way of review, we ask the following rhetorical questions: Who was the shareholder holding out for a better deal? Oaktree; Who funded Aureal? Oaktree; Who was left running Aureal prior to filing for bankruptcy? Oaktree; Who became a secured party at the 11th hour? Oaktree; Who made the decision to file for bankruptcy? Oaktree¹³.

¹¹ "Integrity is the very breath of justice. Confidence in our law, our courts, and in the administration of justice is our supreme interest. No practice must be permitted to prevail which invites towards the administration of justice a doubt or distrust of its integrity." Erwin M. Jennings Co. v DiGenova, 107 Conn. 491, 499, 141 A. 866, 868 (1928).

¹² The text of CRPC 3-310 contains no "material adverse effect" requirement as a prerequisite to the rule's applicability in a case of concurrent adverse representation. Similarly, the rule applies regardless of the CA Attorney's reasonable belief about the lack of adverse effect on the representation of their clients.

¹³ Indeed, it would appear to me that Aureal acts as the mere "Alter Ego" of its largest shareholder, sole secured creditor, and sole board member.

Among the potential claims or against Oaktree and the Oaktree Funds, or the defenses to their claims, at the time the CA Attorney's undertook concurrent representation would have been all those based on theories of aiding and abetting, equitable subordination, validity of the security interest, deepening insolvency and fraudulent conveyance ("Lender Issues"). These facts underscore the importance of full disclosure and informed consent of the parties prior to such representation¹⁴. They also are instructive to the CA Attorneys: any written disclosure of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client would have to include, without limitation, a full disclosure of these Lender Issues, as required by and in accordance with CRPC 3-310(A).

2.6 Blanket Waiver

Any blanket waiver which H&B may have received from Aureal could not serve to contractually circumvent the CA Attorney's obligations to obtain an informed written consent under CRPC 3-310 during the initial retention of H&B by Aureal. The disclosure required must further have conformed to the definition in CRPC 3-310(A). Each of the CA Attorneys has the duty to make a full disclosure of the actual or potential conflicts to their clients, in a meaningful manner²⁰. Such disclosure should, at a minimum, include the information as discussed in section 2.5 *Facts Illustrating Egregious Nature of Possible CRPC 3-310 Violation*, including, without limitation, the Lender Issues. In this case, the CA Attorneys did obtain from Aureal advance consent to conflicts of interest that presently existed or that might arise in the future. It appears that the CA Attorney's did not, however, obtain the informed written consent prior to obtaining this blanket waiver.

The advanced consent H&B did obtain appears in their Retainer Agreement with Aureal in the form of a "Blanket Waiver" on pages 3 and 4 of the attached Exhibit D (the "Blanket Waiver"). The CA Attorneys knew or should have known that Oaktree/Oaktree Funds were creditors in the Aureal bankruptcy case as they were listed on the proof of service list attached to the Application. Similarly, they would also have been informed as to the Lender Issues. These facts highlight the need for the CA Attorney's to have obtained an informed written consent. However, in accordance with

¹⁴"A lawyer for the debtor in possession represents the estate and owes duties to the entire creditor body. Because the bankruptcy process involves a competition among all of the creditors and shareholders for a share of a limited pie, all of the creditors' interests are potentially adverse to one another." Christopher W. Frost, *Are you really disinterested? Chapter 11 presents real problems in ethics*, ABA Section of Business Law Today, November/December (1998).

²⁰ In re California Cannery and Growers (Bkrcty.N.D.Cal. 1987) 74 B.R. 336.

CRPC 3-310, such consent was required *even in the absence of these additional facts* which reflect the egregious circumstances surrounding the apparent failure of the CA Attorney to obtain the informed written consent.

2.7 Apparent Failure to Obtain Informed Written Consent

On April 4, 2000, Aureal executed the H&B retainer agreement and became their client. Exhibit D. Oaktree was on the attached Service List. Exhibit B. H&B was required to obtain a written informed consent before April 4, 2000 between these concurrent adverse clients as required under CRPC 3-310. The only indication available from the bankruptcy court that these clients had consented to the concurrent and adverse representation of Aureal and Oaktree is from the statement of Attorney Johnston: "I am informed by other members of H&B that each of the Debtor, the Oaktree Funds, and Oaktree have consented to H&B's concurrent representation of the Debtor and Oaktree Funds." Exhibit B. In this case, the omitted information is more telling than the proffered hearsay.

Attorney Johnston does not state that he has either fully disclosed the true nature of the adversarial conflicts, including the Lender Issues, or has received written consent to the conflicted representation²³. No conflict waiver letter or written consent from Aureal, Oaktree, Oaktree Funds, or the Creditors Committee which mentions the Lender Issues was submitted into court, and we have reason to believe that none exists²⁴. Indeed, Next made requests for such written waivers with respect to the Oaktree Affiliates to the CA Attorneys and the Liquidating Trustee in this case; Next has yet to receive a response.

A separate violation of CRPC 3-310 may be associated with Attorney Johnston's subsequent statement: "The representation of large corporate chapter 11 debtors, who typically have sizable corporate and institutional creditors, constitutes a substantial portion of H&B's business. In fact, other members of H&B have informed me that H&B currently represents a chapter 11 debtor against which an Oaktree Affiliate also asserts significant secured claims. To the best of my knowledge, no person has asserted that H&B is not disinterested in that case."

Attorney Johnston does not indicate whether or not informed written consent was received in this instance. If such informed written consent was not obtained, then it would appear that this CA Attorney believes the burden of CRPC 3-310 rests not with

²³ See, e.g., *In re Jaeger*, 213 B.R. 578, 585-586 (Bankr. C.D. Cal. 1997).

²⁴ If any such waiver was received from Aureal, it should have been filed with the court.

himself but rather on CA Attorney's clients or opposing parties. This would not be the first instance where a CA Attorney misconstrued CRPC 3-310.

Page four of the Retainer Agreement (Exhibit D) discusses "Relationship Conflicts" involving H&B attorney spouses and other relatives who work at other law firms and companies. The blanket waiver that H&B obtained from Aureal was subject to the disclosure by H&B in the event that "[H&B] determines than any of the relationships likely would lead to a conflict situation." By this language, it appears that H&B again misconstrues CRPC 3-310 as applying to their clients only where the CA Attorney has a reasonable belief that the conflict may have an adverse effect on the representation of a client. On the contrary, CRPC 3-310 applies regardless of the CA Attorney's reasonable belief about the lack of adverse effect a conflict of interest will have on the representation of a client. Next has no knowledge of any H&B Relationship Conflicts, but we assert that if any exist, H&B must obtain the informed written consent required by CRPC 3-310.

2.8 Failure to Seek Renewed Consent

On April 13, 2000, the Oaktree Disclosure was filed with the Court. This supplemental declaration (Exhibit B) was submitted not at the CA Attorney's initiative, but rather in response to concerns raised by the Court at the initial hearing on the Application. In this supplemental declaration, Attorney Johnston discloses the following facts: 1) Oaktree asserts claims against Aureal in the amount of approximately \$18M, and 2) the CA Attorneys represent Oaktree in an unrelated action pending in the California Superior Court.

Even if the CA Attorneys had obtained the informed written consent from Oaktree, Oaktree Funds, and the Creditors Committee as required by CRPC 3-310 when first engaging the client, they were required to receive renewed informed written consent as a result of the new facts in the supplemental declaration.²⁵

2.9 Apparent Harm to Next and Other Unsecured Creditors

The unsecured creditors in this case were impaired as a result of H&B's apparent breach of their promise made to their concurrent and adverse clients that they "zealously pursue the interests of each of our clients, including in those circumstances in which we represent the adversary of an existing client in an unrelated case." Exhibit D. This harm occurred in at least two separate respects.

²⁵See, e.g., *Klemm v. Superior Court*, 75 Cal. App. 3d 893, 142 Cal. Rptr. 509, 513 (1977) opining that, once an actual conflict develops, a previous waiver of potential conflicts becomes ineffective). Cf. Cal. State Bar Standing Comm. On Prof'l Responsibility & Conduct, Formal Op. 1989-115 (1989) (approving blanket prospective waivers, but requiring a new waiver once a potential conflict ripens into an actual one).

First, the unsecured creditors, Next, and the US Trustee (“Harmed Parties”) were harmed by the absence of a disclosure of information relevant and necessary to them in determining whether or not they should object to the employment of H&B by the debtor in this case. Such a right is specifically provided for and fundamental to the bankruptcy code. 11 U.S.C. 327(A). Had H&B obtained the written informed consent of each client after first making a full disclosure of all issues relating to CRPC 3-310, which disclosure would include, at a minimum, the Lender Issues, either in their First Declaration, the Oaktree Disclosure, or to each client, then one or more of the Harmed Parties could have made an objection to the employment of the conflicted CA Attorneys. However, apparently such information was not disclosed and the case was managed in a fashion that resulted in speedy liquidation of debtor assets. The CA Attorneys appear to have either failed to address the Lender Issues or simply resolved all such issues in favor of the wealthier non-liquidating client²⁶. In either event, this first harm has resulted in additional harm.

Second, H&B did not retain outside counsel to review Lender Issues. As a result of the management of the case, the unsecured creditors, and Next, were left impaired while the only secured creditor, Oaktree, was paid in full. Had H&B retained outside counsel to review issues where Aureal and Oaktree’s interests were adverse, such as involving the Lender Issues discussed above, then an action may have been filed against one or more parties, such as Oaktree, that could have left Next and other creditors unimpaired while the conflicted client, Oaktree, would possibly have been paid less.

A written informed consent in compliance with CRPC 3-310(A), wherein all of the relevant circumstances, such as the Lender Issues, and of the actual and reasonably foreseeable adverse consequences was first disclosed and obtained by H&B, then Next and the other creditors may have been left unimpaired. This consent was required under CRPC 3-310 before April 4, 2000, when H&B retained a concurrent adverse client, and subsequently on April 13, 2000, when the Oaktree Disclosure was made.

²⁶ The Lender Issues discussed are common in fact situations similar to the one presented in this complaint. However, an attorney may not determine alone whether or not such potential issues may have an adverse effect on the representation of a client. Such an incredulous position would render CRPC 3-310 moot whenever a CA attorney holds a “reasonable belief” about the adverse affect an issue may have for a client.

3.0 Request

Given that H&B's conduct appears to violate the California Rules of Professional Conduct, 3-310, I respectfully request that the Office of the Chief Trial Counsel investigate this matter to see if the CA Attorneys should be subject to sanctions for their actions.

In order to ensure transparency in the Bar investigatory process, and to aid members of the Bar in determining what constitutes a disclosure in conformity with the definition in CRPC 3-310(A) in bankruptcy practice, I would ask that any purported written waiver produced by H&B be made available for public inspection. Further, I ask that H&B provide a complete statement of Relationship Conflicts, available for public inspection.

The simple facts giving rise to the complaint regarding the concurrent adverse representation of H&B and Oaktree appear straight-forward. Significant effort was expended in focusing this complaint solely on that topic in hopes that your investigation could proceed quickly. I look forward to learning about the outcome of your investigation in the near future. Meanwhile, I am available to answer any questions you may have.

Sincerely,

David P. O'Donnell, President

Date: _____

EXHIBIT A

COPY

1 BRUCE BENNETT (SBN 105430)
2 JAMES O. JOHNSTON (SBN 167330)
3 JOSHUA M. MESTER (SBN 194783)
4 HENNIGAN & BENNETT
5 601 South Figueroa Street, Suite 3300
6 Los Angeles, California 90017
7 Telephone: (213) 694-1200
8 Facsimile: (213) 694-1234

FILED
JUL 13 2002
CLERK OF COURT
DISTRICT OF CALIFORNIA

9 Proposed Reorganization Counsel for
10 Debtor and Debtor in Possession

11 UNITED STATES BANKRUPTCY COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 In re
15 AUREAL, INC., d/b/a SILO.COM,
16 f/k/a AUREAL
17 SEMICONDUCTOR, INC., f/k/a
18 MEDIA VISION TECHNOLOGY,
19 INC., a Delaware corporation;
20 Debtor.

Case No. 00 42104
(Chapter 11)

APPLICATION OF DEBTOR AND DEBTOR
IN POSSESSION TO EMPLOY HENNIGAN
& BENNETT AS REORGANIZATION
COUNSEL; DECLARATION OF JAMES O.
JOHNSTON IN SUPPORT

[No Hearing Required]

21
22 Aural, Inc., the debtor and debtor in possession herein (the "Debtor"), hereby
23 applies to this Court for the entry of an order, in substantially the form of the proposed
24 order attached hereto as Exhibit A, authorizing it to employ the law firm of Hennigan &
25 Bennett ("H&B") as its reorganization counsel. In support of this Application, the Debtor
26 submits the accompanying Declaration of James O. Johnston (the "Johnston
27 Declaration") and respectfully represents as follows:

28 ///

HENNIGAN & BENNETT

1 1. On April 5, 2000 (the "Petition Date"), the Debtor commenced its
2 reorganization case by filing a voluntary petition for relief under chapter 11 of the
3 Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code").

4 2. The Debtor is continuing in possession of its assets and is operating and
5 managing its business as debtor in possession pursuant to sections 1107 and 1108 of the
6 Bankruptcy Code.

7 3. The Debtor's business is in the field of digital audio imaging, which is the
8 process of creating a highly realistic audio experience by closely simulating the real
9 world physics of audio. The Debtor has developed a series of audio products based
10 upon its A3D technologies. One of the leading markets for the Debtor's audio products
11 is the personal computer gaming market. As of the Petition Date, the Debtor was
12 integrating its A3D technologies with internet based applications to increase its
13 customer base.

14 4. On the Petition Date, the Debtor employed approximately 56 employees in
15 offices located in Fremont, California and Austin, Texas. At these offices, the Debtor
16 conducts sales, shipping, production, and research and development efforts.

17 **Services to be Provided by H&B as Reorganization Counsel**

18 5. The Debtor desires to employ H&B as its reorganization counsel in
19 connection with this case on substantially the terms and conditions set forth in the
20 retention agreement attached hereto as Exhibit B (the "Retention Agreement").

21 6. All attorneys comprising or associated with H&B who will render services
22 in this case are or will be duly admitted to practice law in the Courts of the State of
23 California and in the United States District Court for the Northern District of California.
24 A summary of the experience and qualifications of these attorneys and paraprofessionals
25 of H&B expected to render substantial services to the Debtor is attached hereto as
26 Exhibit C.

27 ///
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1 7. Among other things, as indicated in the Retention Agreement, the Debtor
2 requires H&B to render the following types of professional services:

- 3 • To advise the Debtor regarding matters of bankruptcy law;
- 4 • To represent the Debtor in proceedings or hearings before this Court
5 involving matters of bankruptcy law;
- 6 • To assist the Debtor in the preparation of reports, accounts,
7 applications, and orders;
- 8 • To advise the Debtor concerning the requirements of the
9 Bankruptcy Code, Bankruptcy Rules, and United States Trustee Guidelines and
10 Requirements relating to the administration of this case and the operation of the
11 Debtor's business; and
- 12 • To assist the Debtor in the negotiation, preparation, confirmation,
13 and implementation of a plan of reorganization.

14 8. As indicated in the Retention Agreement, however, except as set forth in
15 paragraphs 9, 10, and 11 below, the Debtor does not intend for H&B to be responsible for
16 appearances before any court or agency, other than before this Court and the office of
17 the United States Trustee; litigation before this Court with respect to matters which are,
18 in essence, disputes involving issues of nonbankruptcy law; or the provision of
19 substantive legal advice outside of the insolvency area, such as in areas implicating
20 patent, trademarks, intellectual property, corporations, taxation, securities, torts,
21 environmental, labor, criminal, or real estate law. Further, the Debtor does not intend
22 for H&B to be required to devote attention to, form professional opinions as to, or advise
23 the Debtor with respect to their disclosure obligations under nonbankruptcy laws or
24 agreements.

25 9. The Debtor anticipates that in addition to employing H&B as
26 reorganization counsel, the Debtor will require the services of litigation, corporate,
27 trademark and patent counsel. However, the Debtor does not expect that there will be
28 duplication in the services to be rendered to the Debtor by the separate counsel.

1 10. The Debtor may, from time to time, request that H&B undertake specific
2 matters beyond the limited scope of the responsibilities set forth above. Should H&B
3 agree in its discretion to undertake any such specific matters, the Debtor seeks authority
4 by this Application to employ H&B for such matters, in addition to those set forth above,
5 without further order of this Court.

6 11. H&B also has agreed to serve as counsel to the Debtor with respect to
7 certain nonbankruptcy litigation to be commenced on behalf of the Debtor. The terms
8 and conditions of that engagement are set forth in a separate engagement letter, which
9 will be submitted to the Court for approval with the appropriate notice.

10 **H&B's Compensation as Reorganization Counsel**

11 12. H&B has received a retainer of \$300,000 for services to be rendered to the
12 Debtor in connection with this chapter 11 case. H&B has deposited the unearned
13 portion of that retainer into a trust account in the name of the Debtor, as a trust
14 fund/security retainer, to secure the payment of H&B's allowed fees and expenses in
15 this case. During the one year period prior to the filing date of the chapter 11 petition,
16 H&B did not receive from the Debtor any other payments for services rendered to the
17 Debtor in connection with this case and the reorganization of its business.

18 13. H&B has agreed to accept as compensation for its services its retainer and
19 such additional reasonable sums as may be allowed by this Court in accordance with
20 law, based upon the time spent and services rendered, the results achieved, the
21 difficulties encountered, the complexities involved, and other appropriate factors, as set
22 forth in the Retention Agreement. A list of the guideline hourly rates for H&B and of
23 those members of H&B expected to render services to the Debtor is attached hereto as
24 Exhibit "D".

25 14. No additional compensation will be paid by the Debtor to H&B except
26 upon application to and approval by the Bankruptcy Court after notice and a hearing.

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Disinterestedness

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2 15. To the best of the Debtor's knowledge, based upon the Johnston
3 Declaration, except as they are or have been the attorneys for the Debtor, H&B and all of
4 the attorneys comprising or employed by it are disinterested persons who do not hold or
5 represent an interest adverse to the estates and who do not have any connection with the
6 Debtor, their creditors, or any other party in interest in these cases, or their respective
7 attorneys or accountants, except as stated in the Johnston Declaration.

8 16. Moreover, to the best of the Debtor's knowledge, based upon the Johnston
9 Declaration, H&B and all of the attorneys comprising or employed by H&B:

10 (a) are not and have not been an equity security holder or an insider of
11 the Debtor.

12 (b) are not and have not been an investment banker for any outstanding
13 security of the Debtor.

14 (c) are not and have not been an investment banker for a security of the
15 Debtor, or an attorney for such an investment banker in connection with the offer,
16 sale or issuance of any security of the Debtor.

17 (d) are not and have not been a director, officer or employee of the
18 Debtor or of any investment banker for any security of the Debtor.

19 (e) subject to the disclosures contained in the Johnston Declaration,
20 have no interest materially adverse to the interest of the estate or any class of
21 creditors or equity security holders, by reason of any direct or indirect
22 relationship to, connection with, or interest in, the Debtor or an investment
23 banker for any security of the Debtor, or for any other reason.

24 ///

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1 18. The name, address and phone number of the person signing this
2 Application on behalf of H&B and the relationship of such person to H&B is:

3 James O. Johnston, Partner
4 Hennigan & Bennett
5 601 S. Figueroa Street, Suite 3300
6 Los Angeles, California 90017
7 Telephone: (213) 694-1200

7 **Summary**

8 19. The employment of H&B as the Debtor's reorganization counsel is in the
9 best interest of the estate.

10 20. The Debtor has served copies of the Application and certain related
11 pleadings and documents on the Office of the United States Trustee, the creditors
12 identified on the lists of creditors holding the twenty largest unsecured claims against
13 the Debtor, and counsel to the Debtor's primary secured lender, Oaktree Capital
14 Management, LLC.

1 **WHEREFORE**, the Debtor requests that it be authorized to employ H&B as its
2 reorganization counsel with compensation to be at the expense of the estate in such
3 amount as the Court may hereafter allow in accordance with law.

4
5 DATED: April 5, 2000

AUREAL, INC.

6
7
8 By: 
Steve Mitchell,
Chief Operating Officer

9
10
11 Submitted By:

12
13
14 By: 
James O. Johnston
Hennigan & Bennett
Proposed Reorganization Counsel for Debtor
And Debtor in Possession

EXHIBIT B

1 BRUCE BENNETT (SBN 105430)
2 JAMES O. JOHNSTON (SBN 167330)
3 JOSHUA M. MESTER (SBN 194783)
4 HENNIGAN & BENNETT
5 601 South Figueroa Street, Suite 3300
6 Los Angeles, California 90017
7 Telephone: (213) 694-1200
8 Facsimile: (213) 694-1234

9 Proposed Reorganization Counsel for
10 Debtor and Debtor in Possession

COPY
ORIGINAL FILED
APR 18 2000
COURT CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

11 UNITED STATES BANKRUPTCY COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 In re
15 AUREAL, INC., d/b/a SILO.COM,
16 f/k/a AUREAL SEMICONDUCTOR,
17 INC., f/k/a MEDIA VISION
18 TECHNOLOGY, INC., a Delaware
19 corporation;

20 Debtor.

21 Case No. 00-42104-T11
(Chapter 11)

22 SUPPLEMENTAL DECLARATION OF
23 JAMES O. JOHNSTON IN SUPPORT OF
24 APPLICATION OF DEBTOR AND
25 DEBTOR IN POSSESSION TO EMPLOY
26 HENNIGAN & BENNETT AS
27 REORGANIZATION COUNSEL

28 Date: April 17, 2000
Time: 3:30 p.m.
Place: Courtroom 201
1300 Clay Street
Oakland, CA 94612

29 I, James O. Johnston, declare:

30 1. I am a member in good standing of the Bar of the State of California, and I
31 am admitted to practice before, among other courts, the United States District Court for
32 the Northern District of California. I am a partner in Hennigan & Bennett ("H&B"),
33 proposed reorganization counsel for Aural, Inc., the debtor and debtor in possession
34 (the "Debtor") in the above-captioned bankruptcy case. I make this Supplemental
35 Declaration in further support of the "Application Of Debtor And Debtor In Possession

36 HENNIGAN & BENNETT

243

1 For Authority To Employ Hennigan & Bennett As Reorganization Counsel" (the
2 "Application") and in response to concerns that I understand to have been raised by the
3 Court at the initial hearing on the Application. Except where otherwise indicated, I have
4 personal knowledge of the matters set forth below and, if called to testify, I would and
5 could competently testify thereto.

6 2. Based upon my review of the Debtor's books and records, it appears that
7 OCM Opportunities Fund II, L.P., TCW Special Credits Fund IIIb, TCW Special Credits
8 Trust, TCW Special Credits Trust IIIb, The Board of Trustees of the Delaware State
9 Employees' Retirement Fund, Weyerhaeuser Company Master Retirement Trust,
10 Columbia/HCA Master Retirement Trust, and OCM Administrative Services II, LLC
11 (collectively, the "Oaktree Funds") assert secured claims against the Debtor in the
12 amount of approximately \$18,151,739 and also that the Oaktree Funds own a majority of
13 the shares of the Debtor. H&B has been informed by the Oaktree Funds that one or
14 more of the Oaktree Funds are affiliates of, related to, or managed by Oaktree Capital
15 Management LLC ("Oaktree").

16 3. H&B represents Oaktree, on a contingent-fee basis, in an unrelated action
17 entitled Farallon Capital Partners, L.P., et. al. v. Gleacher & Co., Inc. et. al., which action
18 currently is pending in the California Superior Court in Los Angeles as Case Number BC
19 215260 (the "Farallon Litigation"). The Farallon Litigation involves alleged fraud by the
20 underwriters for a Thai steel company in connection with the issuance of bonds by that
21 Thai steel company. In the Farallon Litigation, Oaktree, as plaintiff, alleges that it was
22 damaged through the purchase of the Thai steel company's bonds, and Oaktree is
23 pursuing remedies against the underwriters.

24 4. To the best of my knowledge, none of the parties to the Farallon Litigation,
25 other than Oaktree, are parties in interest, or are affiliated with parties in interest, in the
26 above-captioned case in which H&B seeks employment. Also, to the best of my
27 knowledge, the controversies for which H&B represents Oaktree in the Farallon
28 ///

HENNIGAN & BENNETT

1 Litigation are entirely unrelated to any of the transactions conducted by any of the
2 Oaktree Funds with the Debtor.

3 5. I believe that H&B is "disinterested" with respect to the Debtor, within the
4 meaning of sections 101(14) and 327 of the Bankruptcy Code, notwithstanding its
5 ongoing representation of Oaktree on the Farallon Litigation.

6 6. Specifically, as indicated in that Declaration, H&B does not fall within the
7 criteria set forth in subsections (A) through (D) of section 101(14). Moreover, I do not
8 believe that H&B has an interest materially adverse to the interest of the Debtor's estate,
9 or to any class of creditors or equity security holders, for at least the following reasons:

10 a. As noted above, to the best of my knowledge, none of the parties to
11 the Farallon Litigation, other than Oaktree, are parties in interest, or are affiliated
12 with parties in interest, in the above-captioned case. Moreover, I believe that the
13 controversies for which H&B represents Oaktree in the Farallon Litigation are
14 entirely unrelated to any of the transactions conducted by any of the Oaktree
15 Funds with the Debtor.

16 b. The Farallon Litigation does not constitute a material percentage of
17 H&B's revenues or overall client base. Specifically, based upon information
18 provided to me from H&B personnel who regularly monitor and administer our
19 books and records, I believe that H&B devoted to the Farallon Litigation only
20 approximately 1.14% of the total hours billed by H&B professionals and
21 employees from March 1, 1999 through February 29, 2000. Thus, I believe that
22 H&B's representation of Oaktree in the Farallon Litigation does not constitute a
23 material portion of H&B's business. The overwhelming majority of H&B's
24 business relates to litigation and bankruptcy matters that do not involve Oaktree
25 or any of its affiliates.

26 c. I am informed by other members of H&B that each of the Debtor,
27 the Oaktree Funds, and Oaktree have consented to H&B's concurrent
28 representation of the Debtor and the Oaktree Funds.

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d. The representation of large corporate chapter 11 debtors, who typically have sizable corporate and institutional creditors, constitutes a substantial portion of H&B's business. In fact, other members of H&B have informed me that H&B currently represents a chapter 11 debtor against which an Oaktree affiliate also asserts significant secured claims. To the best of my knowledge, no person has asserted that H&B is not disinterested in that case.

7. In summary, I believe that H&B is disinterested notwithstanding H&B's representation of Oaktree in the unrelated Farallon Litigation, and I believe that the employment of H&B as requested in the Application is reasonable and appropriate under the circumstances.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of April, 2000, at Los Angeles, California.

By: 
James O. Johnston
Proposed Reorganization Counsel for Debtor
And Debtor in Possession

DECLARATION OF SERVICE

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I am over the age of eighteen years and not a party to the within action. My business address is Hennigan, Mercer & Bennett, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On April 13, 2000, I served the following pleading:

SUPPLEMENTAL DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF APPLICATION OF DEBTOR AND DEBTOR IN POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

See attached Service List

The above-described pleading also was transmitted to the indicated parties set forth above in the manner described below:

By air courier service, for next business-day delivery by

By messenger service, for same-day delivery by hand by

By telecopy, for immediate receipt to those creditors marked with an asterisk.

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made.

EXECUTED on April 13, 2000, at Los Angeles, California.

Kathryn S. Bowman

Kathryn S. Bowman, Declarant

PROOF OF SERVICE

Debtor:

AUREAL, INC.
Attn: Steve Mitchell
7 Northport Loop West
Mont, CA 94538

Secured Creditor as Agent:

Oaktree Capital Management LLC
Attn: Richard Masson
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

20 Largest Unsecured Creditor:

UMC Group (USA)
Attn: Tam Kalvin
488 Deguigne Drive
Sunnyvale, CA 94086

20 Largest Unsecured Creditor:

Cadence Design Systems, Inc.
Attn: Steve Mih
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditor:

Ziff-Davis, Inc.
Attn: Customer Service
File #2082
Los Angeles, CA 90074-2082

20 Largest Unsecured Creditor:

World Communications
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0767

20 Largest Unsecured Creditor:

Integra-Dyne Corp.
Attn: Ren Condorta
145 King Street, West, Suite 1000
Toronto, ON M5H 1J8
Canada

20 Largest Unsecured Creditor:

Highsoft, Inc.
Attn: Steve Campos
1965 Latham Street
Mountain View, CA 94040-2107

20 Largest Unsecured Creditor:

Orrick, Herrington & Sutcliffe
Attn: Terrence P. McMahon
1020 March Road
Menlo Park, CA 94025

Debtor's Counsel:

Bruce Bennett/Joshua Mester
Hennigan & Bennett
601 S Figueroa St., Suite 3300
Los Angeles, CA 90017

Counsel to Oaktree Capital Mgmt.:

Eric Reimer, Esq.
McDermott, Will & Emory
2049 Century Park East, 34th Floor
Los Angeles, CA 90067

20 Largest Unsecured Creditor:

Flatland Online, Inc.
Attn: Michael K. Powers
2325 Third Street, Suite 215
San Francisco, CA 94107

20 Largest Unsecured Creditor:

KPMG, LLP
Attn: Juan Gonzales
Dept. 0922
PO Box 120001
Dallas, TX 75312-0922

20 Largest Unsecured Creditor:

Houlihan Lokey Howard & Zukin
Attn: Glenn R. Daniel, Managing Director
49 Stevenson Street, 14th Floor
San Francisco, CA 94105

20 Largest Unsecured Creditor:

VIFA-Speak A/S
Stationsvej 5
6920 Videbaek
Denmark

20 Largest Unsecured Creditor:

3DSL
Attn: John Byrne
Blissworth Base Hill
Stoke Road, Busworth
Northants, UK NN73DB

20 Largest Unsecured Creditor:

Hruska Productions Audio, Inc.
Attn: Jennifer Hruska
66 Rear Dudley Street
Arlington, MA 02476

Request For Special Notice:

Orrick, Herrington & Sutcliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-3143

Office of the U.S. Trustee: ★

U.S. Trustee
1301 Clay Street, Suite 690N
Oakland, CA 94612

20 Largest Unsecured Creditor:

Ocean Data Products
5th Floor Kader Industrial Bldg.
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

20 Largest Unsecured Creditor:

Caesar International, Inc.
Attn: JoJo Estavillo
2860 Zanker Road, Suite 210
San Jose, CA 95134

20 Largest Unsecured Creditor:

Avnet Electronics Marketing
Attn: Judy O'Brien
2105 Lundy Avenue
San Jose, CA 95131

20 Largest Unsecured Creditor:

Finova Technology Finance, Inc.
Attn: Lori P. Sullivan
115 West Century Road, 3rd Floor
Paramus, NJ 07652

20 Largest Unsecured Creditor:

GE Capital
Attn: Brian Haber
Dept. 3123
Pasadena, CA 91051-3123

20 Largest Unsecured Creditor:

Activision, Inc.
Attn: Andrea Tedeschi
3100 Ocean Park Boulevard
Santa Monica, CA 90405

20 Largest Unsecured Creditor:

PC Gamer
Attn: Robin Rosales
150 North Hill Drive
Brisbane, CA 94005

EXHIBIT C



Power Struggle Forced Aureal Walkout

March 6, 2003

By [Mark Hachman](#)

The mysterious last days of Aureal Semiconductor were marred by a power struggle that culminated in a management walkout, according to the ex-chief executive of the company.

Kenneth "Kip" Kokinakis, who led Aureal—the company that popularized the concept of virtualized HRTF sound on the PC—joined similarly named startup Aura Communications in January, in yet another bid to turn a struggling company around.



Kokinakis joked about the similarity between his two companies' monikers. "Yeah, I thought Aura — Aureal—here we go again," Kokinakis said in an interview. "At least this time, maybe we won't get sued."

Aureal was founded on the principle that the experience of interacting with devices like a PC or a television set could be made more interactive through the use of "virtual" sound, which uses audio coding algorithms to fool the ear into thinking sounds were actually coming from behind, over, or under the listener. Aura Communications, meanwhile, has designed a personal-area-networking technology that rivals Bluetooth.

Aureal's work prompted a number of competing technologies, the most recent being Dolby's [Virtual Speaker](#) algorithm.

But in late March 2000, Aureal issued a statement claiming that the company needed an immediate infusion of cash to remain in business and that it was considering selling off its assets.

It ultimately sold out to Creative Labs; ironically, Aureal had defended itself against Creative Labs in a bitter legal fight involving patents and claims of false advertising. Aureal later estimated it spent \$6.4 million in 1999 solely on legal fees, while pulling in just slightly more in product revenue each quarter.

The day after Aureal issued its plea for cash, management walked out en masse. All of the eight corporate officers listed in Aureal's annual report, including the chief executive, chief financial officer,

chief technical officer, general counsel and sales executives, left the company. Four of the five members of the board of directors also left, save for D. Richard Masson, principal at Oaktree Capital Management LLC, Los Angeles, a venture-capital firm that held a majority stake in Aural.

Kokinakis essentially vanished from the public eye for several years, quietly working as a consultant. Toni Schneider, Aural's vice president of advanced audio products, now runs [Oddpost](#), a Webmail service paid for by customers, not ads. General counsel Brendan O'Flaherty joined broadband chip company [Massana](#).

Kokinakis said the walkout, which was never explained publicly, simply came down to a fight between shareholders and management. "We had exhausted our funds," he said. "Management hoped to sell to avoid bankruptcy, while the shareholders thought we should hold out for a better deal. So we left."

According to Kokinakis, he's applying some lessons from the Aural ordeal to his new position at Aura Communications.

Aura now uses a fabless model, while Aural contracted with foundries to build and sell its audio components to companies such as the now-defunct Diamond Multimedia. That got Aural into trouble, Kokinakis admitted, when Aural began building its own add-on cards and shipping them to Diamond to resell. Aural later took the plunge and started building and selling its cards under its own name.

In retrospect, Kokinakis said that strategy was a mistake.

"Had Diamond not folded, we could have done it," Kokinakis said. "But I think we were too greedy in that transaction. We were trying to build a brand, but I think we might have been better off in revenue sharing."

Still, Kokinakis said, the management team faced an uphill battle from the beginning. Aural was formed from the ashes of Media Vision, an add-on card manufacturer that underwent a complete management and technology overhaul after its executives were indicted for fraud in 1998. Steven Allan, the ex-CFO of Media Vision, was found guilty of five counts of wire, mail and securities fraud last year following an eight-year investigation.

"It was almost impossible right from the beginning," Kokinakis said. "We just ran out of gas."

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EXHIBIT D

HENNIGAN & BENNETT

LAWYERS

601 SOUTH FIGUEROA STREET

SUITE 3300

LOS ANGELES, CALIFORNIA 90017

TELEPHONE (213) 694-1200

FACSIMILE (213) 694-1234

April 4, 2000

**VIA FACSIMILE
AND FEDERAL EXPRESS**

Aureal, Inc.
45757 Northport Loop West
Fremont, CA 94538
[facsimile no. 510-252-4554]

**Re: Retainer Agreement between Hennigan & Bennett and Aureal, Inc.,
And Its Subsidiaries, Crystal River Engineering, Inc., and Aureal
Limited Regarding Bankruptcy Representation**

Gentlemen:

This letter sets forth the terms and conditions upon which Hennigan & Bennett ("H&B") will represent Aureal, Inc., and its wholly-owned subsidiaries Crystal River Engineering, Inc., and Aureal Limited (collectively, "Aureal"), in connection with the filing and prosecution of chapter 11 bankruptcy cases for one or more of them in the United States Bankruptcy Court for the Northern District of California, Oakland Division.

H&B will act as Aureal's special reorganization counsel to render such ordinary and necessary legal services as may be required in connection with the contemplated chapter 11 cases, including:

1. Assisting Aureal in the preparation of its bankruptcy petition(s), schedule(s) of assets and liabilities, statement(s) of financial affairs, and such other documents as are required to be filed with the Bankruptcy Court and the Office of the United States Trustee to commence and proceed with the chapter 11 case(s);
2. Advising Aureal with respect to the sale of some or all of its assets and with respect to the negotiation, preparation, and confirmation of a plan or plans of reorganization;

HENNIGAN & BENNETT

Aureal, Inc.

Chapter 11 Retainer Agreement

April 4, 2000

Page 2

3. Assisting Aureal in preparing and obtaining approval of a disclosure statement or statements;
4. Appearing at meetings of creditors;
5. Representing Aureal in litigation in the Bankruptcy Court where such litigation involves substantial and material issues of bankruptcy law; and
6. Advising Aureal regarding its legal rights and responsibilities as a debtor in possession under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the United States Trustee Guidelines and Requirements.

Please be advised that H&B's employment as Aureal's special reorganization counsel does not include any of the following: (a) appearances before any court or agency other than the Bankruptcy Court and the Office of the United States Trustee; (b) litigation in the Bankruptcy Court with respect to matters which are, in the main, disputes involving issues of nonbankruptcy law; and (c) the provision of advice outside the insolvency area, including advise with respect to matters such as patent, trademark, corporations, taxation, securities, torts, environmental, labor, criminal, and real estate law. Further, the limited scope of our employment as Aureal's special reorganization counsel does not include giving attention to, forming professional opinions as to, or advising you with respect to, disclosure obligations under federal securities or other nonbankruptcy laws or agreements.

As you are aware, H&B also has agreed to serve as counsel to Aureal with respect to certain nonbankruptcy litigation to be commenced on behalf of Aureal. The terms and conditions of that engagement are set forth in a separate engagement letter, which letter is to be read and interpreted consistently and concurrently with the terms and conditions set forth herein.

With respect to H&B's services as special reorganization counsel pursuant to this engagement letter, Aureal has agreed to pay H&B a reasonable fee for services rendered and to be rendered and to pay H&B for all costs and expenses charged to its account. We have requested and Aureal agreed to pay the sum of \$300,000 as a retainer for the professional services that H&B will render and for the expenses that H&B will incur as special reorganization counsel, as well as additional security for Aureal's obligations to H&B. H&B's engagement is contingent on its receipt of that sum prior to the commencement of any bankruptcy proceedings with respect to Aureal. The retainer amount may be allocated by H&B among the entities comprising Aureal in any manner in which H&B deems appropriate.

HENNIGAN & BENNETT

Aureal, Inc.

Chapter 11 Retainer Agreement

April 4, 2000

Page 3

Following exhaustion of the retainer, H&B will seek additional compensation for services rendered during the course of the chapter 11 cases ("interim compensation") based in part upon our guideline hourly rates. These rates range from \$200 to \$460 per hour for attorneys, from \$90 to \$340 per hour for financial consultants, and from \$50 to \$155 for paralegals and clerks. Our guideline hourly rates are adjusted periodically, typically on January 1 of each year, to reflect the advancing experience, capabilities and seniority of our professionals as well as general economic factors.

Our requests for interim compensation also will include charges for reasonable costs and expenses incurred in connection with the engagement. Such costs and expenses typically include, among others, charges for messenger services, air couriers, word processing services, secretarial overtime, photocopying, postage, long distance telephone service, computerized legal research facilities, process service, investigative searches, and other charges customarily invoiced by law firms in addition to fees for legal services, including court fees and travel expenses. In the event that we incur expenses that we deem to be extraordinary or significant, such as transcript costs or sizable outsourced photocopying expenses, you agree that Aureal will pay those expenses directly.

It is H&B's practice to charge our clients for services rendered based upon not only the total number of hours of services rendered charged at guideline hourly rates, but also upon such other factors as the complexity of the problems presented to us, the amount at issue, the nature, quality and extent of the opposition encountered, the results accomplished, the skill we exercised in accomplishing those results, the extent to which our services were rendered outside the Los Angeles area, after normal business hours or on other than normal business days, delay in our receipt of compensation, and the extent to which we were at risk in being paid. When our representation is ended, the firm will determine the amount of the total fees and will send Aureal a final statement, which may reflect a fee that exceeds the interim compensation previously sought or invoiced by H&B. To the extent that H&B's final fee exceeds the total number of hours of services rendered charged at guideline hourly rates, H&B will consult with Aureal before setting that final fee.

Because of the specialized nature of our practice, from time to time H&B may concurrently represent one client in a particular case and the adversary of that client in an unrelated case. Thus, for example, while representing Aureal, H&B also may represent a creditor of Aureal in that creditor's capacity as a debtor or as a creditor of an entity which is not related to Aureal. In addition, while representing Aureal, H&B may represent an account debtor of Aureal as a debtor in a reorganization case or in connection with out-of-court negotiations with such entity's creditors concerning the

HENNIGAN & BENNETT

Aureal, Inc.

Chapter 11 Retainer Agreement

April 4, 2000

Page 4

entity's ability to pay its debts generally. Please be assured that, despite any such concurrent representation, we strictly preserve all client confidences and zealously pursue the interests of each of our clients, including in those circumstances in which we represent the adversary of an existing client in an unrelated case. Aureal agrees that it does not consider such concurrent representation, in unrelated matters, of Aureal and any adversary to be inappropriate and therefore waives any objections to any such present or future concurrent representation.

Also, several attorneys at H&B have spouses, parents, children, siblings, fiances or fiancées who are attorneys at other law firms and companies. H&B has strict policies against disclosing confidential information to anyone outside the firm, including spouses, parents, children, siblings, fiances and fiancées. You agree that you do not consider our representation of Aureal to be inappropriate in light of any such relationships, and H&B agrees to advise Aureal in the event that it determines that any of the relationships likely would lead to a conflict situation.

H&B maintains a policy that it does not provide opinion letters to its clients or to others who might wish to rely on such letters. We do not alter this policy except under very unusual circumstances and then only upon further written agreement, which provides for compensation to us for the special risks attendant to the furnishing of such opinions. H&B maintains errors and omissions insurance coverage applicable to the services to be rendered hereunder which complies with the requirements imposed by California Business and Professions Code sections 6147(a)(6) and 6148(a)(4).

By this agreement, HMB is being engaged only by Aureal and its subsidiaries, which are corporate entities. Our employment does not include the representation of any individual officer, director, shareholder, employee or any affiliate of Aureal.

Aureal may discharge H&B at any time. H&B may withdraw at any time with Aureal's consent or for good cause without Aureal's consent. Good cause for H&B's withdrawal includes Aureal's breach of this agreement (including Aureal's failure to pay any statement or invoice when due), Aureal's refusal or failure to cooperate with us, or any fact or circumstance that would render our continuing representation unlawful or unethical.

By executing this agreement you acknowledge that you have read carefully and understand all its terms. This letter constitutes the entire understanding between Aureal and H&B regarding our employment as special reorganization counsel, and this agreement cannot be modified except by further written agreement signed by each party. As noted above, the terms and conditions of H&B's engagement by

HENNIGAN & BENNETT

Aureal, Inc.

Chapter 11 Retainer Agreement

April 4, 2000

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Aureal with respect to certain nonbankruptcy litigation matters are set forth in a separate engagement letter.

If you have any questions about the foregoing, please call Josh Mester, or me. Moreover, please feel free to obtain independent legal advice regarding this agreement. If you are in agreement with the foregoing, and it accurately represents your understanding of Aureal's retainer agreement with H&B with respect to services as special reorganization counsel, please execute the enclosed copy of this letter and return it to me. If not, please contact us immediately. We look forward to working with you on these cases.

Very truly yours,

HENNIGAN & BENNETT

By


James O. Johnston**THE FOREGOING IS APPROVED AND AGREED TO:**DATED: April 4, 2000**AUREAL, INC.**By: Its: Chief Operating Officer**Aureal, Inc.'s Taxpayer I.D. Number: 94-3117385**

F:\Client Files A-H\Client Files A\Aureal\Ext Correspondence\retainer agmt for ch 11 jo322000.doc

EXHIBIT E

COPY

1 BRUCE BENNETT (SBN 105430)
 2 JAMES O. JOHNSTON (SBN 167330)
 3 JOSHUA M. MESTER (SBN 194783)
 HENNIGAN & BENNETT
 4 601 South Figueroa Street, Suite 3300
 Los Angeles, California 90017
 Telephone: (213) 694-1200
 Facsimile: (213) 694-1234

CO COPY
 CO APP-5 PM 12:33
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIF.

5 Proposed Reorganization Counsel for
 6 Debtor and Debtor in Possession

7
 8 UNITED STATES BANKRUPTCY COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

11 In re)
 12 AUREAL, INC., d/b/a SILO.COM,)
 f/k/a AUREAL)
 13 SEMICONDUCTOR, INC., f/k/a)
 MEDIA VISION TECHNOLOGY,)
 14 INC., a Delaware corporation;)
 15)
 16 Debtor.)

Case No. **00 42104**
 (Chapter 11)

DECLARATION OF JAMES O. JOHNSTON IN
 SUPPORT OF APPLICATION OF DEBTOR
 AND DEBTOR IN POSSESSION TO EMPLOY
 HENNIGAN & BENNETT AS
 REORGANIZATION COUNSEL

[No Hearing Required]

21
 22 I, James O. Johnston, declare:

23 1. I am a member in good standing of the Bar of the State of California. I am
 24 admitted to practice before, among other courts, the United States District Court for the
 25 Northern District of California. I am a partner in Hennigan & Bennett ("H&B"),
 26 proposed reorganization counsel for Aural, Inc., the debtor and debtor in possession
 27 (the "Debtor") in the above-captioned bankruptcy case. I make this Declaration in
 28 support of the "Application Of Debtor And Debtor In Possession For Authority To

HENNIGAN & BENNETT

1 Employ Hennigan & Bennett As Reorganization Counsel (the "Application"). I have
2 personal knowledge of the matters set forth below and, if called to testify, I would and
3 could competently testify thereto.

4 2. This Declaration is made pursuant to 11 U.S.C. §§ 327, and 329(a) and Rule
5 2016(b) of the Federal Rules of Bankruptcy Procedure.

6 3. By the Application, the Debtor has applied to the Court for authority to
7 engage H&B as its reorganization counsel on substantially the terms and conditions set
8 forth in the retention agreement attached as Exhibit B to the Application (the "Retention
9 Agreement").

10 4. To the best of my knowledge, information, and belief, all attorneys
11 comprising or employed by H&B who will render services in this case are or will be duly
12 admitted to practice law in the courts of the State of California and in the United States
13 District Court for the Northern District of California and are familiar with the
14 Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy
15 Rules for this District.

16 5. H&B has received a retainer of \$300,000 for services to be rendered to the
17 Debtor in connection with this chapter 11 case. H&B has deposited the unearned
18 portion of the retainer in a trust account in the name of the Debtor, as a trust
19 fund/security retainer, to secure the payment of H&B's allowed fees and expenses in
20 this case. During the one year period prior to the filing date of the chapter 11 petition,
21 H&B did not receive from the Debtor any other payments for services rendered to the
22 Debtor in connection with this case and the reorganization of its business. H&B does not
23 have a prepetition claim against the Debtor's estate.

24 6. H&B has agreed to accept as compensation for its services its retainer and
25 such additional reasonable sums as may be allowed by this Court in accordance with
26 law, based upon the time spent and services rendered, the results achieved, the
27 difficulties encountered, the complexities involved, and other appropriate factors. As set
28 forth in the Retention Agreement, the Debtor has agreed to pay H&B a reasonable fee.

1 Such fee may exceed fee calculated by reference to H&B's standard guideline hourly
2 rates.

3 7. I understand that the provisions of Sections 328, 329 and 330 of the
4 Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2016 require, among other
5 things, Court approval of employment of professionals and Court authorization of any
6 fees and costs that H&B shall receive from the Debtor after appropriate notice and a
7 hearing.

8 8. H&B has not shared or agreed to share any compensation for its
9 representation of the Debtor with any other person, except as among the members of
10 H&B.

11 9. H&B represents Oaktree Capital Management, LLC, an affiliate of the
12 Debtor's largest secured creditor and largest equity holder, in an unrelated litigation
13 matter entitled Farallon Capital Partners, L.P., et. al. v. Gleacher & Co., Inc. et. al., which
14 is pending in the California Superior Court in Los Angeles, as case number BC 215260.
15 Despite that concurrent representation which is within the scope of and permitted by
16 retention agreement, I believe that H&B is "disinterested" within the meaning of section
17 101(14) of the Bankruptcy Code, and does not hold or represent an interest materially
18 adverse to the estates within the meaning of section 327 of the Bankruptcy Code.

19 10. Except as set forth above, to the best of my knowledge, information, and
20 belief, neither H&B nor any of the attorneys comprising as employed by it has any prior
21 connection to the Debtor or is an insider of the Debtor or any other related entities in
22 which the Debtor may have an interest, its creditors, or any other party in interest in this
23 case or its respective attorneys or accountants. If at any subsequent time during the
24 course of this proceeding, H&B learns of any representation that may give rise to a
25 conflict, an amended Declaration identifying and specifying such potential conflict will
26 be filed promptly with the Court and the Office of the United States Trustee.

27
28

Exhibit B

to filing under California Rules of Court 9.13 (d), (e), and (f)



THE STATE BAR
OF CALIFORNIA

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE

TELEPHONE: (213) 765-1000
TDD: (213) 765-1566
FAX: (213) 765-1168
<http://www.calbar.ca.gov>

March 6, 2006

DAVID P. O'DONNELL
72 VAN REIPEN AVE # 37
JERSEY CITY NJ 07306

Inquiry No.: 05-20211
Respondent: JOSHUA MESTER, SIDNEY LEVINSON, STEVE MITCHELL, JAMES
JOHNSTON, LINDA KONTOS, JOSHUA MORSE, KAREN KUPETZ,
MICHAEL MORRIS

Dear Mr. O'Donnelli:

Your complaint received on December 29, 2005, and January 25, 2006, have been reviewed by an attorney to determine whether the above-referenced attorneys violated the State Bar Act and/or the Rules of Professional Conduct, and whether there are basis for investigation or prosecution of their alleged conduct. In your complaint, among other issues, you state that the associate of Hennigan & Bennett Lawyers failed to obtain waiver of conflicts in a bankruptcy court.

After careful review and after taking into consideration all relevant factors, we have determined that the matter does not warrant disciplinary action. The circumstances of which you complained appears to be about the conduct of the opposing counsels, and your complaint does not provide sufficient evidence for disciplinary action to take place against them. If the client was to make this complaint, the client would be waiving the confidentiality of attorney-client communications, and the State Bar could require a full response from the attorneys to the allegations. In this situation, the court in which the case is located has jurisdiction to determine if misconduct were committed by the attorneys. Should there be a finding of misconduct on the attorneys' part, you may re-file your complaint, along with a copy of the court's order for further consideration.

If you do not agree with the decision to close your complaint, you may request a review, in writing within **three (3) months**, of the date of this letter. Telephonic requests cannot be accepted. Include with your request any additional or new evidence and **copies** of documentation which you believe should be considered. You may make your written request to: Audit and Review, Office of the Chief Trial Counsel, State Bar of California, 1149 South Hill Street, Los Angeles, California 90015.

Very truly yours,

Manya B. Lewis
Complaint Analyst

MBL/ec

Exhibit C

to filing under California Rules of Court 9.13 (d), (e), and (f)

June 5, 2006

Audit and Review
Office of the Chief Trial Counsel
State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

RE: Request for Review of Decision (California Bar Complaint #05-20211)

Dear Chief Trial Counsel, California Bar:

This is my formal request to the California Bar for a review of the decision I received on March 6, 2006, (the "Decision"), [Exhibit S](#), made in regard to my California bar complaint #05-20211. [Exhibit R](#). Having reviewed the Decision in Next Factor's first complaint, we now augment our original filing in this request, (the "Request"), as directed by the Decision, and supplement it with copies of specific and particular documentation as further demonstration of attorney misconduct.

The additional and new evidence ("Additional Evidence") submitted in response to the Decision provides further demonstrative support for my complaint against the CA Attorney's apparent misconduct as it relates to the failure to obtain waivers of conflicts in accord with the CRPC.

The Additional Evidence also demonstrates grave and related CA Attorney misconduct ("Attorney Misconduct"). For example, in [section 5.8.2](#) of this Request we demonstrate in detail that the lead CA attorney Sidney P. Levinson misled the Court when he concealed his identity as the lead attorney for a client-creditor and who later assisted this client-creditor against Aural in efforts to reverse the Court's final order rejecting this client-creditor's claim. In so doing, the CA Attorney represented an interest adverse to the estate, was not disinterested, and was, therefore, not qualified to represent the debtor in this case¹. If the CA Attorneys had not misled the Court and had fully disclosed these facts, they would have been disqualified as debtor's counsel and in that event would have been required to disgorge the approximate \$1M in fees they earned in the case.

In another instance we show that the Court found that the debtor, represented by the CA Attorneys, engaged in misconduct related to a 29-day delay to disclose adverse representation in this case, and we provide Additional Evidence of the same CA Attorneys delaying disclosure of adverse representation in other instances by several months. Unfortunately, I see misconduct such as this too often in our business. I ask that your office consider the entirety of the CA Attorneys conduct as you review these complaints.

¹ The adverse interest and disinterested person limitations set forth in 11 U.S.C. §327(a) can not be waived. *In re S.S. Retail Stores*, 211 B.R. 699 (Bankr. 9th Cir. 1997); *In re Envirodyne Industries, Inc.* 150 B.R. at 1016.

I want to share with you that Next Factors, Inc. (“Next”) has been reluctantly involved in protracted litigation over the last several years and in various jurisdictions regarding the bankruptcy system, as it relates to the business of trade claim factoring. As founder and President of Next, I feel deeply disillusioned and oppressed as a result of our experience with the legal system. I feel that Next has been frustrated in obtaining justice; that entrenched professionals were able to profit though interconnections of conflicted interests; and that the very legal system that is supposedly there to protect corporate and individual rights and property has been effectively hijacked by professionals who either abuse their own power and authority or whom are attorneys willing to Abandon their Client for Protection of Opposing Counsel (“[ACPOC Syndrome](#)”) rather than with upholding ethical rules and principles of justice. Misconduct in a federal court located in California by California attorneys fall within the jurisdiction and responsibility of your office.

The unethical and oppressive tactics of professionals make the business of trade claim factoring increasingly unprofitable for those who are independent of and unaffiliated with bankruptcy professionals. The original aims of bankruptcy law have been largely disaffected. I have encountered, on too many occasions, vested interests who collude to influence outcomes contrary to the greater good originally intended by Congress. It is with this experience -- having lost faith in the legal system in CA, and indeed in the bankruptcy system generally -- that I plead for a fair and even-handed audit and review of the Decision and investigation of the original Complaint as augmented by and through this Request.

Sincerely,

David P. O’Donnell, President

Date: _____

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5.6.1 The CA Attorneys Omit relevant information about the genesis of the Center Claim.	25

5.6.2 The CA Attorneys omit relevant information about the absence of any writings in support of the Center claim, nor about the weakness of the evidence submitted.	26
5.6.3 The CA Attorneys omit relevant information about the failed transfer of claim from Center Capital to Argo.	28
5.6.4 The CA Attorneys omit relevant information about the impetus for and extent of the further review of the Center claim.	28
5.6.5 The CA Attorneys omit relevant information regarding the proper record holder of the Center claim thereby implying that the debtor Aureal was legally bound to serve notice of the Objection of the Center claim to Argo and thus now Aureal owes some legal or altruistic duty to Argo in order to help them out.	29
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5.8.2 The CA Attorneys deliberately omitted the name of the attorney who provided services for the Second Conflicted Representation in the Second Supplemental Declaration.	34
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5.8.4 The CA Attorneys deliberately omitted from both Supplemental Declarations the similarities among the issues in the adverse representation and the issues in the Aureal case.	37
5.8.5 The CA Attorneys misled the Court when it promised to promptly file additional declarations when learning of potentially conflicting representation.	38
5.9 The CA Attorneys Misled the Judge By Artifice and/or False Statement Concerning the Employment of PriceWaterhouseCooper LLC in the Aureal Case.	41
5.9.1 The Court’s finding of misconduct in the PWC matter reflects the egregious nature of the CA Attorney’s conduct in the First and Second Conflicted Representations.	44
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1.0 Scope of Additional and New Evidence

The Attorney Misconduct is related to the systemic failure of H&B to obtain waivers of conflicts as proscribed by the California Bar Rules, failure to adhere to other California Bar Rules as demonstrated by Additional Evidence, and failure to comport their conduct in accordance with opinions of California courts, ethics opinions, rules, statutes, and standards promulgated by other jurisdictions and bar associations (“Guiding Authority”) as detailed in this Request.

The Additional Evidence is provided in both paper form and an Adobe Acrobat file. For greater facility I have provided diagramed chronologies of the matters detailed in this Request. Please note that each of the facts and events identified in these diagramed chronologies will link to the particular Additional Evidence which supports it when reading the materials in Adobe Acrobat². In addition, the blue underlined text in this Request is similarly linked to the associated Additional Evidence.

2.0 Jurisdiction

The original complaint, and this present Request, is seeking a review of CA Attorney Misconduct under which the Office of the Chief Trial Counsel (the “OCTC”) has jurisdiction. Specifically, I am requesting a review of CA Attorney conduct under the State Bar Act and the Rules of Professional Conduct.

Pursuant to the State Bar Act § 6044, the California State Bar, with the filing of *any* complaint, “may initiate or conduct investigations of all matters affecting or relating to: [...] (c) the discipline of the members of the State Bar”. According to the State Bars’ own website, the State Bar accepts consumer complaints³, and I am certainly a consumer of CA legal services and of the CA court system. The State Bar provides further that “[e]ach local administrative committee shall: (a) receive and investigate complaints as to the conduct of members.” State Bar Act § 6043. For a willful breach of any of the CRPC, the State Bar Board of Governors has the power to discipline attorneys by reproof, public or private, or to recommend to the Supreme Court the suspension from practice for an attorney not exceeding three years. State Bar Act § 6077. Based on the foregoing, I assert that the State Bar Act confers jurisdiction to your Office in this matter.

One of the additional allegations of misconduct complained of in section 5.9 of this Request contains a reference to two issued Court Orders, included in the Additional Evidence, wherein the Court identified misconduct. Certainly the OCTC has jurisdiction to investigate a matter deemed misconduct by a Court in California.

²To follow a link: 1) Select the hand tool , a zoom tool, or a selection tool; 2) Position the pointer over the linked area on the page until the pointer changes to a hand with a pointing finger . (The hand has a plus sign in it if the links point to the Web.) Then click the link.

³ The State Bar of California Website, Home > Attorney Resources > Lawyer Discipline & Complaints > FAQs, at URL: http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10136&id=FAQ

However, the text of the Decision I received from the ICTCI suggests that the bankruptcy court must first find that the CA Attorney's engaged in Misconduct, and then issue an order to that effect, as a prerequisite to OCTC asserting jurisdiction over this Request. While a court decision finding misconduct is identified in this Request, such a court decision or order finding misconduct should not serve as prerequisite to investigation by the CA Bar. It is true that the State Bar Act § 6086.7 requires that the State Bar investigate and determine whether disciplinary action against the lawyer is warranted when a court notifies the State Bar of certain misconduct, but it would appear incorrect to suggest that this is the *exclusive* means by which a complaint may be filed and investigated by the State Bar.

An individual consumer must be able to file a complaint with the State Bar in order for the objectives of a self-policed organization to be met. As earlier indicated, the State Bar itself invites and receives complaints from individual consumers of the CA legal system. Neither §6086.7 nor apparently any other provision of the Act prohibits the OCTC from asserting jurisdiction in these matters solely because another court has not yet reported misconduct to the State Bar. If a prior court finding of misconduct were necessary as a prerequisite for OCTC to assert jurisdiction in every case, then the ability of consumers to recognize and respect the State Bar "as a contributing and accountable leader in improving the administration of justice and ensuring the rule of law in our civil society"⁴ would be substantively weakened. If the consumers cannot bring forward complaints against members of the State Bar, then how can they expect that its' members are ever investigated by the State Bar, let alone held to account for misconduct?

In the same way that the State Bar ensures the integrity of the ruling on attorney discipline cases through the nations only discipline system that employs independent professional judges who are dedicated to ruling on attorney discipline cases, so too does the State Bar ensure the integrity of the review of charges of attorney misconduct through the receipt of complaints by consumers who are independent of the professional judges who may or may not complain of misconduct in every case.

Even where a professional judge may find a conflict does not merit disqualification (and the attendant disruption to the case), that does not mean that it has approved of an attorney's conduct – that question can still be resolved by a disciplinary body⁵.

The original complaint and this Request provides Guiding Authority relevant to bankruptcy jurisprudence, but only for your consideration. My intent is to illuminate the context within which the alleged violations of the State Bar Act or the Rules of Professional Conduct take place. To be clear, I am not requesting the OCTC to make any determination based on any rule or law related to bankruptcy law or rules. This Request only seeks a review of conduct by CA Attorneys under the CA Bar Rules, the OCTC

⁴ State Bar of California Long-Range Strategic Plan, Aug. 23, 2002.

⁵ Subin Assocs. V. Two Ninety One Broadway Realty Assocs., 126 A.D.2d 443, 510 N.Y.S.2d 588, 589 (1987)

therefore has jurisdiction to determine if misconduct was committed by the CA Attorneys.

In exercising its' authority to investigate complaints of misconduct by individual consumers, the California Bar upholds honesty and integrity of the bar⁶ while maintaining the public confidence in lawyers⁷. That the California Bar seeks to uphold these virtues is evidenced by its' own goal as stated in the State Bar of California Long-Range Strategic Plan, Aug. 23, 2002: "To assure that the public is protected and served by attorneys and other legal services providers that meet the highest standards of competence and ethics." The alleged misconduct complained of herein is significant and represents a pattern of abuse that reflects poorly on the integrity of all lawyers who may be judged by the conduct of the CA Attorneys.

3.0 Background

3.1 About Next Factors

Next is a claims trader and was acting in that capacity as a creditor in the Aural case. Claims trading has increased significantly in large bankruptcy cases, and Next has observed a commensurate increase in practices and actions of bankruptcy professionals that is, at best, unethical. While there is no "bankruptcy police" whose responsibility it is to ensure the honesty and integrity of the bankruptcy system, the professionals entrenched in the system should certainly be held to account for their ethical lapses under the disciplinary rubric of their self-policing professional organization.

3.2 About H&B

A substantial portion of H&B's business involves the representation of large corporate 11 debtors. The CA Attorneys named in this complaint served as reorganization counsel for Aural, Inc.

3.3 About Argo Partners, Inc.

Argo Partners, Inc. ("Argo") is a claims trader. At all times during the pendent Aural bankruptcy case, Argo Partners, Inc. ("Argo") was a direct competitor of Next Factors, Inc. Argo purchased a number of claims held by various debtors in the Aural bankruptcy case and the claims trader with the largest number of claims in the case. Argo was a client of H&B during various periods during the pendent Aural bankruptcy case.

⁶ Pulsecard, Inc. v. Discover Card Servs., 1994 U.S. Dist. LEXIS 19635, at *10 (D. Kan. 1994).

⁷ First Am. Carriers v Kroger Co., 302 Ark. 86, 787 S.W.2d 669, 671 (1990).

4.0 Summary of New and Additional Evidence

The gross violations of the CRPC, other instances of Misconduct, and the impairment that these willful, deliberate, and inexcusable acts caused, are each evidenced by specific pleadings, documents, and declarations enclosed herein. I ask the OCTC to consider the entirety of the CA Attorney's conduct when considering these complaints. While the CRPC does not require actual proof of harm or deception as a necessary prerequisite to culpability for certain of these apparent acts of Misconduct⁸, each of Next, other unsecured creditors, and the Court all appear to have been so impaired during the course of the Aureal case.

This request and the original complaint is not a complete enumeration of claims I have against the CA Attorneys; it merely represents what has been compiled in the time allotted since receiving the Decision. I welcome the opportunity to provide further information and/or to speak with a representative from the OCTC to share other matters of concern with you .

I do not intend to limit the review of this complaint to any particular section of the CRPC or the State Bar Act as I do not know whether any other CRPC rules or provisions of the State Bar Act may also be connected with these apparent acts of Attorney Misconduct.

To the extent that the OCTC requires further evidence, beyond that included in the Additional Evidence provide with this Request or the original Complaint, that might be protected by attorney-client privilege, I want to inform the OCTC that I have been informed by the liquidating trustee in the Aureal case, David A. Bradlow, that he will fully cooperate with any investigation into misconduct by the CA Attorneys and disclose any information you require.

⁸Culpability for violating CRPC 5-200(B) may be established even where there is no direct evidence of malice, intent to deceive, or hope of personal gain. Actual deception is not necessary to sustain a violation; willful deception is established where the lawyer knowingly presents a false statement which may tend to mislead the court. In the Matter of Tempkin (Review Dept. 1991) 1 Cal. State Bar Ct.Rptr. 321.

5.0 Claims of Attorney Misconduct

5.1 The CA Attorney's Failure to Obtain Waiver of Conflicts Should be Evaluated Against the CRPC and the State Bar Act.

The Response characterizes our complaints of multiple failures of the CA Attorneys to obtain informed written consent pursuant to CRPC 3-310, as complaints of failures “to obtain waiver[s] of conflicts *in a bankruptcy court* (emphasis added).” [Exhibit S](#). It appears that this characterization by the Complaint Analyst was partially determinative in the decision to close our complaint, and this characterization is incorrect.

As discussed in section [2.0 Jurisdiction](#), our original [Complaint](#), and this Request, provides Guiding Authority relevant to bankruptcy jurisprudence. However, this is offered only to illuminate the context within which the alleged violations of the State Bar Act or the Rules of Professional Conduct take place. We are not complaining that the failure of CA Attorneys to obtain waivers of conflicts was a result of any non-compliance with the bankruptcy court rules, or bankruptcy law. On the contrary, we are requesting that an evaluation of whether the rule to avoid the representation of adverse interests has been broken should be based upon the rules found in the CRPC⁹ and the State Bar Act.

It would appear counterintuitive to suggest that the rules found in the CRPC are somehow diminished or eliminated when a California Attorney is practicing in any particular area of law, such as bankruptcy. If Audit and Review of the Office of Chief Trial Counsel affirms the Decision, it would seem to create just this exception for California bankruptcy attorneys.

While I ask that the Complaint and this Request be evaluated against the CRPC and the State Bar Act, I similarly request that any purported defenses to a failure to obtain necessary informed written consents also be evaluated against these same authorities. Therefore, to the extent a CA Attorney may defend their conflicted representation on the basis that they remained disinterested with respect to their client (notwithstanding its representation of an adverse client i.e. [Exhibit D at 3:5-7](#)), that should not absolve the CA Attorneys' of their ethical requirements under CRPC 3-310(c)(3). Wholly absent from CRPC 3-310(c) is any prerequisite “material adverse effect” requirement, in contrast to the ABA Model Rules 1.7(a)(1) which concerns adverse representation where there exists a “material adverse effect” on representation.

⁹ We also suggest that the Guiding Authority may be helpful in evaluating Attorney Misconduct.

5.2 Sufficient Evidence Regarding All Claims of Failure to Obtain Informed Written Consent Are Provided with this Request and on the Record

In CA Bar complaint #05-20211, and in this Request, I complain that the CA Attorney's did not obtain informed written consent on multiple occasions. The Additional Evidence provided with this Request, along with the public docket in the Aureal case, provides the OCTC with the evidence required to evaluate each instance of these categories of alleged misconduct.

Any document that might or could have met the CA Attorney's disclosure requirements under CRPC would be disclosed to the bankruptcy court and visible on the docket. This is so because the Bankruptcy Code §327(a) implies a continuing obligation upon the professional to immediately disclose connections which are either discovered subsequently or which arise subsequently during the course of the representation¹⁰. Furthermore, disclosure is an ongoing responsibility. Actual or potential conflicts that arise after the initial application and disclosure should be promptly disclosed to the court¹¹. The OCTC can therefore look to the Additional Evidence and public docket to determine whether the CA Attorneys complied with their CRPC 3-310(C)(3) requirements. In evaluating the CA Attorneys conduct in this regard, and in determining whether or not the conduct complained of merits an investigation, it is instructive to review the importance of disclosure requirements to bankruptcy practice as it may relate to the misconduct of which I complain.

As discussed in the [original complaint](#), the Guiding Authority reflected in the Bankruptcy Code¹² and Bankruptcy Rules¹³ requires that Professionals must be "disinterested," "[neither hold nor represent any] interest adverse to the estate" and disclose all connections which may bear upon the foregoing.¹⁴ The import of this mandate that conflict waivers be fully disclosed is illustrated in a recent Montana¹⁵ case.

In that case, the debtor's counsel recognized that the debtor's main secured lender was an existing client of the firm, just as in the Aureal case where [H&B's client Oaktree was a secured creditor and majority shareholder of Aureal, the debtor and of course H&B's client](#). Counsel sought and obtained from the lender a conflict waiver that contained a "no litigation" exception that specified that counsel would not represent the debtor in litigation directly adverse to the lender. By the time the conflicts waiver was obtained, counsel had already filed an affidavit with the court in support of its application for employment by the debtor.

¹⁰Rome v. Braunstein, 19 F.3d at 57-58 (1 st Cir. 1994).

¹¹[In re Sauer](#), 191 B.R. 402 (Bankr. Neb. 1995).

¹²11 U.S.C. §§101 et al., as amended.

¹³Fed. R. Bankr. P. 1001 et al., as amended.

¹⁴Bankruptcy Code §327(a) and Bankruptcy Rule 2014.

¹⁵[In re Jore Corp.](#), 298 B.R. 703 (Bankr. D. Mt. 2003).

In this initial affidavit, as well as in subsequent amendments to it, counsel advised the court that it would “continue to review its connections with shareholders, creditors, potential creditors, and other parties in interest...[and] will notify the Court if any actual conflicts of interest or other significant connections are discovered in th[e] process.” The firm continued as the debtor’s lead counsel in a number of contested matters and negotiations adverse to the lender. Almost a full year passed before the debtor’s counsel notified the court of the no litigation exception in the lender’s waiver, despite the continual disputes between the debtor and the lender.

Upon learning of the limitation to the lender’s conflict waiver, the U.S. Trustee filed a motion to disqualify the debtor’s counsel and vacate the order authorizing its employment. The court granted the motion, holding that counsel’s failure to disclose the waiver’s no litigation exception violated mandatory bankruptcy disclosure requirements and could not be excused for simply being unintentional¹⁶.

In the same way that bankruptcy disclosure requirements serves to protect public participants in the bankruptcy system, so too does a full written disclosure and informed consent required by CRPC 3-310 helps protect the members of the public who are creditors in bankruptcy proceedings in California, while further engendering confidence in the legal system by ensuring that bankruptcy lawyers provide the broad¹⁷, full¹⁸, and candid disclosure of all facts and connections which may be relevant in determining their eligibility for employment under § 327. These requirements are designed to assure not only integrity in fact, but the appearance of propriety¹⁹. These matters merit an investigation by the CA bar.

5.2.1 The OCTC investigator must conclude the CA Attorneys either incurred multiple 3-310 violations with all conflicted clients, or that they engaged in a more severe and deliberate set of actions to hide the corresponding conflict from the Court.

This Request demonstrates at least 3 separate 3-310 violations. Even if we were to assume that HBD delivered a complete written 3-310 disclosure to Argo prior to the First Conflicted Representation, and Argo properly consented to that representation, then the CA Attorneys would still be found to have failed to disclose to the Court, for at least 289 days, the existence the conflicted representation, the secret agreement, and the consent thereto by Argo. Under this hypothetical, the CA Attorneys would have been

¹⁶ *Id.* at 724-727.

¹⁷ *See* *Diamond Lumber v. Unsec’d Creditors’ Comm.*, 88 B.R. 773, 777 (N.D. Tex. 1988) (noting that the disclosure duty is so broad because the court, rather than the attorney, must decide whether the facts constitute an impermissible conflict).

¹⁸ *See* *In re Bolton-Emerson*, 200 B.R. 725, 731 (D. Mass. 1996); *In re Blinder, Robinson & Co.*, 131 B.R. 872 (cautioning that, in bankruptcy cases, full disclosure of all potential adverse interests should be a principle of first magnitude).

¹⁹ *In re Ira Haupt & Co.*, 361 F.2d 164, 168 (2d Cir. 1966) (“The conduct of bankruptcy proceedings not only should be right but must seem right”).

misleading the Court throughout the 289 day period, on each occasion that they submitted a declaration to court but failed to disclose.

At the same time, either a 3-310 violation still existed with the CA Attorney's obligation to the debtor Aural, or Aural was part of the conspiracy to consent to the conflicted representation and withhold same from the Court and all other creditors. Unfortunately for the CA Attorneys, this same logic applies to the Second Conflicted Representation and each time the CA Attorneys acted as debtor Aural's counsel when reviewing each of the 19 claims owned by Argo.

5.3 The CA Attorneys Failed to Avoid the Representation of Adverse Interests Upon the Acceptance of Employment from Creditor Argo Partners Inc. On October 11, 2000.

On October 11, 2000, an unsecured creditor in the Aural case known as Argo Partners, Inc. retained Aural's attorney H&B ("First Conflicted Representation"). [Exhibit D at 2:19-26](#). Argo, as an unsecured creditor of Aural's bankruptcy estate, is a party in interest in the Aural bankruptcy case. Argo's interest in Aural's bankruptcy estate is by definition adverse to Aural. Under the plain language of CRPC 3-310(C)(3) the CA Attorney's were required to obtain the informed written consent of both Argo and Aural prior to entering into the employ of Argo²⁰.

Unfortunately, the Additional Evidence reflects that both integrity in fact was tainted and the appearance of impropriety was created by the CA Attorneys conduct in this case. I will develop this point by first focusing attention on the disclosure requirement. The public docket in this case reflects only one document that might come close to meeting the disclosure requirements of CRPC 3-310(A); the First Supplemental Declaration. [Exhibit D](#). This document is wanting in certain substantive respects and could not serve to satisfy the informed written consent requirement.

5.3.1 The Written Disclosure was Not Timely Filed

As an initial matter, I ask the OCTC to consider that the First Supplemental Declaration, the document that first notified the bankruptcy court about the CA Attorney's conflicted representation, was untimely filed. That is to say, it was filed late. To be clear, the filing on June 7, 2001 was no less than 239 days after the CA Attorneys retained Argo in the First Conflicted Representation. [Exhibit J at 4](#). Even if we assume that the First Supplemental Declaration was a conforming disclosure, it could not have legitimately served the purposes of CRPC 3-310(c)(3) when it was filed almost 8 months after the adverse representation commenced. The dismissive nature of the CA Attorney's actions regarding their CRPC 3-310(c)(3) requirements is further punctuated when you consider that at the time the First Supplemental Declaration was filed, the concurrent representation of the adverse client had already concluded. [Exhibit D at 4:1](#).

Perhaps this late filing was merely an innocent mistake on the part of the CA Attorneys and/or somehow a professional courtesy should have been extended by the professionals in the case to the CA Attorneys. The Additional Evidence shows that the late filing could hardly be characterized as ignorance or mistake when considering the many communications between the CA Attorneys and Argo during the First Conflicted Representation. Rather, these communications show the CA Attorneys delayed their

²⁰ "[...] attorneys for debtors-in-possession have a fiduciary duty to their client [...]. In fact, 11 U.S.C. 327 guards against concurrent representation of both the creditor and a debtor-in-possession." *In re Sidco, Inc.*, 173 BR 194 (E.D.Cal. 1994).

disclosure of their employment by an adverse client, thereby engendering the appearance of impropriety on the part of the CA Attorneys.

5.3.2 The CA Attorneys Were Fully Aware of the First Conflicted Representation When Their CRPC 3-310(C)(3) Obligations Arose

The Additional Evidence demonstrates that the CA Attorneys should have known that CRPC 3-310(C)(3) obligations arose prior to their employment by Argo in the Aureal case. A review of the pertinent dates and activities begins when Aureal filed their Application of Debtor and Debtor in Possession to Employ Hennigan & Bennett as Reorganization Counsel on April 5, 2000. [Exhibit A](#). On June 19, 2000, the Court issued an order authorizing employment of H&B. [Exhibit B](#). Shortly thereafter, H&B conducted numerous telephone conferences with Argo. Each of these telephone conferences²¹, and other significant related events surrounding the CA Attorney's First Conflicted Representation, is illustrated in the chronology diagram of [Exhibit J](#). The following discussion of these communications and related activities will not only demonstrate that the CA Attorney's knew Argo was a creditor with adverse interests in the Aureal case, but that they allowed at least the appearance of impropriety to germinate by their deliberate actions in the case.

5.3.2.1 Communications and Related Activities with Argo Prior to First Conflicted Representation

As can be seen in [Exhibit J](#), no less than four telephone conferences between the CA Attorney's and Argo took place after June 19, 2000, when the Court authorized the CA Attorney's employment by Aureal, but before the date that Argo retained the CA Attorney's, on October 11, 2000. In fact, as recently as the day before Argo retained the CA Attorney's in the Aureal case, CA Attorney Sidney Levinson conducted his third telephone conference with Argo. [Exhibit C at 7](#). CA Attorney Joshua Morse conducted his first telephone conference with Argo on October 6, 2000. [Exhibit C at 7](#).

These four telephone communications were not the sole method by which the CA Attorneys would have been alerted to Argo's position in the Aureal case. The CA Attorneys would have been informed on or before October 2, 2000 of Aureal's status as creditor in the case because at least as early as this date Argo filed a notice of claims transfer in the Aureal case. [Exhibit F](#). This notice was docketed in the normal course in the Aureal case.

Whether by phone or by mail, the CA Attorneys must surely have known Argo was a creditor with interests adverse to Aureal prior to entering into Argo's employ. As we suggested earlier, no CRPC 3-310(C)(3) conforming papers were filed in the Aureal

²¹ Note the debtor was actually charged for each of these communications between the CA Attorney and their client Argo who was at the same time adverse to the CA Attorney's client Aureal.

case by the CA Attorneys. Guiding Authority of the Bankruptcy Code and Bankruptcy Rules would similarly have required that a timely disclosure be made to the Court.

5.3.2.2 Communications and Related Activities with Argo During First Conflicted Representation

Many more telephone conferences and related activities were conducted after Argo retained H&B as their council, but before H&B disclosed the First Conflicted Representation. The first of these took place on October 12, 2000, when CA Attorney James O. Johnston signed a Notice of Appearance and Request for Notice in the First Conflicted Representation. [Exhibit I at 3](#). This Notice of Appearance was filed merely two days following CA Attorney Sidney Levinson's phone call with Argo, a phone call which itself preceded Argos' retention of H&B by only one day. CA Attorney Sidney Levinson conducted another telephone conference on December 5, 2000. [Exhibit C at 15](#). Two other H&B employees, CA Attorney Joshua Morse and legal assistant Joanne B. Stern had two additional telephone conferences with Argo during the First Conflicted Representation. [Exhibit C](#). CA Attorney Joanne B. Stern prepared a memo to Argo regarding "Argo Information". [Exhibit C](#). Finally, this First Conflicted Representation ostensibly concluded in February, 2001, according to CA Attorney Sidney Levinson. [Exhibit D at 2:27](#).

5.3.2.3 Communications and Related Activities with Argo Prior to First Supplemental Declaration

Once the First Conflicted Representation ostensibly concluded, there was one additional H&B activity concerning Argo. According to the Fee Application, legal assistant Joanne B. Stern reviewed the creditor database regarding Argo claims on June 6, 2001. [Exhibit C at 17](#). On the day following Joanne B. Stern's review of Argo claims, some 239 days after the representation of Argo began, CA Attorney Sidney Levinson finally filed his supplemental declaration wherein the previously concluded Argo representation was disclosed.

5.4 The CA Attorneys Failed to Avoid the Representation of Adverse Interests Upon Acceptance of Employment from Creditor Argo Partners, Inc. on a Date Between February 2001 and August 7, 2001.

On some date after February, 2001, Argo again retained Aureal's attorney H&B ("Second Conflicted Representation"). [Exhibit E at 2:26](#). The CA Attorney's were again required to obtain the informed written consent of both Argo and Aureal prior to entering into the second retainer agreement with Argo. I complain that the CA Attorney's did not so obtain the informed written consent of both parties. The Additional Evidence provided with this Request, along with the public docket in the Aureal case, provide the OCTC with the evidence required to evaluate this instance of alleged misconduct. The discussion in [section 5.2](#) above regarding evidence necessary to evaluate an instance of alleged misconduct in that section applies equally here.

Unfortunately, just as was the case in [section 5.2](#), the Additional Evidence reflects that both integrity in fact was tainted and the appearance of impropriety was created by the CA Attorneys conduct in this case. I will develop this point by first focusing attention on the disclosure requirement. The public docket in this case reflects only one document that might come close to meeting the disclosure requirements of CRPC 3-310(A); the Second Supplemental Declaration. [Exhibit E](#). This document is wanting in certain substantive respects and could not serve to satisfy the informed written consent requirement.

5.4.1 The Written Disclosure was Not Timely Filed

The Second Supplemental Declaration, the document that first notified the bankruptcy court about the CA Attorney's Second Conflicted Representation, was untimely filed. That is to say, it was filed late. To be clear, the filing on October 24, 2001 was no less than 78 days, possibly more, after the CA Attorneys retained Argo in the Second Conflicted Representation. [Exhibit J at 6](#). Even if we assume that the First Supplemental Declaration was a conforming disclosure, it could not have legitimately served the purposes of CRPC 3-310(c)(3) when it was filed more than 2 months after the adverse representation commenced. Just as in the First Conflicted Representation, where the corresponding disclosure was made after the representation concluded, the disclosure in the Second Conflicted Representation was apparently made after the representation of the adverse client already concluded. [Exhibit E at 3:3](#).

There were numerous communications and activities between the CA Attorneys and Argo as illustrated in [section 5.2](#), and the diagram in [Exhibit J](#). There were further interactions between H&B and Argo following the First Conflicted Representation, all of which show that the CA Attorneys delayed their disclosure of their employment by an adverse client, thereby engendering the appearance of impropriety on the part of the CA Attorneys.

5.4.2 The CA Attorneys Were Fully Aware of the Second Conflicted Representation When Their CRPC 3-310(C)(3) Obligations Arose

The Additional Evidence demonstrates that the CA Attorneys should have known that CRPC 3-310(C)(3) obligations arose prior to their second employment by Argo in the Aural case. The following discussion of communications and related activities will further demonstrate that the CA Attorney's allowed, at a minimum, the appearance of impropriety by their deliberate actions in the case.

5.4.2.1 Communications and Related Activities with Argo Prior to Second Conflicted Representation

There were two telephone conferences conducted with Argo by CA Attorney Sidney Levinson after Attorney Levinson filed his First Supplemental Declaration on June 7, 2001, but before the Second Conflicted Representation began. These telephone conferences took place on July 16, 2001. On that same day, CA Attorney Levinson also reviewed information concerning Argo's voting on the Aural bankruptcy plan. [Exhibit C at 19](#).

5.4.2.2 Communications and Related Activities with Argo Prior to Second Supplemental Declaration

CA Attorney Levinson does not specify when the Second Conflicted Representation of Argo began. [Exhibit E](#). Indeed, this representation must have commenced sometime after the First Conflicted Representation concluded, but prior to August 7, 2001, when CA Attorney Levinson signed a Stipulation to Continue the Hearing on the Motion of Debtor and Debtor-In-Possession to Disallow Transferee Claims of Argo Partners in the Second Conflicted Representation. [Exhibit H](#). Interestingly, the date of the signature on this pleading in the adverse client matter occurred within roughly 2 weeks of CA Attorney Levinson's telephone conferences with Argo, and review of Argo ballots, in the Aural matter. On September 21, 2001, CA Attorney Levinson filed a Response to Objection to Argo Partners' Claims. [Exhibit G at 50](#). CA Attorney Levinson then represented Argo at a hearing in the Second Conflicted Representation on September 25, 2001. Having resolved the objections in the Second Conflicted Representation in Argo's favor, CA Attorney then filed, approximately 1 month later, the Second Supplemental Disclosure with the Court on October 24, 2001. [Exhibit E](#). This Second Supplemental Disclosure does not indicate that the representation of Argo by the H&B has ceased, but rather that it continues. [Exhibit E at 3](#).

5.5 Upon Their Employment by Argo for the First and Second Conflicted Representation, the CA Attorneys Were Required to Seek Renewed Informed Written Consent From Aureal and Argo.

H&B obtained a conflict waiver from Aureal which appears in the retainer agreement entered into by Aureal and H&B. [Exhibit A at 11](#). While Aureal apparently consented to a potential future conflict of interest, the CA Attorneys were not thereby relieved of their duty to warn Aureal of the actual conflict with Argo once that actual conflict arose.²² In fact, the CA Attorneys were obligated to seek renewed consent from Aureal, who consented to engage in representation that had only *the potential* for a conflict.²³ They were so obligated upon the First Conflicted Representation and then again upon the Second Conflicted Representation. What evidence exists on the record that such informed written consent was received?

We have only CA Attorney Sidney Levinson's two statements that "each of the Debtor and Argo has consented to H&B's concurrent representation of the Debtor and Argo." [Exhibit D at 3:23-24](#) and [Exhibit E at 3:22-23](#). While these gratuitous statements may have been acceptable for the Court's purposes, it does not meet the definition of a informed written consent conforming to CRPC 3-310(A) for the CA Bar's purposes.

In re Robin, 2002 Cal. App. Unpublished LEXIS 3042 (Cal. App. March 15, 2002) (Cal. App. 2002) (recital in court and "on the record" did not satisfy California's writing requirement).

The two statements of CA Attorney Sidney Levinson do not indicate whether any of the required consents conformed to the CRPC²⁴. It does not provide: 1) when each party was informed of the adverse representation; 2) when consent was communicated to H&B by each party; 3) nor any writing evidencing the informed consent as required by CRPC.

If there were informed written consents to the adverse representations of Aureal, those agreements would be considered outside of the ordinary course of business for the debtor-in-possession Aureal. Such agreements may not be entered into without proper notice and motion through the bankruptcy Court. The Additional Evidence, in concert with the public docket in the Aureal case, enables an investigator to determine whether informed written consents were obtained and thereby offers sufficient evidence for determining whether the CA Attorneys' conformed to CRPC requirements this matter. I

²² See *Blecher & Collins, P.C. v. N.W. Air.*, 858 F. Supp. 1442, 1456 (C.D. Cal 1994).

²³ See, e.g., *Klemm v. Superior Court*, 75 Cal. App. 3d 893, 142 Cal. Rptr. 509, 513 (1977) opining that, once an actual conflict develops, a previous waiver of potential conflicts becomes ineffective). Cf. Cal. State Bar Standing Comm. On Prof'l Responsibility & Conduct, Formal Op. 1989-115 (1989) (approving blanket prospective waivers, but requiring a new waiver once a potential conflict ripens into an actual one).

²⁴ *In re Begun*, 162 B.R. 168, 177 (Bankr. N.D. Ill. 1993) (conclusive statements that the professional holds no adverse interests are insufficient).

believe no informed written consents conforming to CRPC 3-310(A) were obtained by the CA Attorneys prior to the First Conflicted Representation or the Second Conflicted Representation, let alone actually sought in either case for either party.

5.6 The CA Attorneys Misled the Court While Acting with Extraordinary Favor Toward Argo in a Matter Where Aureal's Interests Were Materially Adverse to Argo

The CA Attorneys acted, on "Aureal's dime",²⁵ to affect a legal detriment to Aureal and to confer a benefit upon Argo. The method by which the CA Attorneys misled the Court and extended favor to Argo was by deft artifice. The CA Attorneys accomplished this act by misleading the Court through the selective presentation and omission of facts in a stipulation, (the "Stipulation"), filed with the Court, the parties to which were H&B, Argo Partners, Inc., and the attorneys for the Official Committee of Unsecured Creditors. [Exhibit K](#). This Stipulation was submitted by the CA Attorneys for the Courts consideration and approval after the CA Attorneys had been hired multiple times by Argo.

This stipulation sought and achieved what amounts to a reversal of a prior final order by the Court wherein the Court sustained the debtor Aureal's objection to a claim owned by Center Capital Corp. As described below, it appears that this Stipulation circumvented the more appropriate legal method for requesting reconsideration of an order allowing or disallowing a claim against the estate. This act, when viewed in the context of the Additional Evidence described below, leads to the conclusion that the CA Attorneys were less than zealously advocating for their client, the debtor Aureal, and zealously advocating for their client, the creditor Argo.

I assert that the conduct described in this section 5.6 is proscribed by CRPC 5-200(B) which bars the use of "an artifice or false statement of fact or law" in order to "mislead the judge, judicial officer, or jury" and the State Bar Act § 6068(d) which requires that attorneys comply with a general duty to be truthful.

The Additional Evidence illustrates that the CA Attorneys were under no legal duty to enter into this Stipulation; that Aureal paid the fee for the CA Attorney's misconduct; and that Argo reaped a financial windfall as a result. Interestingly, these actions occurred subsequent to the employment of the CA Attorneys by Argo. More pointedly, retention by Argo of the CA Attorneys occurred on the day following a telephone conference between Sidney Levinson and Argo regarding the transfer of claims in the Aureal case. [Exhibit J at 2](#).

In order for the OCTC to fully comprehend the nature and circumstances of this misconduct, it is necessary to explain both the factors surrounding the Stipulation and to clearly identify the particular elements in the Additional Evidence which supports this complaint. As this information is evaluated, we ask that you keep the following critical question close at hand: What was the likelihood that this conflict that eventuated between the CA Attorneys and their client Argo materially interfered with the CA Attorney's independent professional judgment in considering alternatives or foreclosed courses of

²⁵ That is to say, the attorneys in a bankruptcy matter are paid through the estate of the debtor.

action that reasonably should be pursued on behalf of the CA Attorney's other client, the debtor Aureal, in this matter?

Claims Trading

Argo is in the business of purchasing claims against debtors in bankruptcy proceedings. Through this business, claims traders seek to make a profit by acquiring trade claims for an amount less than the amount that ultimately is distributed by the debtor with respect to those claims. As one would expect, since a creditor can sell a claim they have against a debtor only once, the claims trading marketplace is highly competitive. Success comes by applying a combination of science and art to both the timing of the offer to buy a claim from a creditor and the purchase price to offer for that claim. The matter of this complaint relates to the treatment of a particular trade claim in this case.

The trade claim at issue.

The present complaint relates to the biased treatment CA Attorneys afforded to Argo with respect to a particular claim originally owned by Center Capital Corporation (the "Center claim"). A chronology of the events surrounding this Center claim appears in [Exhibit P](#). As you can see from [Exhibit P](#), the Schedules of Assets and Liabilities (the "Schedules") filed by Aureal on May 11, 2000 reflect that Center Capital Corporation was owed \$44,904.76 as of the date that Aureal petitioned for bankruptcy protection. [Exhibit K at 2:6](#). Center Capital Corporation, the holder of this claim, filed a proof of claim with the Court on August 31, 2000 for \$39,668.22. [Exhibit K at 8](#). The basis of this claim, according to Center Capital's attorney Kenneth C. Greene, was a Lease Agreement and a Plan of Reorganization with Media Vision. [Exhibit K at 8](#).

The dollar value of the Center claim.

A properly filed proof of claim is prima facie evidence of the validity and the amount of the claim²⁶. Note that the Center claim for \$39,668.22 differs from the amount on Aureal's Schedules. What effect does this lesser amount in Center Capital's proof of claim have, as to the validity of the claim? Pursuant to the Federal Rules of Bankruptcy Procedure, a proof of claim executed and filed supersedes any scheduling of that claim by the debtor²⁷. Therefore, the Center claim filed on August 31, 2000 became the claim of record and Center Capital Corp. continued as the record owner of that claim. Note that Aureal later corrected their books and records to reflect an even further reduced amount owing to Center Capital Corporation in the amount of \$16,252.68. [Exhibit O at 2:12](#).

²⁶ Fed. R. Bankr. P. 3001(f); see 11 U.S.C. § 502(a) (claim deemed allowed absent objection); In re White, 168 B.R. 825, 828-29 (Bankr. D. Conn. 1994).

²⁷ Fed. R. Bankr. P. 3003(C)(4).

Center Capitol Corp. has always been the record holder of the Center claim.

Center Capitol Corp. was record holder of their claim throughout the pendent Aureal case. Argo never became record holder of the Center claim because their attempts to do so were flawed in at least two respects.

First, Argo did not file the correct papers. Even though Argo purchased the Center claim from Center Capital Corp., it never properly filed evidence of the transfer of this claim with the Court. Argo purchased the Center claim from Center Capital Corp. on September 25, 2000. [Exhibit Q at 2](#). Argo then attempted to file a transfer of claim according to Fed. R. Bankr. P. 3001(E)(1) or (3), which represents a transfer of claim *before* a proof of claim has been filed in the case. However, recall that Center Capitol Corp. first filed a proof of claim on August 31, 2000 pursuant to Fed. R. Bankr. P. 3001(A) and (B). This filing of proof of claim by Center Capital Corp. established the amount of the claim at \$39,668.22.

When Argo purchased the Center claim, it should have filed a Notice of Transfer of Claim pursuant to Fed. R. Bankr. P. 3001(E)(2) or (4) which represents a transfer of claim *after* a proof of claim has been filed. If Argo had succeeded in their original intent, they would have extracted the benefit of Fed. R. Bankr. P. 3001(f) which provides that the filing of a proof of claim is prima facie evidence of the validity and the amount of the claim. Rather than a Center claim established at \$39,668.22, Argo would have a Center claim worth \$44,904.76. Where the creditor had already filed a proof of claim in the lesser amount, Argo should have filed a Notice of Transfer of Claim pursuant to Fed. R. Bankr. P. 3001(E)(2) or (4), along with the corresponding evidence of the transfer as required. Since Argo never properly filed a Notice of Transfer of Claim, Argo was never a record holder of the claim in the Aureal proceedings.

Second, even if Argo's attempt to file a transfer of claim according to Fed. R. Bankr. P. 3001(E)(1) or (3) was correct, it would have failed because there was no Center claim in the amount of \$44,904.76. This claim was superseded by Center Capitol Corp.'s proof of claim for \$39,668.22 that it filed on August 31, 2000. Since Argo did not reference a valid claim in their Notice of Transfer of Claim, and Argo could not transfer a nonexistent claim, Argo never became a record holder of the Center claim during the pendency of the Aureal case.

The Center claim was disallowed in its entirety.

In every bankruptcy case, any "party in interest" may object to the proof of claim²⁸. The CA Attorneys did so in the Aureal case when they objected (the "Objection") to the Center claim on December 7, 2000. [Exhibit L at 14](#). This then became a "contested matter."²⁹ The objection was joined with a demand for relief of the kind specified in Federal Rule of Bankruptcy Procedure 7001, and so it became an

²⁸ 11 U.S.C. § 502.

²⁹ See Fed. R. Bankr. P. 9014.

adversary proceeding³⁰. The demand for relief requested by the CA Attorneys was to have the Center claim expunged from the claims registrar. Once the CA Attorneys produced some evidence (the mere filing of an objection is insufficient) disputing the validity of a claim, the burden then shifted to Center Capitol Corp., the claimant and record holder thereof, to prove the validity of their claim. The claimant bears the ultimate burden of establishing a valid claim by a preponderance of the evidence³¹. Center Capitol Corp. had the burden of overcoming two objections to their claim that were made by the CA Attorneys.

In the first objection, the CA Attorneys stated that there was insufficient evidence provided with the proof of claim. [Exhibit L at 14](#). Recall that the basis of this claim, according to Center Capital's attorney Kenneth C. Greene, was a Lease Agreement and a Plan of Reorganization with Media Vision. [Exhibit K at 8](#). When a claim is based on a writing such as these, the original or a duplicate of these writing must be filed with the proof of claim³². In this case, since neither the Lease Agreement or Plan of Reorganization with Media Vision was filed with the proof of claim, the debtor objected to the claim.

The second objection was based on the fact that the amount of the Center claim exceeded the amounts reflected in Aural's books and records. [Exhibit L at 14](#), [Exhibit O at 2:12](#).

On January 17, 2001, the Court indicated it would sustain the CA Attorney's objection to Argo's Center claim. [Exhibit M](#). Moreover, at that same hearing, the Court ruled it would sustain any objections to individuals whose notice needed correction. Thereafter, on February 9, 2001, the Court signed the form of order submitted by CA Attorney Joshua D. Morse, sustaining the objection to Argo's Center claim which was disallowed and expunged in its entirety. [Exhibit N at 5](#).

Notice of the Objection was properly served on Center Capitol.

Attorney Kenneth C. Greene for Center Capitol was served notice of the Objection on December 6, 2000. This was proper as Center Capital was the record owner of the Center claim, for the reasons discussed above. Argo was not the record owner of the Center claim, although they did attempt to file a notice of claims transfer that would have served to bestow upon them prima facie evidence of the amount of the claim they purchased from Center Capital. This amount was \$5236.54 more than Center Capital listed as the amount of their claim on their own proof of claim they filed with the Court. In sustaining the CA Attorney's Objection to the Center claim, the Court found that "[n]otice of the Objection was reasonable and appropriate under the circumstances and that no further notice is necessary". [Exhibit N at 2:5](#).

³⁰ Fed. R. Bankr. P. 3007.

³¹ In re South Motor Co., 161 B.R. 532, 547 (Bankr. S.D. Fla. 1993).

³² Fed. R. Bankr. P. 3001(C).

The consequences of not responding to an objection to a claim in a bankruptcy case can be severe. To avoid that result, creditors like Center Capital should establish procedures for promptly reviewing notices received from debtors in bankruptcy and responding when necessary to protect their rights. Similarly, trade claim buyers must properly account for their acquired claims and follow the rules in order to be recognized by the bankruptcy court as record owner of the claim and to receive notice in the case.

Argo's interest in the Center Claim.

What about Argo's rights to the claim it purchased from Center Capital? Is there no way that their attorneys, the CA Attorneys, can help them out here?

According to Fed. R. Bankr. P. 3008, "[a] party in interest can move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order." Reconsideration is discretionary with the court. The notes to the rules indicate that a request for reconsideration of the disallowance of a claim would "ordinarily come from the claimant." The claimant is Center Capital, and I suppose they could have hired an attorney and paid that attorney from their own funds, then moved for reconsideration of their disallowed claim. Once the order became final, then Center Capital could have sought reconsideration of the decision. In such a case, Center Capital would have the burden of establishing that a clear error of fact or law or a manifest injustice must be corrected, or that newly discovered evidence was discovered.

However, in this case, the CA Attorneys removed this burden from Argo, via removing this burden from Center Capital, submitting a stipulation in the matter as between the CA Attorneys, Argo, and the Official Committee of Unsecured Creditors (the CA Attorneys made no demand for a hearing, in fact, they stated "no hearing required"). [Exhibit K at 1:16](#). It would seem here that the objective discretion of the Court in these matters and Center Capital or Argo's burden as a moving party to a motion for reconsideration has been usurped by the CA Attorneys own egoistic discretion in filing the Stipulation with the Court. We are reminded that there were and remain alternatives by which Center Capital could, and in fact is so obligated, to help Argo in this matter.

Argo clearly appears to have executed a valid Assignment of Claim with Center Capital. [Exhibit FF at 49](#). I presume that provides Argo with rights under contract law as against Center Capital. For example, under the Assignment of Claim, Center Capital "represents and warrants that the amount of the claim is not less than \$44,904.76". It would appear that Center Capital breached this warranty when filing a proof of claim for \$39,668.22 that it sold to Argo for \$44,904.76. Furthermore, there is a provision in the Assignment of Claim whereby Center Capital "agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part." Since the Center claim was disallowed in whole, they, and not the CA Attorneys on behalf of the debtor, are obligated to make immediate proportional restitution to Argo.

Similarly, under the same Assignment of Claim, Center Capital “agrees to forward to Assignee all notices received from Debtor, the Court, or any third party with respect to the Claim assigned herein”. As discussed earlier, in the absence of a properly filed Notice of Transfer of Claim, Argo has no rights to the Center claim and is not record owner of the claim under bankruptcy law. To be clear, the Court was not obligated to serve Argo with Notice. On the other hand, Center Capitol certainly was obligated to forward to Argo the Notice it had received. Argo again perhaps has rights under contract law as against Center Capitol, but not as against the debtor Aural, even with the CA Attorneys help.

Still, what about Argo’s rights to the claim it purchased from Center Capital? Is there no way that their attorneys, the CA Attorneys, can help them out here? Yes...

CA Attorney’s deft artifice is reflected in the Stipulation.

Now that I have fully explained the circumstances leading up to the Stipulation, we can closely examine the Stipulation and identify multiple factual omissions in that Stipulation, as submitted by the CA Attorneys. These omissions would necessarily have misled the Court (and perhaps Aural) in this matter. The Stipulation reads more like a brief by creditor Argo’s attorney, the CA Attorneys, than as a negotiated agreement made by debtor Aural’s attorney, the CA Attorneys.

5.6.1 The CA Attorneys Omit relevant information about the genesis of the Center Claim.

In the Stipulation, the CA Attorneys state that the Center claim “apparently” is for payments due from another bankruptcy case. [Exhibit K at 2:10](#). They further state that the other bankruptcy case “appears” to be based on a lease agreement. [Exhibit K at 2:24](#). The impression left with the reading of the Stipulation is that the Center claim is about a lease. That characterization would serve to simplify the question of the validity of the claim, as far as Argo’s interests are concerned. It would be easy to consider the Center claim a simple item to be readily disposed of by the Court, according to the CA Attorney’s wishes. It does not, however, reflect the basis stated in the Center claim as filed.

It is more candid to say that the Center claim is based on two separate liabilities as enumerated in the proof of claim filed by Center Capitol. These two liabilities are: 1) Lease Agreement, and 2) Plan of Reorganization with Media Vision. [Exhibit K at 8](#). The CA Attorneys objected to the Center claim, in part, because there was insufficient evidence provided with the proof of claim, as required by the Federal Rules of Bankruptcy Procedure. [Exhibit L at 14](#). The claim must be proved by a preponderance of the evidence.

In submitting the Stipulation, we ask “what additional evidence is presented by CA Attorneys in support of their desire to reverse the prior Court Order sustaining the objection to the Center claim”? Why was the absence of evidence not properly identified by the CA Attorneys and addressed in the Stipulation? What advantage came to debtor Aureal’s estate when their attorneys, the CA Attorneys, did not require further evidence that would substantiate the Center claim?

5.6.2 The CA Attorneys omit relevant information about the absence of any writings in support of the Center claim, nor about the weakness of the evidence submitted.

Conspicuously absent from the Stipulation and the original Proof of Claim is certain relevant evidence that could be used to support a finding that the Center claim was a valid claim. No written Lease Agreement, nor a statement of the circumstances of the loss or destruction of that document exists in the Stipulation or original Proof of Claim. No written Plan of Reorganization with Media Vision, nor a statement of the circumstances of the loss or destruction of that document exists in the Stipulation or original Proof of Claim. There are no declarations in fact from any individual with direct knowledge of the contents of either the Lease Agreement or the Plan of Reorganization. Rather, they proffer a declaration (the “Accounting Declaration”) by Gerrie K. Sargent, a Senior Accounting Manager of Aureal, and an amortization schedule he maintained. [Exhibit O](#). There are enumerable issues with the proffered evidence.

In the Accounting Declaration, Gerrie K. Sargent states that he has no “personal knowledge of the actual terms of the Agreement”. [Exhibit O at 2:4](#). Mr. Sargent also has no personal knowledge of the Center claim or the proper basis of that claim. Rather, he was “informed”, by an unspecified person (perhaps the CA Attorneys?), that the Center claim relates solely to the Plan of Reorganization with Media Vision (the “Plan”). [Exhibit O at 1:27](#). The personal knowledge Gerrie K. Sargent asserts in the capacity of an accountant is immeasurably specific and narrow: he knows that he personally made payments to Center Capitol based on an amortization schedule. [Exhibit O at 2:5](#). He provides a copy of this schedule. [Exhibit O at 3](#). Mr. Sargent then deduces that these payments, made according to an amortization schedule (the “Amortization Schedule”) that he maintained, must have been those same payments due under the Plan – the same Plan that he was informed of by an unnamed person or attorney. As you can see, much of Mr. Sargent’s declaration relies on heresay and speculation. These are not the sole issues in regards to the Amortization Schedule.

The Amortization Schedule that is speculated to represent payments due under the Plan suggests itself that it represents more than one liability. [Exhibit O at 3](#). However, the CA Attorneys characterize the Center claim as “originating from a lease agreement between Center and MV” (emphasis added). [Exhibit K at 2:24](#).

In the upper right side on the first page of the exhibit, we see two liabilities identified as “CENTER S/T 01-0400-2707” and “CENTER L/T 01-0400-2907”. These

two separate liabilities may certainly correspond with the two separate basis listed on the Proof of Claim filed by Center Capital, namely (1) a Lease Agreement and (2) a Plan of Reorganization with Media Vision. [Exhibit K at 8](#). Indeed, if you add two figures under each of these liabilities on any row of the Amortization Schedule, you will see that their sum is equal to the “PRIN BALANCE” column, apparently representing the combined principle balance of the two separate liabilities. This fact raises an important question as to whether one of these liabilities was, as the Proof of Claim filed by Center Capital suggests, for a current lease obligation³³ and how the terms in the corresponding writings affect these liabilities. What about the accounting of these liabilities?

If the Amortization Schedule reflected a debt owed by Aureal, why was it not reflected in the debtor’s accounting system? As Mr. Sargent states in his declaration, “the Debtor only booked monthly installments of the MV Liability as they accrued on a monthly basis”. How is it that the accounting system would not reflect the total debt owed? How did Aureal account for this debt on its balance sheet as a long term liability? How is it that the Amortization Schedule does not have on it a title or description reflecting just what this debt on the Amortization Schedule actually represents? The only information Mr. Sargent has received appears to have come from the CA Attorneys. The answer to some of these questions may lie in a closer look at the form the Amortization Schedule takes.

The Amortization Schedule is partially obscured and appears to be a composite image. The figures representing the TOTALS line suggests it has been manually pasted into that position. [Exhibit O at 4](#). The two columns representing the two separate liabilities suggests too that those columns have been manually pasted into that position. The latter apparent alteration of the Amortization Schedule further obscures the title of this paper. [Exhibit O at 3](#). Why was a composite page created and who created it? Is that artifice all that remains of any writings or agreements that evidence the underlying liabilities?

Each of these issues is relevant to the determination of validity of the Center claim – a claim which had been disallowed in a final order of the Court. Why were none of these issues properly identified by the CA Attorneys and addressed in the Stipulation? What advantage came to debtor Aureal’s estate when their attorneys, the CA Attorneys, did not to ask and receive answers to these questions?

³³The answer to this question would be outcome determinative in regards to the disposition of the Center claim. If the second and or first liability represented a current lease, and debtor Aureal took no action to assume or reject the lease, then under bankruptcy law the lease is automatically rejected, and the leased premises must be immediately surrendered to the landlord. Once the lease is rejected, the landlord will have an administrative expense claim for any rent unpaid for the post petition period up to the date of surrender of the premises. The remaining claim is treated as an unsecured claim limited to the rent due under the lease, without acceleration

5.6.3 The CA Attorneys omit relevant information about the failed transfer of claim from Center Capital to Argo.

The CA Attorneys identify the discrepancy between the amount of the claim identified in Center Capitols proof of claim (\$39,668.22) and the amount of the claim identified Argo's Notice and Assignment (\$44,904.76). However, the CA Attorneys do so in a way that suggests this is the only aspect of the attempted transfer of the Center claim that is incorrect (i.e. "is incorrect inasmuch" [Exhibit K at 2:26](#)).

Another aspect of the attempted transfer of the Center claim that is incorrect, but that is not directly identified in the Stipulation, is the fact that Argo attempted to use a method of claims transfer reserved exclusively for those transfers that are made *before* a proof of claim has been filed. [Exhibit K at 2:16](#). However, Center Capitol had already filed a proof of claim. As the CA Attorneys indicate, the Center Capitol proof of claim supercedes any claim for \$44,904.76. [Exhibit K at 2:27](#). What they do not indicate to the Court is that Argo's attempted transfer therefore failed, not solely because the amount of the claim differed from the amount of Center Capitols proof of claim, but also because Argo failed to properly adhere to the requirements for transferring a claim, and because the claim they were attempting to transfer no longer existed in accordance with the debtors books and records as well as the claims register. The Stipulation as written would mislead one as to the rights of Argo and Center with respect to the Center claim.

Each of these issues is relevant to the determination of validity of Argo's interest in the Center claim, with respect to *the bankruptcy proceedings*. Why were none of these issues properly identified by the CA Attorneys and addressed in the Stipulation? What advantage came to debtor Aural's estate when their attorneys, the CA Attorneys, did not identify and properly address these issues?

5.6.4 The CA Attorneys omit relevant information about the impetus for and extent of the further review of the Center claim.

One question that arises from the Stipulation jumps out of the section of the Stipulation that attempts to create a basis of evidence proving the validity of the Center claim. The section begins, "[u]pon further review of the Center claim". [Exhibit K at 3:7](#). Who asked for this review of a disallowed claim? What was the extent of discovery? What factors entered into the decision by debtor to grant Argo these funds when it legally was not required to do so?

Later in the section, the CA Attorneys note "a review of the Declaration of Service for the Objection reveals that the Debtor notified Center, but not Argo, with notice of the Objection." The Stipulation is clearly focused on righting a perceived wrong to Argo. Where is the declaration from Argo swearing that it was entitled to receive notice but did not receive it and was not aware of the objection? As to what might Argo have known about the Center claim and why might the CA Attorneys want to

help them out here, please see the next which details the numerous communications between Argo and the CA Attorneys around each critical event in this matter.

As has been discussed, it is Center Capital that is in the position to request for reconsideration here, not Argo. The Stipulation is a creative way in which to shoe-horn a reversal of the Court's prior decision to disallow the Center claim in its entirety.

5.6.5 The CA Attorneys omit relevant information regarding the proper record holder of the Center claim thereby implying that the debtor Aureal was legally bound to serve notice of the Objection of the Center claim to Argo and thus now Aureal owes some legal or altruistic duty to Argo in order to help them out.

The CA Attorneys state that “the Debtor served Center, but not Argo, with notice of the Objection”. [Exhibit K at 3:12](#). The next sentence makes the case that “[i]n order to prevent Argo from being required to seek reconsideration of the Order with respect to the disallowance of the Center Claim, the Debtor and the Committee are willing to [ask the court to reverse it's prior Order]”. Well, if Argo was entitled to notice as is suggested then it certainly seems reasonable that the Court do something to help Argo out. However, that artifice is not reality.

In reality, the due process clause of the Fifth Amendment of the United States Constitution requires that known creditors, like Center, receive actual notice of the Objection in order to oppose the Objection and safeguard their rights. Argo was not a known creditor. They did not affect a transfer for the reasons previously discussed; there were not on the claims register, they did not exist as far as this claim was concerned. Argo was not harmed by the bankruptcy process such that the Court, the debtors attorneys, the CA Attorneys, or the Committee for that matter whereby any one of them were legally required to artificially construct Argo as record holder of the Center claim, to accept without question the validity of the Center claim, let alone to reverse the Court's final order in regards to the Center claim in a manner wholly outside of the proscribed method for carrying out such an action pursuant to Fed. R. Bankr. P. 3008.

Why would the debtor's attorneys, the CA Attorneys, frame the facts in such a way as to paint the situation in the best light for Argo? Perhaps out of loyalty to their client. A closer examination of the communications between the CA Attorneys and Argo demonstrates that Argo knew all about the Center claim.

CA Attorney's communications with Argo.

The communications between the CA Attorneys and Argo regarding Argo claims are well document in the Additional Evidence, and may also be viewed in the attached chronological diagram labeled [Exhibit P](#). The communications we refer to begin about 1 week following Argos' purchase of the Center claim on October 3, 2005 when CA

Attorney Sidney Levinson conducted a telephone conference with Argo regarding the claims that Argo had purchased in the Aureal case. [Exhibit C at 6,10](#). Indeed, Argo had just purchased the Center claim one week earlier. A week following this telephone conference, CA Attorney Sid Levinson conducted another telephone conference wherein the transferred claims of Argo were discussed. [Exhibit C at 7,11](#). So by way of review we have Argo purchasing the Center claim and discussing their claims a number of times with CA Attorney Sid Levinson.

On the day following CA Attorney Sid Levinson's October 10, 2000 communication with Argo about their claims, Argo retained H&B to represent them in another case.

Two days after Argo retained H&B to represent them in another case, CA Attorney Sid Levinson had another telephone conference with Argo regarding creditor inquiries. On Friday, December 1, 2000, CA Attorney Joshua Morse conducted a telephone conference with Argo regarding Argo's claims. [Exhibit C at 15](#). The next Tuesday, December 5, 2000, CA Attorney Sidney Levinson had yet another telephone conference concerning status in the case. [Exhibit C at 15](#). CA Attorney Sidney Levinson signed the First Omnibus Objection (the "Objection") in the Aureal case on the next day, December 6, 2000. What is significant about this document, who signed it, and the date it was signed?

The significant aspect of the Objection is that it contained an objection to Argo's Center claim. [Exhibit L at 14](#). Specifically, Aureal, via their counsel, the CA Attorneys, wanted the Center claim expunged from the claims register. The reasons the CA Attorneys filed this objection to Aureal's Center claim were two-fold: 1) there was insufficient evidence provided with the proof of claim, and 2) the amount of the claim exceeded the amounts listed on the Debtors' books and records. In affect, this objection would leave the Argo's Center claim disallowed in its' entirety.

The significant aspect of who signed the Objection is that it was CA Attorney Sidney Levinson. CA Attorney Sidney Levinson had no less than 4 telephone conferences with Argo since Argo purchased the Center claim. The significant aspect about the date it was signed is that it was signed the day following a status telephone conference between CA Attorney Sidney Levinson and Argo. What significant status would have been discussed? It must have included everything from a discussion of the imminent Objection to a detailed identification of any Argo claims that may be included among the claims in the Objection.

The relevant fact is that none of these communications were disclosed in a written form to the CA Attorney's other client, debtor Aureal.

5.6.6 The CA Attorneys omit relevant information about their prior knowledge, and Argo's prior knowledge, that Argo was not in fact the record holder of the Center claim.

Argo purchased a number of claims held by various creditors of the debtor Aural during the case. Specifically, Argo purchased 19 such claims. [Exhibit FF](#). The Center claim was the third such claim for which Argo filed a Notice of Transfer. For the reasons previously stated in [section 5.6](#), Argo failed to effect a change in record ownership for this claim, as far as the bankruptcy case was concerned. Was there an epiphany late in the case as to Argo and the Center claim?

It was not until April 29, 2002, after having represented Argo as an adverse client in two matters, that the CA Attorneys filed the Stipulation as described in [section 5.6](#). However, it would appear that both Argo and the CA Attorneys were well aware of the record ownership of the Center claim, and the claims disposition, at least as early as the date the CA Attorneys filed their First Supplemental Declaration. This information was concealed from the Court in the Stipulation. The following facts detail what must have been know by Argo and the CA Attorneys and when.

The Notice of Transfer of the Center claim was filed on September 27, 2000. [Exhibit FF at 48](#). The last Notice of Transfer for any claim owned by Argo was filed on November 27, 2000. [Exhibit FF at 58](#). It was not until June 7, 2001 that the CA Attorney Sidney P. Levinson filed the First Supplemental Declaration. By that date, all known Argo claims had been transferred. This was approximately 6 months after CA Attorney Sidney P. Levinson had signed the debtors First Omnibus Objection which included the objection to the Center claim. [Exhibit P at 4](#). In his First Supplemental Declaration, CA Attorney Sidney P. Levinson states that "HBD is informed and believes that Argo currently holds 18 claims". In his Second Supplemental Declaration, he makes this statement again. [Exhibit E at 2:15](#).

The number of claims stated in both Declarations is 1 less than the total number Argo had transferred in the case. We provide Additional Evidence that shows Attorney Matthew A. Gold for Argo was served notice of the First and Second Supplemental Declarations. These facts make clear that both Argo and the CA Attorneys knew Argo was not the record holder of the Center claim almost a year before the CA Attorneys filed the Stipulation. It appears that following two separate engagements as Argo's law firm, the CA Attorneys felt they should help them out here.

5.7 The CA Attorneys Failed to Seek Renewed Informed written Consent Prior to Pursuing a Stipulated Agreement Between Argo, CA Attorneys, and Creditor Committee.

The facts detailed in [section 5.6](#) demonstrate a clear matter in which the interests of Aural and Argo were actually adverse. The actions of the CA Attorneys in support of their client in that matter were extraordinary. The CA Attorneys recent relationship with Argo most certainly affected the CA Attorney's representation of Aural. According to CRPC 3-310(B)(2), where an attorney knows or reasonably should know that professional relationship with Argo would substantially affect the attorneys representation of the existing client, the attorney must provide written disclosure to the client.

5.8 The CA Attorneys Misled the Judge By Artifice, False Statement, and Concealment of Material Facts Concerning the First Conflicted Representation, the Second Conflicted Representation, and the Stipulation.

The Additional Evidence exemplifies instances where the CA Attorneys violated CRPC 5-200(B) which provides that a lawyer "[s]hall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law," and the State Bar Act § 6068(d) requirement that lawyers employ "such means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." An important consideration for the review of the complaints in this section is that California jurisprudence has extended the prohibition on false statements of fact to prohibit the concealment of material facts.

As the court in In the Matter of Jeffers put it "[i]t is settled that concealment of material facts is just as misleading as explicit false statements, and accordingly, is misconduct calling for discipline."³⁴

This section will detail five allegations of misconduct related to the concealment of material facts from the Court after first introducing the likely motivation behind the CA Attorneys misconduct.

5.8.1 The CA Attorneys faced revocation of their employment and disgorgement of all fees.

Debtor Aureal and creditor Argo held inherently adverse interests during the Aureal case. Therefore, there is always the potential that at any time the CA Attorneys would no longer remain disinterested with respect to Aureal as they represented both parties. As discussed in [section 5.2](#) and the [original complaint](#), full disclosure by professionals provides interested parties with the information needed to determine if an objection to continued employment should be made. If such an event occurred, then §327 of the Bankruptcy Code would require that the Court disqualify the CA Attorneys as counsel for Aureal, if there was an actual conflict of interest between Aureal and Argo.

Due to the circumstances described in [section 5.6](#), there was arguably an actual conflict of interest throughout most of the Aureal case as illustrated by the chronologies of Exhibits [P](#), [J](#), and [X](#) and described in the original complaint and this Request. Based

³⁴ (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220 (*quoting* Di Sabatino v. State Bar (1980) 27 Cal.3d 159, 162, 162 Cal.Rptr. 458, 606 P.2d 765). Di Sabatino v. State Bar (1980) 27 Cal.3d 159, 162 Cal.Rptr. 458, 606 P.2d 765 (when lawyer sought reduction of bail from bail commissioner, lawyer's failure to disclose fact that the lawyer had previously made two other bail reduction motions that day which were denied constituted failure to disclose material facts in violation of B&PC § 6068(d) and former CRPC 7-105 (1975)).

on the number and timing of communications between Argo and the CA Attorneys as described in [section 5.11](#), it is possible that the CA Attorneys had prior knowledge that future representation of Argo may become actually adverse.

If the CA Attorneys were disqualified as debtor's counsel during the Aural case, they likely would have to disgorge all fees they earned as happened in the case of debtor Aureals' financial advisor PWC and described in [section 5.9](#). The risks to professionals who do not remain disinterested are engage in misconduct are severe. This penalty is certain motivation for professionals to maintain the façade, if not the authenticity, of disinterestedness.

5.8.2 The CA Attorneys deliberately omitted the name of the attorney who provided services for the Second Conflicted Representation in the Second Supplemental Declaration.

In the context of the legal requirements of, and financial risk to, the CA Attorneys as described in [section 5.8.1](#), CA Attorney Sidney P. Levinson filed the First Supplemental Declaration following the First Conflicted Representation. In this declaration, CA Attorney Levinson pointed to ethical walls between the professionals at H&B that were servicing each of the conflicted clients. [Exhibit D at 3:25-4:2](#).

According to CA Attorney Levinson "None of the HBD attorneys principally responsible for representing the Debtor in this bankruptcy case were involved in HBD's representation of Argo." This statement serves to assuage fears that the concurrent adverse representation may cause the CA Attorneys to become disinterested. More specifically, CA Attorney Levinson states "Nearly all of the work for Argo was performed by James O. Johnston, who has performed *only minimal services* for the Debtor in this bankruptcy case." (emphasis in the original). By these statements, CA Attorney Levinson demonstrate his understanding of the importance that the interested parties would place on the material fact that the CA Attorneys had ethical walls between them³⁵.

Indeed, CA Attorney Levinson counseled their client Aural in matters pertaining to so-called "ethical walls". [Exhibit U at 3:4-15](#). In that matter, he understood that a dual engagement would require that "personnel performing services for the Debtor would not perform services for [the conflicted client], either directly, or indirectly, with regard to matters involving the Debtor."

However, in an issue in the Aural case described in [section 5.9](#) where concurrent representation of the debtor and another creditor would represent an actual conflict of interest, the Court stated it agreed with precedent that creating an "ethical wall" would not solve the problem. [Exhibit HH at 6:22](#). The Court states that "the difficulty of

³⁵ The CA Attorneys demonstrate experience negotiating such walls in their work with PWC. [Exhibit U at 3:7](#).

ensuring that such protective measures are effective is greater when the dual employment is concurrent than when it is successive. For this reason, the Court agrees with case law that an “ethical wall” may resolve a conflict in the latter instance but not in the former.” [Exhibit HH at 7:20](#). *In re Trust America Services Corporation*, 175 B.R. 413, 421 (Bankr.M.D. Fla 1994 (“[t]he ‘chinese wall’ is generally not an acceptable means of conflict avoidance where the same professional organization actively represents two adverse interests”). As we see next, even as the CA Attorneys were attempting to certify their adverse representation through the “ethical wall”, the wall was coming down in the Second Supplemental Declaration.

In the context of the legal requirements of, and financial risk to, the CA Attorneys as described in [section 5.8.1](#), CA Attorney Sidney P. Levinson filed the Second Supplemental Declaration following the Second Conflicted Representation. In this declaration, CA Attorney Levinson omitted relevant information. The information concerned which CA Attorney was performing legal services for Argo. This CA Attorney happened to be the same CA Attorney working for Argo against the debtor Aureals interests ([section 5.6](#)). It is an important fact because it would have been used by the Court, the United States Trustee, a creditor in the Areal case, or any other interested party to determine whether or not the CA Attorneys remained disinterested in the Areal case. However, due to the CA Attorneys purposeful actions, the information was concealed and these parties were deprived of the opportunity to act on that information.

The name of the CA Attorney who performed the services in the Second Conflicted Representation was CA Attorney Sidney P. Levinson. This partner of H&B was the lead attorney in the Areal case³⁶. CA Attorney Sidney P. Levinson’s conversations, activities, and discussions related to Argo in the Second Conflicted Representation are depicted in the chronology of [Exhibit P](#) discussed in [section 5.6](#), while more general contacts are displayed in [Exhibit J](#).

Anytime the CA Attorneys claimed that they “fully disclosed” their conflicted representation with Argo, they were misleading the court, as is clearly noted in this section: CA Attorney Sidney P. Levinson concealed his identity as the lead counsel on the Second Conflicted Representation.

5.8.2.1 The CA Attorneys held an interest adverse to Areal, were not disinterested, and were, therefore, not qualified to represent Areal.

Lead CA Attorney Sidney P. Levinson, misled the Court when he concealed his identity and role as the lead attorney who also later assisted Argo against Areal in efforts to reverse the Court’s final order rejecting Argo’s claim as described in [section 5.6](#). In so doing, the CA Attorney represented an interest adverse to the estate, was not

³⁶ The Court noted another omission in a paper submitted by CA Attorney Sidney P. Levinson. This is discussed in section 5.9.

disinterested, and was, therefore, not qualified to represent the debtor in this case³⁷. *US Trustee v. Price Waterhouse*, 19 F.3d 138 (3rd Cir. 1994)(a debtor in possession cannot employ accountants or other professionals who are not disinterested); *In re Envirodyne Industries, Inc.*, 150 B.R. 1008 (Bankr. N.D. Ill.1993)(to represent an adverse interest means to serve as an agent for an entity holding an adverse interest).

5.8.3 The CA Attorneys deliberately omitted from the Second Supplemental Declaration the date that the Second Conflicted Representation Began While Employing Subtle but Base Deception Regarding this Date.

In the context of the legal requirements of, and financial risk to, the CA Attorneys as described in [section 5.8.1](#), CA Attorney Sidney P. Levinson filed the First Supplemental Declaration following the First Conflicted Representation. In this declaration, CA Attorney Levinson stated that the CA Attorneys would “continue to monitor [their] engagements and connections and will make additional supplemental disclosures as necessary.” [Exhibit D at 4:5-7](#).

According to CA Attorney Levinson, the First Conflicted Representation concluded in February 2001 and “the Debtor does not currently represent Argo in any matters.”³⁸ This statement serves to assuage fears that the concurrent adverse representation might be continuing, and therefore may cause the CA Attorneys to become disinterested in the future. By these statements, CA Attorney Levinson demonstrates his understanding of the importance that the interested parties would place on the material fact that the CA Attorneys were not currently representing Argo.

In the context of the legal requirements of, and financial risk to, the CA Attorneys as described in [section 5.8.1](#), CA Attorney Sidney P. Levinson filed the Second Supplemental Declaration following the Second Conflicted Representation. In this declaration, CA Attorney Levinson omitted relevant information. The information concerned the date on which Argo retained the CA Attorneys for the Second Conflicted Representation. It is an important fact because it would have been used by the Court, the United States Trustee, a creditor in the Aureal case, or any other interested party to determine whether or not the CA Attorneys remained disinterested in the Aureal case and whether or not the CA Attorneys were candid and truthful regarding this and other declarations. However, due to the CA Attorneys actions, the information was concealed and these parties were deprived of the opportunity to act on that information.

³⁷ The adverse interest and disinterested person limitations set forth in 11 U.S.C. §327(a) can not be waived. *In re S.S. Retail Stores*, 211 B.R. 699 (Bankr. 9th Cir. 1997); *In re Envirodyne Industries, Inc.* 150 B.R. at 1016.

³⁸ The CA Attorney Sidney P. Levinson likely meant to state that “HBD does not currently represent Argo in any matters”. However, this slip of the keyboard reflects how the subconscious mind of the CA Attorneys recognized the adverse nature of the representation.

CA Attorney Sidney P. Levinson states that Argo retained the CA Attorneys “[s]ubsequent to the filing of the Argo Supplemental Declaration”. [Exhibit E at 2:26](#). CA Attorney Levinson then states that the hearing in the Second Conflicted Representation occurred on September 25, 2001. [Exhibit E at 3:3](#). The Second Supplemental Declaration was filed on October 24, 2001. These dates indicate that the filing of the disclosure related to the Second Conflicted Representation commenced took place only 29 days following that representation. This misleading impression was incorrect.

In fact, the earliest date located so far indicates that the filing of the disclosure related to the Second Conflicted Representation took place at least 78 days after the Second Conflicted Representation commenced. This fact is demonstrated by a continuance filed by CA Attorney Sidney Levinson in the Second Conflicted Representation on August 7, 2001. [Exhibit H at 2](#). It is still unknown at this time when this adverse representation actually began. What is known is that this delay was at least over 2.5 times as long as the impression created by CA Attorney Sidney P. Levinson. In other words, at least fewer than 2 months following the promise made by Attorney P. Levinson to “monitor [their] engagements and connections and will make additional supplemental disclosures as necessary”, the CA Attorneys were again engaged by a client with adverse interests. When the CA Attorneys decided to final submit a declaration disclosing the adverse representation more than 78 days later, the representation had already concluded.

These facts reflect that the CA Attorneys were less than candid with the Court and the probable motivation; to purposefully avoid the disclosure of concurrent adverse representations and protect over \$1Million in professional fees. The facts show that the CA Attorneys deprived the Court and other interested parties from fulfilling their role in the employment process. This omission is similar to the circumstances described in [section 5.9](#) wherein the Court found that a 29 day delay in filing a disclosure in an employment application was purposely intended to take advantage of that delay.

Anytime the CA Attorneys claimed that they “fully disclosed” their conflicted representation with Argo, they were misleading the court, as is clearly noted in this section: CA Attorney Sidney P. Levinson concealed the date this representation began in the Second Conflicted Representation.

5.8.4 The CA Attorneys deliberately omitted from both Supplemental Declarations the similarities among the issues in the adverse representation and the issues in the Aureal case.

In the context of the legal requirements of, and financial risk to, the CA Attorneys as described in [section 5.8.1](#), CA Attorney Sidney P. Levinson filed the First Supplemental Declaration following the First Conflicted Representation. In this declaration, CA Attorney Levinson stated that he believed “the controversies for which HBD represents Argo [...] are entirely unrelated to any of the claims held by Argo

against the Debtor.” [Exhibit D at 3:14](#). A similar statement is made in the Second Supplemental Declaration following the Second Conflicted Representation. [Exhibit E at 3:14](#).

These two statements serve to assuage fears that the concurrent adverse representation might affect the CA Attorneys representation of Aureal, or that the CA Attorneys might be influenced in a way that would render them no longer disinterested in their representation of Aureal against Argo. By these statements, CA Attorney Levinson demonstrates his understanding of the importance that the interested parties would place on the material fact that the controversies for which they represent Argo are unrelated to any of the claims held by Argo against Aureal.

Contrary to the CA Attorney’s statements, the controversies for which they represented Argo were related to claims held by Argo against the debtor Aureal. Most generally, claims trading is claims trading, wherever it is practiced. Argo was a substantial claims trader, one of the most active in the Aureal case with 18 claims in the aggregate dollar amount of \$270,906.91 (not including the Center claim). There are numerous common trade claims issues that could be litigated such as whether a transferred claim was asserted by more than one transferee or transferred properly. This latter issue is one example that happened to be an issue in the Center claim against Aureal that Argo attempted to transfer and in the claims Argo held subject to the First Conflicted Representation.

As previously discussed, Argo did not effectuate a transfer of the Center claim as it intended. Yet the CA Attorneys extended extraordinary efforts in crafting a Stipulation that would result in a benefit to Argo and detriment to the Aureal estate. Part of the CA Attorneys work in the First Conflicted Representation was to argue the effectiveness of the transfer of claims that Argo filed in that case. The CA Attorney James O. Johnston argued “**when the requirements of Rule 3001(e) have been followed, as they indisputably were by Argo in this case, and where an assigning creditor does not object to the assignment of its claim, as none have in this case, the matter is at an end.**” (bold and underlined in the original). [Section 5.6](#) describes how Rule 3001 was applied by the CA Attorneys to the Argo claim against Aureal’s interest in this case. These demonstrate similar issues between the claims of Argo in the First Conflicted Representation and the claims of Argo against the adverse client Aureal.

This is an important fact because it would have been used by the Court, the United States Trustee, a creditor in the Aureal case, or any other interested party to determine whether or not the CA Attorneys would remain disinterested in the Aureal case after representing Argo in the First and Second Conflicted Representations. However, due to the CA Attorneys actions, the information was concealed and these parties were deprived of the opportunity to act on that information.

5.8.5 The CA Attorneys misled the Court when it promised to promptly file additional declarations when learning of potentially conflicting representation.

CA Attorney James O. Johnston, a partner of the H&B law firm, promised the Court in his declaration in support of the debtor’s application for their employment, dated April 4, 2000, that “[i]f at any subsequent time during the course of this proceeding, H&B learns of any representation that may give rise to a conflict, an amended Declaration identifying and specifying such potential conflict will be filed promptly with the Court and the Office of the United States Trustee.” [Exhibit GG at 3:23](#). CA Attorney Johnston’s statement serves to assuage fears that future concurrent adverse representations might affect the CA Attorneys representation of Aureal, or that the CA Attorneys might be influenced in a way that would render them no longer disinterested in their representation of Aureal against the conflicted party. This fear would not be unfounded, as the CA Attorneys required their client Aureal to waive potential future conflicts as a part of the retainer agreement. [Exhibit A at 12](#). By this promise, CA Attorney Johnston demonstrates his understanding of the importance that the interested parties would place on the material fact that they would be notified promptly before taking on clients with potential or actual adverse interests.

In the case of Argo and PWC, the CA Attorneys neglected to ever seek prior permission from the Court before to representing these parties. With respect to Argo, the CA Attorneys waited until the employment concluded before submitting the promised “prompt” disclosure to the Court. With respect to PWC, the CA Attorneys waited almost 4 months, and the disclosure was imbedded in a declaration that was serving a different purpose than that of fulfilling the promise made to the Court by CA Attorney Johnston. Due to the CA Attorneys actions, these parties were deprived of the opportunity to act on the respective adverse representation information.

On each occasion when the CA Attorneys filed a Fee Application with the Court for payment of fees earned and expenses incurred in the Aureal case, they made a continued representation that they remained disinterested in the case and did not hold or maintain an interest adverse to the estate. During the period of concurrent representation of Argo and Aureal with adverse interests, the CA Attorneys misled the Court each time it filed a Fee Application as follows:

PERIOD OF ADVERSE REPRESENTATION	DATE OF FEE APPLICATION WHERE 327(A) DISINTERESTEDNESS STATEMENT REAFFIRMED
Oct 11, 2000 – Feb 2001 Exhibit J	12/1/2000 Exhibit II at 4:19
Oct 11, 2000 – Feb 2001 Exhibit J	12/27/00 Exhibit II at 5:1
Oct 11, 2000 – Feb 2001 Exhibit J	2/14/2001 Exhibit II at 4:22
Oct 11, 2000 – Feb 2001 Exhibit J	2/15/2001 Exhibit II at 5:4
Oct 11, 2000 – Feb 2001 Exhibit J	2/16/2001 Exhibit II at 5:11

Jun 8, 2001 – Sep 25, 2001 Exhibit J	6/28/2001 Exhibit II at 5:25
Jun 8, 2001 – Sep 25, 2001 Exhibit J	7/6/2001 Exhibit II at 6:4
Jun 8, 2001 – Sep 25, 2001 Exhibit J	8/6/2001 Exhibit II at 6:11

The failure to inform the Court has previously been ruled misconduct in CA. A lawyer failed to inform the court of two continuance requests by opposing counsel (the second request was on the day of the proceeding and a result of transportation problems). When opposing counsel failed to appear, the respondent-lawyer obtained a default. The lawyer in the disciplinary proceeding was held culpable for willful concealment of material information coupled with the intent to mislead a judicial officer. *Grove v. State Bar* (1965) 63 Cal.2d 312, 46 Cal.Rptr. 513, 405 P.2d 553. The First and Second Supplemental Declarations similarly failed to inform the Court as they were filed after representation concluded. The Court and other Interested Parties were therefore deprived of their role in the employment process. Similarly, the CA Attorneys should be held culpable for willful concealment of material information couple with the intent to mislead a judicial officer.

5.9 The CA Attorneys Misled the Judge By Artifice and/or False Statement Concerning the Employment of PriceWaterhouseCooper LLC in the Aural Case.

The misconduct detailed in this section arises out of events surrounding the employment of PriceWaterhouseCooper LLC (“PWC”) as accountants and financial advisors to the debtor Aural. In this matter of misconduct, the Additional Evidence includes clear findings of misconduct by the CA Attorneys as made by the Court in Memorandum of Decisions. The relevant facts and events are depicted graphically in [Exhibit X](#). The recitation of facts begins with an introduction to one of PWC’s clients.

PWC’s Adverse Representation of Creative Technology, Ltd.

Prior to the Aural bankruptcy filing, PWC had a client known as Creative Technology, Ltd. This company engaged PWC for their audit and tax services. [Exhibit V at 5:8](#). PWC was further engaged as technical consulting experts for Creative in a lawsuit between Creative and Aural. [Exhibit V at 5:10](#). In fact, there were no less than three separate cases pending as between Create an Aural. [Exhibit Y at 9:14](#). Before Aural filed for bankruptcy, Creative hired PWC to perform a due diligence on Aural in anticipation of a possible pre-bankruptcy acquisition of Aural’s assets. [Exhibit W at 2:14](#). As you can see, PWC was representing Creative in adverse litigation against Aural and in advising them as a buyer of Aural assets. This clear conflict was partly the impetus for the Trustee to object to the employment application of PWC in this case. [Exhibit Z](#). Creative objected to the employment for those reasons as well. [Exhibit AA](#). The debtor and the CA Attorneys, however, desired that PWC be employed, regardless of the serious conflict.

It is perhaps not too surprising that Aural would want to employ the professional PWC who was concurrently representing its adversary when you also consider that PWC was representing the largest secured creditor in the case, Oaktree. [Exhibit V at 4:27](#). Oaktree was the subject of our earlier 3-310 complaint against the CA Attorneys involving Lender Issues, [Exhibit R at 7](#). Recall too that the CA Attorneys were representing Oaktree during the pendent Aural case. [Exhibit R at 5](#). The last remaining member of the Aural board of directors was a principal at Oaktree. [Exhibit V at 4:27](#). It was this so-called Aural “board of directors” and the CA Attorneys who hired PWC. [Exhibit BB at 3:21](#).

Perhaps this does not surprise every professional engaged in the bankruptcy system and there may not necessarily be proof of misconduct therein. I suggest that what might surprise the OCTC is the conduct of the CA Attorneys in helping out Aural to retain their adversely conflicted accounting professional, and the Court Order finding that an artifice enveloped that matter. The CA Attorneys role begins on April, 4, 2000.

CA Attorney Relation to PWC Adverse Interests

On this day, the day before Aureal filed their petition for bankruptcy protection, the CA Attorneys and their client Aureal were both informed that PWC were representing Creative in adverse litigation against Aureal on. [Exhibit T at 2:17](#). Also on this day, PWC received a retainer of \$150,000. [Exhibit BB at 5:14](#). According to Creative, PWC requested that Creative waive the conflict created by its dual representation of Creative and Aureal; Creative understandably refused this request. [Exhibit AA at 2:5](#). In this situation, how then could the CA Attorneys help out their client Aureal and also see their own selection of accountant professional be employed in the case?

The situation was dire. It appeared that the significant adversarial conflicts in the case between the parties, combined with the likely continued objections of both Creative and the US Trustee to the employment of PWC by Aureal would doom the debtor's request to employ PWC as a professional during the critical first few months of Aureal's debtor-in-possession status. The answer came from CA Attorney Sidney Levinson who advised their client Aureal to resolve the matter by creating a conflict waiver letter to be signed by Aureal and PWC. [Exhibit U at 2:18](#). It took 28 days to complete the terms of this conflict waiver letter.³⁹ The application to employ PWC was filed the next day on May 4, 2000. The hearing on multiple objections to the application occurred on June 19, 2000. [Exhibit Y](#). The effect of this accomplishment resulted in PWC's employment during the first two months of the case when PWC performed the bulk of its services. [Exhibit T at 4:4](#). The CA Attorneys themselves were subsequently employed by PWC on April 29, 2002⁴⁰. [Exhibit U at 4:5-13](#). Later in the case, this delay became a matter of grave concern for the Court, and a matter of misconduct for the CA Attorneys.

The Court Approves and Later Revokes Employment of PWC by Aureal

Earlier in the case, on July 26, 2000, an Order was issued approving PWC's employment as financial advisors for Aureal. [Exhibit BB at 18](#). This Order included specific restrictions and requirements to PWC's employment. [Exhibit BB at 20](#). PWC did not accept the Court's conditions for future employment, and the Court found that PWC intentionally misled the Court by "failing to disclose in a meaningful fashion that it did not accept the Court's conditions for future employment by the debtor". [Exhibit T at 4:10](#). The court found that inclusion of the information embedded in a paragraph contained in a two-page transmittal letter, enclosing courtesy copies of certain documents. [Exhibit T at 4:15](#). On this finding, the Court based its August 7, 2002 order to deny PWC's final fee application, to revoke the previous order approving its employment, and to disgorge the retainer PWC received pre-petition. [Exhibit T at 1:11](#).

³⁹ The U.S. Trustee guidelines specify that employment applications are to be filed within 15 days.

⁴⁰ In keeping with CA Attorney pattern of misconduct, this late disclosure occurred on August 19, 2002, as the final paragraph of a declaration by Sidney P. Levinson. This declaration concerned perhaps not an entirely unrelated matter: the motion for reconsideration filed by PWC of the order denying second and final fee application of PWC and Directing Revocation of Retention and Ordering Disgorgement. Interests of the parties at this point were adverse, and again 3-310 requirements were not fulfilled by CA Attorneys prior to their entering this representation.

This Order was issued pursuant to the Court's July 23, 2002 Decision, which also concerned the conduct of the CA Attorneys and their client Aureal.

The Court Finds Misconduct on the Part of CA Attorneys and Aureal

In the Court's Decision, the Court found that the debtor Aureal had "purposely delayed submitting the employment application to the Court [...] to secure the benefits of PWC's services regardless of whether the Court approved PWC's employment." After the Court issued its Order pursuant to the Decision, PWC moved for reconsideration of the Court's Decision. The only additional evidence provided to the Court with PWC's motion were declarations of the professionals in the case, "attesting to their good faith". [Exhibit T at 2:13](#).

One of these declarations was that of CA Attorney Sidney P. Levinson who states that the Court's finding regarding the true motivation for the delay as stated in the Decision was incorrect. [Exhibit U at 3:16-19](#). He further states that "the delay was a result of efforts by the Debtor, our firm on behalf of the Debtor, and PwC, to negotiate a resolution of the issues concerning PwC's dual employment in a manner [...]"⁴¹. Later in the same declaration, CA Attorney Levinson states that the omission in an application for employment of EYR⁴² of any information regarding the fact of PWC's resignation or the circumstances surrounding PWC's resignation was not a deliberate omission. With this new evidence the Court made the following findings in its September 9, 2002 Memorandum Re Motion for Reconsideration ("Memorandum").

The Court found that all of the arguments made in explanation for the delay in filing the PWC employment application made by the CA Attorneys in support of the Final Fee Application were unpersuasive both at the time the Decision was made and at the time the Court considered the Motion for Reconsideration. [Exhibit T at 3:11](#). The Court further found that the "debtor's conduct in this case deprived the Court and other interested parties of their role in the employment process during the period of delay". [Exhibit T at 3:24](#). Clearly the Court did not approve of the CA Attorneys conduct in regard to the delay it imposed on the Court and other interested parties or to the manner in which information regarding PWC's supposed resignation from employment was omitted from the application for employment of the successor EYR.

In evaluating the facts and events concerning this misconduct, we note that the State Bar Act § 6068(d) requires that attorneys comply with a general duty to be truthful. This section mirrors CRPC 5-200(B), which proscribes practices which "mislead or tend to mislead." The State Bar of California has consistently imposed sanctions on attorneys for violating the rules set forth in § 6068(d). *See, e.g., Davis v. State Bar* (1983) 33 Cal.3d 231, 188 Cal.Rptr. 441, 655 P.2d 1276 (holding that "the filing of false or

⁴¹ CA Attorney Sidney P. Levinson made similar claims at the hearing on the application to employ PWC. Exhibit Y at 48:5-13.

⁴² EYR was a financial advisor who was to replace PWC as a result of PWC's resignation as financial advisor due to their non-acceptance of the Courts conditions of future employment.

misleading pleadings or documents is ground for discipline"). See also, *Pickering v. State Bar* (1944) 24 Cal.2d 141, 148 P.2d 1 (holding that "[t]he presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of [§ 6068(d)].").

5.9.1 The Court's finding of misconduct in the PWC matter reflects the egregious nature of the CA Attorney's conduct in the First and Second Conflicted Representations.

There are similarities between the misconduct in the PWC matter and in the First and Second Conflicted Representations. In all of these circumstances, the CA Attorneys delayed their actions in disclosing material information to the Court. In all of these circumstances, the CA Attorneys had at various times concurrent adverse clients. In all of these circumstances, the CA Attorneys, when disclosing information to the Court, did so in a way intended to mislead the court or interested parties. However, there exists stark contrast which amplifies the CA Attorney Misconduct.

In the PWC matter, the Court found that a mere 29 day delay of filing a disclosure was purposeful --- an artifice that enabled the CA Attorneys to guarantee for themselves (as well as for their client Aural), PWC's continued employment through the early stages of the case⁴³. This delay was too long. However, in the First and Second Conflicted Representations, we had an even longer delay between an event in the case requiring notice to the Court, and the subsequent delivery of that notice: 239 days and over 78 days, respectively. [Exhibit X at 3](#). In these Conflicted Representations, the actual representation had already concluded so as to secure the benefits of representing the conflicted client regardless of whether the Court or other Interested Parties approved of the adverse representation⁴⁴.

⁴³ Even the Court in its Decision suggested that one reason PWC may not have filed a new employment application with the Court is that "neither PWC nor the debtor [as counseled by CA Attorneys] may have considered the Court's role in the employment process significant". [Exhibit T at 8:9](#).

⁴⁴ The adverse interest and disinterested person limitations set forth in 11 U.S.C. §327(a) can not be waived. *In re S.S. Retail Stores*, 211 B.R. 699 (Bankr. 9th Cir. 1997); *In re Envirodyne Industries, Inc.* 150 B.R. at 1016.

5.10 The CA Bar should employ §6169 of the Bar Act and require the CA Attorneys to refrain from systemic pattern of failing to disclose adverse representation; such conduct misleads the Court and violates CRPC 3-310.

The original complaint and this Request detail numerous occasions where the CA Attorneys represent clients with concurrent potential and actual adverse interests. Multiple CA Attorneys appear to consider themselves above the requirements of CRPC 3-310. The examples reflected in the table below demonstrate a pattern of behavior and suggests they will continue to violate CRPC 3-310 in the future.

Date	Description of conduct or CRPC 3-310 violation identified in original complaint or this Request
April 5, 2000	CA Attorneys represented adverse client Oaktree without following CRPC 3-310 requirements.
April 12, 2000	CA Attorney states H&B represents another debtor adverse to Oaktree and that no party has yet to assert H&B is disinterested <i>in that</i> case. Exhibit R at 25:3 . Comment displays arrogant view of employment matters and CRPC 3-310 requirements.
April 13, 2000	New information concerning CA Attorneys representation of Oaktree triggered additional CRPC 3-310 requirements.
October 11, 2000	CA Attorneys represented adverse client Argo without following CRPC 3-310 requirements.
>February, 2001 <August 7, 2001	CA Attorneys represented adverse client Argo without following CRPC 3-310 requirements.
<April 29, 2002	The CA Attorneys did not provide written disclosure to Aural detailing their professional relationship and extent of communications with Argo required by CRPC 3-310.
<April 29, 2002	The CA Attorneys were obligated to seek renewed consent from Aural when the representation of Argo became actually adverse.
August 12, 2002	CA Attorneys represented adverse client PWC without following CRPC 3-310 requirements
During the pendent Aural case.	CA Attorneys had to reviewed 19 Argo claims. Exhibit FF . During actual adverse representation of Argo, a separate 3-310 and 327(a) violation would apply each time they reviewed one of these Argo claims.

5.11 The CA Attorneys Pattern of Communications with Argo in Conjunction with Their Conduct During the Pendent Aureal Case Creates An Appearance of Impropriety that Should be Investigated

The diagrams of Exhibits [J](#) and [P](#) reflect a disturbing pattern of communications between the CA Attorneys and Argo. It appears that significant actions related to the misconduct complained of herein take place in close proximity to telephone conferences between the parties or services the CA Attorneys or their staff performed at the expense of the Aureal bankruptcy estate. These exemplify, at best, an appearance of impropriety. There were only 13 separate interactions between the parties in the case, according to the Additional Evidence. However, 4 of these immediately precipitated actions that surround our allegations of misconduct. A majority precipitates actions by within a couple of weeks. The CA Bar should investigate this correlation as it relates to the complaint. A list of the immediately proximate events follows:

Date	Precipitating Event	Date	Subsequent Event
10/10/2000	CA Attorney Sidney Levinson conference with Argo Partners.	10/11/2000	Argo retains HBD
10/12/2000	Argo files appearance in First Conflicted Representation	10/13/2000	CA Attorney Sidney Levinson conference with Argo Partners
6/6/2001	CA Professional Joanne B. Stern reviews creditor database regarding Argo	6/7/2001	CA Attorney Sidney Levinson files declaration with Court disclosing First Conflicted Representation
12/5/2000	CA Attorney Sidney Levinson conference with Argo Partners	12/6/2000	CA Attorney Sidney Levinson files papers objecting to Center claim

5.12 CA Attorney Sidney P. Levinson appears to have engaged in coaching a witness or encouraging a witness to testify falsely.

On December 4, 2001, Next, through it's counsel, deposed Ramesh Kandukuri, an employee or agent of Aural. In Mr. Kandukuri's deposition, he stated that that an Aural product named the SQ3500 was manufactured and released by Aural. [Exhibit DD at 4, deposition p. 151:2-8](#). On several instances, Mr. Levinson interjected answers to several questions directed towards Mr. Kandukuri and suggested breaks when Mr. Kandukuri's answers were detrimental to the debtor.

Shortly thereafter, CA Attorney Sidney P. Levinson called for a break.

After the break, Mr. Kandukuri began not by answering the first question following the break, but rather by stating that he wanted to now change his earlier testimony just given to say that he did not remember if the SQ3500 was manufactured. [Exhibit DD at 4, deposition p. 153:15-20](#).

5.13 The CA Attorneys provided documentary evidence that was apparently fabricated and misleading, in violation of the CRPC and the USC.

[Exhibit EE](#) contains documents produced by the CA Attorneys in response to a request for documents by Next's attorney in the Aureal case. Upon inspection it is clear that the documents provided are likely fabrications.

The three sets of documents we focus on are a series of Marketing Meeting Minutes related to Aureal products. Next was the holder of a claim related to these products and requested that Aureal provide them for review. Dates in these documents would be determinative as to Next's rights related to it's claim. These documents are located as follows: First Meeting at Exhibit EE at 39, Second Meeting at Exhibit EE at 42, and Third Meeting at Exhibit EE at 45. The following is an enumeration of some inconsistencies with these documents that illustrates likely document fabrication:

- The title of each of these 3 Marketing Meeting Minutes has the same date: February 15, 2000. It is incredulous that 3 marketing meetings would be held on the same date at unspecified times with separate minutes notes.
- The expected participants list and host varies for each of the 3 documents is different for the 1st document, indicating that these 3 documents were purportedly intended to represent meetings held on different dates.
- The information under heading "I. ADMINISTRATIVE" specifies in each of the 3 Marketing Meeting Minutes that the next meeting will take place on Monday, February 22nd. February 22, 2000 did not fall on a Monday.

Each of the 3 documents shows detailed notes and corrections that were hand-written on the paper. However, this detail does not comport with the lack of any correction of the current meeting date errors or the future meeting on a non-existent date.

There exists only one plausible explanation which would account for these documents which 1) at first glance would have helped the debtor in their litigation, 2) included intense hand written detail including corrections but ignoring the most relevant errors to contemporaneous participants, 3) provided no indication of the author of the notes, 4) were not provided with the 36 pages delivered at 6:29pm by facsimile in advance of the deposition, but rather on the day of the deposition: The documents were a well planned but poorly executed fabrication.

An investigator could easily determine beyond a reasonable doubt whether these documents (which included hand writing samples) were fabricated. There are a finite number of participants and former employees, there are actual hand writing samples, and

An investigator could easily determine beyond a reasonable doubt whether these documents (which included hand writing samples) were fabricated. There are a finite number of participants and former employees, there are actual hand writing samples, and the company would certainly have to have years worth of Marketing Meeting Minutes which would always have the same date errors verifiable by these employees.

What if the CA Attorneys did not alter these documents, but that was done by Aural? The CA Attorneys remain culpable for violating the rule against misleading courts and judicial officers as that may be established even where there is no direct evidence of malice, intent to deceive, or hope of personal gain. Actual deception is not necessary to sustain a violation; willful deception is established where the lawyer knowingly presents a false statement which may tend to mislead the court. Even where the fabrications are the work of another, and the lawyer is unaware of the truth, the lawyer remains culpable if the lawyer learns of their bogus nature and continues to assert their authenticity. *In the Matter of Tempkin* (Review Dept. 1991) 1 Cal. State Bar Ct.Rptr. 321 (due to inconsistent findings (involving Bar Act §§ 6106, 6068(b) and § 6103) and the need for witness "credibility reassessment" thereby necessitating a reevaluation of the documentary evidence, the case was remanded).

EXHIBIT A

COPIES

BRUCE BENNETT (SBN 105430)
JAMES O. JOHNSTON (SBN 167330)
JOSHUA M. MESTER (SBN 194783)
HENNIGAN & BENNETT
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Proposed Reorganization Counsel for
Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Case No. **00 42104**
(Chapter 11)

In re
AUREAL, INC., d/b/a SILO.COM,
f/k/a AUREAL
SEMICONDUCTOR, INC., f/k/a
MEDIA VISION TECHNOLOGY,
INC., a Delaware corporation;

Debtor.

APPLICATION OF DEBTOR AND DEBTOR
IN POSSESSION TO EMPLOY HENNIGAN
& BENNETT AS REORGANIZATION
COUNSEL; DECLARATION OF JAMES O.
JOHNSTON IN SUPPORT

[No Hearing Required]

Aureal, Inc., the debtor and debtor in possession herein (the "Debtor"), hereby
applies to this Court for the entry of an order, in substantially the form of the proposed
order attached hereto as Exhibit A, authorizing it to employ the law firm of Hennigan &
Bennett ("H&B") as its reorganization counsel. In support of this Application, the Debtor
submits the accompanying Declaration of James O. Johnston (the "Johnston
Declaration") and respectfully represents as follows:

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HENNIGAN & BENNETT

1 7. Among other things, as indicated in the Retention Agreement, the Debtor
2 requires H&B to render the following types of professional services:
3 • To advise the Debtor regarding matters of bankruptcy law;
4 • To represent the Debtor in proceedings or hearings before this Court
5 involving matters of bankruptcy law;
6 • To assist the Debtor in the preparation of reports, accounts,
7 applications, and orders;
8 • To advise the Debtor concerning the requirements of the
9 Bankruptcy Code, Bankruptcy Rules, and United States Trustee Guidelines and
10 Requirements relating to the administration of this case and the operation of the
11 Debtor's business; and
12 • To assist the Debtor in the negotiation, preparation, confirmation,
13 and implementation of a plan of reorganization.
14 8. As indicated in the Retention Agreement, however, except as set forth in
15 paragraphs 9, 10, and 11 below, the Debtor does not intend for H&B to be responsible for
16 appearances before any court or agency, other than before this Court and the office of
17 the United States Trustee; litigation before this Court with respect to matters which are,
18 in essence, disputes involving issues of nonbankruptcy law; or the provision of
19 substantive legal advice outside of the insolvency area, such as in areas implicating
20 patent, trademarks, intellectual property, corporations, taxation, securities, torts,
21 environmental, labor, criminal, or real estate law. Further, the Debtor does not intend
22 for H&B to be required to devote attention to, form professional opinions as to, or advise
23 the Debtor with respect to their disclosure obligations under nonbankruptcy laws or
24 agreements.
25 9. The Debtor anticipates that in addition to employing H&B as
26 reorganization counsel, the Debtor will require the services of litigation, corporate,
27 trademark and patent counsel. However, the Debtor does not expect that there will be
28 duplication in the services to be rendered to the Debtor by the separate counsel.

HENNIGAN & BENNETT

1 10. The Debtor may, from time to time, request that H&B undertake specific
2 matters beyond the limited scope of the responsibilities set forth above. Should H&B
3 agree in its discretion to undertake any such specific matters, the Debtor seeks authority
4 by this Application to employ H&B for such matters, in addition to those set forth above,
5 without further order of this Court.

6 11. H&B also has agreed to serve as counsel to the Debtor with respect to
7 certain nonbankruptcy litigation to be commenced on behalf of the Debtor. The terms
8 and conditions of that engagement are set forth in a separate engagement letter, which
9 will be submitted to the Court for approval with the appropriate notice.

10 **H&B's Compensation as Reorganization Counsel**

11 12. H&B has received a retainer of \$300,000 for services to be rendered to the
12 Debtor in connection with this chapter 11 case. H&B has deposited the unearned
13 portion of that retainer into a trust account in the name of the Debtor, as a trust
14 fund/security retainer, to secure the payment of H&B's allowed fees and expenses in
15 this case. During the one year period prior to the filing date of the chapter 11 petition,
16 H&B did not receive from the Debtor any other payments for services rendered to the
17 Debtor in connection with this case and the reorganization of its business.

18 13. H&B has agreed to accept as compensation for its services its retainer and
19 such additional reasonable sums as may be allowed by this Court in accordance with
20 law, based upon the time spent and services rendered, the results achieved, the
21 difficulties encountered, the complexities involved, and other appropriate factors, as set
22 forth in the Retention Agreement. A list of the guideline hourly rates for H&B and of
23 those members of H&B expected to render services to the Debtor is attached hereto as
24 Exhibit "D".

25 14. No additional compensation will be paid by the Debtor to H&B except
26 upon application to and approval by the Bankruptcy Court after notice and a hearing.

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HENNIGAN & BENNETT

Disinterestedness

15. To the best of the Debtor's knowledge, based upon the Johnston Declaration, except as they are or have been the attorneys for the Debtor, H&B and all of the attorneys comprising or employed by it are disinterested persons who do not hold or represent an interest adverse to the estates and who do not have any connection with the Debtor, their creditors, or any other party in interest in these cases, or their respective attorneys or accountants, except as stated in the Johnston Declaration.

16. Moreover, to the best of the Debtor's knowledge, based upon the Johnston Declaration, H&B and all of the attorneys comprising or employed by H&B:

- (a) are not and have not been an equity security holder or an insider of the Debtor.
- (b) are not and have not been an investment banker for any outstanding security of the Debtor.
- (c) are not and have not been an investment banker for a security of the Debtor, or an attorney for such an investment banker in connection with the offer, sale or issuance of any security of the Debtor.
- (d) are not and have not been a director, officer or employee of the Debtor or of any investment banker for any security of the Debtor.
- (e) subject to the disclosures contained in the Johnston Declaration, have no interest materially adverse to the interest of the estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor or an investment banker for any security of the Debtor, or for any other reason.

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HENNIGAN & BENNETT

18. The name, address and phone number of the person signing this

Application on behalf of H&B and the relationship of such person to H&B is:

James O. Johnston, Partner
Hennigan & Bennett
601 S. Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200

Summary

19. The employment of H&B as the Debtor's reorganization counsel is in the best interest of the estate.

20. The Debtor has served copies of the Application and certain related pleadings and documents on the Office of the United States Trustee, the creditors identified on the lists of creditors holding the twenty largest unsecured claims against the Debtor, and counsel to the Debtor's primary secured lender, Oaktree Capital Management, LLC.

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HENNIGAN & BENNETT

1 WHEREFOR, the Debtor requests that it be authorized to employ H&B as its
2 reorganization counsel with compensation to be at the expense of the estate in such
3 amount as the Court may hereafter allow in accordance with law.

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5 DATED: April 5, 2000

AUREAL, INC.

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9 By: 
10 Steve Mitchell,
11 Chief Operating Officer

12 Submitted By:

13
14 By: 
15 James O. Johnston
16 Hennigan & Bennett
17 Proposed Reorganization Counsel for Debtor
18 And Debtor in Possession
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HENNIGAN & BENNETT

1 BRUCE BENNETT (SBN 105430)
2 JAMES O. JOHNSTON (SBN 167330)
3 JOSHUA M. MESTER (SBN 194783)
4 HENNIGAN & BENNETT
5 601 South Figueroa Street, Suite 3300
6 Los Angeles, California 90017
7 Telephone: (213) 694-1200
8 Facsimile: (213) 694-1234

9 Proposed Reorganization Counsel for
10 Debtor and Debtor in Possession

11 UNITED STATES BANKRUPTCY COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 In re

15 AUREAL, INC., d/b/a SILO.COM,
16 f/k/a AUREAL
17 SEMICONDUCTOR, INC., f/k/a
18 MEDIA VISION TECHNOLOGY,
19 INC., a Delaware corporation;

20 Debtor.

21 Case No.

22 (Chapter 11)

23 [PROPOSED] ORDER APPROVING
24 APPLICATION OF DEBTOR AND DEBTOR
25 IN POSSESSION TO EMPLOY HENNIGAN
26 & BENNETT AS REORGANIZATION
27 COUNSEL

28 [No Hearing Required]

29 Upon the "Application of Debtor and Debtor in Possession for Authority to
30 Employ Hennigan & Bennett as Reorganization Counsel" and the Declaration of
31 James O. Johnston in support thereof (collectively the "Application"), filed by Aureal,
32 Inc. (the "Debtor"), to employ the law firm of Hennigan & Bennett ("H&B") as its
33 attorneys; it appearing to the Court that H&B and its members and employees are
34 disinterested persons who do not hold or represent an interest adverse to the estate
35 in the matters upon which they are to be engaged; that the employment of H&B by

36 HENNIGAN & BENNETT

1 the Debtors is in the best interest of the estate; that notice the Application was
2 appropriate; and good cause appearing therefor,

3 **IT IS HEREBY ORDERED THAT:**

- 4 1. The Application is hereby APPROVED.
5 2. The Debtor is hereby authorized to employ H&B as its reorganization
6 counsel, on substantially the terms and conditions set forth in the Application and
7 the retention agreement attached as Exhibit B to the Application, with compensation
8 to be at the expense of the estate in such amount as the Court may hereafter allow.

9 p

10 DATE: April __, 2000

11
12 UNITED STATES BANKRUPTCY JUDGE

13 Submitted by:

14 HENNIGAN & BENNETT

15
16 By: _____

17 Joshua M. Mester
18 Proposed Reorganization Counsel for
19 Debtor and Debtor in Possession

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HENNIGAN & BENNETT

HENNIGAN & BENNETT

LAWYERS

601 SOUTH FIGUEROA STREET

SUITE 3300

LOS ANGELES, CALIFORNIA 90017

TELEPHONE (213) 694-1200

FACSIMILE (213) 694-1234

April 4, 2000

**VIA FACSIMILE
AND FEDERAL EXPRESS**

Aureal, Inc.
45757 Northport Loop West
Fremont, CA 94538
[facsimile no. 510-252-4554]

**Re: Retainer Agreement between Hennigan & Bennett and Aureal, Inc.,
And Its Subsidiaries, Crystal River Engineering, Inc., and Aureal
Limited Regarding Bankruptcy Representation**

Gentlemen:

This letter sets forth the terms and conditions upon which Hennigan & Bennett ("H&B") will represent Aureal, Inc., and its wholly-owned subsidiaries Crystal River Engineering, Inc., and Aureal Limited (collectively, "Aureal"), in connection with the filing and prosecution of chapter 11 bankruptcy cases for one or more of them in the United States Bankruptcy Court for the Northern District of California, Oakland Division.

H&B will act as Aureal's special reorganization counsel to render such ordinary and necessary legal services as may be required in connection with the contemplated chapter 11 cases, including:

1. Assisting Aureal in the preparation of its bankruptcy petition(s), schedule(s) of assets and liabilities, statement(s) of financial affairs, and such other documents as are required to be filed with the Bankruptcy Court and the Office of the United States Trustee to commence and proceed with the chapter 11 case(s);
2. Advising Aureal with respect to the sale of some or all of its assets and with respect to the negotiation, preparation, and confirmation of a plan or plans of reorganization;

HENNIGAN & BENNETT
Aureal, Inc.
Chapter 11 Retainer Agreement
April 4, 2000
Page 2

3. Assisting Aureal in preparing and obtaining approval of a disclosure statement or statements;
4. Appearing at meetings of creditors;
5. Representing Aureal in litigation in the Bankruptcy Court where such litigation involves substantial and material issues of bankruptcy law; and
6. Advising Aureal regarding its legal rights and responsibilities as a debtor in possession under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the United States Trustee Guidelines and Requirements.

Please be advised that H&B's employment as Aureal's special reorganization counsel does not include any of the following: (a) appearances before any court or agency other than the Bankruptcy Court and the Office of the United States Trustee; (b) litigation in the Bankruptcy Court with respect to matters which are, in the main, disputes involving issues of nonbankruptcy law; and (c) the provision of advice outside the insolvency area, including advise with respect to matters such as patent, trademark, corporations, taxation, securities, torts, environmental, labor, criminal, and real estate law. Further, the limited scope of our employment as Aureal's special reorganization counsel does not include giving attention to, forming professional opinions as to, or advising you with respect to, disclosure obligations under federal securities or other nonbankruptcy laws or agreements.

As you are aware, H&B also has agreed to serve as counsel to Aureal with respect to certain nonbankruptcy litigation to be commenced on behalf of Aureal. The terms and conditions of that engagement are set forth in a separate engagement letter, which letter is to be read and interpreted consistently and concurrently with the terms and conditions set forth herein.

With respect to H&B's services as special reorganization counsel pursuant to this engagement letter, Aureal has agreed to pay H&B a reasonable fee for services rendered and to be rendered and to pay H&B for all costs and expenses charged to its account. We have requested and Aureal agreed to pay the sum of \$300,000 as a retainer for the professional services that H&B will render and for the expenses that H&B will incur as special reorganization counsel, as well as additional security for Aureal's obligations to H&B. H&B's engagement is contingent on its receipt of that sum prior to the commencement of any bankruptcy proceedings with respect to Aureal. The retainer amount may be allocated by H&B among the entities comprising Aureal in any manner in which H&B deems appropriate.

HENNIGAN & BENNETT

Aureal, Inc.

Chapter 11 Retainer Agreement

April 4, 2000

Page 3

Following exhaustion of the retainer, H&B will seek additional compensation for services rendered during the course of the chapter 11 cases ("interim compensation") based in part upon our guideline hourly rates. These rates range from \$200 to \$460 per hour for attorneys, from \$90 to \$340 per hour for financial consultants, and from \$50 to \$155 for paralegals and clerks. Our guideline hourly rates are adjusted periodically, typically on January 1 of each year, to reflect the advancing experience, capabilities and seniority of our professionals as well as general economic factors.

Our requests for interim compensation also will include charges for reasonable costs and expenses incurred in connection with the engagement. Such costs and expenses typically include, among others, charges for messenger services, air couriers, word processing services, secretarial overtime, photocopying, postage, long distance telephone service, computerized legal research facilities, process service, investigative searches, and other charges customarily invoiced by law firms in addition to fees for legal services, including court fees and travel expenses. In the event that we incur expenses that we deem to be extraordinary or significant, such as transcript costs or sizable outsourced photocopying expenses, you agree that Aureal will pay those expenses directly.

It is H&B's practice to charge our clients for services rendered based upon not only the total number of hours of services rendered charged at guideline hourly rates, but also upon such other factors as the complexity of the problems presented to us, the amount at issue, the nature, quality and extent of the opposition encountered, the results accomplished, the skill we exercised in accomplishing those results, the extent to which our services were rendered outside the Los Angeles area, after normal business hours or on other than normal business days, delay in our receipt of compensation, and the extent to which we were at risk in being paid. When our representation is ended, the firm will determine the amount of the total fees and will send Aureal a final statement, which may reflect a fee that exceeds the interim compensation previously sought or invoiced by H&B. To the extent that H&B's final fee exceeds the total number of hours of services rendered charged at guideline hourly rates, H&B will consult with Aureal before setting that final fee.

Because of the specialized nature of our practice, from time to time H&B may concurrently represent one client in a particular case and the adversary of that client in an unrelated case. Thus, for example, while representing Aureal, H&B also may represent a creditor of Aureal in that creditor's capacity as a debtor or as a creditor of an entity which is not related to Aureal. In addition, while representing Aureal, H&B may represent an account debtor of Aureal as a debtor in a reorganization case or in connection with out-of-court negotiations with such entity's creditors concerning the

HENNIGAN & BENNETT
Aureal, Inc.
Chapter 11 Retainer Agreement
April 4, 2000
Page 4

entity's ability to pay its debts generally. Please be assured that, despite any such concurrent representation, we strictly preserve all client confidences and zealously pursue the interests of each of our clients, including in those circumstances in which we represent the adversary of an existing client in an unrelated case. Aureal agrees that it does not consider such concurrent representation, in unrelated matters, of Aureal and any adversary to be inappropriate and therefore waives any objections to any such present or future concurrent representation.

Also, several attorneys at H&B have spouses, parents, children, siblings, fiances or fiancées who are attorneys at other law firms and companies. H&B has strict policies against disclosing confidential information to anyone outside the firm, including spouses, parents, children, siblings, fiances and fiancées. You agree that you do not consider our representation of Aureal to be inappropriate in light of any such relationships, and H&B agrees to advise Aureal in the event that it determines that any of the relationships likely would lead to a conflict situation.

H&B maintains a policy that it does not provide opinion letters to its clients or to others who might wish to rely on such letters. We do not alter this policy except under very unusual circumstances and then only upon further written agreement, which provides for compensation to us for the special risks attendant to the furnishing of such opinions. H&B maintains errors and omissions insurance coverage applicable to the services to be rendered hereunder which complies with the requirements imposed by California Business and Professions Code sections 6147(a)(6) and 6148(a)(4).

By this agreement, HMB is being engaged only by Aureal and its subsidiaries, which are corporate entities. Our employment does not include the representation of any individual officer, director, shareholder, employee or any affiliate of Aureal.

Aureal may discharge H&B at any time. H&B may withdraw at any time with Aureal's consent or for good cause without Aureal's consent. Good cause for H&B's withdrawal includes Aureal's breach of this agreement (including Aureal's failure to pay any statement or invoice when due), Aureal's refusal or failure to cooperate with us, or any fact or circumstance that would render our continuing representation unlawful or unethical.

By executing this agreement you acknowledge that you have read carefully and understand all its terms. This letter constitutes the entire understanding between Aureal and H&B regarding our employment as special reorganization counsel, and this agreement cannot be modified except by further written agreement signed by each party. As noted above, the terms and conditions of H&B's engagement by

HENNIGAN & BENNETT
Aureal, Inc.
Chapter 11 Retainer Agreement
April 4, 2000
Page 5

Aureal with respect to certain nonbankruptcy litigation matters are set forth in a separate engagement letter.

If you have any questions about the foregoing, please call Josh Mester, or me. Moreover, please feel free to obtain independent legal advice regarding this agreement. If you are in agreement with the foregoing, and it accurately represents your understanding of Aureal's retainer agreement with H&B with respect to services as special reorganization counsel, please execute the enclosed copy of this letter and return it to me. If not, please contact us immediately. We look forward to working with you on these cases.

Very truly yours,

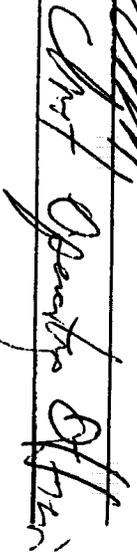
HENNIGAN & BENNETT

By 
James O. Johnston

THE FOREGOING IS APPROVED AND AGREED TO:

DATED: April 4, 2000

AUREAL, INC

By: 
Its: 

Aureal, Inc.'s Taxpayer I.D. Number: 94-3117385

F:\Client Files A-H\Client Files A\Aureal\Exec Correspondence\retainer_agmt for ch 11 jg322000.doc

EXHIBIT C
BIOGRAPHIES OF MEMBERS OF
HENNINGAN & BENNETT
EXPECTED TO RENDER SERVICES TO THE DEBTOR

BRUCE BENNETT, born Brooklyn, New York, October 3, 1958; admitted to bar, 1982, California. *Education*: Brown University (Sc.B., magna cum laude, 1979); Harvard University (J.D., cum laude, 1982). Commissioner, Personal and Small Business Bankruptcy Law Advisory Commission of The California Board of Legal Specialization. *Member*: Los Angeles County (Member, Sections on: Commercial Law and Bankruptcy; Business and Corporation) and American (Member, Section on: Business Law) Bar Associations; The State Bar of California (Member, Business Law Section); International Bar Association (Member, Section on: Business Law, Committee J: Insolvency and Creditors' Rights); Financial Lawyers Conference. Hourly rate: \$460.

SIDNEY P. LEVINSON, born August 10, 1963, Los Angeles, California; admitted to bar 1988, California, 1989, District of Columbia. Admitted to United States Supreme Court, United States Court of Appeals for the Ninth Circuit, United States District Courts for the Northern District of California, District of Columbia and District of Maryland. *Education*: Brandeis University (B.A., cum laude, 1985), UCLA Law School (J.D., 1988). Member, UCLA Law Review, 1986-1988. Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, 1992-1995. *Member*: American Bar Association (Business Law Section), American Bankruptcy Institute, Los Angeles Bankruptcy Forum. Author, "Does the Government Bear the Ultimate Burden of Proof Regarding Allowance of a Tax Claim in Bankruptcy," 25 Cal. Bankr. J. 137 (1999). Hourly rate: \$355.

JAMES O. JOHNSTON, born Glendale, California, August 14, 1968; admitted to bar, 1993, California. *Education*: Stanford University (B.A. 1990); University of Southern California (J.D./M.A. 1993) (Malcomb Lucas, Alfred J. Mellenthin, Gerald G. Kelly, and Scribes Award). Member, Order of the Coif. Member, University of Southern California Law Review, 1992-1992; Managing Editor, 1992-1993. Law Clerk to the Honorable Cynthia Holcomb Hall, U.S. Ninth Circuit Court of Appeals, 1993-1994. Co-author, "State Defiance of Bankruptcy Law", 52 Vand. L. Rev. 1528 (1999). Author, "The Inequitable Machinations of Section 362(a)(3): Rethinking Bankruptcy's Automatic Stay Over Intangible Property Rights," 66 S. Cal. Rev. 659 (1992). Co-author, "Introduction: In the Matter of Kaye, Scholer, Fierman, Hays & Handler: A Symposium on Government Regulations, Lawyers' Ethics, and the Rule of Law", 66 S. Cal. L. Rev. 977 (1993). Co-author, "Privileges in Bankruptcy," presented at the New York University Workshop on Bankruptcy & Business Reorganization (1993). *Member*: Los Angeles County Bar Association; American Bankruptcy Institute; The State of California; Hourly rate: \$345.

JOSHUA M. MESTER, born Baltimore, Maryland, July 16, 1972; admitted to bar, 1998, California, U.S. District Court, Central and Northern Districts of California. *Education:* Georgetown University (B.S.B.A. 1994); University of San Francisco, School of Law (1997, with honors). Law Clerk to the Honorable Erithe A. Smith, United States Bankruptcy Court, Central District of California, August 1998-1999, Assistant Counsel with the Office of the General Counsel, Department of the Navy; September 1997-July 1998; *Member:* Los Angeles County Bar Association; Financial Lawyers Conference; Hourly rate: \$230.

KATHYRYN S. BOWMAN, born Wellington, Ohio, October 26, 1955. *Position:* Legal Assistant. *Education:* California State University at Los Angeles (Paralegal Certificate, 1985). *Employment:* Stutman, Triester & Glatt (1986-1992), Legal Assistant; United States Bankruptcy Court, Central District of California (1992-1993); Hennigan & Bennett (1995-present).

JOANNE STERN, born Nurnberg, Germany, December 13, 1959. *Position:* Legal Assistant. *Education:* Pitzer College, Claremont, California (B.A., 1981), University Of West Los Angeles, School of Paralegal Studies (Paralegal Certificate, 1990). *Employment:* Stutman, Triester & Glatt (1992-1997), Legal Assistant; Neilson, Elggren, Durkin & Co. (1997-1999); Hennigan & Bennett (1999 – present).

EXHIBIT D

<u>NAME</u>	<u>RATE</u>
Bruce Bennett	\$460/hour
Sidney P. Levinson	\$355/hour
James O. Johnston	\$345/hour
Joshua M. Mester	\$230/hour
Joanne Stern	\$155/hour
Kathryn S. Bowman	\$155/hour

EXHIBIT B

1 ~~ORIGINAL~~ (SBN 105430)
 2 JAMES O. JOHNSTON (SBN 167330)
 3 SIDNEY P. LEVINSON (SBN 139419)
 4 JOSHUA M. MESTER (SBN 194783)
 5 HENNIGAN & BENNETT
 601 South Figueroa Street, Suite 3300
 Los Angeles, California 90017
 Telephone: (213) 694-1200
 Facsimile: (213) 694-1234

FILED
 JUN 1 9 2000

Proposed Reorganization Counsel for Debtor and Debtor in Possession

CLERK OF COURT
 OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

In re
 AUREAL, INC., d/b/a SLO.COM,
 f/k/a AUREAL
 SEMICONDUCTOR, INC., f/k/a
 MEDIA VISION TECHNOLOGY,
 INC., a Delaware corporation;

Case No. 00-42104-T11
 (Chapter 11)

[PROPOSED] ORDER APPROVING
 APPLICATION OF DEBTOR AND DEBTOR
 IN POSSESSION TO EMPLOY HENNIGAN
 & BENNETT AS REORGANIZATION
 COUNSEL

[No Hearing Required]

Debtor.

Upon the "Application of Debtor and Debtor in Possession for Authority to Employ Hennigan & Bennett as Reorganization Counsel" and the Declaration and Supplemental Declaration of James O. Johnston in support thereof (collectively the "Application"), filed by Aural, Inc. (the "Debtor"), to employ the law firm of Hennigan & Bennett ("H&B") as its attorneys; it appearing to the Court that H&B and its members and employees are disinterested persons who do not hold or represent an interest adverse to the estate in the matters upon which they are to be engaged;

HENNIGAN & BENNETT

[PROPOSED] ORDER APPROVING APPLICATION OF DEBTOR AND DEBTOR IN POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

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1 that the employment of H&B by the Debtors is in the best interest of the estate; that
 2 notice of the Application was appropriate; that there is no objection to the
 3 Application based upon the information supplied in the Supplemental Declaration
 4 and the provisions of Paragraph 3 of this Order; and good cause appearing therefor,
 5 **IT IS HEREBY ORDERED THAT:**

6 1. The Application is hereby APPROVED.

7 2. The Debtor is hereby authorized to employ H&B as its reorganization
 8 counsel, on substantially the terms and conditions set forth in the Application,
 9 Paragraph 3 of this Order, and the retention agreement attached as Exhibit B to the
 10 Application, with compensation to be at the expense of the estate in such amount as
 11 the Court may hereafter allow.

12 3. Any attorneys who provide representation to the estate on bankruptcy
 13 matters shall be precluded from providing any concurrent representation to Oaktree
 14 Capital Management LLC or other entities affiliated with or managed by Oaktree
 15 Capital Management LLC (collectively, "Oaktree") on other matters, including but not
 16 limited to H&B's representation of Oaktree in Farallon Capital Partners, L.P., et. al. v.
 17 Gleacher & Co., Inc. et. al., pending in the California Superior Court in Los Angeles as
 18 case number BC 215260. The provisions of this Paragraph 3 shall not apply to H&B
 19 attorneys who provide non-bankruptcy litigation representation to the Debtor in the
 20 event that the Debtor seeks and obtains bankruptcy court approval to represent the
 21 Debtor in such non-bankruptcy matters.

22 DATE: ~~April 19~~ ^{July} 19 2000

23 *Walter T. Schneider*
 24 Walter T. Schneider
 25 UNITED STATES BANKRUPTCY JUDGE
 26
 27
 28

1 Submitted by:
2 HENNIGAN & BENNETT

3
4 By: Sidney P. Levinson
5 Proposed Reorganization Counsel for
6 Debtor and Debtor in Possession

7 NO OBJECTION

8 Mark Pope
9 Mark Pope
10 Attorney-Advisor
11 Office of the United States Trustee
12 1301 Clay Street, # 680 North
13 Oakland, CA 94612-5217
14 (510) 637-3200

15 Thomas C. Mitchell
16 Orrick, Herrington & Sutcliffe
17 400 Sansome Street
18 San Francisco, CA 94111-3143
19 (415) 773-5732

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HENNIGAN & BENNETT

1 Submitted by:
2 HENNIGAN & BENNETT
3

4 By: Sidney P. Levinson
5 Proposed Reorganization Counsel for
6 Debtor and Debtor in Possession

7 NO OBJECTION

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15 Thomas C. Mitchell
16 Orrick, Herrington & Surliffe LLP
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18 San Francisco, CA 94111-3143
19 (415) 773-5732

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HENNIGAN & BENNETT

DECLARATION OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Hennigan & Bennett, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On April 24, 2000, I served the following pleading:

[PROPOSED] ORDER APPROVING APPLICATION OF DEBTOR AND DEBTOR IN POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows below.

I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

SEE ATTACHED SERVICE LIST

The above-described pleading also was transmitted to the indicated parties set forth above in the manner described below:

By air courier service, for next business-day delivery by

By messenger service, for same-day delivery by hand by

by telecopy, for immediate receipt.

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made.

EXECUTED on April 24, 2000 at Los Angeles, California.

Joanne B. Stern, Declarant

Debtor:
 AUREAL, INC.
 Attn: Steve Mitchell
 45757 Northport Loop West
 Fremont, CA 94538

Debtor's Counsel:
 Bruce Bennett/Oshua Mester
 Hennigan & Bennett
 601 S Figueroa St., Suite 3300
 Los Angeles, CA 90017

Office of the U.S. Trustee:
 U.S. Trustee
 1301 Clay Street, Suite 690N
 Oakland, CA 94612

Secured Creditor as Agent:
 Oaktree Capital Management LLC
 Attn: Richard Masson
 333 S. Grand Avenue, 28th Floor
 Los Angeles, CA 90071

Counsel to Oaktree Capital Mgmt.:
 Eric Reimer, Esq.
 McDermott, Will & Emory
 2049 Century Park East, 34th Floor
 Los Angeles, CA 90067

20 Largest Unsecured Creditor:
 Ocean Data Products
 5th Floor Kader Industrial Bldg.
 22 Kai Cheung Road
 Kowloon Bay
 Kowloon, Hong Kong

20 Largest Unsecured Creditor:
 UMC Group (USA)
 Attn: Tam Kalvin
 488 Dequigne Drive
 Sunnyvale, CA 94086

20 Largest Unsecured Creditor:
 Flatland Online, Inc.
 Attn: Michael K. Powers
 2325 Third Street, Suite 215
 San Francisco, CA 94107

20 Largest Unsecured Creditor:
 Caesar International, Inc.
 Attn: Jolo Estavillo
 2860 Zanker Road, Suite 210
 San Jose, CA 95134

20 Largest Unsecured Creditor:
 Cadence Design Systems, Inc.
 Attn: Steve Mith
 555 River Oaks Parkway
 San Jose, CA 95134

20 Largest Unsecured Creditor:
 Juan Gonzalez
 KPMG
 3 Embarcadero Center, Suite 2000
 San Francisco, CA 94111

20 Largest Unsecured Creditor:
 Avnet Electronics Marketing
 Attn: Judy O'Brien
 2105 Lundy Avenue
 San Jose, CA 95131

20 Largest Unsecured Creditor:
 Ziff-Davis, Inc.
 Attn: Customer Service
 File #2082
 Los Angeles, CA 90074-2082

20 Largest Unsecured Creditor:
 Houlihan Lokey Howard & Zukin
 Attn: Glenn R. Daniel, Managing Director
 49 Stevenson Street, 14th Floor
 San Francisco, CA 94105

20 Largest Unsecured Creditor:
 Finova Technology Finance, Inc.
 Attn: Lori P. Sullivan
 115 West Century Road, 3rd Floor
 Paramus, NJ 07652

20 Largest Unsecured Creditor:
 PC World Communications
 Attn: Kevin Greene
 PO Box 3700-67
 Boston, MA 02241-0767

20 Largest Unsecured Creditor:
 VIFA-Speak A/S
 Stationsvej 5
 6920 Videbaek
 Danmark

20 Largest Unsecured Creditor:
 GE Capital
 Attn: Brian Haber
 Dept 3123
 Pasadena, CA 91051-3123

20 Largest Unsecured Creditor:
 Integra-Dync Corp.
 Attn: Ren Condotta
 145 King Street, West, Suite 1000
 Toronto, ON M5H 1J8
 Canada

20 Largest Unsecured Creditor:
 3DSL
 Attn: John Byrne
 Blissworth Base Hill
 Stoke Road, Busworth
 Northants, UK NN73DB

20 Largest Unsecured Creditor:
 Activation, Inc.
 Attn: Andrea Tedeschi
 3100 Ocean Park Boulevard
 Santa Monica, CA 90405

20 Largest Unsecured Creditor:
 Highsoft, Inc.
 Attn: Steve Campos
 1965 Latham Street
 Mountain View, CA 94040-2107

20 Largest Unsecured Creditor:
 Huska Productions Audio, Inc.
 Attn: Jennifer Huska
 66 Rear Dudley Street
 Arlington, MA 02476

20 Largest Unsecured Creditor:
 PC Garner
 Attn: Robin Rosales
 150 North Hill Drive
 Brisbane, CA 94005

Request For Special Notice:
 Orrick, Herrington & Sutcliffe
 Attn: Thomas C. Mitchell, Esq.
 400 Sansome Street
 San Francisco, CA 94111-3143

Creative Labs Reg For Spec Notice:
 Mark Shinderman, Esq.
 Munger, Tolles & Olson LLP
 355 South Grand Avenue, Suite 3500
 Los Angeles, CA 90071-1560

Creative Labs, et al Reg. Spec. Notice:
 Erika Rottenberg, Esq.
 Creative Labs, Inc.
 1901 McCarthy Boulevard
 Milpitas, CA 95035

Caesar Intl Reg for Special Notice:
 William C. Lewis, Esq.
 Law Offices of William C. Lewis
 510 Waverley Street
 Palo Alto, CA 94031

Ocean Data Products Reg Spec. Not:
 Patricia S. Mar, Esq.
 Morrison & Foerster LLP
 425 Market Street
 San Francisco, CA 94105

IO Magic Reg. for Spec. Notice:
 Horowitz & Beam
 Attn: Lawrence M. Cron, Esq.
 Two Ventura Plaza, Suite 350
 Irvine, CA 92618

Request for Special Notice:

Ritter, Van Pelt & Yi, LLP

Attn: Jack Limper

4906 El Camino Real, Suite 205

Los Altos, CA 94022

In re AUREAL, INC.	CHAPTER 11
Debtor:	CASE NUMBER 00-42104-T11

**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(1)(a)(v), that a judgment or order entitled
(specify):

[PROPOSED] ORDER APPROVING APPLICATION OF DEBTOR AND DEBTOR IN POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

was entered on *(specify date):*

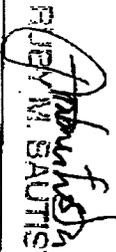
JUN 20 2000

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on *(specify date):*

Dated:

JUN 20 2000

KEENAN G. CASADY
Clerk of the Bankruptcy Court

By: 
RUBY M. SAUTISTA
Deputy Clerk

SERVICE LIST

Debtor's Counsel:

Hennigan & Bennett

Attn: Sid Levinson/Joshua Mester

601 South Figueroa Street, Suite 3300

Los Angeles, CA 90017

EXHIBIT C

2nd Fee Application

2nd Fee Add.

Matter	Date	Timekeeper	Description	Hrs	Fees
0020 - Meetings of and Communications with Creditors	7/5/2000	Joanne B. Stern	Telephone conference with Mr. Reimer regarding signature page to stipulation regarding order establishing sale procedures for certain assets of the estate, overbid procedures, break-up fee arrangements.	0.1	\$15.50
0020 - Meetings of and Communications with Creditors	7/5/2000	Joanne B. Stern	Telephone conference with creditor regarding filing proof of claim.	0.1	\$15.50
0020 - Meetings of and Communications with Creditors	7/5/2000	Sidney Levinson	Telephone conference with Mr. Hiraga regarding Voyetra-Turtle Beach.	0.2	\$71.00
0020 - Meetings of and Communications with Creditors	7/6/2000	Joanne B. Stern	Telephone conference with Mr. Holiday regarding application to employ auctioneer.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/6/2000	Joanne B. Stern	Telephone conference with Ruby at the Clerk's office regarding order approving sales procedures motion and stipulation.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/6/2000	Joanne B. Stern	Telephone conference with Ms. Cronin regarding filing proof of claim.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/6/2000	Sidney Levinson	Telephone conference with Ms. Michelson (committee counsel) regarding status of various matters.	0.4	\$142.00
0020 - Meetings of and Communications with Creditors	7/7/2000	Sidney Levinson	Telephone conference with Mr. Mitchell regarding document retention, Gray Cary.	0.3	\$106.50
0020 - Meetings of and Communications with Creditors	7/10/2000	Joanne B. Stern	Telephone conference with Mr. Mitchell regarding signing declaration in support of motion to approve premium finance agreement.	0.1	\$15.50
0020 - Meetings of and Communications with Creditors	7/10/2000	Joanne B. Stern	Prepare correspondence to Mr. Mitchell regarding signing declaration in support of motion to approve premium finance agreement.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/10/2000	Joanne B. Stern	Telephone conference with Sterling Madison regarding filing notice of motion and motion for approval of stipulation to pay employee vacation benefits.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/11/2000	Joanne B. Stern	Telephone conference with Celina at Marsh & Associates regarding insurance certificates.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/12/2000	Sidney Levinson	Telephone conference with Ms. Michelson regarding various issues.	0.4	\$142.00
0020 - Meetings of and Communications with Creditors	7/13/2000	Sidney Levinson	Telephone conference with Mr. Gold (Argo Partners) regarding status of case.	0.2	\$71.00
0020 - Meetings of and Communications with Creditors	7/14/2000	Sidney Levinson	Telephone conference with Mr. Reimer regarding sale, exclusivity, other issues.	0.4	\$142.00
0020 - Meetings of and Communications with Creditors	7/19/2000	Joanne B. Stern	Telephone conference with Mr. Shimanek regarding status of shares and section 144 issues.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/20/2000	Joanne B. Stern	Telephone conference with Ms. Bautista regarding copy of Ritter Van Pelt application.	0.1	\$15.50
0020 - Meetings of and Communications with Creditors	7/24/2000	Joanne B. Stern	Telephone conference with Sterling Madison regarding copies of claims.	0.1	\$15.50
0020 - Meetings of and Communications with Creditors	7/24/2000	Joanne B. Stern	Telephone conference with Mr. Pancurak regarding notice received.	0.2	\$31.00
0020 - Meetings of and Communications with Creditors	7/24/2000	Joanne B. Stern	Telephone conference with Ms. Johnston regarding notice received.	0.2	\$31.00



3rd Fee Application

3rd Application

Date	Matter	Timekeeper	Description	Hours	Fees
10/2/2000	0020 - Meetings of and Communications with Creditors	Kelly Frazier	Telephone conference with Mr. Youlankis regarding creditors claims.	0.10	\$ 23.50
10/3/2000	0020 - Meetings of and Communications with Creditors	Joanne B. Stern	Telephone conference with creditor regarding filing proof of claim.	0.10	\$ 15.50
10/3/2000	0020 - Meetings of and Communications with Creditors	Joanne B. Stern	Telephone conference with creditor regarding filing proof of claim.	0.10	\$ 15.50
10/4/2000	0020 - Meetings of and Communications with Creditors	Joshua Mester	Telephone conference with Ms. Hruska regarding payment of claim against the debtor.	0.20	\$46.00
10/4/2000	0020 - Meetings of and Communications with Creditors	Joshua Mester	Telephone conference with Ms. Cleary regarding claim of Hruska.	0.20	\$46.00
10/5/2000	0020 - Meetings of and Communications with Creditors	Joanne B. Stern	Telephone conference with creditor regarding claims process.	0.20	\$31.00
10/6/2000	0020 - Meetings of and Communications with Creditors	Joanne B. Stern	Telephone conference with Mr. Rose regarding revisions to Aural order.	0.20	\$31.00
10/13/2000	0020 - Meetings of and Communications with Creditors	Sidney Levinson	Telephone conference with Mr. Gold regarding creditor inquiries.	0.20	\$71.00
10/23/2000	0020 - Meetings of and Communications with Creditors	Sidney Levinson	Telephone conference with creditor (LSI) regarding status.	0.20	\$71.00
Grand Total				1.50	\$350.50





Date	Matter	Timekeeper	Description	Hours/Fees
10/3/2000	0030 - General Business Operations	Sidney Levinson	Telephone conference with Mr. Gold regarding purchased claims.	0.10 \$35.50
10/3/2000	0030 - General Business Operations	Sidney Levinson	Conference with Ms. Stern regarding purchased claims.	0.10 \$35.50
10/23/2000	0030 - General Business Operations	Sidney Levinson	Telephone conference with Mr. Mitchell regarding various issues.	0.40 \$142.00
10/24/2000	0030 - General Business Operations	Joanne B. Stern	Telephone conference with Judge Tchakovsky's law clerk regarding status of orders.	0.10 \$ 15.50
Grand Total				70 \$228.50

Date	Matter	Timekeeper	Description	Hours	Fees
10/4/2000	0075 - Hruska Claim	Joshua Mester	Prepare memorandum to Mr. Levinson and Ms. Frazier regarding Hruska claim.	0.30	\$69.00
10/4/2000	0075 - Hruska Claim	Joshua Morse	Telephone conference with Ms. Cleary regarding Hruska's unsecured claim and the sale motion.	0.30	\$60.00
10/4/2000	0075 - Hruska Claim	Sidney Levinson	Telephone conference with Mr. Mester regarding Hruska claim.	0.20	\$71.00
10/5/2000	0075 - Hruska Claim	Joshua Morse	Telephone conference with Ms. Cleary (Hruska claim).	0.20	\$40.00
10/6/2000	0075 - Hruska Claim	Sidney Levinson	Telephone conference with Ms. Hruska regarding cure claim.	0.30	\$106.50
10/6/2000	0075 - Hruska Claim	Joshua Morse	Telephone conference with Mr. Gold regarding Hruska claim.	0.10	\$20.00
10/6/2000	0075 - Hruska Claim	Joshua Morse	Telephone conference with Ms. Cleary regarding Hruska claim.	0.10	\$20.00
10/10/2000	0075 - Hruska Claim	Sidney Levinson	Telephone conference with Mr. Gold regarding transfer of claims.	0.20	\$71.00
Grand Total				1.7	\$457.50



ORIGINAL

BRUCE BENNETT (SBN 105430)
MICHAEL A. MORRIS (SBN 89842)
SIDNEY P. LEVINSON (SBN 139419)
KEILY K. FRAZIER (Admitted Pro Hac Vice)
HENNIGAN, BENNETT & DORMAN
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Reorganization and Litigation Counsel
for Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re Case No. 00-42104-T11

(Chapter 11)

AUREAL INC., d/b/a SLO.COM,
f/k/a AUREAL SEMICONDUCTOR,
INC., f/k/a MEDIA VISION
TECHNOLOGY, INC., a Delaware
corporation;

Debtor.

NOTICE OF APPLICATION AND THIRD
INTERIM APPLICATION OF HENNIGAN,
BENNETT & DORMAN FOR ALLOWANCE
OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR
PROFESSIONAL SERVICES RENDERED
AS REORGANIZATION COUNSEL AND
LITIGATION COUNSEL TO THE DEBTOR
AND DEBTOR IN POSSESSION

[No Hearing Requested]

PLEASE TAKE NOTICE, that pursuant to Bankruptcy Local Rule ("B.L.R.") 9014-1 of

the United States Bankruptcy Court for the Northern District of California, any objection to the
requested relief, or a request for hearing on the matter below, must be filed and served upon
counsel for the Aureal Inc., debtor and debtor in possession in the above-captioned case, (the
"Debtor"), at the address listed above, within twenty (20) days of mailing of this notice. A

HENNIGAN, BENNETT & DORMAN

28

FILED
00 DEC 27 PM 12:36
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND, CA

3rd App.

DATE		HOURS	FEES
<u>Nickname 1: 0020 - Meetings of and Communications with Creditors</u>			
10/2/2000	Telephone conference with Mr. Youlankis regarding creditors claims. Kelly Frazier	0.10	\$23.50
10/3/2000	Telephone conference with creditor regarding filing proof of claim. Joanne B. Stern	0.10	\$15.50
10/3/2000	Telephone conference with creditor regarding filing proof of claim. Joanne B. Stern	0.10	\$15.50
10/4/2000	Telephone conference with Ms. Cleary regarding claim of Hruska. Joshua Mester	0.20	\$46.00
10/4/2000	Telephone conference with Ms. Hruska regarding payment of claim against the debtor. Joshua Mester	0.20	\$46.00
10/5/2000	Telephone conference with creditor regarding claims process. Joanne B. Stern	0.20	\$31.00
10/6/2000	Telephone conference with Mr. Rose regarding revisions to Aural order. Joanne B. Stern	0.20	\$31.00
10/13/2000	Telephone conference with Mr. Gold regarding creditor inquiries. Sidney Levinson	0.20	\$71.00
10/23/2000	Telephone conference with creditor (LSJ) regarding status. Sidney Levinson	0.20	\$71.00
Total: 0020 - Meetings of and Communications with Creditors		1.50	\$350.50





DATE		HOURS	FEES
<u>Nickname 1: 0030 - General Business Operations</u>			
10/2/2000	Telephone conference with Mr. Lathrop regarding patent deadline and compliance therewith. Joanne B. Stern	0.30	\$46.50
10/2/2000	Telephone conference with Mr. Mitchell regarding trademark deadline and compliance therewith. Joanne B. Stern	0.10	\$15.50
10/3/2000	Analyze correspondence regarding trademark issues. Sidney Levinson	0.20	\$71.00
10/3/2000	Telephone conference with Mr. Gold regarding purchased claims. Sidney Levinson	0.10	\$35.50
10/3/2000	Conference with Ms. Stern regarding purchased claims. Sidney Levinson	0.10	\$35.50
10/3/2000	Revise order approving Caesar payment. Joanne B. Stern	0.10	\$15.50
10/6/2000	Revise Circle Order. Joanne B. Stern	0.10	\$15.50
10/6/2000	Revise Caesar Order. Joanne B. Stern	0.10	\$15.50
10/10/2000	Telephone conference with Mr. Mitchell regarding pension issue. Sidney Levinson	0.20	\$71.00
10/10/2000	Prepare correspondence to YS Chang regarding filing Korean appeal. Joanne B. Stern	0.50	\$77.50
10/10/2000	Revise Caesar order. Joanne B. Stern	0.30	\$46.50

DATE		HOURS	FEE\$
10/6/2000	Telephone conference with Ms. Hruska regarding cure claim. Sidney Levinson	0.30	\$106.50
10/6/2000	Prepare e-mail correspondence to Ms. Michelson regarding claims. Joanne B. Stern	0.20	\$31.00
10/10/2000	Telephone conference with Mr. Gold regarding transfer of claims. Sidney Levinson	0.20	\$71.00
10/12/2000	Draft correspondence to Mr. Day (3DSL) regarding letter of credit issue and 3DSL's claim. Joshua Morse	0.60	\$120.00
10/12/2000	Review and revise correspondence to Mr. Day (3DSL) regarding letter of credit issue and 3DSL's claim. Joshua Morse	0.30	\$60.00
10/16/2000	Review and revise letter to 3DSL regarding letter of credit. Joshua Morse	0.60	\$120.00
10/18/2000	Review claims register. Sidney Levinson	0.30	\$106.50
10/18/2000	Prepare memorandum to Mr. Morse regarding forms of objection to claims and exhibits. Joshua Mester	0.40	\$92.00
10/18/2000	Meeting with Mr. Morse regarding objections to claims. Joshua Mester	0.70	\$161.00
10/18/2000	Meeting with Mr. Mester regarding preparation of omnibus motion objecting to claims. Joshua Morse	0.70	\$140.00

DATE		HOURS	FEES
10/6/2000	Telephone conference with Mr. Mitchell regarding post-closing retained equipment. Kelly Frazier	0.10	\$23.50
10/6/2000	Telephone conference with Mr. Carlson regarding inventory count. Kelly Frazier	0.20	\$47.00
10/6/2000	Telephone conference with Messrs. Mitchell and Morris regarding sale issues. Sidney Levinson	0.20	\$71.00
10/6/2000	Telephone conference with Ms. Frazier regarding status. Sidney Levinson	0.20	\$71.00
10/6/2000	Telephone conference with Mr. Morris regarding sale issues. Sidney Levinson	0.20	\$71.00
10/6/2000	Telephone conference with Ms. Frazier regarding inventory and closing matters. Michael Morris	0.30	\$126.00
10/6/2000	Telephone conference with Mr. Masson regarding status of closing. Michael Morris	0.10	\$42.00
10/6/2000	Telephone conference with Mr. Levinson regarding closing issues. Michael Morris	0.30	\$126.00
10/6/2000	Telephone conference with Mr. Lafferty regarding response on open issues. Michael Morris	0.20	\$84.00
→ 10/6/2000	Telephone conference with Mr. Gold regarding Hruska claim. Joshua Morse	0.10	\$20.00

4th Fee Application

Mr. Stephen Stern

DATE		HOURS	FE
<u>Nickname 1: 0020 - Meetings of and Communications with Creditors</u>			
12/12/2000	Telephone conference with creditor regarding status. Sidney Levinson	0.10	\$35.
→	12/12/2000 Prepare correspondence to Ms. Sargent regarding Argo Partners information. Joanne B. Stern	0.20	\$31.00
→	12/12/2000 Telephone conference with Ms. Sargent regarding Argo Partners. Joanne B. Stern	0.20	\$31.00
12/15/2000	Telephone conference with attorney for Krystaltech regarding filing of plan. Joanne B. Stern	0.20	\$31.00
12/15/2000	Telephone conference with Mr. Brown regarding new telephone numbers for Aureal and Mohler, Nixon. Joanne B. Stern	0.20	\$31.00
Total: 0020 - Meetings of and Communications with Creditors		0.90	\$159.50

DATE	HOURS	FEI
<u>Nickname 1: 0070 - Claims Administration and Objections</u>		
→ 12/1/2000 Telephone conference with Mr. Gold regarding claims. Joshua Morse	0.10	\$20.00
→ 12/5/2000 Telephone conference with Mr. Gold regarding status. Sidney Levinson	0.20	\$71.00
12/13/2000 Telephone conference with creditor regarding objection to claim. Sidney Levinson	0.10	\$35.50
12/15/2000 Review file regarding Aural invoice information. Joanne B. Stern	0.40	\$62.00
Total: 0070 - Claims Administration and Objections	0.80	\$188.50

10th Fee Application

10th Fee Application

DATE		HOURS	FEI
6/5/2001	Prepare facsimile correspondence to Mr. Mitchell regarding debtor's solicitation letter. Joanne B. Stern	0.20	\$33.00
6/5/2001	Revise second amended plan and make camera ready. Joanne B. Stern	1.30	\$214.50
6/6/2001	Review and revise creditor database. Joanne B. Stern	2.10	\$346.50
6/6/2001	Telephone conference with McCutcheon regarding solicitation process. Joanne B. Stern	0.20	\$33.00
6/6/2001	Telephone conference with Mr. Fallek regarding solicitation process. Joanne B. Stern	0.20	\$33.00
6/6/2001	Review creditor database regarding Argo Partners claims. Joanne B. Stern	0.30	\$49.50
6/7/2001	Analyze solicitation issues. Sidney Levinson	0.20	\$75.00
6/7/2001	Review informational letter to creditors and shareholders for plan solicitation; meeting with Mr. Levinson regarding same. Joshua Morse	0.30	\$63.00
6/7/2001	Review and revise creditor database. Joanne B. Stern	0.90	\$148.50
6/7/2001	Revise second amended plan. Joanne B. Stern	0.30	\$49.50
6/8/2001	Telephone conference with Mr. Mitchell regarding signing solicitation letter. Joshua Morse	0.10	\$21.00



11th Fee Application

11th Fee Application

DATE		HOURS	FEE
7/16/2001	Telephone conference with Mr. Gold regarding ballots cast on Committee plan. Sidney Levinson	0.10	\$37.5
7/16/2001	Draft email to Mr. Liang regarding plan negotiation. Sidney Levinson	0.10	\$37.5
7/16/2001	Conference with Mr. Morris regarding committee ballot report. Sidney Levinson	0.20	\$75.0
7/16/2001	Telephone conference with Mr. Gold regarding ballots cast on Committee plan. Sidney Levinson	0.20	\$75.0
7/16/2001	Review Argo ballots. Sidney Levinson	0.10	\$37.5
7/16/2001	Review and analyze committee ballot report. Sidney Levinson	0.50	\$187.5
7/16/2001	Review file regarding committee's objection to debtor's second amended plan. Joanne B. Stern	0.60	\$99.0
7/16/2001	Prepare facsimile correspondence to Mr. Pope regarding McCutchen documents. Joanne B. Stern	0.20	\$33.0
7/16/2001	Review committee's ballot report. Joanne B. Stern	0.40	\$66.0
7/17/2001	Further analysis of Committee ballot report. Sidney Levinson	0.30	\$112.5

EXHIBIT D

FILED
JUN 7 3 27 PM '04
CLERK OF DISTRICT COURT
OAKLAND, CA

BRUCE BENNETT (SRN 105450)
SIDNEY P. LEVINSON (SBN 139419)
TOSHUA D. MORSE (SBN 211050)
HENNINGAN, BENNETT & DORMAN
501 South Figueroa Street, Suite 3300
Los Angeles, CA 90017
Telephone: (213) 694-1200
Fax: (213) 694-1234

FILE BY
FAX
Reorganization Counsel for
Debtor and Debtor in Possession

File By FAX

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re Case No. 00-42104-T11

(Chapter 11)

AUREAL INC., d/b/a SHO.COM, f/k/a
AUREAL SEMICONDUCTOR, INC. f/k/a
MEDIA VISION TECHNOLOGY, INC., a
Delaware corporation,
Debtor.

SUPPLEMENTAL DECLARATION OF
SIDNEY P. LEVINSON IN CONNECTION
WITH EMPLOYMENT BY DEBTOR AND
DEBTOR-IN-POSSESSION OF
HENNINGAN, BENNETT & DORMAN AS
REORGANIZATION COUNSEL

I, Sidney P. Levinson, declare:

I am a member in good standing of the Bar of the State of California, and I am admitted to practice before, among other courts, the United States District Court for the Northern District of California. I am employed at Henningan, Bennett & Dorman ("HBD"), reorganization counsel for Aureal, Inc., the debtor and debtor in possession (the "Debtor") in the above-captioned bankruptcy case. I make this Supplemental Declaration in Connection With Employment by Debtor and Debtor in Possession, Bennett & Dorman AS Reorganization Counsel to disclose a connection between HBD and a party in interest in the case. Except where otherwise indicated, I have personal

SUPPLEMENTAL DECLARATION OF SIDNEY P. LEVINSON IN CONNECTION WITH
EMPLOYMENT BY DEBTOR AND DEBTOR IN POSSESSION OF HENNINGAN, BENNETT & DORMAN
AS REORGANIZATION COUNSEL Case No. 00-42104-T11

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1 knowledge of the matters set forth below and, if called to testify, I would and could competently
 2 testify thereto

3 2. On April 5, 2000, the Debtor filed an application to employ HBD as bankruptcy
 4 reorganization counsel. At that time, HBD disavowed in its retention agreement that it would
 5 represent creditors in unrelated matters. On April 13, 2000, HBD provided a Supplemental
 6 Declaration of James O. Johnson which provided additional information regarding HBD's
 7 representation of Oaktree Capital Management, LLC. On June 19, 2000, this Court entered an order
 8 authorizing the employment of HBD as bankruptcy reorganization counsel.

9 3. Subsequently, on June 12, 2000, HBD filed an application to employ HBD as
 10 litigation counsel. In connection with that application, HBD submitted the Declaration of James O.
 11 Johnson dated June 12, 2000, and the Supplemental Declaration of Sidney P. Levinson, dated June
 12 28, 2000. On August 9, 2000, HBD filed an amended application with respect to employment as
 13 litigation counsel. On October 25, 2000, this Court entered an order authorizing the employment of
 14 HBD as litigation counsel.

15 4. Since the commencement of the bankruptcy case, a number of the claims held by
 16 various creditors of the Debtor have been purchased by Argo Partners, Inc. ("Argo"). HBD is
 17 informed and believes that Argo currently holds 16 claims in an aggregate dollar amount of
 18 \$270,906.91.

19 5. On October 11, 2000, subsequent to the Debtor's retention of HBD in this bankruptcy
 20 case, and as authorized by HBD's retention agreement with the Debtor, Argo retained HBD to
 21 represent Argo in connection with a separate matter entirely unrelated to this bankruptcy case.
 22 Specifically, Argo retained HBD to serve as Argo's special bankruptcy counsel for the purpose of
 23 representing Argo in the bankruptcy and receivership cases involving Nashville Wireless Cable Joint
 24 Venture and Continental Wireless Cable Television, Inc., currently and/or previously pending before
 25 the United States District Court for the Southern District of California as Case No. 94cv0737E
 26 (COA) and Case No. 97cv01872R (COA) collectively, the "Receivership Cases". Argo had not
 27 retained HBD prior to the Receivership Cases. HBD's representation of Argo in the Receivership
 28

1 Cases concluded in February 2001, and the Debtor does not currently represent Argo in any matters.
2 HBD's representation of Argo did not constitute a material portion of HBD's business. To the
3 contrary, the overwhelming majority of HBD's business relates to litigation and bankruptcy matters
4 that do not involve Argo or any of its affiliates.

5 6. I believe that HBD is and remains "disinterested" with respect to the Debtor, within
6 the meaning of sections 101(14) and 327 of the Bankruptcy Code, notwithstanding its representation
7 of Argo during the period October 2000 through February 2001.

8 7. Specifically, HBD does not fall within the criteria set forth in subsections (A)
9 through (D) of section 101(14). Moreover, I do not believe that HBD has an interest materially
10 adverse to the interest of the Debtor's estate, or to any class of creditors or equity security holders,
11 for at least the following reasons:

12 a. As noted above, to the best of my knowledge, none of the parties to the
13 Receivership Cases, other than Argo, are parties in interest, or are affiliated with parties in interest
14 in the above-captioned case. Moreover, I believe that the controversies for which HBD represents
15 Argo in the Receivership Cases are entirely unrelated to any of the claims held by Argo against the
16 Debtor.

17 b. The matter for which HBD represents Argo did not constitute a material
18 percentage of HBD's revenues or overall client base. The Receivership Cases is the only matter
19 where HBD has provided representation to Argo. Thus, I believe that HBD's representation of Argo
20 in the Receivership Cases does not constitute a material portion of HBD's business. The
21 overwhelming majority of HBD's business relates to litigation and bankruptcy matters that do not
22 involve Argo or any of its affiliates.

23 c. Each of the Debtor and Argo has consented to HBD's concurrent
24 representation of the Debtor and Argo.

25 d. Nearly all of the work for Argo was performed by James O. Johnston, who
26 has performed only minimal services for the Debtor in this bankruptcy case. None of the HBD
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-2-

SUBMITTED AND FILED BY
SUPERIOR COURT OF THE STATE OF CONNECTICUT
IN THE DISTRICT COURT OF JUDICIAL DISTRICT NO. 1
SOUTH BRITAIN, CONNECTICUT
JAMES O. JOHNSTON, ATTORNEY AT LAW
100 STATE STREET, SUITE 200
SOUTH BRITAIN, CONNECTICUT 06488-1200
TEL: (860) 441-1111
FAX: (860) 441-1112

1 attorneys principally responsible for representing the Debtor in this bankruptcy case were involved
2 in HBD's representation of Argo.

3 7. In summary, I believe that HBD remains disinterested notwithstanding HBD's
4 representation of Argo in the unrelated Receivership Cases.

5 8. HBD will continue to monitor its engagements and connection and will make
6 additional supplemental disclosures as necessary.

7 I declare under penalty of perjury that the foregoing is true and correct.
8 Executed this 7th day of June, 2001, at Los Angeles, California.

9
10 By: Sidney P. Levinson
11 Sidney P. Levinson
12 Reorganization Counsel for Debtor
13 And Debtor in Possession

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RENEE L. BARNETT & ASSOCIATES
FIRM OF
SUPPLEMENTAL DECLARATION OF SIDNEY P. LEVINSON IN CONNECTION WITH
BANKRUPTCY REORGANIZATION OF HENNINGSON, BERNETT & DORRAN
BY DEBTOR AND DEBTOR IN POSSESSION OF HENNINGSON, BERNETT & DORRAN
AS REORGANIZATION COUNSEL - Case No. 00-47104-TJJ

DECLARATION OF SERVICE

1 I am over the age of eighteen years and not a party to the within action. My business
2 address is Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 1100, Los Angeles,
3 California 90017.

4 On June 7, 2001, I served the following pleading:

5 SUPPLEMENTAL DECLARATION OF SIDNEY P. LEVISON IN CONNECTION WITH
6 EMPLOYMENT BY DEBTOR AND DEBTOR IN POSSESSION OF HENNIGAN, BENNETT &
7 DORMAN AS REORGANIZATION COUNSEL

8 on the interested parties in this action by placing true copies thereof, enclosed in sealed
9 envelopes, with first class postage thereon fully prepaid, in the United States mail at Los Angeles,
10 California addressed as follows:

11 See attached service list

12 I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States
13 mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and
14 processing correspondence for mailing. I further state that postage it would be deposited with the U.S.
15 postal service on that same day with postage thereon fully prepaid at Los Angeles, California in
16 the ordinary course of business. I am aware that on motion of the party served, service is
17 presumed invalid if postal cancellation date or postage meter date is more than one day after date
18 of deposit for mailing in affidavit.

19 The above-described pleading also was transmitted to the indicated parties set forth above in the
20 manner described below:

21 By air courier service, for next business-day delivery by _____

22 By messenger service, for same-day delivery by hand by _____

23 By telecopy, for immediate receipt _____

24 I declare that I am employed in an office of a member of the bar of this Court, at whose
25 direction the within service was made. I declare under penalty of perjury under the law of the
26 United States of America that the foregoing is true and correct.

27 EXHIBITED on June 7, 2001, at Los Angeles, California.


28 Joanne Stern, Declarant

HENNIGAN, BENNETT & DORMAN

PROOF OF SERVICE

Debtors:

ATREAI, INC
 Attn: Steve Mitchell
 PO Box 12587
 Pleasanton, CA 94566-2587

Secured Creditor as Agent:

Daktec Capital Management LLC
 Attn: Richard Masson
 333 S. Grand Avenue, 25th Floor
 Los Angeles, CA 90017

Creditors' Committee Member:

UMC Group (USA)
 Attn: Tianshan Lu, Credit Manager
 418 DeSoto Drive
 Sunnyvale, CA 94086

Creditors' Committee Member:

Highsoft, Inc.
 Attn: R. Scott Hollings, Gen. Mgr.
 1045 Linden Street
 Mountain View, CA 94040-2181

20 Largest Unsecured Creditors:

Caspi International, Inc.
 Attn: Jito Edwards
 2860 Zanker Road, Suite 210
 San Jose, CA 95134

20 Largest Unsecured Creditors:

FC World Communications
 Attn: Kevin Deane
 PO Box 3704-67
 Boston, MA 02241-0767

20 Largest Unsecured Creditors:

Integr8 Dync Corp.
 Attn: Ran Condota
 143 King Street West, Suite 1000
 Toronto, ON M5H 1J8
 Canada

20 Largest Unsecured Creditors:

Twinkl Productions Andco, Inc.
 Attn: Jennifer Hruska
 66 Barr Dudley Street
 Arlington, MA 02476

Creative Labs, et al Revs. Spec. Notices:

Edika Rortenberg, Inc.
 Creative Labs, Inc.
 1901 McCarthy Boulevard
 Milpitas, CA 95035

I/O Media Reg. for Spec. Notice:

Lawrence M. Cron, Esq.
 Seth Palumbo Medeiros LLP
 15301 Von Karman Avenue, Suite 850
 Irvine, CA 92617

Debtor's Counsel:

Sidney Levinson/Kelly Frazier
 Hannigan, Bennett & Dorman
 601 S Figueroa St., Suite 3400
 Los Angeles, CA 90017

Counsel to Debtor, Capital Market:

Eric Reiner, Esq.
 McDermon, Will & Emory
 3049 Century Park East, 34th Floor
 Los Angeles, CA 90067

Creditors' Committee Member:

Palind Online, Inc.
 Attn: Larry Campbell
 2225 Third Street, Suite 300
 San Francisco, CA 94110

Creditors' Committee Member:

Finova Technology Finance, Inc.
 Attn: O'Neil Parsons, Collections Mgr.
 115 West Century Road, 2nd Floor
 Paramus, NJ 07657

20 Largest Unsecured Creditors:

Codebe Design Systems, Inc.
 Attn: Steve Judd
 455 River Oaks Parkway
 San Jose, CA 95134

20 Largest Unsecured Creditors:

VIVA-Speak A/S
 Attn: David Stephens
 1861 Renaissance Blvd
 Sturtevant, WI 53177

20 Largest Unsecured Creditors:

3DSL
 Attn: John Byrne
 Blissworth Base Hill
 Stokes Road, Burwash
 Northway, UK N272DQ

Request for Special Notice:

Ornick, Harrington & Sutcliffe
 Attn: Thomas C. Mitchell, Esq.
 400 Sansome Street
 San Francisco, CA 94111-3143

Lawyer Not Rec'd for Special Notice:

William C. Lewis, Esq.
 Law Offices of William C. Lewis
 510 Waverley Street
 Palo Alto, CA 94031

Request for Special Notice:

Ritter, Van Pelt & Yi, LLP
 Attn: Jack Limper
 4906 El Camino Real, Suite 205
 Los Altos, CA 94022

Office of the U.S. Trustee:

U.S. Trustee
 Attn: Mark L. Pope, Esq.
 1801 Clay Street, Suite 690N
 Oakland, CA 94612

Creditors' Committee Member:

Ocean Data Products
 2nd Floor, Koda Industrial Bldg.
 20 Kai Chung Road
 Kowloon Bay
 Kowloon, Hong Kong

Creditors' Committee Member:

ICM Group
 Attn: Gregor
 3 Julliarwater Center, Suite 2000
 San Francisco, CA 94111

Creditors' Committee Member:

Imagine Media Inc. d/b/a PC Games
 Attn: John Lyssleli, Credit Manager
 150 North Hill Drive
 Brisbane, CA 94105

20 Largest Unsecured Creditors:

Haulhan Lakey Howard & Zalko
 Attn: Uleann Daniel, Managing Director
 49 Stevenson Street, 14th Floor
 San Francisco, CA 94104

20 Largest Unsecured Creditors:

GE Capital
 Attn: Chris Smythe
 44 Old Putneyway Road
 Danbury, CT 06810

20 Largest Unsecured Creditors:

Activision, Inc.
 Attn: Chad K. Kuse
 3100 Ocean Park Boulevard
 Santa Monica, CA 90405

Creative Labs Reg For Spec Notice:

Andrew J. Weiss, Esq.
 Morgan, Tolles & Olson LLP
 355 South Grand Avenue, Suite 3500
 Los Angeles, CA 90071-1560

Ocean Data Products Reg Spec. Not:

Patricia S. Ndu, Esq.
 Morrison & Foerster LLP
 425 Market Street
 San Francisco, CA 94105

20 Largest Unsecured Creditors:

Ziff Davis
 Attn: Christopher Salvatore Dept.
 One Park Avenue
 New York, NY 10016

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Resigned for Notice Debt Acquisition:
DACA V. LLC
Attn: Tom Schickel
2120 W. Washington Street
San Diego, CA 92110

Physic Ben for Special Notice:
Sachoff & Weaver Ltd
Attn: Charles P. Schultman, Esq.
40 South Wacker Drive, Suite 2500
Chicago, IL 60606

Retention for Special Notice:
Christopher Beard, Esq.
Beard & Beard
4601 Miami Park Avenue
Orange County, CA 92668

Retention for Special Notice:
Peter A. Chapman, Esq.
24 Pediatric Place
Trenton, NJ 08618

Retention For Special Notice:
Messias Lawsalder
MetLife Securities Corporation
789 S. Federal Hwy., Suite 102
Gainesville, FL 32609

Creditors' Committee Members:
ITAF Corporation
Attn: Anthony D. Alloua
1144 Market Street, Suite 720
San Jose, CA 95113

Creditors' Committee Counsel:
Randy Michelson, Esq.
McLachlan, Loyie, Brown & Emerson
3 Embarcadero Center
San Francisco, CA 94111

Retention Landlord:
Linn Research, Inc.
Attn: George M. Solsler, Jr.
4500 Quince Parkway
Herrington, CA 94738-0470

Contract to Loan Research:
Dale L. Branton, Esq.
Heiter, Ehrman, White & Associates
320 Park Street, Suite 3000
San Francisco, CA 94104-2878

Witness-Speak Ben for Spec. Not:
David M. Meegan, Esq.
Inouye, Hunsler & Hunsler
1545 River Park Drive, Suite 550
Sacramento, CA 95815

SEC Reg. For Spec Notice:
Sara D. Maged, Esq.
Securities & Exchange Commission
Pacific Regional Office
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90028-3648

Reg. for Spec Notice:
Howard Rice, et al
Attn: James Ludwig/Carol Kaplan
3 Embarcadero Center, Suite 700
San Francisco, CA 94111

Creative Labs, Inc.:
Creative Labs, Inc.
Attn: Stacy Young
1901 McCarthy Boulevard
Sanplimo, CA 95055

Ben for Special Notice:
Alan Yoc
764 Holland Road
Los Olivos, CA 95052

Debtor's Financial Advisors:
EWY Reconstructing LLC
Attn: Robert H. Williamson
555 California Street
San Francisco, CA 94104

Auditor to the Debtors:
Mouler, Nixon & Williams
Attn: Steve Yoffels
635 Campbell Technology Plaza, #109
Campbell, CA 95009

New York Dept of Tax and Fin. Affs.:
New York Dept of Taxation and Finance
Deputy Commissioners and Counsel
Attn: Amy J. Murphy
77 Grandway, Suite 112
Buffalo, NY 14203-1970

Conello Reg. for Spec Notice:
Kenneth G. Liu
Baron & Prouse
17910 Vanista Boulevard, 12th Fl.
Fremont, CA 91436-2829

Baron Capital Reg. for Notice:
Elmoot Hershkowitz
Baron Capital, Inc.
PO Box 606 Pleasanton Station
New York, New York 10024-0540

Creditors:
Circle International, Inc.
365 Valley Drive
Berkham, CA 94705

Debtors' Special Patent Counsel:
David N. Ledberg, Esq.
Gallagher & Lathrop - A Pro Corp.
601 California Street, Suite 1111
San Francisco, California 94108-2905

Interop-Treme Men for Special Notice:
Tracy Green, Esq.
Wendel, Koson, Black & Dean
1111 Broadway, 24th Floor
Oakland, CA 94612

Landlord:
Fifth Street Properties, LLC
40 Commonwealth Partners, LLC
Attn: Bill David Aronson
633 West Fifth St, 22nd Floor
Los Angeles, CA 90071

Counsel to SHPX:
Hopkins & Cady
Attn: Julie Leventhal, Esq.
76 South Pine Street
San Jose, CA 95113-2406

Top Accounting:
Nelson, Eisen LLP
Attn: Yoram Galder
230 South 500 East, Suite 425
Salt Lake City, UT 84102

Wells Street Properties Reg for Notice:
Pulsbury, Winthrop LLP
Attn: Craig Belsky/William Steinberg
650 Town Center Drive, 7th Fl.
Cohle Mesa, CA 92026-7122

Esq., Inc.:
PO Box 5605 JS
The Colony, TX 75056

Spec. for Request for Notice:
J. Mark Chevalier, Esq.
3526 Emerald Plaza
500 N. Akard
Dallas, TX 75201

REG. Committee Member Reg for Notice:
RCC Capitalia Master Fund Ltd
Attn: Allison Cavella
666 Third Avenue, 26th Fl.
New York, NY 10017

Counsel to KRYALIN:
Michael V. Sherman, Esq.
Law Office of M. Scott Vayer
620 14th Avenue
New York, New York 10019

Attn: Partners Management for Notice:
Walter A. Boyd, Esq.
Argo Partners, Inc.
12 West 37th St, 5th Fl.
New York, NY 10018

Partner:
ALIFP&L, INC
Attn: Steve Malickell
PO Box 12587
Beverly Hills, CA 90244 7587

Secured Creditor as Agent:
Dobson Capital Management LLC
Attn: Richard Weissert
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

Creditors' Committee Members:
UMC Group (USA)
Attn: Maurizio Leo, Credit Manager
488 Devonian Drive
Sunnyvale, CA 94086

Creditors' Committee Members:
Highsoft, Inc.
Attn: R. Scott Heltinger, Gen. Mgr.
1955 Latham Street
Mountain View, CA 94040-2107

20 Largest Unsecured Creditors:
Cactus International, Inc.
Attn: Iain Penavilla
2860 Zanker Road, Suite 210
San Jose, CA 95134

20 Largest Unsecured Creditors:
PC World Constructions
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0707

20 Largest Unsecured Creditors:
Imagra Dye Corp.
Attn: Ken Compton
145 King Street, West, Suite 1000
Toronto, ON M5H 1T2
Canada

20 Largest Unsecured Creditors:
Hruska Productions Audio, Inc
Attn: Kramler Hruska
66 Near Dunley Street
Arlington, VA 22276

Creative Labs, et al Gen. Sec. Member:
Erica Rottenberg, Esq.
Creative Labs, Inc.
1501 McCauley Boulevard
Alhambra, CA 91804

10 Most Recent Sec. for Spec. Notice:
Lawrence M. Cron, Esq.
Sean Palumbo Mechanicals LLP
1840 Van Kesteren Avenue, Suite 890
Irvine, CA 92612

Debtor's Counsel:
Sidney Lewinson/Kelly Frenser
Hornigan, Bennett & Dorman
601 S. Foggassa St., Suite 3000
Los Angeles, CA 90017

Counsel to Debtor's Capital Market:
Eric Reimer, Esq.
M&JLaw.com, Wm & Emory
2090 Century Park East, 34th Floor
Los Angeles, CA 90067

Creditors' Committee Members:
Jiauhand Online, Inc.
Attn: Larry Campbell
2323 Third Street, Suite 335
San Francisco, CA 94107

Creditors' Committee Members:
Tintova Technology Finance, Inc.
Attn: O'Neil Bertram, Collections Mgr.
115 West Century Road, 3rd Floor
Paramus, NJ 07652

20 Largest Unsecured Creditors:
Cadence Design Systems, Inc.
Attn: Steve Wih
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditors:
VITA Speal AVS
Attn: David Stephens
1860 Renaissance Blvd
Sturtevant, WI 53177

20 Largest Unsecured Creditors:
3DST
Attn: John Byrne
Biscawton Base Hill
Dicker Road, Burswood
Northants, UK NN73DB

Request for Special Notice:
Ornick, Harrington & Sueliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-5143

Casper Int'l Rec for Special Notice:
William C. Lewis, Esq.
Law Offices of William C. Lewis
310 Waverly Street
Toluca Hills, CA 94071

Request for Special Notice:
Ruter, Van Pelt & YL LLP
Attn: Jack Lampert
4906 El Camino Real, Suite 205
Los Altos, CA 94022

Office of the U.S. Trustee:
U.S. Trustee
Attn: Viora L. Popo, Esq.
FBI Clay Street, Suite 690N
Oakland, CA 94612

Creditors' Committee Members:
Ocean Data Products
9th Floor Keller Industrial Bldg
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

Creditors' Committee Members:
Jean Goussier
25155
374000000 Center, Suite 2000
San Francisco, CA 94111

Creditors' Committee Members:
Junjuro Shiroki Inc. v/via PC Daniel
Attn: Eileen Daniels, Credit Manager
150 North Hill Drive
Brisbane, CA 94005

20 Largest Unsecured Creditors:
Hudson Valley Harvest & Zebra
Attn: Glenn Daniel, Managing Director
48 Stevenson Street, 14th Floor
San Francisco, CA 94105

20 Largest Unsecured Creditors:
OSE Capital
Attn: Chris Stryhle
44 Old Ridgeway Road
Danbury, CT 06810

20 Largest Unsecured Creditors:
Aptovision Inc
Attn: George Rose
3100 Ocean Park Boulevard
Santa Monica, CA 90405

Creditor's Public Rec for Spec. Notice:
Andrea J. Weiss, Esq.
Munger, Zeller & Olson LLP
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071-1500

Opena Data Bankings Bar Spec. Not.
Patricia S. Mar, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

20 Largest Unsecured Creditors:
Ziff Davis
Attn: Customer Service Dept.
One Park Avenue
New York, NY 10016

EXHIBIT E



ORIGINAL FILED

OCT 24 2001

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

1 SIDNEY P. LEVINSON (SBN 139419)
2 JOSHUA D. MORSE (SBN 211050)
3 HENNIGAN, BENNETT & DORMAN
4 601 South Figueroa Street, Suite 3300
5 Los Angeles, CA 90017
6 Telephone: (213) 694-1200
7 Fax: (213) 694-1234

8 Reorganization Counsel for
9 Debtor and Debtor in Possession

10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 In re) Case No.00-42104-T11
14)
15) (Chapter 11)

16 AUREAL INC., d/b/a SII.O.COM, f/k/a)
17 AUREAL SEMICONDUCTOR, INC., f/k/a)
18 MEDIA VISION TECHNOLOGY, INC., a)
19 Delaware corporation,)
20)
21) Debtor.)
22)
23)
24)
25)
26)
27)
28)

) SUPPLEMENTAL DECLARATION OF
) SIDNEY P. LEVINSON IN CONNECTION
) WITH EMPLOYMENT BY DEBTOR AND
) DEBTOR-IN-POSSESSION OF
) HENNIGAN, BENNETT & DORMAN AS
) REORGANIZATION COUNSEL
)
)
)
)

19 I, Sidney P. Levinson, declare:

20 1. I am a member in good standing of the Bar of the State of California, and I am
21 admitted to practice before, among other courts, the United States District Court for the Northern
22 District of California. I am employed at Hennigan, Bennett & Dorman ("HBD"), reorganization
23 counsel for Aureal, Inc., the debtor and debtor in possession (the "Debtor") in the above-captioned
24 bankruptcy case. I make this Supplemental Declaration in Connection With Employment by Debtor
25 and Debtor of Hennigan, Bennett & Dorman As Reorganization Counsel to disclose a connection
26 between HBD and a party in interest in the case. Except where otherwise indicated, I have personal
27
28

SUPPLEMENTAL DECLARATION OF SIDNEY P. LEVINSON IN CONNECTION
WITH EMPLOYMENT BY DEBTOR AND DEBTOR-IN-POSSESSION OF
HENNIGAN, BENNETT & DORMAN AS REORGANIZATION COUNSEL - Case No. 00-42104-T11

1 knowledge of the matters set forth below and, if called to testify, I would and could competently
2 testify thereto.

3 2. On April 5, 2000, the Debtor filed an application to employ HBD as bankruptcy
4 reorganization counsel. At that time, HBD disclosed in its retention agreement that it would
5 represent creditors in unrelated matters. On April 13, 2000, HBD provided a Supplemental
6 Declaration of James O. Johnston which provided additional information regarding HBD's
7 representation of Oaktree Capital Management, LLC. On June 19, 2000, this Court entered an order
8 authorizing the employment of HBD as bankruptcy reorganization counsel.

9 3. Subsequently, on June 12, 2000, HBD filed an application to employ HBD as
10 litigation counsel. In connection with that application, HBD submitted the Declaration of James O.
11 Johnston dated June 12, 2000, and the Supplemental Declaration of Sidney P. Levinson, dated
12 June 28, 2000. On August 9, 2000, HBD filed an amended application with respect to employment
13 as litigation counsel. On October 25, 2000, this Court entered an order authorizing the employment
14 of HBD as litigation counsel.

15 4. Since the commencement of this bankruptcy case, a number of the claims held by
16 various creditors of the Debtor have been purchased by Argo Partners, Inc. ("Argo"). HBD is
17 informed and believes that Argo currently holds 18 claims in an aggregate dollar amount of
18 \$270,906.91.

19 5. On June 7, 2001, HBD filed a supplemental declaration (the "Argo Supplemental
20 Declaration") in which it disclosed its representation of Argo in connection with a separate matter
21 entirely unrelated to this bankruptcy case; specifically, in the bankruptcy and receivership cases
22 involving Nashville Wireless Cable Joint Venture and Continental Wireless Cable Television, Inc.,
23 currently and/or previously pending before the United States District Court for the Southern District
24 of California as Case No. 94cv0737E (CGA) and Case No. 97cv0352E (CGA)(collectively, the
25 "Receivership Cases").

26 6. Subsequent to the filing of the Argo Supplemental Declaration, Argo requested that
27 HBD represent Argo in connection with a new separate matter, also entirely unrelated to this
28

HENNIGAN, BENNETT & DORMAN

-1-

1 bankruptcy case. Specifically, Argo retained HBD to represent it in responding to objections to
2 claims purchased and held by Argo in In re Scour, Inc., Case No. LA 00-38784 KM (Bankr. C.D.
3 Cal.) (the "Scour Case"). A hearing on those objections was held on September 25, 2001, and the
4 objections have now been resolved.

5 7. I believe that HBD is and remains "disinterested" with respect to the Debtor, within
6 the meaning of sections 101(14) and 327 of the Bankruptcy Code, notwithstanding its representation
7 of Argo in the Scour Case.

8 8. Specifically, HBD does not fall within the criteria set forth in subsections (A)
9 through (D) of section 101(14). Moreover, I do not believe that HBD has an interest materially
10 adverse to the interest of the Debtor's estate, or to any class of creditors or equity security holders,
11 for at least the following reasons:

12 a. As noted above, to the best of my knowledge, none of the parties to the Scour
13 Case, other than Argo, are parties in interest, or are affiliated with parties in interest, in the above-
14 captioned case. Moreover, I believe that the controversies for which HBD represents Argo in the
15 Scour Case are entirely unrelated to any of the claims held by Argo against the Debtor.

16 b. The matter for which HBD represents Argo did not constitute a material
17 percentage of HBD's revenues or overall client base. The Scour Case is only the second matter
18 where HBD has provided representation to Argo, the first being the Receivership Cases. Thus, I
19 believe that HBD's representation of Argo in the Scour Case does not constitute a material portion of
20 HBD's business. The overwhelming majority of HBD's business relates to litigation and bankruptcy
21 matters that do not involve Argo or any of its affiliates.

22 c. Each of the Debtor and Argo has consented to HBD's concurrent
23 representation of the Debtor and Argo.

24 9. In summary, I believe that HBD remains disinterested notwithstanding HBD's
25 representation of Argo in the unrelated Scour Case.

26 10. HBD will continue to monitor its engagements and connection and will make
27 additional supplemental disclosures as necessary.

28

1

I declare under penalty of perjury that the foregoing is true and correct.

2

Executed this 23 day of October, 2001, at Los Angeles, California.

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By: *Sidney P. Levinson*

Sidney P. Levinson

Reorganization Counsel for Debtor

And Debtor in Possession

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HENNIGAN, BENNETT & DORMAN

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SUPPLEMENTAL DECLARATION OF SIDNEY P. LEVINSON IN CONNECTION

WITH EMPLOYMENT BY DEBTOR AND DEBTOR-IN-POSSESSION OF

HENNIGAN, BENNETT & DORMAN AS REORGANIZATION COUNSEL - Case No. 00-42104-T11

DECLARATION OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On October ²⁴~~27~~ 2001, I served the following pleading:

SUPPLEMENTAL DECLARATION OF SIDNEY P. LEVINSON IN CONNECTION WITH EMPLOYMENT BY DEBTOR AND DEBTOR-IN-POSSESSION OF HENNIGAN, BENNETT & DORMAN AS REORGANIZATION COUNSEL

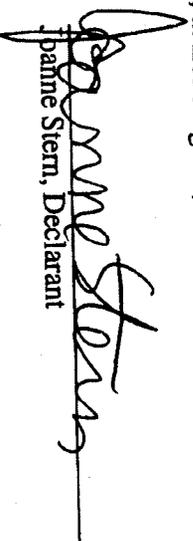
on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

See attached service list

I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in an affidavit

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made. I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

EXECUTED on October ²⁴~~27~~ 2001, at Los Angeles, California.


Dianne Stern, Declarant

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Debtor:

AUREAL, INC.
Attn: Steve Mitchell
PO Box 12587
Pleasanton, CA 94588-2587

Secured Creditor as Agent:

Oaktree Capital Management LLC
Attn: Richard Masson
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

Creditors' Committee Member:

UMC Group (USA)
Attn: Hui-Jen Lu, Credit Manager
488 Dequigne Drive
Sunnyvale, CA 94086

Creditors' Committee Member:

Highsoft, Inc.
Attn: R. Scott Holmgren, Gen. Mgr.
1965 Latham Street
Mountain View, CA 94040-2107

20 Largest Unsecured Creditor:

Caesar International, Inc.
Attn: Jolo Estavillo
2860 Zanker Road, Suite 210
San Jose, CA 95134

20 Largest Unsecured Creditor:

PC World Communications
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0767

20 Largest Unsecured Creditor:

Integra-Dyne Corp.
Attn: Ren Condotta
145 King Street, West, Suite 1000
Toronto, ON M5H 1J8
Canada

Creative Labs, et al Reg. Spec. Notice:

Erika Rottenberg, Esq.
Creative Labs, Inc.
1901 McCarthy Boulevard
Milpitas, CA 95035

I/O Magic Reg. for Spec. Notice:

Lawrence M. Cron, Esq.
Senn Palumbo Meulemans LLP
18301 Von Karman Avenue, Suite 850
Irvine, CA 92612

Debtor's Counsel:

Sidney Levinson
Hennigan, Bennett & Dorman
601 S Figueroa St., Suite 3300
Los Angeles, CA 90017

Counsel to Oaktree Capital Memt.:

Eric Reimer, Esq.
McDermott, Will & Emory
2049 Century Park East, 34th Floor
Los Angeles, CA 90067

Creditors' Committee Member:

Fiandl Online, Inc.
Attn: Terry Campbell
4104 24th Street
San Francisco, CA 94114

Creditors' Committee Member:

Finova Technology Finance, Inc.
Attn: O'Neil Petrone, Collections Mgr.
115 West Century Road, 3rd Floor
Paramus, NJ 07652

20 Largest Unsecured Creditor:

Cadence Design Systems, Inc.
Attn: Steve Mih
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditor:

VIFA-Speak A/S
Attn: David Stephens
1860 Renaissance Blvd
Surtevant, WI 53177

20 Largest Unsecured Creditor:

3DSL
Attn: John Byrne
Stone Barn Blisworth Hill Barns
Stoke Road, Blisworth
Northants, NN73DB, UK

Request For Special Notice:

Orrick, Herrington & Sutcliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-3143

Caesar Intl Reg for Special Notice:

William C. Lewis, Esq.
Law Offices of William C. Lewis
510 Waverley Street
Palo Alto, CA 94031

Request for Special Notice:

Ritter, Van Pelt & Yi, LLP
Attn: Jack Limper
4906 El Camino Real, Suite 205
Los Altos, CA 94022

Office of the U.S. Trustee:

U.S. Trustee
Attn: Mark L. Pope, Esq.
1301 Clay Street, Suite 690N
Oakland, CA 94612

Creditors' Committee Member:

Ocean Data Products
5th Floor Kader Industrial Bldg.
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

Creditors' Committee Member:

Juan Gonzalez
KPMG
3 Embarcadero Center, Suite 2000
San Francisco, CA 94111

Creditors' Committee Member:

Imagine Media Inc. db/a PC Gamer
Attn: John Lysdahl, Credit Manager
150 North Hill Drive
Brisbane, CA 94005

20 Largest Unsecured Creditor:

Houlihan Lokey Howard & Zukin
Attn: Glenn Daniel, Managing Director
One Sansome Street, Suite 1700
San Francisco, CA 94104

20 Largest Unsecured Creditor:

GE Capital
Attn: Chris Smythe
44 Old Ridgebury Road
Danbury, CT 06810

20 Largest Unsecured Creditor:

Activision, Inc.
Attn: George Rose
3100 Ocean Park Boulevard
Santa Monica, CA 90405

Creative Labs Reg For Spec Notice:

Andrea J. Weiss, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071-1560

Ocean Data Products Reg Spec. Not:

Patricia S. Mar, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

20 Largest Unsecured Creditors:

Ziff Davis
Attn: Customer Service Dept.
One Park Avenue
New York, NY 10016

Finova Reg. for Special Notice:
Sachnoff & Weaver, Ltd.
Attn: Charles P. Schulman, Esq.
30 South Wacker Drive, Suite 2900
Chicago, IL 60606

Request for Special Notice:
Christopher Beard, Esq.
Beard & Beard
4601 North Park Avenue
Chevy Chase, MD 20815

Request for Special Notice:
Peter A. Chapman, Esq.
24 Perdicaris Place
Trenton, NJ 08618

Request For Special Notice:
Maggie Lewsadder
Makefield Securities Corporation
789 S. Federal Hwy., Suite 102
Stuart, FL 34994

Creditors' Committee Member:
IT&E Corporation
Attn: Anthony D. Allocca
11 N. Market Street, Suite 730
San Jose, CA 95113

Creditor's Committee Counsel:
Randy Michelson, Esq.
McCutcheon, Doyle, Brown & Emerson
3 Embarcadero Center
San Francisco, CA 94111

Premont Landlord:
Lam Research, Inc.
Attn: George M. Schisler, Jr.
4560 Cushing Parkway
Fremont, CA 94538-6470

Counsel to Lam Research:
Dale L. Bratton, Esq.
Heller, Ehrman, White & McAuliffe
333 Bush Street, Suite 3000
San Francisco, CA 94104-2878

Vifa/Scan-Speak Reg for Spec. Not:
David M. Meegan, Esq.
Meegan, Hanschu & Kassenbrock
1545 River Park Drive, Suite 550
Sacramento, CA 95815

SFC Reg. For Spec. Notice:
Sarah D. Moyed, Esq.
Securities & Exchange Commission
Pacific Regional Office
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036-3648

Reg. for Spec. Notice:
Howard, Rice, et al
Attn: James Lopez/Gary Kaplan
3 Embarcadero Center, Suite 700
San Francisco, CA 94111

Creative Labs Reg. for Spec Not:
Creative Labs, Inc.
Attn: Spacey Leong
1901 McCarthy Boulevard
Milpitas, CA 95035

Reg. for Special Notice:
Alan Yee
764 Pollard Road
Los Gatos, CA 95032

Debtor's Financial Advisor:
E&Y Restructuring LLC
Attn: Robert H. Warshauer
555 California Street,
San Francisco, CA 94104

Auditor to the Debtor:
Mohler, Nixon & Williams
Attn: Steve Vidlock
635 Campbell Technology Pkwy, #100
Campbell, CA 95008

New York Dept of Tax reg for not:
New York Dept of Taxation and Finance
Deputy Commissioner and Counsel
Attn: Amy J. Murphy
77 Broadway, Suite 112
Buffalo, NY 14203-1670

Copeko Reg. for Spec. Notice:
Kenneth G. Lau
Hemar & Roussio
15910 Ventura Boulevard, 12th Flr.
Encino, CA 91436-2829

Regen Capital Reg. For Notice:
Elliott Hershkovitz
Regen Capital I, Inc.
PO Box 626 Planetarium Station
New York, New York 10024-0540

Creditor:
Circle International, Inc.
385 Valley Drive
Brisbane, CA 94005

Debtor's Special Patent Counsel:
David N. Lathrop, Esq.
Gallagher & Lathrop, A Prof Corp.
601 California Street, Suite 1111
San Francisco, California 94108-2805

Integra-Drye Reg. for Special Notice:
Tracy Green, Esq.
Wendel, Rosen, Black & Dean
1111 Broadway, 24th Floor
Oakland, CA 94607

Landlord:
Fifth Street Properties, LLC
c/o Commonwealth Partners, LLC
Attn: Mr. David Armstrong
633 West Fifth St., 7nd Floor
Los Angeles, CA 90071

Counsel to 3DFX:
Hopkins & Carley
Attn: John Easterbrook, Esq.
70 South First Street
San Jose, CA 95113-2406

Tax Accountants:
Neilson, Elgren LLP
Attn: Vernon Calder
230 South 500 East, Suite 425
Salt Lake City, UT 84102

Fifth Street Properties Reg for Notice:
Pillsbury, Winthrop LLP
Attn: Craig Barbarosh/Kalman Steinberg
650 Town Center Drive, 7thFlr.
Costa Mesa, CA 92626-7122

Dice, Inc.
PO Box 560573
The Colony, TX 85056

Dice Inc. request for notice:
J. Mark Chevallier, Esq.
3550 Lincoln Plaza
500 N. Akard
Dallas, TX 85201

RCG Carpathia Master req for notice:
RCG Carpathia Master Fund Ltd
Attn: Allison Covello
666 Third Avenue, 26th Fl
New York, NY 10017

Counsel to Krystaltech:
Michael Y. Sukhman, Esq.
Law Office of M. Scott Vayer
620 Fifth Avenue
New York, New York 10020

Arvo Partners Request for Notice:
Matthew A. Gold, Esq.
Arvo Partners, Inc.
12 West 37th St. 9th Fl
New York, NY 10018

Request for Notice Debt Acquisition:

DACA V. LLC
Attn: Tom Scheidt
2120 W. Washington Street
San Diego, CA 92110

Counsel to the Examiner:

Daniel M. Linchey, Esq.
Goldberg, Stinnett, Meyers & Davis
44 Montgomery Street, Suite 2900
San Francisco, CA 94104

Next Factor Request for Notice:

William Webb Farrer, Esq.
Law Offices of William Webb Farrer
300 Montgomery Street, Suite 789
San Francisco, CA 94104

Next Factor Request for Notice:

Edward Archambault
Next Factor, Inc.
72 Van Reipen Avenue, Suite 37
Jersey City, NJ 07306

EXHIBIT F

FILED

United States Bankruptcy Court

00 OCT -2 AM 9:07

HELEN A. LEAHY, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Fitzgerald Communications Inc.
245 First St, 12th Fl
Cambridge, MA 02142**

2. Your entire claim as shown in the amount of **\$3,265.89** has been transferred pursuant to the Purchase Letter dated as of September 26th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: September 26, 2000



Ed Morrell
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Fitzgerald Communications Inc, having a mailing address at 245 First St, 12th Fl, Cambridge, MA 02142 ("Assignor"), in consideration of the sum of \$_____ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aural, Inc Case No. 00-42104 (LT) ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), jointly administered under Aural, Inc, Case No. 00-42104 (LT), in the currently outstanding amount of not less than \$3,265.89 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- A Proof of Claim has not been filed in the proceedings.
- A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$3,265.89 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets his hand this _____ day of _____ 2000.

ATTEST:

By: ME [Signature]
Signature

CEO

Print Name/Title

Telephone # _____

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 26 day of September 2000.

ATTEST:

By: E. M. Morrell

Ed Morrell
Argo Partners, Inc.
212-643-5456

EXHIBIT G

2:00-bk-38784-ES Scour Inc A Delaware Corp
Case type: bk Chapter: 11 Asset: Yes Vol: v Judge: Erithe A. Smith
Date filed: 10/12/2000 Plan confirmed: 04/15/2002
Date terminated: 12/17/2002 Date of last filing: 12/17/2002

History

Doc.

No. Dates Description

1 Filed: 10/12/2000

Entered: 10/13/2000

Voluntary Petition (Chapter 11)

Docket Text: Voluntary petition under chapter 11 [ASI]

2 Filed: 10/12/2000

Entered: 10/13/2000

Exhibit A (Corporation)

Docket Text: Exhibit "A" [corporations] [ASI]

3 Filed: 10/12/2000

Entered: 10/13/2000

Statement of Related Case

Docket Text: Statement of related cases [ASI]

4 Filed: 10/12/2000

Entered: 10/13/2000

Disclosure of Compensation of Attorney for Debtor

Docket Text: Disclosure of attorney fees [ASI]

5 Filed: 10/12/2000

Entered: 10/13/2000

List of creditors holding 20 largest unsecured claims

Docket Text: List of creditors holding 20 largest unsecured claims [ASI]

6 Filed: 10/12/2000

Entered: 10/13/2000

Verification of creditor matrix

Docket Text: Verification of creditor matrix [ASI]

7 Filed: 10/12/2000

Entered: 10/13/2000

Matrix (Mailing List)

Docket Text: Matrix [mailing list] [ASI]

8 Filed: 10/12/2000

Entered: 10/13/2000

Equity Security Holders

Docket Text: List of equity security holders [ASI]

9 Filed: 10/12/2000

Entered: 10/13/2000

Venue Disclosure Form

Docket Text: Venue disclosure form [for Corporations and Partnerships filing a chapter 11] [ASI]

10 Filed: 10/12/2000

Entered: 10/13/2000

Corp Resolution Auth Filing

Docket Text: Corporate resolution authorizing filing of petitions [ASI]

11 Filed: 10/12/2000

Entered: 10/13/2000

Notice Avail Chapters

Docket Text: Notice of available chapters [ASI]

12 Filed: 10/12/2000

Entered: 10/13/2000

Attorney's State Bar Number

Docket Text: Attorney's state bar number on page 1 of petition form [ASI]

13 Filed: 10/12/2000

Entered: 10/13/2000

Atty Signature Pg2 Petition

Docket Text: Signature[s] page 2 of petition form B1 for attorney [ASI]

14 Filed: 10/12/2000

Entered: 10/13/2000

Case Commencement Deficiency Notice

Docket Text: Case commencement deficiency notice Summary of Schedules; Signed Declaratn Re Sched; Disk over 100 Creditors [ASI]

15 Filed: 10/12/2000

Entered: 10/13/2000

Order to comply BK Rule 1007

Docket Text: ORDER to comply with bankruptcy rule 1007 and notice of intent Schedule A; Schedule B; Schedule D; Schedule E; Schedule F; Schedule G; Schedule H; Statemt Financial Affairs [ASI]

16 Filed: 10/12/2000

Entered: 10/13/2000

Certificate of Mailing

Docket Text: Certificate of mailing RE: Item# 14 [ASI]

17 Filed: 10/12/2000

Entered: 10/13/2000

Certificate of Mailing

Docket Text: Certificate of mailing RE: Item# 15 [ASI]

18 Filed & Entered: 10/18/2000

Terminated: 12/17/2002

ORDER shortening time

Docket Text: ORDER setting hearing on status of Chapter 11 case and requiring report on status of Chapter 11 case. Courts own motion. With notice of entry. hearing on 01/10/2001 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 1 [BB]

19 Filed: 10/18/2000

Entered: 10/19/2000

Request for special notice

Docket Text: Request for special notice filed by Johsua D. Wayser attorney for Greenwald, Pauly, Foster & Miller; with signed proof of service. [REC]

20 Filed: 10/18/2000

Entered: 10/19/2000

Request for special notice

Docket Text: Request for special notice filed by Alan J. Cohen, Esq., Attorney for creditor CarryOn Communication, Inc., with proof of service [NDI]

21 Filed: 10/18/2000

Entered: 10/19/2000

Notice

Docket Text: Notice of submission to the United States Trustee of application of Scour Inc. for authority to employ perkins Coie LLP as general counsel pursuant to 11 USc Section 327[a] and deadline to file response and request for hearing thereon and proof of service filed by proposed attorneys for debtor and debtor-in-possession, Scour Inc. [GDG]

22 Filed: 10/19/2000

Entered: 10/20/2000

Terminated: 01/03/2001

Emergency motion

Docket Text: Emergency motion for approval of debtor's application to employ Perkins Coie LLP as general counsel; Filed by Steven G. F. Polard proposed

attorney for debtor; With proof of service hearing on 11/01/2000 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item#

21[Disposed] [BB]

23 Filed: 10/19/2000

Entered: 10/20/2000

Declaration

Docket Text: Declaration of Steven G. F. Polard RE: Item# 22 [BB] Original

NIBS Entry Number: 22A

24 Filed: 10/19/2000

Entered: 10/20/2000

ORDER shortening time

Docket Text: ORDER shortening time GRANTED; Hearing scheduled for 11-1-00 at 10:00 a.m. in Courtroom 1468, 255 E. Temple Street, Los Angeles, CA 90012 RE: Item# 22 [BB] Original NIBS Entry Number: 23

25 Filed: 10/20/2000

Entered: 10/24/2000

Terminated: 11/03/2000

Emergency motion

Docket Text: Emergency motion by debtor for order approving payment of insider compensation; Filed by Michael I. Sorochinsky proposed attorney for debtor; With proof of service hearing on 11/01/2000 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 24

26 Filed: 10/20/2000

Entered: 10/24/2000

Declaration

Docket Text: Declaration of Craig A. Grossman RE: Item# 25 [BB] Original NIBS Entry Number: 24A

27 Filed: 10/20/2000

Entered: 10/24/2000

ORDER shortening time

Docket Text: ORDER shortening time GRANTED; Hearing 11-1-00 at 10:00 a.m. in Courtroom 1468, 255 E. Temple Street, Los Angeles, CA 90012 RE: Item# 25 [BB] Original NIBS Entry Number: 25

28 Filed & Entered: 10/24/2000

Notice of 341a meeting (BNC)

Docket Text: Notice of 341a meeting [requested from BNC] hearing on 11/20/2000 at 10:30 a.m. at 221 N. Figueroa St., Ste. 104, Los Angeles, CA 90012 [OVI] Original NIBS Entry Number: 26

29 Filed: 10/26/2000

Entered: 10/27/2000

Supplemental (Generic)

Docket Text: Supplemental declaration of Steven G.F. Polard in support of application of Scour Inc. for authority to employ perkins Coie LLP as general bankruptcy counsel and proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. RE: Item# 23 [GDG] Original NIBS Entry Number: 27

30 Filed & Entered: 10/27/2000

Objection

Docket Text: Objection of Twentieth Century Fox Film Corporation [FOX] to Perkins Coie LLP's representation of debtor, Scour Inc., where debtor is adverse to FOX and proof of service filed by attorneys for Twentieth Century Fox Film Corporation RE: Item# 22 [GDG] Original NIBS Entry Number: 28

. Doc.

No. Dates Description

31 Filed & Entered: 10/27/2000

Declaration

Docket Text: Declaration of Gary D. Roberts in support of objection and proof of service filed by attorneys for Twentieth Century Fox Film Corporation RE: Item# 30 [GDG] Original NIBS Entry Number: 29
32 Filed & Entered: 10/27/2000

Objection

Docket Text: Objection [limited] of COPYRIGHT HOLDERS [Please see pleading for list of parties] to debtor's application to employ Perkins Coie as general counsel, filed by Suzanne Uhland, Kevin Blaine, Andrew Rosenberg, attorney for copyright holders, with proof of service RE: Item# 22 [SKF] Original NIBS Entry Number: 30

33 Filed: 10/27/2000

Entered: 10/30/2000

Certificate of Mailing

Docket Text: Certificate of mailing RE: Item# 28 [BNC] Original NIBS Entry Number: 31

34 Filed: 10/27/2000

Entered: 10/30/2000

Declaration Re Sched

Docket Text: Declaration concerning debtor's schedules RE: Item# 1 [GDG] Original NIBS Entry Number: 32

35 Filed: 10/27/2000

Entered: 10/30/2000

Summary of Schedules

Docket Text: Summary of schedules RE: Item# 1 [GDG] Original NIBS Entry Number: 33

36 Filed: 10/27/2000

Entered: 10/30/2000

Schedule A

Docket Text: Schedule A filed RE: Item# 35 [GDG] Original NIBS Entry Number: 34

37 Filed: 10/27/2000

Entered: 10/30/2000

Schedule B

Docket Text: Schedule B filed RE: Item# 35 [GDG] Original NIBS Entry Number: 35

38 Filed: 10/27/2000

Entered: 10/30/2000

Schedule C

Docket Text: Schedule C filed RE: Item# 35 [GDG] Original NIBS Entry Number: 36

39 Filed: 10/27/2000

Entered: 10/30/2000

Schedule D

Docket Text: Schedule D filed RE: Item# 35 [GDG] Original NIBS Entry Number: 37

40 Filed: 10/27/2000

Entered: 10/30/2000

Schedule E

Docket Text: Schedule E filed RE: Item# 35 [GDG] Original NIBS Entry Number: 38

41 Filed: 10/27/2000

Entered: 10/30/2000

Schedule F

Docket Text: Schedule F filed RE: Item# 35 [GDG] Original NIBS Entry Number: 39

42 Filed: 10/27/2000

Entered: 10/30/2000

Schedule G

Docket Text: Schedule G filed RE: Item# 35 [GDG] Original NIBS Entry Number: 40

43 Filed: 10/27/2000

Entered: 10/30/2000

Schedule H

Docket Text: Schedule H filed RE: Item# 35 [GDG] Original NIBS Entry Number: 41

44 Filed: 10/27/2000

Entered: 10/30/2000

Statement of Financial Affairs

Docket Text: Statement of financial affairs RE: Item# 35 [GDG] Original NIBS Entry Number: 42

45 Filed: 10/27/2000

Entered: 10/30/2000

Terminated: 11/06/2000

Application of non-resident attorney to appear in a specific case per Local Bankruptcy rule

Docket Text: Application of non-resident attorney to appear in a specific case per Local Bankruptcy rule filed by Kevin T Blaine, attorney for Twentieth Century Fox Film Corporation, Universal City Studios, Inc, Sony Pictures Entertainment Inc, Paramount Pictures Corporation, Metro-Goldwyn Mayer Studios Inc, Disney Enterprises, Inc, Columbia Pictures Industries, Inc, Zomba Recording Corporation, Walt Disney Records, Virgin Records America, Inc, UMG Recordings, Inc, Sony Music Entertainment Inc, Motown Record Company, LP, LaFace Records, Interscope Records, Hollywood Records, Inc, Capitol Records, BMG Music dba The RCA Records Label, and Arista Records, Inc, with proof of service [Disposed] [SKF] Original NIBS Entry Number: 43

46 Filed: 10/27/2000

Entered: 10/31/2000

Proof of service

Docket Text: Proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. RE: Item# 18 [GDG] Original NIBS Entry Number: 44

47 Filed: 10/27/2000

Entered: 10/31/2000

Objection

Docket Text: Objection of the United States Trustee to employment application of Perkins Coie LLP as general bankruptcy counsel to the debtor and proof of service filed by US Trustee RE: Item# 22 [GDG] Original NIBS Entry Number: 45

48 Filed: 10/30/2000

Entered: 10/31/2000

Terminated: 11/06/2000

Application of non-resident attorney to appear in a specific case per Local Bankruptcy rule

Docket Text: Application of non-resident attorney to appear in a specific case per Local Bankruptcy rule [David E. Kendall of Williams & Connolly LLP] and proof of service filed by David E. Kendall [Disposed] [GDG] Original NIBS Entry Number: 46

63 Filed: 10/30/2000

Entered: 11/01/2000

Terminated: 11/02/2000

Emergency motion

Docket Text: Emergency motion by debtor for order authorizing the sale of personal property free and clear of liens and encumbrances; Filed by Steven G. F. Polard proposed attorney for debtor With proof of service hearing on

11/07/2000 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA
90012[Disposed] [BB] Original NIBS Entry Number: 61
64 Filed: 10/30/2000
Entered: 11/01/2000

Declaration

Docket Text: Declaration of Craig A. Grossman RE: Item# 63 [BB] Original NIBS
Entry Number: 61A

49 Filed & Entered: 10/31/2000

Declaration

Docket Text: Declaration of Michael I. Sorochinsky re telephonic notice of
hearing on Scour's emergency motioin for approval of debtor's application to
employ Perkins Coie LLP as general counsel RE: Item# 22 [GDG] Original NIBS
Entry Number: 47

50 Filed & Entered: 10/31/2000

Declaration

Docket Text: Declaration of Ann Ferreri re telephonic notice of hearing on
Scour's emergency motion for order approving payment of insider compensation RE:
Item# 25 [GDG] Original NIBS Entry Number: 48

51 Filed & Entered: 10/31/2000

Declaration

Docket Text: Declaration of Corinna Atkinson re telephonic notice of hearing
on Scour's emergency motion for order approving payment of insider compensation
RE: Item# 25 [GDG] Original NIBS Entry Number: 49

52 Filed & Entered: 10/31/2000

Declaration

Docket Text: Declaration of Gloria Mandel re telephonic notice of hearing on
Scour's emergency motion for approval of debtor's applicatiion to employ Perkins
Coie LLP as general counsel RE: Item# 22 [GDG] Original NIBS Entry Number: 50

53 Filed & Entered: 10/31/2000

Proof of service

Docket Text: Proof of service filed by proposed attorneys for debtor and
debtor-in-possession Scour Inc. RE: Item# 49 [GDG] Original NIBS Entry Number:
51

54 Filed & Entered: 10/31/2000

Proof of service

Docket Text: Proof of service filed by proposed attorneys for debtor and
debtor-in-possession Scour Inc. RE: Item# 25 [GDG] Original NIBS Entry Number:
52

55 Filed & Entered: 10/31/2000

Proof of service

Docket Text: Proof of service filed by proposed attorneys for debtor and
debtor-in-possession Scour Inc. RE: Item# 22 [GDG] Original NIBS Entry Number:
53

56 Filed & Entered: 10/31/2000

Proof of service

Docket Text: Proof of service [Lyle Greenburg] filed by attorneys for debtor
and debtor-in-possession RE: Item# 22 [GDG] Original NIBS Entry Number: 54

57 Filed & Entered: 10/31/2000

Proof of service

Docket Text: Proof of service [Entertainment Boulevard Inc.] filed by
attorneys for debtor and debtor-in-possession RE: Item# 22 [GDG] Original NIBS
Entry Number: 55

58 Filed & Entered: 10/31/2000

Proof of service

Docket Text: Proof of service [Redline Games] filed by attorneys for debtor
and debtor-in-possession RE: Item# 22 [GDG] Original NIBS Entry Number: 56

. Doc.

No. Dates Description

59 Filed & Entered: 10/31/2000

Proof of service

Docket Text: Proof of service [Redline Games] filed by attorneys for debtor and debtor-in-possession RE: Item# 25 [GDG] Original NIBS Entry Number: 57

60 Filed: 10/31/2000

Entered: 11/01/2000

Notice

Docket Text: Notice of Appearance and Request for Special Notice filed by David E.Kendall, attorney for Twentieth Century Fox Film Coporation;Universal City Studios, Inc;Sony Pictures Entertainment Inc; Paramount Pictures Corporation; Metro Goldwyn Mayer Studios Inc;Disney Enterprises, Inc;Columbia Pictures industries, Inc;Zomba Recording Corporation; Walt Disney Records;Virgin Records America, Inc;UMG Recordings, Inc;Sony Music Entertainment Records Inc;Motown Recor Company,L.P.;LaFace records;Interscope Records;Hollywood records,Inc;Capitol Records,Inc;BMG Music d.b.a.The RCA Records Label;and Arista Records,Inc with proof of service [CBK] Original NIBS Entry Number: 58

61 Filed: 10/31/2000

Entered: 11/01/2000

Notice

Docket Text: Notice of Appearance ond Request for Special Notice filed by Robert J.White, attorney for Time Warner Entertainment Company,L.P.;Warner Bros.Records Inc;London-Sire Records Inc;Elektra Entertainment Group Inc; and Atlantic Recording Corporation with proof of service [CBK] Original NIBS Entry Number: 59

62 Filed: 10/31/2000

Entered: 11/01/2000

Supplemental (Generic)

Docket Text: Supplemental proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. on emergency motion for order authorizing the sale of personal property free and clear of liens and encumbrances; memorandum of points and authorities; declaration of Craig A. Grossman [GDG] Original NIBS Entry Number: 60

65 Filed: 10/31/2000

Entered: 11/01/2000

ORDER shortening time

Docket Text: ORDER shortening time GRANTED; Hearing 11-7-00 at 11:00 a.m. in Courtroom 1468, 255 E. Temple Street, Los Angeles, CA 90012 RE: Item# 63 [BB] Original NIBS Entry Number: 62

71 Filed: 11/01/2000

Entered: 11/02/2000

Terminated: 11/15/2000

Emergency motion

Docket Text: Emergency motion by debtor for order authorizing debtor to close the exchange outside the ordinary course of business; With proof of service hearing on 11/14/2000 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 70[Disposed] [BB] Original NIBS Entry Number: 67

72 Filed: 11/01/2000

Entered: 11/02/2000

Declaration

Docket Text: Declaration of Craig A. Grossman RE: Item# 71 [BB] Original NIBS Entry Number: 67A

74 Filed: 11/01/2000

Entered: 11/02/2000

Terminated: 11/17/2000

Emergency motion

Docket Text: Emergency motion by debtor for order setting hearing date and notice requirements and establishing procedures in connection with debtor's motion for order authorizing debtor to 1. Sell assets free and clear of liens, claims and interests pursuant to bankruptcy code section 363[b], [f] and [m]; 2. Assume and assign contracts pursuant to bankruptcy code sections 365[f] and [k]; and 3. Enter into asset purchase agreement with LISTEN; Filed by Steven G. F. Polard, proposed attorney for debtor hearing on 11/14/2000 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 73[Disposed] [BB] Original NIBS Entry Number: 69
75 Filed: 11/01/2000
Entered: 11/02/2000

Declaration

Docket Text: Declaration of Craig A. Grossman RE: Item# 74 [BB] Original NIBS Entry Number: 69A
66 Filed & Entered: 11/02/2000

Declaration

Docket Text: Declaration of Craig A. Grossman regarding waiver by Scour Inc. of Perkins Coie LLP conflicts and proof of service filed by proposed attorneys for debtor and debtor-in-possession [GDG] Original NIBS Entry Number: 63
67 Filed & Entered: 11/02/2000

Withdrawal of motion

Docket Text: Withdrawal of motion of debtor's emergency motion for order authorizing the sale of personal property free and clear of liens and encumbrances; With proof of service RE: Item# 63 [BB] Original NIBS Entry Number: 64

68 Filed & Entered: 11/02/2000
Terminated: 11/02/2000

Ex parte application

Docket Text: Ex parte application for order shortening time for hearing and briefing schedule on debtor's motion for order authorizing debtor to close the exchange outside the ordinary course of business; Filed by Steven G.F. Polard proposed attorney for debtor; With proof of service hearing on 11/14/2000 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 65
69 Filed & Entered: 11/02/2000

Declaration

Docket Text: Declaration of Craig A. Grossman RE: Item# 68 [BB] Original NIBS Entry Number: 65A
70 Filed & Entered: 11/02/2000

ORDER shortening time

Docket Text: ORDER shortening time GRANTED; Hearing scheduled for 11-14-00 at 11:00 a.m. in Courtroom 1468 RE: Item# 68 [BB] Original NIBS Entry Number: 66
73 Filed & Entered: 11/02/2000
Terminated: 12/17/2002

Ex parte application

Docket Text: Ex parte application ning time for hearing and briefing schedule on debtor's motion for order setting hearing date and notice requirements and establishing procedures in connection with debtor's motion for order authorizing debtor to 1. Sell assets free and clear of liens, claims and interests pursuant to bankruptcy code section 363[b],[f] and [m] 2. Assume and assign contracts pursuant to bankruptcy code section 365[f] and [k]; and 3. Enter into asset purchase agreements with Listen; Filed by Steven G. F. Polard, proposed attorney for debtor; With proof of service hearing on 11/14/2000 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 71[Disposed] Original NIBS Entry Number: 68
[DISPOSED] related to Order docket item #66 RE: Item# 71 [BB] Original NIBS Entry Number: 68

[DISPOSED] [SKF] Original NIBS Entry Number: 68

76 Filed & Entered: 11/03/2000

Notice

Docket Text: Notice of Lodging of waivers of Twentieth Century Fox and the Disney Company and proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. [GDG] Original NIBS Entry Number: 70

77 Filed & Entered: 11/03/2000

ORDER granting/approving

Docket Text: ORDER granting/approving debtor's emergency motion for order approving payment of insider compensation; With notice of entry RE: Item# 25 [BB] Original NIBS Entry Number: 71

78 Filed: 11/03/2000

Entered: 11/06/2000

ORDER re:

Docket Text: ORDER re: debtor's application for authority to employ Perkins Coie LLP as special counsel; With notice of entry: Note to all: Waivers of Scour, and limited waivers of conflict by Fox and Disney [the limited waivers being for only the above matters] have been filed on 11-2 and 11-3 respectively. No later than 7 days before the continued December 12, 2000 hearing date Court requires that Scour counsel obtain [if possible] and file with the Court supplemental written waivers which reflect that Scour, Fox and Disney have consulted with, or been told by Perkin Coie to consult with, but declined to consult with separate counsel on the issue of waiving conflict and still wish to waive conflict. e.g. Klemm vs Sup Ct 75 Cal.App 3d 839, 901 [1977], see Buehler v. S. Bardellati, 34 Cal App. 4th 1527, 1537 [1995] RE: Item# 22 [BB] Original NIBS Entry Number: 72

79 Filed: 11/03/2000

Entered: 11/06/2000

ORDER on application of non-resident attorney to appear in a specific case per Local Bankruptcy rule

Docket Text: ORDER on application of non-resident attorney to appear in a specific case per Local Bankruptcy rule with notice of entry - Granted [David e. Kendall] RE: Item# 48 [GDG] Original NIBS Entry Number: 73

80 Filed: 11/03/2000

Entered: 11/06/2000

ORDER on application of non-resident attorney to appear in a specific case per Local Bankruptcy rule

Docket Text: ORDER on application of non-resident attorney to appear in a specific case per Local Bankruptcy rule with notice of entry - Granted [Kevin T. Baine] RE: Item# 45 [GDG] Original NIBS Entry Number: 74

81 Filed: 11/03/2000

Entered: 11/06/2000

Unsecured creditors' committee appointed

Docket Text: Unsecured creditors' committee appointed filed by Terri Anderson, assistant United States Trustee, with proof of service [SKF] Original NIBS Entry Number: 75

82 Filed: 11/07/2000

Entered: 11/09/2000

Formatted diskette required for petition with over 100 creditors

Docket Text: 3 1/2" formatted diskette required for petition with over 100 creditors filed by Steven G.F.Polard, attorney for debtor RE: Item# 14 [CBK] Original NIBS Entry Number: 76

83 Filed: 11/08/2000

Entered: 11/09/2000

Request for special notice

Docket Text: Request for special notice filed by David R.Weinstein, attorney for Official Committee of Unsecured Creditors with proof of service [CBK] Original NIBS Entry Number: 77
84 Filed: 11/08/2000
Entered: 11/09/2000

Request for special notice

Docket Text: Request for special notice filed by Joseph Buchman, attorney for Brook Furniture Rental Inc with proof of service [CBK] Original NIBS Entry Number: 78
85 Filed: 11/09/2000
Entered: 11/13/2000

Response

Docket Text: Response by creditors' committee to debtor's motion re Sale Procedures and proof of service filed by attorneys for Official Committee of unsecured Creditors RE: Item# 74 [GDG] Original NIBS Entry Number: 79
86 Filed: 11/09/2000
Entered: 11/13/2000

Statement (Generic)

Docket Text: Statement by The Copyright Plaintiff in support of debtor's motion for order authorizing debtor to close Scour exchange outside the ordinary course of business and proof of service filed by attorneys for the Time Warner Plaintiffs, plaintiffs other than the Time Warner Plaintiffs, and attorneys for the Music Publishing plaintiffs RE: Item# 71 [GDG] Original NIBS Entry Number: 80

87 Filed & Entered: 11/13/2000

Declaration

Docket Text: Declaration of Corinna Atkinson re telephonic notice of hearing and proof of service filed by proposed attorneys for debtor and debtor in possession Scour Inc. RE: Item# 73 [GDG] Original NIBS Entry Number: 81
88 Filed & Entered: 11/13/2000

Declaration

Docket Text: Declaration of Yolanda McCowan re telephonic notice of hearing and proposed attorneys for debtor and debtor in possession Scour Inc. RE: Item# 73 [GDG] Original NIBS Entry Number: 82
89 Filed & Entered: 11/13/2000

Declaration

Docket Text: Declaration of Shawn Henry re facsimile notice and proposed attorneys for debtor and debtor in possession Scour Inc. RE: Item# 73 [GDG] Original NIBS Entry Number: 83
90 Filed & Entered: 11/13/2000

Declaration

Docket Text: Declaration of Joan Quinn re telephonic notice of hearing and proposed attorneys for debtor and debtor in possession Scour Inc. RE: Item# 73 [GDG] Original NIBS Entry Number: 84

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No. Dates Description

91 Filed & Entered: 11/13/2000

Declaration

Docket Text: Declaration of Roderick Wall re telephonic notice of hearing and proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. RE: Item# 73 [GDG] Original NIBS Entry Number: 85
92 Filed & Entered: 11/13/2000

Declaration

Docket Text: Declaration of Beth Passage re telephonic notice of hearing and proof of service proposed attorneys for debtor and debtor in possession Scour Inc. RE: Item# 73 [GDG] Original NIBS Entry Number: 86
93 Filed & Entered: 11/13/2000

Proof of service

Docket Text: Proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. [Shawn Henry] RE: Item# 73 [GDG] Original NIBS Entry Number: 87

94 Filed & Entered: 11/13/2000

Proof of service

Docket Text: Proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. RE: Item# 73 [GDG] Original NIBS Entry Number: 88

95 Filed & Entered: 11/13/2000

Notice

Docket Text: Notice of entry of order shortening time and notice of hearings on Scour Inc.'s motions RE: Item# 73 [GDG] Original NIBS Entry Number: 89

96 Filed: 11/13/2000

Entered: 11/14/2000

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities submitted by Listen.Com Inc. in support of sales procedures and fees - Filed by attorneys for Listen.Com Inc. [GDG] Original NIBS Entry Number: 90

97 Filed: 11/13/2000

Entered: 11/14/2000

Declaration

Docket Text: Declaration of Carol L. Smith in support of overage fee and break-up fee for Listen.Com Inc. - Filed by attorneys for Listen.Com Inc. [GDG] Original NIBS Entry Number: 91

98 Filed: 11/13/2000

Entered: 11/14/2000

Proof of service

Docket Text: Proof of service by facsimile filed by attorneys for Listen.Com Inc. RE: Item# 97 [GDG] Original NIBS Entry Number: 92

101 Filed: 11/13/2000

Entered: 11/15/2000

Objection

Docket Text: Objection filed by Susanne Meline, attorney for Centerspan Communications Corporation; Declaration of Frank G. Hausmann; With proof of service RE: Item# 74 [DEO] Original NIBS Entry Number: 95

99 Filed & Entered: 11/14/2000

Declaration

Docket Text: Declaration of mark Albert in response to inquiry of Creditors Committee as to motion re overbid procedures and proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. [GDG] Original NIBS Entry Number: 93

100 Filed & Entered: 11/14/2000

Proof of service

Docket Text: Proof of service filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. RE: Item# 99 [GDG] Original NIBS Entry Number: 94

102 Filed: 11/14/2000

Entered: 11/15/2000

Declaration

Docket Text: Declaration of Carol L. Smith regarding shareholders and preferred stock of Listen.Com Inc. - Filed by attorneys for Listen.Com Inc. [GDG] Original NIBS Entry Number: 96

103 Filed: 11/14/2000

Entered: 11/15/2000

ORDER granting/approving

Docket Text: ORDER granting/approving debtor's motion for order authorizing debtor to close Scour Exchange with notice of entry RE: Item# 71 [GDG] Original NIBS Entry Number: 97
104 Filed: 11/15/2000
Entered: 11/16/2000

Notice of motion/application

Docket Text: Notice of motion/application by Official Committee of Unsecured Creditors of to employ general Bankruptcy counsel and proof of service filed by proposed attorneys for Official Committee of Unsecured Creditors [GDG] Original NIBS Entry Number: 98
105 Filed: 11/16/2000
Entered: 11/17/2000

Request for special notice

Docket Text: Request for special notice filed by Ira P.Rothken, attorney for MP3Board, Inc with proof of service [CBK] Original NIBS Entry Number: 99
106 Filed: 11/16/2000
Entered: 11/17/2000

Notice

Docket Text: Notice of Lodging of waivers of Twentieth Century Fox, The Disney Company and Scour Inc. - Filed by proposed special counsel for debtor and debtor-in-possession Scour Inc. [GDG] Original NIBS Entry Number: 100
107 Filed: 11/16/2000
Entered: 11/17/2000

Supplemental (Generic)

Docket Text: Supplemental [2nd] declaration of Steven G. F. Polard re two disinterestedness issues arising post-petition - Filed by proposed attorneys for debtor and debtor-in-possession Scour Inc. [GDG] Original NIBS Entry Number: 101
108 Filed: 11/16/2000
Entered: 11/17/2000

Proof of service

Docket Text: Proof of service filed by proposed special counsel for debtor and debtor-in-possession Scour Inc. RE: Item# 106 [GDG] Original NIBS Entry Number: 102
109 Filed & Entered: 11/17/2000

ORDER re:

Docket Text: ORDER re: establishing sale procedures and authorizing fees; Hearing scheduled for 12-12-00 at 11:00 a.m. in Courtroom 1468, 255 E. Temple Street, Los Angeles, CA 90012; With notice of entry RE: Item# 74 [BB] Original NIBS Entry Number: 103
110 Filed: 11/17/2000
Entered: 11/20/2000
Terminated: 11/20/2000

Emergency motion

Docket Text: Emergency motion filed by movant MP3 Board Inc. to purchase or license perishable asset of debtor pursuant to 11 U.S.C. 363[b][1]; combined with motion for order shortening time for notice of hearing on the motion; Filed by Ira P. Rothken attorney for movant; With notice of entry [Disposed] [BB] Original NIBS Entry Number: 104
111 Filed: 11/17/2000
Entered: 11/20/2000

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 110 [BB] Original NIBS Entry Number: 105
112 Filed: 11/17/2000
Entered: 11/20/2000

Declaration

Docket Text: Declaration of Ira P. Rothken RE: Item# 110 [BB] Original NIBS
Entry Number: 106
113 Filed: 11/17/2000
Entered: 11/20/2000

Declaration

Docket Text: Declaration of Lars Mapstead RE: Item# 110 [BB] Original NIBS
Entry Number: 107
115 Filed: 11/17/2000
Entered: 11/21/2000
Terminated: 12/18/2000

Motion to Sell

Docket Text: Motion to sell by debtor 1. Sell assets free and clear of liens,
claims and interests pursuant to bankruptcy code sections 363[b][f] and [m] and
2. Enter into asset purchase agreement with Listen.Com Inc.; Filed by Paul M.
Brent attorney for debtor; With proof of service hearing on 12/12/2000 at 11:00
a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item#
109[Disposed] [BB] Original NIBS Entry Number: 109
116 Filed: 11/17/2000
Entered: 11/21/2000

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 115 [BB] Original
NIBS Entry Number: 109A
117 Filed: 11/17/2000
Entered: 11/21/2000

Declaration

Docket Text: Declaration of Craig Grossman RE: Item# 115 [BB] Original NIBS
Entry Number: 109B
118 Filed: 11/17/2000
Entered: 11/21/2000

Notice of hearing

Docket Text: Notice of hearing on motion for order authorizing debtor and
debtor in possession to sell assets free and clear of liens and encumbrance
pursuant to 11 U.S.C. 363[b][f] and [m], and to enter into purchase agreement
with Listen.Com; Filed by Paul M. Brent attorney for debtor; With proof of
service hearing on 12/12/2000 at 11:00 a.m. at 255 E. Temple St., Courtroom
1468, Los Angeles, CA 90012 RE: Item# 115 [BB] Original NIBS Entry Number: 110
119 Filed: 11/17/2000
Entered: 11/21/2000
Terminated: 12/17/2002

Generic Motion

Docket Text: Motion by debtor pursuant to bankruptcy code sections 365[a],
365[f] and 365[k] for order authorizing debtor to assume and assign executory
contract to LISTEN.COM INC., Filed by Paul M. Brent proposed attorney for
debtor; With proof of service hearing on 12/12/2000 at 11:00 a.m. at 255 E.
Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 115[Disposed] [BB]
Original NIBS Entry Number: 111
[DISPOSED] by 166 [SKF] Original NIBS Entry Number: 111
120 Filed: 11/17/2000
Entered: 11/21/2000

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 119 [BB] Original
NIBS Entry Number: 111A
121 Filed: 11/17/2000
Entered: 11/21/2000

Declaration

Docket Text: Declaration of Craig Grossman RE: Item# 119 [BB] Original NIBS
Entry Number: 111B

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No. Dates Description
122 Filed: 11/17/2000

Entered: 11/21/2000

Notice of hearing

Docket Text: Notice of hearing on motion of debtor and debtor in possession for order authorizing debtor to assume and assign executory contract to LISTEN.COM INC. pursuant to bankruptcy code sections 365[a], 365[f] and 365[k]; Filed by Paul Brent; With proof of service hearing on 12/12/2000 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 119 [BB] Original NIBS Entry Number: 112

114 Filed & Entered: 11/20/2000

ORDER denying

Docket Text: ORDER denying MP3 Board's emergency motion with prejudice to purchase or license perishable asset of debtor pursuant to 11 U.S.C. 363[d][1] and Denying motion for order shortening time for notice of hearing on the motion; With notice of entry RE: Item# 110 [BB] Original NIBS Entry Number: 108

123 Filed: 11/20/2000

Entered: 11/21/2000

Request for special notice

Docket Text: Request for special notice Filed by David S Kupetz, attorney for Wongdoody Inc; With proof of service [HA2] Original NIBS Entry Number: 113

124 Filed: 11/21/2000

Entered: 11/29/2000

Proof of service

Docket Text: Proof of service filed by proposed counsel for: Scour Inc., debtor and debtor-in-possession RE: Item# 122 [GDG] Original NIBS Entry Number: 114

125 Filed: 11/22/2000

Entered: 11/29/2000

Notice of motion/application

Docket Text: Notice of motion/application of debtor for authority to employ Steinberg, Nutter & Brent Law Corporation as general counsel and proof of service filed by proposed counsel for debtor and debtor-in-possession, Scour Inc. [GDG] Original NIBS Entry Number: 115

126 Filed: 11/24/2000

Entered: 11/29/2000

Terminated: 12/17/2002

Application to Employ

Docket Text: Application to employ by Official Committee of Unsecured Creditors general bankruptcy counsel [Weinstein & Eisen]; The US Trustee has raise an objection and proof of service filed by proposed attorneys for Official Committee of Unsecured Creditors [Disposed] [GDG] Original NIBS Entry Number: 116

127 Filed: 11/24/2000

Entered: 11/29/2000

Declaration

Docket Text: Declaration of Aram Ordubegian RE: Item# 126 [GDG] Original NIBS Entry Number: 116A

128 Filed: 11/24/2000

Entered: 11/29/2000

Declaration

Docket Text: Declaration of William A. Rudick RE: Item# 126 [GDG] Original NIBS Entry Number: 116B

129 Filed: 11/27/2000

Entered: 11/29/2000

Response

Docket Text: Response by Creditors' Committee to debtor's motion for authority to assume and assign executory contracts and proof of service filed by proposed attorneys for Official Committee of Unsecured Creditors RE: Item# 119 [GDG] Original NIBS Entry Number: 117

130 Filed: 11/28/2000

Entered: 11/29/2000

Response

Docket Text: Response [Limited] by the copyright plaintiffs to debtors' motion for order authorizing debtor and debtor in possession to sell assets free and clear of liens and encumbrance pursuant to 11 USC 363[b][f] and [m] and to enter into purchase agreement with Listen.Com Inc. and proof of service filed by attorneys for the Time Warner plaintiffs RE: Item# 115 [GDG] Original NIBS Entry Number: 118

131 Filed: 11/28/2000

Entered: 11/29/2000

ORDER re:

Docket Text: ORDER re: Debtor's motion to sell assets and debtor's motion for order authorizing debtor to assume and assign executory contracts set for hearing and overbid on 12-12-00 at 11:00 a.m. in Courtroom 1468; Debtor counsel to advertise the sale and overbid of debtor's assets on internet; With notice of entry [BB] Original NIBS Entry Number: 119

132 Filed & Entered: 11/29/2000

Reply

Docket Text: Reply to United States Trustee's objection to the Official Committee of Unsecured Creditors' application to employ general bankruptcy counsel [Weinstein and Eisen], filed by Aram Ordubegian, proposed attorney for creditors' committee, with proof of service RE: Item# 126 [SKF] Original NIBS Entry Number: 120

133 Filed: 11/29/2000

Entered: 11/30/2000

Terminated: 12/05/2000

Application to Employ

Docket Text: Application to employ Steinberg, Nutter & Brent as general counsel for debtor; Declaration of Paul M. Brent; Comments of the US Trustee, no objection; With proof of service RE: Item# 125[Disposed] [DEO] Original NIBS Entry Number: 121

134 Filed: 11/30/2000

Entered: 12/04/2000

Amendment/Amended

Docket Text: Amendment/Amended appointment and notice of appointment of Committee of Creditors Holding Unsecured Claims and proof of service filed by US Trustee, Add: Angel Investors 650 Page Mill Road Alto, CA 94304 Attn: J. Casey McGlynn [650] 354-4115 [GDG] Original NIBS Entry Number: 122

135 Filed: 12/01/2000

Entered: 12/04/2000

ORDER not signed

Docket Text: ORDER not signed 12-1-00 Per objection of U.S. Trustee 1. Applicant must file and serve the Sony conflict waiver, plus written conflict waiver for the committee, before Court can approve employment and 2. Correct employment date could not be before 11-6-00 date when committee hired firm; Applicant must get hearing date from Calendar deputy and file/conflict waivers plus notice of hearing on U.S. Trustee, Committee, debtor, debtor attorney Brent, attorneys, and all other parties entitled to notice, 10 days before hearing, to pursue this employment. KPM; Hearing scheduled for 12-20-00 at 10:00 a.m. in Courtroom 1468. RE: Item# 126 [BB] Original NIBS Entry Number: 123

136 Filed: 12/01/2000

Entered: 12/04/2000

Terminated: 12/17/2002

Stipulation (Generic)

Docket Text: Stipulation re: Release of \$50,000.00 from Perkins Coie LLP Trust account to the debtor for its ordinary use and proof of service filed by proposed interim special counsel for: Scour Inc., debtor and debtor-in-possession [GDG] Original NIBS Entry Number: 124

137 Filed: 12/01/2000

Entered: 12/05/2000

ORDER approving employment of professional

Docket Text: ORDER approving employment of professional with notice of entry - Granted [Steinberg, Nutter & Brent - effective November 1, 2000] RE: Item# 133 [GDG] Original NIBS Entry Number: 125

138 Filed: 12/05/2000

Entered: 12/06/2000

Notice

Docket Text: Notice of submission of competitive bid by Centerspan Communications Corporation pursuant to order establishing sale procedures and authorizing fees - Filed by attorneys for Centerspan Communications Corporation [GDG] Original NIBS Entry Number: 126

139 Filed: 12/05/2000

Entered: 12/06/2000

Declaration

Docket Text: Declaration of Frank G. Hauksmann RE: Item# 138 [GDG] Original NIBS Entry Number: 126A

140 Filed: 12/05/2000

Entered: 12/06/2000

Declaration

Docket Text: Declaration of Jack W. Berka RE: Item# 138 [GDG] Original NIBS Entry Number: 126B

141 Filed: 12/05/2000

Entered: 12/06/2000

Brief/Memorandum

Docket Text: Brief/Memorandum of terms of Bid submitted by Listen.Com Inc. for assets of debtor - Filed by attorneys for Listen.Com Inc. for assets of debtor [GDG] Original NIBS Entry Number: 127

142 Filed: 12/05/2000

Entered: 12/06/2000

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities in support of valuation of Listen.Com stock - Filed by attorneys for Listen.Com Inc. [GDG] Original NIBS Entry Number: 128

143 Filed: 12/05/2000

Entered: 12/06/2000

Declaration

Docket Text: Declaration of Valuenomics Research Inc. and Gary E. Jones, President, in support of the proposed transaction series 1 preferred stock value per share by Listen.Com - Filed by attorneys for Listen.Com Inc. [GDG] Original NIBS Entry Number: 129

144 Filed: 12/05/2000

Entered: 12/06/2000

Proof of service

Docket Text: Proof of service [by facsimile] filed by attorneys for Listen.Com Inc. RE: Item# 142 [GDG] Original NIBS Entry Number: 130

145 Filed: 12/05/2000

Entered: 12/06/2000

Declaration

Docket Text: Declaration of Carol L. Smith regarding Listen.Com Inc.'s submission of Bid for purchase of debtor's assets - Filed by attorneys for Listen.Com Inc. [GDG] Original NIBS Entry Number: 131
146 Filed: 12/05/2000
Entered: 12/06/2000

Declaration

Docket Text: Declaration of service by messenger of memorandum of terms of Bid submitted by Listen.Com Inc. and related documents - Filed by attorneys for Listen.Com Inc. [GDG] Original NIBS Entry Number: 132
147 Filed: 12/05/2000
Entered: 12/06/2000
Terminated: 12/17/2002

Generic Motion

Docket Text: Motion JOINT by debtor and through Steinberg, Nutter & Brent Law Corporation and Perkins Coie, LLP in support of motion to continue hearing on application to employ Perkins Coie, LLP; Filed by Paul M. Brent proposed co-counsel for debtor; With proof of service [Disposed] [BB] Original NIBS Entry Number: 133
148 Filed & Entered: 12/06/2000

ORDER not signed

Docket Text: ORDER not signed Continuance denied. Court has already signed order employing Steinberg, Nutter and Brent as counsel for debtor in possession, so there is no need for continuing during transition - transition has occurred and 11 U.S.C. 503[b] cannot be used to get around employment restrictions of 11 U.S.C. 327, attorney; In re Mehdipour, 202 BR 474; In re Albrecht 245 BR 666 [BB] Original NIBS Entry Number: 133A
[DISPOSED] by 133A RE: Item# 147 [SKF] Original NIBS Entry Number: 133A
149 Filed: 12/06/2000
Entered: 12/07/2000

Proof of service

Docket Text: Proof of service filed by attorneys for Centerspan Communications Corporation RE: Item# 138 [GDG] Original NIBS Entry Number: 134
150 Filed: 12/06/2000
Entered: 12/07/2000
Terminated: 11/04/2002

Generic Motion

Docket Text: Motion and notice of motion for order authorizing debtor to reject unexpired leases of non-residential real property, pursuant to 11 USC 365[a] and federal rule of bankruptcy procedure 6066 and proof of service filed by proposed counsel for Scour Inc.,, debtor and debtor-in-possession [Disposed] [GDG] Original NIBS Entry Number: 135

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No. Dates Description
151 Filed: 12/06/2000
Entered: 12/07/2000

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 150 [GDG] Original NIBS Entry Number: 135A
152 Filed: 12/06/2000
Entered: 12/07/2000

Declaration

Docket Text: Declaration of Craig Grossman RE: Item# 150 [GDG] Original NIBS Entry Number: 135B
153 Filed & Entered: 12/08/2000

Declaration

Docket Text: Declaration of Phil Wiser, filed by Craig M. Prim attorney for LiquidAudio [NV] Original NIBS Entry Number: 136

154 Filed: 12/08/2000

Entered: 12/11/2000

Comments

Docket Text: Comments on bid by LISTEN.COM; Filed by David R. Weinstein, attorney for Official Committee of Unsecured Creditors; With proof of service RE: Item# 119 [DEO] Original NIBS Entry Number: 137

155 Filed: 12/08/2000

Entered: 12/11/2000

Comments

Docket Text: Comments on bid by CENTERSPAN; Filed by David R. Weinstein, attorney for Official Committee of Unsecured Creditors; With proof of service RE: Item# 138 [DEO] Original NIBS Entry Number: 138

156 Filed: 12/08/2000

Entered: 12/11/2000

Terminated: 02/06/2001

Generic Motion

Docket Text: Motion by attorney for debtor for order authorizing debtor and debtor in possession extension of time to assume or reject unexpired leases of non-residential real property 11 U.S.C. 365[d][4]; Filed by Paul M. Brent attorney for debtor; With proof of service hearing on 01/10/2001 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 139

157 Filed: 12/08/2000

Entered: 12/11/2000

Notice of motion/application

Docket Text: Notice of motion/application RE: Item# 156 [BB] Original NIBS Entry Number: 139A

158 Filed: 12/08/2000

Entered: 12/11/2000

Declaration

Docket Text: Declaration of Craig Grossman RE: Item# 156 [BB] Original NIBS Entry Number: 139B

159 Filed: 12/08/2000

Entered: 12/11/2000

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 156 [BB] Original NIBS Entry Number: 139C

160 Filed: 12/08/2000

Entered: 12/11/2000

Objection

Docket Text: Objection of Centerspan Communications Corporation to the declaration of Valuenomics Research Inc. and Gary E. Jones, its president, regarding proposed transaction series 1 preferred stock value per share by Listen.Com - Filed by attorneys for Centerspan Communications Corporation RE: Item# 143 [GDG] Original NIBS Entry Number: 140

161 Filed: 12/08/2000

Entered: 12/11/2000

Response

Docket Text: Response of Centerspan Communications Corporation to the Bid of Listen.Com - Filed by attorneys for Centerspan Communications Corporation RE: Item# 138 [GDG] Original NIBS Entry Number: 141

162 Filed: 12/08/2000

Entered: 12/11/2000

Declaration

Docket Text: Declaration of Frank G. Hausmann RE: Item# 161 [GDG] Original NIBS Entry Number: 141A

163 Filed: 12/08/2000

Entered: 12/11/2000

Declaration

Docket Text: Declaration of Jack W. Berka RE: Item# 161 [GDG] Original NIBS

Entry Number: 141B

164 Filed: 12/08/2000

Entered: 12/11/2000

Declaration

Docket Text: Declaration of Debbie A. Simon RE: Item# 161 [GDG] Original NIBS

Entry Number: 141C

165 Filed: 12/08/2000

Entered: 12/11/2000

Reply

Docket Text: Reply of Listen.Com to Bids submitted by Centerspan and Liquid Audio - filed by attorneys for Listen.Com Inc. RE: Item# 138 [GDG] Original NIBS

Entry Number: 142

166 Filed: 12/08/2000

Entered: 12/11/2000

Comments

Docket Text: Comments by debtor on Bids and proof of service filed by counsel for: Scour Inc., debtor and debtor-in-possession RE: Item# 138 [GDG] Original

NIBS Entry Number: 143

167 Filed: 12/08/2000

Entered: 12/11/2000

Proof of service

Docket Text: Proof of service filed by attorney for Liquid Audio via facsimile [GDG] Original NIBS Entry Number: 144

168 Filed: 12/08/2000

Entered: 12/12/2000

Declaration

Docket Text: Declaration of Angela chan regarding sale notice posted on debtor's website [GDG] Original NIBS Entry Number: 145

169 Filed: 12/08/2000

Entered: 12/12/2000

Proof of service

Docket Text: Proof of service filed by attorneys for Listen.Com Inc. by facsimile of reply of Listen.Com to Bid submitted by Centerspan and related documents RE: Item# 165 [GDG] Original NIBS Entry Number: 146

170 Filed: 12/08/2000

Entered: 12/12/2000

Declaration

Docket Text: Declaration [second] of Valuenomics Research Inc. and Gary E. Jones President in reply to Bid submitted by Centerspan [GDG] Original NIBS

Entry Number: 147

171 Filed: 12/08/2000

Entered: 12/12/2000

Proof of service

Docket Text: Proof of service filed by attorneys for Listen.Com Inc. by messenger of reply of Listen.Com to Bid submitted by Centerspan and related documents [GDG] Original NIBS Entry Number: 148

172 Filed: 12/08/2000

Entered: 12/12/2000

Declaration

Docket Text: Declaration [third] of Valuenomics Research Inc. and Gary E. Jones, President, in support of Bid submitted by Listen.Com RE: Item# 170 [GDG] Original NIBS Entry Number: 149

173 Filed: 12/08/2000

Entered: 12/12/2000

Declaration

Docket Text: Declaration [second] of Carol L. Smith regarding Listen.Com Inc.'s submission of Bid for purchase of debtor's assets [GDG] Original NIBS Entry Number: 150

174 Filed: 12/08/2000

Entered: 12/12/2000

Proof of service

Docket Text: Proof of service filed by attorneys for Liquid Audio via facsimile RE: Item# 153 [GDG] Original NIBS Entry Number: 151

175 Filed: 12/08/2000

Entered: 12/12/2000

Declaration

Docket Text: Declaration [GDG] Original NIBS Entry Number: 152

176 Filed: 12/11/2000

Entered: 12/12/2000

Response

Docket Text: Response by creditors' committee to Bid by Liquid Audio and proof of service filed by proposed attorneys for Official Committee of Unsecured Creditors [GDG] Original NIBS Entry Number: 153

177 Filed: 12/11/2000

Entered: 12/12/2000

Declaration

Docket Text: Declaration of Gary E. Jones of Valuenomics Research Inc. and Gary E. Jones, president, in reply to Bid submitted by Liquid Audio RE: Item# 170 [GDG] Original NIBS Entry Number: 154

178 Filed: 12/11/2000

Entered: 12/13/2000

Reply

Docket Text: Reply of Centerspan Communications Corporation to comments regarding its competitive bid, filed by Susanne Meline, attorney for Centerspan Communications Corporation RE: Item# 165 [SKF] Original NIBS Entry Number: 155

179 Filed: 12/11/2000

Entered: 12/13/2000

Declaration

Docket Text: Declaration of Frank G. Hausmann RE: Item# 178 [SKF] Original NIBS Entry Number: 155A

180 Filed: 12/11/2000

Entered: 12/13/2000

Declaration

Docket Text: Declaration of Jack W. Berka RE: Item# 178 [SKF] Original NIBS Entry Number: 155B

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No. Dates Description

181 Filed: 12/11/2000

Entered: 12/13/2000

Proof of service

Docket Text: Proof of service by messenger, filed by Linda DaSilva RE: Item# 177 [SKF] Original NIBS Entry Number: 156

182 Filed: 12/11/2000

Entered: 12/13/2000

Proof of service

Docket Text: Proof of service by facsimile, file dby Angela Chan RE: Item# 177 [SKF] Original NIBS Entry Number: 157

183 Filed: 12/11/2000

Entered: 12/13/2000

Proof of service

Docket Text: Proof of service by U.S. mail. filed by Angela Chan RE: Item# 177
[SKF] Original NIBS Entry Number: 158

184 Filed: 12/12/2000

Entered: 12/13/2000

Declaration

Docket Text: Declaration of Paul M. Brent and Scott W. Simpson re compliance with order establishing sale procedure; With proof of service RE: Item# 109

[DEO] Original NIBS Entry Number: 159

185 Filed: 12/13/2000

Entered: 12/14/2000

Proof of service

Docket Text: Proof of service via facsimile of reply of Centerspan Communications Corporation to comments reagrding its competitive bid, filed by Carole Cooper RE: Item# 178 [SKF] Original NIBS Entry Number: 160

186 Filed: 12/13/2000

Entered: 12/14/2000

Proof of service

Docket Text: Proof of service via facsimile of Centerspan's objection and response of Centerspan to bid of Listen.com, file dby Carole Cooper RE: Item# 161 [SKF] Original NIBS Entry Number: 161

187 Filed & Entered: 12/14/2000

Proof of service

Docket Text: Proof of service filed by Paul M. Brent, attorney for debtor, with proof of service RE: Item# 109 [SKF] Original NIBS Entry Number: 162

188 Filed & Entered: 12/14/2000

Declaration

Docket Text: Declaration of Scott W. Simpson, re: obtaining tapes of hearing of December 12, 2000, with proof of service [SKF] Original NIBS Entry Number: 163

189 Filed & Entered: 12/14/2000

Declaration

Docket Text: Declaration of Paul M. Brent re: advertisement of sale of debtor's assets, with proof of service RE: Item# 109 [SKF] Original NIBS Entry Number: 164

190 Filed: 12/15/2000

Entered: 12/18/2000

ORDER granting/approving

Docket Text: ORDER granting/approving debtor to 1] assume and assign executory contracts to Centerspan Communications Corporation under Bankruptcy code sections 365[a], 365[f] and 365[k]; 2] sell substantially all of debtor's assets to Centerspan Communications Corporation under section 363 of the Bankruptcy code; and 3] enter into asset purchase agreement relating to the foregoing [with details], with notice of entry RE: Item# 115 [SKF] Original NIBS Entry Number: 165

191 Filed: 12/15/2000

Entered: 12/18/2000

Findings of Fact and Conclusions of Law

Docket Text: Findings of fact and conclusions of law regarding motions for order authorizing debtor to assume and assign executory contracts to Listen.com; for order authorizing debtor to 1] sell assets free and clear of liens, claims and interests; and enter into asset purchase agreement with Listen.com, with notice of entry RE: Item# 115 [SKF] Original NIBS Entry Number: 166

192 Filed: 12/15/2000

Entered: 12/18/2000

Request for special notice

Docket Text: Request for special notice filed by Karl E Block attorney for Oracle Corporation and Oracle Credit Corporation; with proof of service [KM2] Original NIBS Entry Number: 167

193 Filed: 12/15/2000

Entered: 12/18/2000

Terminated: 12/17/2002

Stipulation (Generic)

Docket Text: Stipulation re: Second Release of \$50,000.00 from Perkins Coie, LLP Trust Account to the debtor for its ordinary use filed by attorney for Scour, Inc. RE: Item# 136[Disposed] [MPM] Original NIBS Entry Number: 168

194 Filed: 12/15/2000

Entered: 12/18/2000

Status report

Docket Text: Status report on Chapter 11 case; declaration of Paul M. Brent; Hearing 1/10/01 at 10:00 a.m. RE: Item# 18 [MPM] Original NIBS Entry Number: 169

195 Filed: 12/18/2000

Entered: 12/19/2000

Terminated: 12/17/2002

Generic Motion

Docket Text: Motion of debtor-in-possession for order setting bar date to file proofs of claim or interest; declaration of Paul M. Brent; memorandum of points and authorities in support thereof, filed by Paul M. Brent, with proof of service [Disposed] [YR] Original NIBS Entry Number: 170

196 Filed: 12/18/2000

Entered: 12/19/2000

Notice

Docket Text: Notice to creditors of motion setting bar date to file proofs of claim or interest, filed by Paul M. Brent, with proof of service [YR] Original NIBS Entry Number: 171

197 Filed: 12/18/2000

Entered: 12/19/2000

Notice of hearing

Docket Text: Notice of hearing re: Official Committee of Unsecured Creditors' application for authority to employ Weinstein & Eisen as general bankruptcy counsel, filed by Aram Ordubegian, with proof of service hearing on 12/28/2000 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [YR] Original NIBS Entry Number: 172

198 Filed: 12/18/2000

Entered: 12/20/2000

Proof of service

Docket Text: Proof of service

And RE: Item# 190 [DEO] Original NIBS Entry Number: 173

199 Filed: 12/21/2000

Entered: 12/26/2000

Notice

Docket Text: Notice of filing of conflict waivers from Sony Pictures Entertainment, Inc. and the Official Committee of Unsecured Creditors; With proof of service [DEO] Original NIBS Entry Number: 174

200 Filed: 12/26/2000

Entered: 12/27/2000

Request for special notice

Docket Text: Request for special notice and Change of Address filed by Becket & Lee, LLP for American Express Travel Related Svcs Co Inc Corp Card. [REC] Original NIBS Entry Number: 175

201 Filed: 12/28/2000

Entered: 01/02/2001

Terminated: 03/05/2001

Notice of hearing

Docket Text: Notice of hearing on the first interim fee application of Steinberg, Nutter & Brent, Law Corporation, filed by Paul M Brent, Counsel for Scour, Inc., Debtor and Debtor-in-possession; with proof of service hearing on 02/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Rescheduled] [RMA] Original NIBS Entry Number: 176

202 Filed: 12/29/2000

Entered: 01/02/2001

Terminated: 02/26/2001

Generic Motion

Docket Text: Motion and notice of motion for order authorizing extension of exclusivity periods pursuant to 11 U.S.C. 1121[d]; Filed by Paul M. Brent attorney for debtor; With proof of service hearing on 01/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 177

203 Filed: 12/29/2000

Entered: 01/02/2001

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 202 [BB] Original NIBS Entry Number: 177A

204 Filed: 12/29/2000

Entered: 01/02/2001

Declaration

Docket Text: Declaration of Paul M. Brent RE: Item# 202 [BB] Original NIBS Entry Number: 177B

205 Filed: 12/29/2000

Entered: 01/03/2001

ORDER denying

Docket Text: ORDER denying debtor's application for authority to employ Perkins Coie L.L.P., as general bankruptcy counsel [with notice of entry] RE: Item# 22 [BP] Original NIBS Entry Number: 178

206 Filed: 01/05/2001

Entered: 01/08/2001

Terminated: 12/17/2002

Application to Employ

Docket Text: Application to employ Brooks, Norton & Garbowitz an accountancy corporation, nunc pro tun, accountants; Filed by Paul M. Brent attorney for debtor; With proof of service hearing on 01/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 179

207 Filed: 01/05/2001

Entered: 01/08/2001

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 206 [BB] Original NIBS Entry Number: 179A

208 Filed: 01/05/2001

Entered: 01/08/2001

Declaration

Docket Text: Declaration of Joseph A. Brooks RE: Item# 206 [BB] Original NIBS Entry Number: 179B

209 Filed: 01/05/2001

Entered: 01/08/2001

Notice of motion/application

Docket Text: Notice of motion/application With proof of service RE: Item# 206 [BB] Original NIBS Entry Number: 180

210 Filed: 01/10/2001

Entered: 01/11/2001

ORDER approving employment of professional

Docket Text: ORDER approving employment of professional Weinstein & Eisen, as General Bankruptcy Counsel; See order for further details. With Notice of Entry. RE: Item# 206 [RMA] Original NIBS Entry Number: 181 [DISPOSED] [SKF] Original NIBS Entry Number: 181

. Doc.

No. Dates Description

211 Filed: 01/12/2001

Entered: 01/16/2001

Terminated: 02/07/2001

Application to Employ

Docket Text: Application to employ Perkins Coie LLP as special counsel under 11 U.S.C. 327[e] nunc pro tunc; Filed by Steven G. F. Polard proposed special counsel to debtor hearing on 02/07/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [BB] Original NIBS Entry Number: 182

212 Filed: 01/12/2001

Entered: 01/16/2001

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 211 [BB] Original NIBS Entry Number: 182A

213 Filed: 01/12/2001

Entered: 01/16/2001

Declaration

Docket Text: Declaration of Paul M. Brent RE: Item# 211 [BB] Original NIBS Entry Number: 183

214 Filed: 01/12/2001

Entered: 01/16/2001

Declaration

Docket Text: Declaration of Craig A. Grossman RE: Item# 211 [BB] Original NIBS Entry Number: 184

215 Filed: 01/12/2001

Entered: 01/16/2001

Declaration

Docket Text: Declaration of Steven G. F. Polard RE: Item# 211 [BB] Original NIBS Entry Number: 185

216 Filed: 01/12/2001

Entered: 01/16/2001

Notice of motion/application

Docket Text: Notice of motion/application RE: Item# 211 [BB] Original NIBS Entry Number: 186

217 Filed: 01/12/2001

Entered: 01/16/2001

Notice of hearing

Docket Text: Notice of hearing re application to employ special counsel to the debtor; Filed by Paul M. Brent attorney for debtor; With proof of service hearing on 02/07/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 211 [BB] Original NIBS Entry Number: 187

218 Filed: 01/12/2001

Entered: 01/16/2001

Proof of service

Docket Text: Proof of service filed by Steven G. F. Polard RE: Item# 211 [BB] Original NIBS Entry Number: 188

219 Filed: 01/12/2001

Entered: 01/16/2001

Proof of service

Docket Text: Proof of service filed by Steven G. F. Polard RE: Item# 211 [BB]
Original NIBS Entry Number: 189
221 Filed: 01/12/2001
Entered: 01/17/2001

ORDER re:

Docket Text: ORDER re: Setting Dates Certain - 1] Debtor to file, serve and set for hearing a disclosure statement with an accompanying plan on or before May 2, 2001; 2] Debtor must obtain Court approval of a disclosure statement on or before July 2, 2001; 3] Debtor must obtain confirmation of a plan on or before September 5, 2001, with notice of entry [SKF] Original NIBS Entry Number: 191
220 Filed: 01/16/2001
Entered: 01/17/2001

Notice

Docket Text: Notice of bar date for filing proofs of claims and interest [MARCH 15, 2001], filed by Paul M Brent, Attorney for Debtor; with proof of service RE: Item# 194 [RMA] Original NIBS Entry Number: 190
222 Filed: 01/19/2001
Entered: 01/22/2001

Amendment/Amended

Docket Text: Amendment/Amended notice of all professionals of interim fee application of Steinberg, Nutter & Brent, Law Corporation, filed by Paul M Brent, Counsel for Scour, Inc., Debtor and Debtor-in-possession; with proof of service [RMA] Original NIBS Entry Number: 192
224 Filed: 01/19/2001
Entered: 01/23/2001

ORDER granting/approving

Docket Text: ORDER granting/approving proofs of claims and interests; MARCH 15, 2001. With Notice of Entry. Original NIBS Entry Number: 194
And [RMA] Original NIBS Entry Number: 194
[DISPOSED] [SKF] Original NIBS Entry Number: 194
223 Filed: 01/22/2001
Entered: 01/23/2001

Request for special notice

Docket Text: Request for special notice and change of address filed by Becket & Lee, attorneys for American Express Travel Related Services [CBK] Original NIBS Entry Number: 193
225 Filed: 01/24/2001
Entered: 01/26/2001

Document

Docket Text: Document: The copyright plaintiffs' reservation of rights re Scour, Inc.s' motion to employ Perkins Coie LLP as Special Counsel, Nunc Pro Tunc; with proof of service RE: Item# 211 [RMA] Original NIBS Entry Number: 195
226 Filed: 01/26/2001
Entered: 02/01/2001

Response

Docket Text: Response on motion for authority to employ Perkins Coie LLP Nunc Pro Tunc; filed by David R Weinstein, Attorney for Official Committee of Unsecured Creditors; with proof of service RE: Item# 211 [RMA] Original NIBS Entry Number: 196
227 Filed: 01/29/2001
Entered: 02/01/2001
Terminated: 02/23/2001

Application to Employ

Docket Text: Application to employ [Supplement] Brooks, Norton & Garbowitz, and Accountancy Corporation, Nunc Pro Tunc; filed by Paul M Brent, Attorney for debtor and debtor-in-possession; with proof of service RE: Item# 206[Disposed] [RMA] Original NIBS Entry Number: 197

228 Filed: 02/02/2001

Entered: 02/06/2001

ORDER to extend time

Docket Text: ORDER to extend time Granted to assume or reject lease of non residential real property; extended to up to and including February 9, 2001; See order; [with notice of entry] RE: Item# 156 [BP] Original NIBS Entry Number: 198

229 Filed: 02/02/2001

Entered: 02/06/2001

Terminated: 12/17/2002

Stipulation (Generic)

Docket Text: Stipulation to take off calendar the hearing on the application to employ Perkins Coie, L.L.P. as special counsel to the debtor and debtor in possession nunc pro tunc; Filed by Paul M. Brent attorney for debtor RE: Item# 156[Disposed] [BB] Original NIBS Entry Number: 199

[DISPOSED] by 199 A RE: Item# 211 [SKF] Original NIBS Entry Number: 199

230 Filed: 02/02/2001

Entered: 02/06/2001

ORDER not signed

Docket Text: ORDER not signed DENIED ther is no such thing as "taking a matter off calendar". Matters are either 1. Ruled on by Court 2. Continued by Court on proper written application to continue showing cause to cotinue or 3.

Motion/application may be withdrawn by movant RE: Item# 229 [BB] Original NIBS Entry Number: 199A

232 Filed: 02/05/2001

Entered: 02/07/2001

Terminated: 09/18/2001

Motion to reject executory contract

Docket Text: Motion to reject executory contract [and notice] pursuant to 11 U.S.C. Section 365[a] and Federal Rule of Bankruptcy Procedure 6066; filed by Paul M. Brent [Disposed] [BP] Original NIBS Entry Number: 201

233 Filed: 02/05/2001

Entered: 02/07/2001

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities RE: Item# 232 [BP] Original NIBS Entry Number: 201A

234 Filed: 02/05/2001

Entered: 02/07/2001

Declaration

Docket Text: Declaration of Craig Grossman RE: Item# 233 [BP] Original NIBS Entry Number: 201B

235 Filed: 02/05/2001

Entered: 02/07/2001

Notice

Docket Text: Notice of rescheduled hearing on application to employ Perkins Coie, L.L.P; filed by Paul M. Brent [with proof of service] RE: Item# 211 [BP] Original NIBS Entry Number: 202

231 Filed & Entered: 02/06/2001

Withdrawal of motion

Docket Text: Withdrawal of motion /application to employ Perkins Coie, L.L.P. as special counsel to the debtor and debtor in possession nunc pro tunc; Filed by Paul M. Brent attorney for debtor; With proof of service RE: Item# 211 [BB] Original NIBS Entry Number: 200

236 Filed: 02/06/2001

Entered: 02/07/2001

Withdrawal of motion

Docket Text: Withdrawal of motion [Duplicate] to employ Perkiins Coie, L.L.P. as special counsel to debtor; filed by Paul M. Brent RE: Item# 211 [BP] Original NIBS Entry Number: 203
237 Filed: 02/07/2001
Entered: 02/08/2001

Change of address

Docket Text: Change of address for debtor filed by Paul M Brent attorney for Debtor; with proof of service [KM2] Original NIBS Entry Number: 204
238 Filed: 02/09/2001
Entered: 02/14/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object Transfer from Micro Warehouse to Argo Partners, amount of \$11,496.22; Claim # 31 [RMA] Original NIBS Entry Number: 205
239 Filed: 02/16/2001
Entered: 02/20/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object Transfer of claim from Durrance Group to Argo Partners for the amount of \$13,000.00; Claim No. 18 [RMA] Original NIBS Entry Number: 206
240 Filed: 02/20/2001
Entered: 02/22/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object Transfer from Lyon & Lyon, LLP to Argo Partners, Amount \$37,502.89 and Claim No. 11 [RMA] Original NIBS Entry Number: 207

. Doc.
No. Dates Description
241 Filed: 02/22/2001
Entered: 02/23/2001

ORDER approving employment of professional

Docket Text: ORDER approving employment of professional Brooks, Norton and Garbowitz, an Accountancy Corporation. With Notice of Entry. [RMA] Original NIBS Entry Number: 208

[DISPOSED] RE: Item# 227 [SKF] Original NIBS Entry Number: 208
242 Filed: 02/22/2001
Entered: 02/26/2001

ORDER to extend time

Docket Text: ORDER to extend time of exclusivity periods pursuant to U.S.C. 1121 [d]. GRANTED. The 120-day exclusivity period is extended to and including May 2, 2001; and the 180-day exclusivity period is extended to July 2, 2001. With Notice of Entry. RE: Item# 202 [RMA] Original NIBS Entry Number: 209
243 Filed: 02/23/2001
Entered: 02/28/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object Transfer of claim from XXCAL, Inc., to Argo Partners for the amount of \$25,000.00; Claim No. 17 [RMA] Original NIBS Entry Number: 210
244 Filed: 03/01/2001

Entered: 03/02/2001

Notice

Docket Text: Notice of Weinstein & Eisen's new billing rates, filed by David R Weinstein, Attorney for Official Committee of Unsecured Creditors with declaration of service [RMA] Original NIBS Entry Number: 211

245 Filed: 03/01/2001

Entered: 03/05/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on Interim Fee Application of Steinberg, Nutter, & Brent; filed by Paul M Brent, Counsel for Scour, Inc., Debtor and Debtor-in-Possession; with proof of service postponed to 03/28/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 201 [RMA] Original NIBS Entry Number: 212

246 Filed: 03/02/2001

Entered: 03/05/2001

Terminated: 04/10/2001

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [FIRST INTERIM] of Weinstein & Eisen, attorney for the Official Committee of unsecured creditors, filed by Aram Ordubegian, with proof of service hearing on 03/28/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 213

247 Filed: 03/02/2001

Entered: 03/05/2001

Declaration

Docket Text: Declaration of aram Ordubegian RE: Item# 246 [SKF] Original NIBS Entry Number: 213A

248 Filed: 03/02/2001

Entered: 03/05/2001

Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses FIRST INTERIM; Filed by Paul Brent attorney for debtor for Brooks, Norton & Garbowitz accountants for Chapter 11 debtor for the period 10-12-00 through 2-26-01; declaration of Joseph C. Brooks; proof of service hearing on 03/28/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 214

249 Filed: 03/02/2001

Entered: 03/05/2001

Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses FIRST INTERIM; Filed by Paul M. Brent attorney for debtor for Steinberg, Nutter & Brent Law Corporation, counsel for Chapter 11 debtor, for allowance of compensation and reimbursement of expenses; declaration of Paul Brent; proof of service; period November 2000 through 2-27-01 hearing on 03/28/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 215

250 Filed: 03/02/2001

Entered: 03/05/2001

Notice of hearing

Docket Text: Notice of hearing on First Interim application for fees of Steinberg, Nutter & Brent, Law Corporation; Weinstein & Eisen; and Brooks, Norton & Garbowitz; with proof of service hearing on 03/28/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 249 [BB] Original NIBS Entry Number: 216

251 Filed: 03/08/2001

Entered: 03/12/2001

Declaration

Docket Text: Declaration of Craig Grossman in support of First Interim application of Brooks, Norton & Garbowitz; filed by Paul M Brent, Attorney for debtor; with proof of service RE: Item# 248 [RMA] Original NIBS Entry Number: 217

252 Filed: 03/08/2001

Entered: 03/12/2001

Declaration

Docket Text: Declaration of Craig Grossman in support of First Interim application of Steinberg, Nutter & Brent; filed by Paul M Brent, Attorney for Debtor; with proof of service RE: Item# 249 [RMA] Original NIBS Entry Number: 218

253 Filed: 03/09/2001

Entered: 03/12/2001

Declaration

Docket Text: Declaration of William A Rudick re first interim application for compensation by General Bankruptcy Counsel for Official Committee of Unsecured Creditors; filed by Aram Ordubegian, Attorney for Official Committee of Unsecured Creditors; with declaration of service RE: Item# 246 [RMA] Original NIBS Entry Number: 219

254 Filed: 03/09/2001

Entered: 03/12/2001

Document

Docket Text: Document: Proof of interest, filed by Michael J Crum, CFP on behalf of James Umphryes; with proof of service [RMA] Original NIBS Entry Number: 220

255 Filed: 03/15/2001

Entered: 03/20/2001

Objection

Docket Text: Objection to the First Interim Fee Application of Weinstein & Eisen; filed by Dare Law, Attorney for the U. S. Trustee; with proof of service RE: Item# 246 [RMA] Original NIBS Entry Number: 221

256 Filed: 03/19/2001

Entered: 03/21/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e) (2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object Transfer from Donahue, Messereau, et al to Argo Partners, amount \$4,113.90 [claim not filed] [RMA] Original NIBS Entry Number: 222

257 Filed: 03/21/2001

Entered: 03/22/2001

Reply

Docket Text: Reply of Weinstein & Eisen to United States Trustee's objections to the First Interim application for compensation by General Bankruptcy Counsel for Official Committee of Unsecured Creditors; filed by Aram Ordubegian, Attorney for Official Committee of Unsecured Creditors; with proof of service RE: Item# 255 [RMA] Original NIBS Entry Number: 223

258 Filed: 03/23/2001

Entered: 03/27/2001

Terminated: 05/25/2001

Motion to Sell

Docket Text: Motion to sell personal property free and clear of liens and encumbrances; Filed by Paul M. Brent attorney for debtor; memorandum of points and authorities; declaration of Craig Grossman; with proof of service hearing on

04/17/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 224

259 Filed: 03/23/2001

Entered: 03/27/2001

Notice of hearing

Docket Text: Notice of hearing filed by Paul M. Brent; with proof of service hearing on 04/17/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 258 [BB] Original NIBS Entry Number: 225

260 Filed: 03/23/2001

Entered: 03/27/2001

Terminated: 05/09/2001

Generic Motion

Docket Text: Motion by debtor for order authorizing debtor to change its name from Scour Inc. to Apartment 433 Technologies, Inc. and to amend caption to reflect name change; Filed by Paul M. Brent attorney for debtor; memorandum of points and authorities; with proof of service hearing on 04/17/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 226

261 Filed: 03/23/2001

Entered: 03/27/2001

Notice of hearing

Docket Text: Notice of hearing filed by Paul M. Brent; with proof of service hearing on 04/17/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 260 [BB] Original NIBS Entry Number: 227

262 Filed: 03/28/2001

Entered: 03/29/2001

Document

Docket Text: Document: Redlined changes to asset purchase agreement; filed by Paul M Brent, Attorney for debtor; with proof of service [RMA] Original NIBS Entry Number: 228

263 Filed: 03/29/2001

Entered: 03/30/2001

Terminated: 04/23/2001

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses break-up fee for Listen.com; Filed by Hill Blackett III attorney for Listen.com; hearing on 04/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BB] Original NIBS Entry Number: 229

264 Filed: 03/29/2001

Entered: 03/30/2001

Notice of hearing

Docket Text: Notice of hearing filed by Hill Blackett III hearing on 04/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 263 [BB] Original NIBS Entry Number: 230

265 Filed: 03/29/2001

Entered: 03/30/2001

Proof of service

Docket Text: Proof of service filed by Hill Blackett III RE: Item# 263 [BB] Original NIBS Entry Number: 231

266 Filed: 03/29/2001

Entered: 03/30/2001

Declaration

Docket Text: Declaration of Hill Blackett III RE: Item# 263 [BB] Original NIBS Entry Number: 232

267 Filed: 03/29/2001

Entered: 03/30/2001

Declaration

Docket Text: Declaration of Robert B. Dellenbach RE: Item# 263 [BB] Original
NIBS Entry Number: 233
268 Filed: 04/02/2001
Entered: 04/05/2001

Comments

Docket Text: Comments to Debtor's motion for order authorizing Debtor to change it name from Scour, Inc. to Apartment 433 Technologies, Inc., and to amend caption to reflect name change; filed by Aram Ordubegian, Attorney for Official Committee of Unsecured Creditors; with declaration of service RE: Item# 260 [RMA] Original NIBS Entry Number: 234
269 Filed: 04/03/2001
Entered: 04/05/2001

Objection

Docket Text: Objection [limited] to motion of debtor for order authorizing the sale of personal property free and clear of liens and encumbrances; filed by Robert G Loewy, Attorney for Time Warner Plaintiffs; Kevin T Baine, Attorney for The Studio and Music Recording Plaintiffs; and Andrew Rosenberg, Attorney for The Music Publishing Plaintiffs; with proof of service RE: Item# 258 [RMA] Original NIBS Entry Number: 235
270 Filed: 04/05/2001
Entered: 04/09/2001
Terminated: 12/17/2002

Motion to reject executory contract

Docket Text: Motion to reject executory contract filed by Paul M Brent, Counsel for Scour, Inc., Debtor and Debtor-in-Possession; with memorandum of points and authorities; declaration of Craig Grossman; proof of service RE: Item# 258[Disposed] [RMA] Original NIBS Entry Number: 236
[DISPOSED] by #282 [SKF] Original NIBS Entry Number: 236
. Doc.

No. Dates Description
271 Filed: 04/05/2001
Entered: 04/09/2001

Declaration

Docket Text: Declaration of Linda T Bowen re: compliance with Local Rule 9013-7 [a] with respect to uncontested motion for order authorizing debtor to reject executory contracts; with proof of service RE: Item# 270 [RMA] Original NIBS Entry Number: 237
272 Filed: 04/06/2001
Entered: 04/10/2001

ORDER re: application for fees, expenses or compensation

Docket Text: ORDER re: application for fees, expenses or compensation tter & Brent fees: \$166,182.25 and expenses: \$5,674.18 for a total of \$171,856,41; Brooks, Norton & Garbowitz fees: \$8,514.50 expenses: \$17.00 for a total of \$8,531.50; Weinstein & Eisen fees: \$35,813.75 and expenses: 6,156.95 for a total of \$41,970.70; With Notice of Entry.

[DISPOSED]
[DISPOSED] RE: Item# 246 [RMA] Original NIBS Entry Number: 238
273 Filed: 04/13/2001
Entered: 04/16/2001

ORDER not signed

Docket Text: ORDER not signed re motion for orde authorizing debtor to reject executory contracts pursuant to 11 U.S.C. 365[a] and Federal Rule of Bankruptcy Procedure 6066; Court needs more evidence before it can Grant rejection. Court needs supplemental declaration attaching and authenticating each contract sought to be rejected so Court can read same and assure itself that the contracts sought to be rejected are executory contracts or unexpired leases to which 365 applies. File and serve on each contracting party the supplemental declaration.

Plus Court will need a new proposed order that reflects to "motion and supplemental declaration with contracts" RE: Item# 232 [BB] Original NIBS Entry Number: 239

274 Filed: 04/16/2001

Entered: 04/18/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 Transfer of claim from SXSW SALES TO LIQUIDITY SOLUTIONS, INC., amount \$1,275.00 [claim not filed] [RMA] Original NIBS Entry Number: 240

275 Filed: 04/16/2001

Entered: 04/18/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 Transfer of claim from Direct Sales, Inc., to Liquidity Solutions, Inc., amount \$17,936.07 [claim not filed] [RMA] Original NIBS Entry Number: 241

276 Filed: 04/16/2001

Entered: 04/18/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 Transfer of claim from Systematic Office Supp. to Liquidity Solutions, Inc., amount \$3,209.38; claim number 80 [RMA] Original NIBS Entry Number: 242

288 Filed: 04/18/2001

Entered: 04/27/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e) (2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object from Boylston Group to Argo Partners [A proof of claim has not been filed in the proceeding] [SKF] Original NIBS Entry Number: 254

277 Filed: 04/20/2001

Entered: 04/23/2001

Declaration

Docket Text: Declaration of Paul M. Brent re: request that the Court grant the application of Listen.com, Inc., for payment of breakup fee without necessity for hearing with proof of service, filed by Paul M. Brent, attorney for Scour, Inc. RE: Item# 263 [SF] Original NIBS Entry Number: 243

278 Filed: 04/20/2001

Entered: 04/23/2001

Terminated: 04/24/2001

Ex parte application

Docket Text: Ex parte application for order authorizing filing of motion under seal [Local Bankruptcy Rule 5003-2[4][a]] limiting notice and setting hearing on motion; declaration of Paul M. Brent; declaration of Craig A. Grossman; with proof of service, filed by Paul M. Brent, attorney for Scour, Inc. [Disposed] [SF] Original NIBS Entry Number: 244

279 Filed: 04/20/2001

Entered: 04/23/2001

ORDER granting/approving

Docket Text: ORDER granting/approving allowing application of Listen.com Inc. for payment of break-up fee; with notice of entry of judgment or order and certificate of service RE: Item# 263 [BB] Original NIBS Entry Number: 245

280 Filed: 04/20/2001

Entered: 04/24/2001

ORDER granting/approving

Docket Text: ORDER granting/approving exparte application authorizing filing of motion under seal and setting hearing: Hearing set for 4-25-01 at 11:00 a.m.

in courtroom 1468; See order for other details [with notice of entry] RE: Item# 278 [BP] Original NIBS Entry Number: 246

282 Filed: 04/23/2001

Entered: 04/25/2001

Terminated: 10/21/2002

Motion to reject executory contract

Docket Text: Motion to reject executory contract [and notice] [ORACLE], pursuant to 11 U.S.C. Section 365[a] and Federal Rule of Bankruptcy Procedure 6066; declaration of Craig Grossman; filed by Paul M. Brent [with proof of service] [Disposed] [BP] Original NIBS Entry Number: 248

281 Filed: 04/24/2001

Entered: 04/25/2001

Request for special notice

Docket Text: Request for special notice filed by Heidrick & Struggles with supporting affidavit [CBK] Original NIBS Entry Number: 247

283 Filed: 04/24/2001

Entered: 04/25/2001

Notice of hearing

Docket Text: Notice of hearing on shortened time on debtor's motion under seal; filed by Paul M. Brent hearing on 04/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 278 [BP] Original NIBS Entry Number: 249

284 Filed: 04/24/2001

Entered: 04/25/2001

Declaration

Docket Text: Declaration of telephonic and facsimile notice of hearing on debtor's motion under seal; filed by Paul M. Brent RE: Item# 278 [BP] Original NIBS Entry Number: 250

285 Filed: 04/24/2001

Entered: 04/27/2001

Notice of continued hearing

Docket Text: Notice of continued hearing filed by Paul M. Brent, with proof of service postponed to 05/09/2001 at 10:00 a.m. at 255 E. Temple St., Courtroom 1668, Los Angeles, CA 90012 RE: Item# 258 [SS] Original NIBS Entry Number: 251

286 Filed: 04/24/2001

Entered: 04/27/2001

Declaration

Docket Text: Declaration of Paul M. Brent in support of debtor's motion for order authorizing sale of personal property free and clear of liens and encumbrances RE: Item# 258 [SS] Original NIBS Entry Number: 252

287 Filed & Entered: 04/27/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 From: Brook Furniture Rental To: Liquidity Solutions, Inc., amount \$72,892.84 [BP] Original NIBS Entry Number: 253

289 Filed: 04/27/2001

Entered: 05/01/2001

Withdrawal re:

Docket Text: Withdrawal re: transfer of claim from: Systematic Office Supply to Liquidity Solutions, Inc. ; filed by Robert K. Minkoff RE: Item# 276 [BP] Original NIBS Entry Number: 255

295 Filed: 04/30/2001

Entered: 05/04/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e) (2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object From: Music Vision, Inc. To:

Liquidity Solutions, Inc. Amount of \$10,000.00 [BP] Original NIBS Entry Number: 261

296 Filed: 04/30/2001

Entered: 05/04/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object From: TMVM, Inc., To: Liuidity Solutions, Inc. Amout of \$20,000.00 [BP] Original NIBS Entry Number: 262

290 Filed: 05/02/2001

Entered: 05/03/2001

Notice of hearing

Docket Text: Notice of hearing on debtor's disclosure statement describing plan of reorganization; filed by Paul M. Brent [with proof of service] hearing on 06/26/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 221[Rescheduled] [BP] Original NIBS Entry Number: 256

291 Filed: 05/02/2001

Entered: 05/03/2001

Notice of hearing

Docket Text: Notice of hearing on motion of debtor for order approving compromise and settlemental of claims; filed by Paul M. Brent [with proof of service] hearing on 05/30/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [BP] Original NIBS Entry Number: 257

292 Filed: 05/02/2001

Entered: 05/03/2001

Terminated: 12/17/2002

Disclosure Statement

Docket Text: Disclosure statement FIRST; Filed by Paul M. Brent attorney for debtor hearing on 06/26/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Rescheduled] [BB] Original NIBS Entry Number: 258

293 Filed: 05/02/2001

Entered: 05/03/2001

Terminated: 12/17/2002

Plan of reorganization

Docket Text: Plan of reorganization FIRST; Filed by Paul M. Brent attorney for debtor; with proof of service hearing on 06/26/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 292[Disposed] [BB] Original NIBS Entry Number: 259

294 Filed: 05/02/2001

Entered: 05/03/2001

Notice of motion/application

Docket Text: Notice of motion/application RE: Item# 292 [BB] Original NIBS Entry Number: 260

297 Filed: 05/02/2001

Entered: 05/04/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object From: Maple Plaza Parking To: Argo Partners amount of \$8,385.00 [BP] Original NIBS Entry Number: 263

298 Filed: 05/02/2001

Entered: 05/04/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object From: Brockway Standard Inc., To:Argo Partners amount \$115,287.19 [BP] Original NIBS Entry Number: 264

299 Filed: 05/04/2001
Entered: 05/07/2001
Terminated: 10/12/2001

Motion to approve compromise

Docket Text: Motion to approve compromise and notice of motion of claims between debtor and Bartlit, Beck, et. al.; declaration of Craig Grossman; Filed by Paul M. Brent attorney for debtor; with memorandum of points and authorities; with proof of service hearing on 05/30/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [BB] Original NIBS Entry Number: 265

300 Filed: 05/04/2001
Entered: 05/08/2001

ORDER granting/approving

Docket Text: ORDER granting/approving Motion under seal [see order for further details] [RMA] Original NIBS Entry Number: 266

. Doc.

No. Dates Description
301 Filed: 05/04/2001
Entered: 05/09/2001

ORDER re:

Docket Text: ORDER re: Motion for order authorizing debtor to change its name from Scour, Inc., to Apartment 433 Technologies Inc., only if debtor files applicable state law and only if state law allows change; and denying portion of motion seeking to delete name Scour from bankruptcy petition. With Notice of Entry. RE: Item# 260 [RMA] Original NIBS Entry Number: 267

302 Filed: 05/08/2001
Entered: 05/10/2001

Opposition

Docket Text: Opposition [limited] to motion for order authorizing debtor to reject executory contract [Oracle]; filed by Karl E Block, Attorney for Oracle Corporation; with proof of service RE: Item# 282 [RMA] Original NIBS Entry Number: 268

303 Filed: 05/10/2001
Entered: 05/16/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 Transfer claim from Cardinal Equipment Co to Liquidity Solutions, Inc., amount \$4,850.00 [claim was not filed] [RMA] Original NIBS Entry Number: 269

304 Filed: 05/10/2001
Entered: 05/16/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 Transfer of claim from MP3.COM to Liquidity Solutions, Inc., amount of \$23,448.00, claim No. 66 [RMA] Original NIBS Entry Number: 270

305 Filed: 05/14/2001
Entered: 05/16/2001

Notice

Docket Text: Notice of Firm Name Change. Filed by Aram Ordubegian, attorney for Official Committee of Unsecured Creditors, with signed proof of service. Law firm of Weinstein, Eisen & Levine has changed its name to WEINSTEIN, EISEN & WEISS. [REC] Original NIBS Entry Number: 271

306 Filed: 05/16/2001
Entered: 05/17/2001

Declaration

Docket Text: Declaration of Linda T Bowen re: compliance with Local Rule 9013-7 [a] with respect to uncontested motion for order authorizing debtor to reject

executory contracts; with proof of service RE: Item# 270 [RMA] Original NIBS Entry Number: 272

307 Filed: 05/22/2001

Entered: 05/23/2001

Request re: (mapping)

Docket Text: Request re: Removal of Name from Service List and for Further Notices filed by Hill Blackett, III., attorney for Listen.Com, Inc with proof of service [CBK] Original NIBS Entry Number: 273

308 Filed: 05/23/2001

Entered: 05/24/2001

Response

Docket Text: Response to Oracle Corporation's limited opposition to motion for order authorizing debtor to reject executory contract [Oracle]; declaration and filed by Paul M Brent, Counsel for debtor; with proof of service RE: Item# 302 [RMA] Original NIBS Entry Number: 274

309 Filed: 05/23/2001

Entered: 05/24/2001

Notice of hearing

Docket Text: Notice of hearing filed by Paul M Brent, Attorney for debtor; with proof of service hearing on 06/05/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 302 [RMA] Original NIBS Entry Number: 275

310 Filed: 05/23/2001

Entered: 05/24/2001

Supplemental (Generic)

Docket Text: Supplemental declaration of Craig Grossman in support of motion for order authorizing debtor to reject executory contracts [IX2 Networks, LLC, and Quest Business Services]; with proof of service RE: Item# 234 [RMA] Original NIBS Entry Number: 276

311 Filed: 05/24/2001

Entered: 05/25/2001

ORDER granting/approving

Docket Text: ORDER granting/approving Debtor's motion to sell personal property. [See order for further details]. With Notice of Entry. RE: Item# 258 [RMA] Original NIBS Entry Number: 277

312 Filed: 05/24/2001

Entered: 05/29/2001

Supplemental (Generic)

Docket Text: Supplemental regarding rejection Oracle Contract with proof of service, filed by Paul M. Brent, attorney for Scour, Inc. RE: Item# 282 [SF] Original NIBS Entry Number: 278

315 Filed: 05/24/2001

Entered: 05/30/2001

Terminated: 06/25/2001

ORDER to continue/reschedule hearing

Docket Text: ORDER to continue/reschedule hearing tor for order approving compromise and settlement of claims between debtor and Bartlit, Beck, et al - GRANTED. With Notice of Entry. [Rescheduled] Original NIBS Entry Number: 281 Notice of continued hearing postponed to 06/26/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [RMA] Original NIBS Entry Number: 281

316 Filed: 05/24/2001

Entered: 05/30/2001

ORDER not signed

Docket Text: ORDER not signed for motion for order authorizing debtor to reject executory contracts pursuant to 11 U.S.C. 365[a] and Federal Rule of

Bankruptcy Porcedure 6066 [See order for details]. [RMA] Original NIBS Entry Number: 282

313 Filed: 05/25/2001

Entered: 05/29/2001

Terminated: 07/02/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on motion of debtor for order approving compromise and settlement of claims with proof of service; filed by Paul M. Brent, attorney for Scour, Inc.; continued hearing postponed to 06/26/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1668, Los Angeles, CA 90012 RE: Item# 299[Rescheduled] [SF] Original NIBS Entry Number: 279

314 Filed: 05/25/2001

Entered: 05/29/2001

Notice of hearing

Docket Text: Notice of hearing to all professionals of second interim fee application of Steinberg, Nutter & Brent, Law Corporation with proof of service, filed by Paul M. Brent, attorney for Scour, Inc. hearing on 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [SF] Original NIBS Entry Number: 280

317 Filed: 05/29/2001

Entered: 05/31/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 Transfer of claim from Cort Furniture Rental to Argo Partners; amount of \$1,780.00 [claim was not filed] [RMA] Original NIBS Entry Number: 283

318 Filed: 06/01/2001

Entered: 06/05/2001

Terminated: 12/17/2002

Objection to Claim

Docket Text: Objection to claim [and notice] to disallow transferred claims; memorandum of points and authorities; declaration of Craig Grossman [Group One] filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 07/03/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [SKF] Original NIBS Entry Number: 284

319 Filed: 06/08/2001

Entered: 06/11/2001

Terminated: 12/17/2002

Generic Motion

Docket Text: Motion [and notice] to disallow duplicative claims; memorandum of points and authorities; declaration of Craig Grossman [Group Two], filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 07/10/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 285

320 Filed: 06/08/2001

Entered: 06/11/2001

Terminated: 08/13/2001

Generic Motion

Docket Text: Motion [and notice] for order approving settlement agreement and mutual release of claims between the debtor and copyright plaintiffs and Allied Trade Association; memorandum of points and authorities; declaration of Craig Grossman; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 07/03/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 286

321 Filed: 06/08/2001

Entered: 06/11/2001

Notice of motion/application

Docket Text: Notice of motion/application filed by Paul M. Brent, attorney for debtor, with proof of service RE: Item# 320 [SKF] Original NIBS Entry Number: 287

322 Filed: 06/18/2001

Entered: 06/19/2001

Terminated: 07/02/2001

Application of non-resident attorney to appear in a specific case per Local Bankruptcy rule

Docket Text: Application of non-resident attorney to appear in a specific case per Local Bankruptcy rule filed by Thomas G. Hentoff [Disposed] [MPM] Original NIBS Entry Number: 288

323 Filed: 06/18/2001

Entered: 06/19/2001

Notice of transfer of claim pursuant to bankruptcy rule 3001(e)4

Docket Text: Notice of transfer of claim pursuant to bankruptcy rule 3001[e]4 Transfer of claim from Flycast Communications to Liquidity Solutions, Inc., amount \$15,996.00 [claim not filed] [RMA] Original NIBS Entry Number: 289

324 Filed & Entered: 06/20/2001

Notice

Docket Text: Notice lodging of settlement agreement and mutual release by and between Copyright Plaintiff's and debtor; filed by Paul M Brent, Attorney for debtor and debtor-in-possession; with proof of service RE: Item# 320 [RMA] Original NIBS Entry Number: 290

325 Filed: 06/24/2001

Entered: 06/25/2001

Application and ORDER rescheduling hearing -GRANTED

Docket Text: Application and ORDER rescheduling hearing - GRANTED filed by Paul M Brent, Counsel for debtor. With Notice of Entry. postponed to 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 315 [RMA] Original NIBS Entry Number: 291

326 Filed: 06/24/2001

Entered: 06/25/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon [Joint] of Official Committee of Creditors holding unsecured claims and the debtor re: conversion of hearing on debtor's disclosure statement to status conference; GRANTED, with notice of entry. [RMA] Original NIBS Entry Number: 292

328 Filed: 06/24/2001

Entered: 06/26/2001

ORDER not signed

Docket Text: ORDER not signed NOT THE CORRECT ORDER [See order for further details]. RE: Item# 299 [RMA] Original NIBS Entry Number: 294

327 Filed: 06/25/2001

Entered: 06/26/2001

Comments

Docket Text: Comments to debtor's disclosure statement; filed by Ron Maroko, Trial Attorney; with declaration of service RE: Item# 292 [RMA] Original NIBS Entry Number: 293

329 Filed: 06/26/2001

Entered: 06/27/2001

Terminated: 06/29/2001

Motion for Examination

Docket Text: Motion/Application for examination under 2004 of "person most knowledgeable" at Centerspan Communications Corporation, filed by Paul M. Brent, attorney for debtor, with proof of service [Disposed] [SKF] Original NIBS Entry Number: 295

331 Filed: 06/27/2001

Entered: 06/28/2001

ORDER re:

Docket Text: ORDER re: Debtor's motion for order authorizing debtor to reject executory contracts pursuant to 11 U.S.C. 365 [a] and Federal Rule of Bankruptcy Procedure 6066 [IX2 Networks, LLC and Quest Business Networks] The Court cannot sign the amended order approving motion for order authorizing debtor to reject executory contracts pursuant to 11 U.S.C. 365 [a] and Federal Rule of Bankruptcy Procedure 6066 lodged May 31, 2001 until the Court receives an authenticated copy of the Quest Contracts. With Notice of Entry. [RMA] Original NIBS Entry Number: 296

. Doc.

No. Dates Description

330 Filed: 06/28/2001

Entered: 06/29/2001

Order on Motion for Examination

Docket Text: ORDER for examination under 2004 GRANTED, with notice of entry [Centerspan Communications Corporation's "person most knowledgeable" is to appear on July 27, 2001 at 10:00 a.m., at the offices of Steinberg, Nutter & Brent, at 501 Colorado Avenue, Suite 300, Santa Monica] RE: Item# 329 [SKF] Original NIBS Entry Number: 295A

333 Filed: 06/28/2001

Entered: 07/02/2001

Notice of continued hearing

Docket Text: Notice of continued hearing filed by Paul M Brent, Counsel for debtor; with proof of service postponed to 07/31/2001 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 313 [RMA] Original NIBS Entry Number: 298

332 Filed: 06/29/2001

Entered: 07/02/2001

ORDER on application of non-resident attorney to appear in a specific case per Local Bankruptcy rule

Docket Text: ORDER on application of non-resident attorney to appear in a specific case per Local Bankruptcy rule GRANTED; Thomas G Hentoff. With Notice of Entry. RE: Item# 322 [RMA] Original NIBS Entry Number: 297

334 Filed: 06/29/2001

Entered: 07/02/2001

Terminated: 10/01/2001

Objection to Claim

Docket Text: Objection to claim [GROUP 3]; memorandum of points and authorities; declaration of Craig Grossman; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [SKF] Original NIBS Entry Number: 299

335 Filed: 06/29/2001

Entered: 07/02/2001

Terminated: 08/17/2001

Generic Motion

Docket Text: Motion [and notice] for order authorizing extension of exclusivity period pursuant to 11 U.S.C. section 1121[d]; memorandum of points and authorities; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 08/01/2001 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [SKF] Original NIBS Entry Number: 300

336 Filed: 07/05/2001

Entered: 07/06/2001

Terminated: 07/06/2001

Declaration

Docket Text: Declaration of service by mail re: motion to disallow claims [Group One]; filed by Scott W Simpson, declarant; with proof of service RE: Item# 333[Rescheduled] [RMA] Original NIBS Entry Number: 301
337 Filed: 07/05/2001
Entered: 07/06/2001
Terminated: 07/18/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on motion to disallow claims [Group One]; filed by Paul M Brent, Counsel for debtor; with proof of service postponed to 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 336[Rescheduled] [RMA] Original NIBS Entry Number: 302
338 Filed: 07/06/2001
Entered: 07/09/2001
Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses of PERKINS COIE, LLP special counsel for Chapter 11 debtor; declaration of Steven G.F. Polard; filed by Steven G.F. Polard, proposed special counsel for debtor hearing on 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 336[Disposed] Original NIBS Entry Number: 303 [DISPOSED] by item #399 [SKF] Original NIBS Entry Number: 303
339 Filed: 07/06/2001
Entered: 07/09/2001
Terminated: 08/14/2001

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses SECOND INTERIM of general bankruptcy counsel for creditor committee,; declaration of Aram Ordubegian, filed by Aram Ordubegian, attorney for creditor committee, with proof of service hearing on 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 304
340 Filed: 07/06/2001
Entered: 07/09/2001
Terminated: 07/24/2001

Application to Employ

Docket Text: Application to employ Perkins Coie, LLP as special counsel nunc pro tunc; memorandum of points and authorities; filed by Steven G.F. Polard, proposed special counsel for debtor hearing on 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 305
341 Filed: 07/06/2001
Entered: 07/09/2001

Declaration

Docket Text: Declaration of Steven G.F. Polard RE: Item# 340 [SKF] Original NIBS Entry Number: 306
342 Filed: 07/06/2001
Entered: 07/09/2001

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities field by Steven G.F. Polard, proposed attorney for debtor RE: Item# 340 [SKF] Original NIBS Entry Number: 307
343 Filed: 07/06/2001
Entered: 07/09/2001

Declaration

Docket Text: Declaration of Craig A. Grossman RE: Item# 340 [SKF] Original NIBS Entry Number: 308
344 Filed: 07/06/2001
Entered: 07/09/2001

Declaration

Docket Text: Declaration of Paul M. Brent RE: Item# 340 [SKF] Original NIBS Entry Number: 309
345 Filed: 07/06/2001
Entered: 07/09/2001

Notice of motion/application

Docket Text: Notice of motion/application for authority to employ Perkis Coie, filed by Steven G.F. Polard, proposed special counsel for debtor RE: Item# 340 [SKF] Original NIBS Entry Number: 310
346 Filed: 07/06/2001
Entered: 07/09/2001

Proof of service

Docket Text: Proof of service filed by Miriam Bartlett RE: Item# 340 [SKF] Original NIBS Entry Number: 311
347 Filed: 07/06/2001
Entered: 07/10/2001
Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [SECOND INTERIM] of Brooks, Norton & Garbowitz, accountants for Chapter 11 debtor; declarations of Joseph C. Brooks and Craig Grossman, filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 312

348 Filed: 07/06/2001
Entered: 07/10/2001
Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [SECOND INTERIM] of Steinberg, Nutter & Brent, Law Corporation, counsel for chapter 11 debtor; declaration of Paul M. Brent; declaration of Craig Grossman, filed by Paul M. Brent, attorney for debtor with proof of service hearing on 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 313

349 Filed: 07/10/2001
Entered: 07/11/2001

Notice of continued hearing

Docket Text: Notice of continued hearing filed by Paul M Brent, Counsel for debtor; with proof of service postponed to 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 320 [RMA] Original NIBS Entry Number: 314

350 Filed: 07/12/2001
Entered: 07/13/2001

Opposition

Docket Text: Opposition to debtor's and debtor in possession's motion to disallow claims [Group 3]; filed by David L Margulies, Attorney for Creditor Opptree, Inc., formerly known as Poemation Recruiting and Roger; with memorandum of points and authorities; declaration of Roger Blonder and proof of service [RMA] Original NIBS Entry Number: 315

351 Filed: 07/12/2001
Entered: 07/13/2001

Change of address

Docket Text: Change of address for creditor Amplified Holding, Inc filed by Checkout.Com [KM2] Original NIBS Entry Number: 316

352 Filed: 07/13/2001
Entered: 07/16/2001

Opposition

Docket Text: Opposition to debtor's motion for order approving compromise and settlement of claims between the debtor and Bartlit Beck, et al; declaration of Aram Ordubegian; filed by Aram Ordubegian, attorney for creditor's committee, with proof of service [SKF] Original NIBS Entry Number: 317

353 Filed: 07/13/2001

Entered: 07/16/2001

Declaration

Docket Text: Declaration of service by mail; filed by Scott W. Simpson RE: Item# 348 [SKF] Original NIBS Entry Number: 318

354 Filed: 07/13/2001

Entered: 07/16/2001

Declaration

Docket Text: Declaration of service by mail, filed by Scott W. Simpson RE: Item# 320 [SKF] Original NIBS Entry Number: 319

355 Filed: 07/13/2001

Entered: 07/17/2001

ORDER to continue/reschedule hearing

Docket Text: ORDER to continue/reschedule hearing debtor's Disclosure Statement and to extend the deadline for debtor to file its amended disclosure statement in support of amended plan of reorganization to 8-8-2001; GRANTED. With Notice of Entry. RE: Item# 320 Original NIBS Entry Number: 320

Notice of continued hearing postponed to 09/11/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [RMA] Original NIBS Entry Number: 320

356 Filed: 07/13/2001

Entered: 07/18/2001

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] filed by Account Pros; claim #44, filed by Cort Furniture; claim # 29, filed by Direct Sales; claim #79, filed by Donahue, Messereau; claim # 18, filed by Durrance Group; claim # 59, filed by Entertainment Boulevard; claims # 11 and 36, filed by Lyon & Lyon; claim #66, filed by MP3.com; claim #20, filed by Ogilvy Publication; claim # 80, filed by Systematic Office Supplies; claim # 17, filed by XXCal, Inc., [no proof of claim filed] by Cardinal Equipment; Maple Plaza Parking, Network Appliance, Inc., and SXS Sales; with notice of entry. [Rescheduled] Original NIBS Entry Number: 321 Notice of continued hearing for debtor's objection to claims: Claim # 31, filed by Microwarehouse and claim filed by Boylston Group [no proof of claim filed] postponed to 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [RMA] Original NIBS Entry Number: 321

358 Filed: 07/16/2001

Entered: 07/19/2001

UNDER SEALED DOCUMENTS

Docket Text: UNDER SEALED DOCUMENTS title of document: Debtor's motion for order authorizing debtor to sell or dispose of the assets of the Estate [Centerspan Stock] pursuant to 11 U.S.C. section 363[b]; declaration of Craig Grossman [SKF] Original NIBS Entry Number: 323

357 Filed: 07/17/2001

Entered: 07/18/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on motion to disallow claims [group two]; filed by Paul M Brent, Counsel for debtor; with proof of service postponed to 08/07/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 337 [RMA] Original NIBS Entry Number: 322

359 Filed: 07/18/2001

Entered: 07/20/2001

Declaration

Docket Text: Declaration of Linda T Bowen re: duplicate proofs of claims of Pacific Bell; with proof of service [RMA] Original NIBS Entry Number: 324
360 Filed: 07/20/2001
Entered: 07/23/2001
Terminated: 10/09/2001

Objection to Claim

Docket Text: Objection to claim /motion to disallow claims [and notice][GROUP 4], re claim numbers 53,84,59,80,81,11,17,18,31,54,79, [no number - Maple Parking Transferor],66, [no number - SWSW Sales - transferor], 29, [no number - Cardinal Equipment Company - Transferor], 44, [no number - Flycast - transferor]; memorandum of points and authorities; declaration of Craig Grossman; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 08/21/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 325

. Doc.

No. Dates Description

361 Filed: 07/20/2001
Entered: 07/24/2001

Amendment/Amended

Docket Text: Amendment/Amended to caption of Bankruptcy Petition to reflect name change of chapter 11 debtor from "SCOUR, INC., A DELAWARE CORPORATION." TO "SCOUR, INC., now known as APARTMENT 433 TECHNOLOGIES, INC."; filed by Paul Brent, Attorney for Debtor; with proof of service RE: Item# 1 [RMA] Original NIBS Entry Number: 326

362 Filed: 07/20/2001
Entered: 07/24/2001

Notice

Docket Text: Notice of amendment to caption of Bankruptcy Petition to reflect name change; filed by Paul M Brent, Attorney for debtor; with proof of service RE: Item# 361 [RMA] Original NIBS Entry Number: 327

363 Filed & Entered: 07/24/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon hearings on the application to employ Perkins Coie, L.L.P. as special counsel to the debtor and debtor and debtor-in-possession NUNC PRO TUNC and its application for fees; with notice of entry RE: Item# 361[Rescheduled] Original NIBS Entry Number: 328

Notice of continued hearing postponed to 10/03/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 340 [NV] Original NIBS Entry Number: 328

364 Filed: 07/26/2001
Entered: 07/27/2001

Withdrawal re:

Docket Text: Withdrawal re: objection to claim of OPPTREE, INC., filed by Paul M Brent, Counsel for Debtor; with proof of service [RMA] Original NIBS Entry Number: 329

365 Filed: 07/27/2001
Entered: 07/30/2001

ORDER to continue/reschedule hearing

Docket Text: ORDER to continue/reschedule hearing tor for order approving settlement agreement and mutual release of claims between the debtor and copyright plaintiffs and Allied Trade Association; GRANTED. With Notice of Entry. Original NIBS Entry Number: 330

Notice of continued hearing postponed to 07/31/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [RMA] Original NIBS Entry Number: 330

366 Filed: 07/27/2001
Entered: 07/30/2001

Terminated: 03/29/2002

Objection to Claim

Docket Text: Objection to claim /motion to disallow claims [GROUP 5] and notice; memorandum of points and authorities; declaration of Craig Grossman, filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 08/28/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 331

367 Filed & Entered: 07/31/2001

Declaration

Docket Text: Declaration of Craig Grossman re: Financial Condition of the Estate, with proof of service [SKF] Original NIBS Entry Number: 332

368 Filed: 07/31/2001

Entered: 08/01/2001

Declaration

Docket Text: Declaration of William A Rudick re second interim application for compensation by General Bankruptcy Counsel for Official Committee of Unsecured Creditors; filed by Aram Ordubegian, Attorney for Official Committee of Unsecured Creditors; with declaration of service RE: Item# 348 [RMA] Original NIBS Entry Number: 333

369 Filed: 07/31/2001

Entered: 08/01/2001

Notice of motion/application

Docket Text: Notice of motion/application to employ Cowan Alexander Equipment Group as Acutioneer; filed by Paul M Brent, Attorney for Debtor and Debtor-In-Possession; with proof of service [RMA] Original NIBS Entry Number: 334

370 Filed: 07/31/2001

Entered: 08/02/2001

Notice of sale of estate property

Docket Text: Notice of sale of estate property Sale date: August 16, 2001 at 11:00 a.m., property to be sold: Computer equipment and office furniture per physical inspection; filed by Paul M Brent, Esq., and proof of service [RMA] Original NIBS Entry Number: 335

371 Filed & Entered: 08/02/2001

Terminated: 09/07/2001

Order to show cause

Docket Text: ORDER to show cause directing debtor to file with court evidence that debtor has complied with applicable state law procedures for changing debtor's corporate name, with notice of entry hearing on 08/28/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 336

372 Filed: 08/02/2001

Entered: 08/03/2001

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] [Duplicate claims] re Claim No. 36, filed by Argo Partners; Claim No. 35, filed by Scour [See order for further details]. With Notice of Entry. [RMA] Original NIBS Entry Number: 337

373 Filed: 08/02/2001

Entered: 08/06/2001

Objection

Docket Text: Objection to motion to disallow claim [claim #6] from Peopleware Technical Resources, Inc., filed by Jeff Thaler, Chief Financial Officer, Owner for PeopleWare Technical Resources, Inc. [RMA] Original NIBS Entry Number: 338

374 Filed: 08/03/2001

Entered: 08/06/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on motion of debtor for order approving compromise and settlement of claims between debtor and Bartlit, Beck,

ET. AL; filed by Paul M Brent, Counsel for debtor; with proof of service postponed to 10/02/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 299 [RMA] Original NIBS Entry Number: 339
375 Filed: 08/07/2001
Entered: 08/09/2001

Notice of hearing

Docket Text: Notice of hearing on debtor's first amended disclosure statement describing plan of reorganization; filed by Paul M Brent, Attorney for debtor; with proof of service hearing on 09/11/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [RMA] Original NIBS Entry Number: 340
376 Filed: 08/08/2001
Entered: 08/10/2001
Terminated: 12/17/2002

Amended Disclosure Statement

Docket Text: Amended disclosure statement [FIRST AMENDED] describing First Amended Chapter 11 plan, filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 09/11/2001 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 292 [SKF] Original NIBS Entry Number: 341
377 Filed: 08/10/2001
Entered: 08/13/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion of debtor and approving settlement agreement and Mutual Release of claims between the debtor and copyright plaintiffs and Allied Trade Association. With Notice of Entry. RE: Item# 320 [RMA] Original NIBS Entry Number: 342
378 Filed: 08/10/2001
Entered: 08/14/2001

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] of Boylston Group and Microwarehouse. With Notice of Entry. [RMA] Original NIBS Entry Number: 343
379 Filed: 08/10/2001
Entered: 08/14/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon to continue the hearing on the motion of debtor and debtor-in-possession to disallow transferee claims of Arog Partners; Continued to 9-25-2001 at 11:00 a.m., with notice of entry. [RMA] Original NIBS Entry Number: 344
380 Filed: 08/10/2001
Entered: 08/14/2001

ORDER to continue/reschedule hearing

Docket Text: RMA] Original NIBS Entry Number: 345
381 Filed: 08/10/2001
Entered: 08/14/2001

ORDER re: application for fees, expenses or compensation

Docket Text: ORDER re: application for fees, expenses or compensation tter & Brent, Law Corporation in fees: \$160,892.00 and expenses: \$5,918.00; Brooks, Norton & Garbowitz in fees: 16,628.00; Weinstein, Eisen & Weiss in fees: \$14,775.50 and expenses: \$1,6452.54. With Notice of Entry.

[DISPOSED]

[DISPOSED] RE: Item# 339 [RMA] Original NIBS Entry Number: 346

384 Filed: 08/13/2001

Entered: 08/15/2001

Opposition

Docket Text: Opposition of creditor Wongdoody, Inc., to debtor Scour, Inc.,'s objection to claim; filed by Angela M. Sousa RE: Item# 366 [BP] Original NIBS Entry Number: 349
385 Filed: 08/13/2001

Entered: 08/15/2001

Declaration

Docket Text: Declaration of Benjamin Winer of Wongdoody, Inc. in further support of Wongdoody's claim, and in opposition to debtor Scour Inc.'s objection to claim; RE: Item# 384 [BP] Original NIBS Entry Number: 350

386 Filed: 08/13/2001

Entered: 08/15/2001

Response

Docket Text: Response to order to show cause directing debtor to file with court evidence that debtor has complied with applicable state law procedures for changing debotr's corporation name; filed by Paul M. Brent RE: Item# 371 [BP] Original NIBS Entry Number: 351

387 Filed: 08/13/2001

Entered: 08/15/2001

Withdrawal re:

Docket Text: Withdrawal re: transfer of claim from Music Vision to Liquidity Solutions, Inc.; filed by Robert K. Minkoff [BP] Original NIBS Entry Number: 352

388 Filed: 08/13/2001

Entered: 08/15/2001

Withdrawal re:

Docket Text: Withdrawal re: transfer of claim from TMVM, Inc.; filed by Robert K. Minkoff of Liquidity Souldtions, Inc. [BP] Original NIBS Entry Number: 353

382 Filed: 08/14/2001

Entered: 08/15/2001

Objection

Docket Text: Objection to motion to disallow claim of Technical Connection, Inc.; filed by Kevin K Haah, Attorney for Creditor Technical Connections, Inc. and declaration of Peter Mackinnon [RMA] Original NIBS Entry Number: 347

383 Filed: 08/14/2001

Entered: 08/15/2001

Response

Docket Text: Response by American Express Travel Related Services Company, Inc. to debtor's motion to disallow claims; filed by Gilbert B Weisman, Counsel for American Express Travel Related Services Company, Inc.; with certificate of service [RMA] Original NIBS Entry Number: 348

389 Filed: 08/16/2001

Entered: 08/17/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion for order authorizing extension of exclusivity period pursuant to 11 U.S.C. 112 [d]; extended to and including November 2, 2001. With Notice of Entry. RE: Item# 335 [RMA] Original NIBS Entry Number: 354

390 Filed: 08/16/2001

Entered: 08/17/2001

ORDER allowing and disallowing claim(s)

Docket Text: ORDER allowing and disallowing claim[s] ALLOWED: Claim No. 4, filed by Opptree, Inc. for \$15,920.00; DISALLOWED: Claim No. 5, filed by Opptree, Inc. in the amount of \$15,920.00; Claim No. 46 in the amount of \$15,920.00 as duplicate of Claim No. 4 [By Stipulation]. With Notice of Entry. [RMA] Original NIBS Entry Number: 355

. Doc.

No. Dates Description

391 Filed: 08/16/2001

Entered: 08/17/2001

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] re claim # 42, filed by Pacific Bell as duplicative of Pacific Bell Claim No. 43. With Notice of Entry. [RMA]

Original NIBS Entry Number: 356

[DISPOSED] [SKF] Original NIBS Entry Number: 356

392 Filed & Entered: 08/20/2001

Transcript filed

Docket Text: Transcript filed hearing held 12-20-01 RE: Item# 131 [SQ]

Original NIBS Entry Number: 357

393 Filed: 08/20/2001

Entered: 08/22/2001

Terminated: 09/14/2001

Application and ORDER rescheduling hearing -GRANTED

Docket Text: Application and ORDER rescheduling hearing - GRANTED of Brown & Wood per stipulation with notice of entry of judgment or order and certificate of service - continued postponed to 09/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 366[Rescheduled] [MPM]

Original NIBS Entry Number: 358

394 Filed: 08/20/2001

Entered: 08/22/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon ing to disallow claim of American Express Travel with notice of entry of judgment or order and certificate of service RE: Item# 366 Original NIBS Entry Number: 359

Notice of hearing continued to hearing on 09/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [MPM] Original NIBS Entry Number: 359

395 Filed: 08/20/2001

Entered: 08/22/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon ring to disallow claim no. 28 of Systems Design Solutions, Inc. with notice of entry of judgment or order and certificate of service Original NIBS Entry Number: 360

Notice of hearing continued hearing on 09/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [MPM] Original NIBS Entry Number: 360

396 Filed: 08/20/2001

Entered: 08/22/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon ring to disallow claims of Promo Shop, Inc. with notice of entry of judgment or order and certificate of service Original NIBS Entry Number: 361

Notice of hearing continued hearing on 09/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [MPM] Original NIBS Entry Number: 361

397 Filed: 08/21/2001

Entered: 08/22/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon ring to disallow claims of Redline Games with notice of entry of judgment or order and certificate of service Original NIBS Entry Number: 362

Notice of hearing continued hearing on 09/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [MPM] Original NIBS Entry Number: 362

398 Filed: 08/21/2001

Entered: 08/22/2001

Terminated: 10/03/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon ring to disallow claims of Checkout.Com with notice of entry of judgment or order and certificate of service [Rescheduled] Original NIBS Entry Number: 363

Notice of hearing continued hearing on 09/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [MPM] Original NIBS Entry Number: 363
399 Filed: 08/27/2001

Entered: 08/29/2001

Withdrawal re:

Docket Text: Withdrawal re: proof of claim No. 1 in the amount of \$47,015.54 as duplicative of claim No. 48 in the amount of \$48,916.54; filed by Paul B Brent, Attorney for Debtor; with proof of service [RMA] Original NIBS Entry Number: 364

418 Filed: 08/29/2001

Entered: 09/28/2001

Joint notice of transfer of claim pursuant to FRBP rule 3001(e)(2) and waiver of opportunity to object

Docket Text: Joint notice of transfer of claim pursuant to FRBP rule 3001[e][2] and waiver of opportunity to object from Amplified Holdings, Inc [Checkout.Com] to CNP, Inc for \$330,151.14; Claim No. 23 with proof of service [NV] Original NIBS Entry Number: 383

400 Filed: 09/06/2001

Entered: 09/07/2001

ORDER granting/approving

Docket Text: ORDER granting/approving Debtor to change its name from SCOUR, INC., TO APARTMENT 433 TECHNOLOGIES, INC., and to amend caption to reflect name change and vacating order to show cause. With Notice of Entry. RE: Item# 371 [RMA] Original NIBS Entry Number: 365

402 Filed: 09/06/2001

Entered: 09/07/2001

Objection

Docket Text: Objection of The United States Trustee to debtor's disclosure statement; filed by Dare Law, Attorney for the U. S. Trustee; with proof of service RE: Item# 292 [RMA] Original NIBS Entry Number: 367

401 Filed & Entered: 09/07/2001

Terminated: 09/10/2001

Ex parte application

Docket Text: Ex parte application for order authorizing the filing of request under seal [local bankruptcy rule 5003-2[4][A]] limiting notice; declaration of Paul M. Brent, filed by Paul M. Brent, attorney for debtor, with proof of service [Disposed] [SKF] Original NIBS Entry Number: 366

403 Filed: 09/07/2001

Entered: 09/10/2001

ORDER granting/approving

Docket Text: ORDER granting/approving ex parte application authorizing filing of request under seal, with notice of entry RE: Item# 401 [SKF] Original NIBS Entry Number: 368

404 Filed: 09/07/2001

Entered: 09/10/2001

Request re: (mapping)

Docket Text: Request re: conversion of hearing on debtor's disclosure statement to status conference, filed by Paul M. Brent, attorney for debtor [SKF] Original NIBS Entry Number: 369

405 Filed: 09/07/2001

Entered: 09/10/2001

ORDER granting/approving

Docket Text: ORDER granting/approving request re: conversion of hearing on debtor's disclosure statement to status conference, with notice of entry [SKF] Original NIBS Entry Number: 370

406 Filed: 09/07/2001

Entered: 09/14/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on objection to disallow claims [group 4]; continued postponed to 09/25/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 360 [BP] Original NIBS Entry Number: 371

407 Filed: 09/07/2001

Entered: 09/14/2001

Notice of continued hearing

Docket Text: Notice of continued hearing postponed to 09/25/2001 at 09:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 393 [BP] Original NIBS Entry Number: 372

409 Filed: 09/07/2001

Entered: 09/14/2001

Terminated: 11/26/2001

Application to Employ

Docket Text: Application to employ Cowan Alexander Equipment Group, as auctioneer; declaration of Adam F. Alexander; comments of U.S. Trustee with objection [with proof of service] filed by Paul M. Brent [Disposed] [BP] Original NIBS Entry Number: 374

408 Filed: 09/13/2001

Entered: 09/14/2001

Response

Docket Text: Response in opposition to debtor's objection to proof of claim of creditor Brown & Wood LLP; with memorandum of points and authorities; filed by Richard W Havel, attorney for creditor Brown & Wood LLP; declarations of Alan L Jakimo and Richard W Havel; with proof of service RE: Item# 393 [RMA] Original NIBS Entry Number: 373

410 Filed: 09/13/2001

Entered: 09/17/2001

Supplemental (Generic)

Docket Text: Supplemental declaration [second] of Craig Grossman in support of debtor to reject executory contracts [IX2 Networks, LLC, and Quest Business Services]; with proof of service [RMA] Original NIBS Entry Number: 375

411 Filed: 09/17/2001

Entered: 09/18/2001

Notice

Docket Text: Notice of status conference to be held on September 25, 2001 at 2:00 p.m.; filed by Paul M Brent, Attorney for debtor; with proof of service [RMA] Original NIBS Entry Number: 376

412 Filed: 09/17/2001

Entered: 09/18/2001

ORDER granting/approving

Docket Text: ORDER granting/approving [Amended order] authorizing debtor to reject executory contracts entered into with IX2 Networks, LLC and Quest Business Services; with notice of entry. RE: Item# 232 [RMA] Original NIBS Entry Number: 377

413 Filed: 09/17/2001

Entered: 09/18/2001

ORDER not signed

Docket Text: ORDER not signed due to objection of U.S. Trustee that auctioneer only bonded up to \$20,000 which is less than est. value of items to be auctioned. To pursue employment, file/serve declaration attaching evidence bond has been increased to \$100,000 and either obtain signature of US Trustee or set for hearing by calling calendar deputy and give notice to US Trustee and all other parties entitled to notice RE: Item# 409 [SKF] Original NIBS Entry Number: 378

414 Filed: 09/20/2001

Entered: 09/21/2001

Response

Docket Text: Response to objection to Argo Partners' claims; filed by Sidney P Levinson, Counsel for Argo Partners; with declaration of service [RMA] Original NIBS Entry Number: 379

415 Filed: 09/21/2001

Entered: 09/24/2001

Objection

Docket Text: Objection to transfer of claim number 23 pursuant to Federal Rule of Bankruptcy Procedure 3001[e][2]; filed by Ronald E Guttman, Attorney for Checkout.com, LLC; with proof of service [RMA] Original NIBS Entry Number: 380

416 Filed: 09/24/2001

Entered: 09/25/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon Re: withdrawal of proofs of claims filed by Time Warner, Studio/Music Record Group, and Music Publishing Claimants. With Notice of Entry. [RMA] Original NIBS Entry Number: 381

417 Filed & Entered: 09/26/2001

Notice of hearing

Docket Text: Notice of hearing re: Checkout.com, LLC's objection to transfer of claim number 23 pursuant to Federal Rule of Bankruptcy Procedure 3001[e][2], with certificate of mailing hearing on 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 415 [SKF] Original NIBS Entry Number: 382

419 Filed: 09/28/2001

Entered: 10/01/2001

Withdrawal of motion

Docket Text: Withdrawal of motion of debtor's motion to disallow claims [Group 3], filed by Paul M. Brent, attorney for debtor, with proof of service RE: Item# 334 [SKF] Original NIBS Entry Number: 384

420 Filed: 10/02/2001

Entered: 10/03/2001

Supplemental (Generic)

Docket Text: Supplemental declaration of Steven G.F. Polard in support of application of Perkins Coie LLP to be special counsel nunc pro tunc, filed by Steven Polard, with proof of service RE: Item# 341 [AC] Original NIBS Entry Number: 385

. Doc.

No. Dates Description

421 Filed & Entered: 10/03/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on debtor's motion to disallow certain claims [Group 5], filed by Paul M. Brent, attorney for debtor, with proof of service postponed to 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 398 [SKF] Original NIBS Entry Number: 386

422 Filed: 10/04/2001

Entered: 10/05/2001

Terminated: 11/26/2001

Motion to approve compromise

Docket Text: Motion to approve compromise and settlement of claims between the debtor and promo shop, Inc.; memorandum of points and authorities; declarations of Craig Grossman and Robert Mittedorf, filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [SKF] Original NIBS Entry Number: 387

423 Filed: 10/04/2001

Entered: 10/05/2001

Notice of motion/application

Docket Text: Notice of motion/application filed by Paul M. Brent, with proof of service RE: Item# 422 [SKF] Original NIBS Entry Number: 388

424 Filed: 10/04/2001

Entered: 10/09/2001

ORDER allowing and disallowing claim(s)

Docket Text: ORDER allowing and disallowing claim[s] [GROUP 5], see order for further details; notice of entry of judgment or order and certificate of mailing RE: Item# 366 [SQ] Original NIBS Entry Number: 389

425 Filed: 10/04/2001

Entered: 10/09/2001

ORDER allowing and disallowing claim(s)

Docket Text: ORDER allowing and disallowing claim[s] [the following list not in numerical order] 27, 14, 48, 62, 13, 2, 26, 21, 47, 9, 51, 6, 45, 16, 30, 56, 1, 24, 19, 15 [For rulings on the individual claims, please see order] - the objections to the following claims are continued to November 13, 2001 at 11:00 a.m.: 68, 3, 28, - with notice of entry RE: Item# 366 Original NIBS Entry Number: 390

Notice of continued hearing postponed to 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [SKF] Original NIBS Entry Number: 390

426 Filed: 10/04/2001

Entered: 10/09/2001

ORDER allowing and disallowing claim(s)

Docket Text: ORDER allowing and disallowing claim[s] [the following list is not in numerical order] 53, 84, 59, 81, 11, 17, 18, 31, 54, 79, Argo Partners in their amount of \$8,385.00, 66, 29, [3] liquidity solution claims in the amounts of \$1,275.00, \$4,850.00, and \$15,996.00, 80, 44 [for rulings on the individual claims, please see order], with notice of entry RE: Item# 360 [SKF] Original NIBS Entry Number: 391

427 Filed: 10/09/2001

Entered: 10/10/2001

ORDER to continue/reschedule hearing

Docket Text: ORDER to continue/reschedule hearing on to employ Perkins Coie, L.L.P. as special counsel to the debtor and debtor-in-possession nunc pro tunc and its application for fees; GRANTED [By Stipulation]. With Notice of Entry. RE: Item# 360 Original NIBS Entry Number: 392

Notice of continued hearing postponed to 10/24/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [RMA] Original NIBS Entry Number: 392

428 Filed & Entered: 10/12/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion of debtor approving settlement and compromise of claims between the debtor and Bartlit, Beck, et. al.; with notice of entry. RE: Item# 299 [RMA] Original NIBS Entry Number: 393

429 Filed: 10/12/2001

Entered: 10/15/2001

Notice

Docket Text: Notice [third] to all professionals of interim fee application of Steinberg, Nutter & Brent, Law Corporation; filed by Paul M Brent, Counsel for Scour Inc., debtor and debtor-in-possession; with proof of service [RMA] Original NIBS Entry Number: 394

430 Filed: 10/16/2001

Entered: 10/17/2001

Terminated: 10/30/2001

Ex parte application

Docket Text: Ex parte application to continue hearing re: Checkout.com, LLC's objection to transfer of claim number 23; declaration of Ronald E. Guttman in support; filed by Ronald E. Guttman, attorney for checkout.com, with proof of service [Disposed] [SKF] Original NIBS Entry Number: 395

431 Filed: 10/16/2001

Entered: 10/17/2001

ORDER shortening time

Docket Text: ORDER shortening time GRANTED - Hearing on 10-17-01 at 11:00 a.m. RE: Item# 430 [SKF] Original NIBS Entry Number: 396

432 Filed & Entered: 10/18/2001

Response

Docket Text: Response of CNP, Inc., to Checkout.com, LLC's objection to transfer of claim number 23 and objection to Checkout.com LLC's ex-parte motion to continue objections to transfer of claim; filed by Julia W. Brand, attorney for CNP, Inc. with proof of service RE: Item# 430 [SKF] Original NIBS Entry Number: 397

433 Filed: 10/19/2001

Entered: 10/22/2001

Notice of motion/application

Docket Text: Notice of motion/application to employ Perkings Coie, LLP As Special Counsel to the debtor, Nunc Pro Tunc and its application for payment of fees and costs; filed by Paul M Brent, Attorney for debtor; with proof of service [RMA] Original NIBS Entry Number: 398

434 Filed: 10/24/2001

Entered: 10/25/2001

ORDER approving employment of professional

Docket Text: ORDER approving employment of professional Perkins Coie, L.L.P. as special counsel to the debtor [By Stipulation] and debtor-in-possession and payment of \$114,000.00 to Perkins Coie, L.L.P. as full and final payment of all claims against the estate, including all pre and post-petition claims; with notice of entry. [RMA] Original NIBS Entry Number: 399

435 Filed: 10/26/2001

Entered: 10/29/2001

ORDER denying

Docket Text: ORDER denying ex parte motion of Checkout.Com, LLC to continue hearing on Checkout.Com, LLC'S objection to transfer of claim number 23 and scheduling order. With Notice of Entry. RE: Item# 430 [RMA] Original NIBS Entry Number: 400

436 Filed: 10/29/2001

Entered: 10/30/2001

Withdrawal of motion

Docket Text: Withdrawal of motion /objection to transfer of claim number 23, filed by Patricia Glaser, with proof of service RE: Item# 430 [AC] Original NIBS Entry Number: 401

437 Filed & Entered: 10/30/2001

Terminated: 10/31/2001

Ex parte application

Docket Text: Ex parte application pursuant to local bankruptcy rule 9075-1[b] for order shortening time on motion pursuant to bankruptcy rule 9024 in connection with opposition of Redline Games, Inc to objection to claim [group 5]; filed by David W. Meadows attorney for movant, with declaration of David W. Meadows and proof of service hearing on 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [NV] Original NIBS Entry Number: 402

438 Filed & Entered: 10/30/2001

Terminated: 10/31/2001

Ex parte application

Docket Text: Ex parte application pursuant to local bankruptcy rule 9075-1[b] for order shortening time on motion pursuant to bankruptcy rule 9024 in connection with opposition of Systems Design solutions, Inc to objection to claim [group 5] with declaration of David W. Meadows; filed by David W. Meadows attorney for movant, with proof of service hearing on 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [NV] Original NIBS Entry Number: 403

439 Filed: 10/30/2001

Entered: 10/31/2001

ORDER shortening time

Docket Text: ORDER shortening time GRANTED - hearing on 11-13-01 at 11:00am RE: Item# 437 [NV] Original NIBS Entry Number: 404

440 Filed: 10/30/2001

Entered: 10/31/2001

ORDER shortening time

Docket Text: ORDER shortening time GRANTED - hearing on 11-13-01 at 11:00 am RE: Item# 438 [NV] Original NIBS Entry Number: 405

441 Filed: 10/30/2001

Entered: 10/31/2001

Terminated: 02/11/2002

Generic Motion

Docket Text: Motion of Systems Design Solutions, Inc pursuant to bankruptcy rule 9024 in connection with response to objection to claim [group 5] with declaration of David W. Meadows; filed by David Meadows attorney for movant Systems Design Solutions, Inc, with proof of service hearing on 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 438[Disposed] [NV] Original NIBS Entry Number: 406

442 Filed: 10/30/2001

Entered: 10/31/2001

Opposition

Docket Text: Opposition of Systems Design Solutions, Inc. to objection to claim [Group 5]; declaration of William Rudick; filed by David W. Meadows attorney for movant, Systems Design Solutions, Inc. with proof of service RE: Item# 366 [NV] Original NIBS Entry Number: 407

443 Filed: 10/30/2001

Entered: 10/31/2001

Terminated: 02/08/2002

Generic Motion

Docket Text: Motion of Redline Games, Inc pursuant to bankruptcy rule 9024 in connection with response to objection to claim [Group 5] and declaration of David W. Meadows; filed by David W. Meadows attorney for movant, Redline Games, Inc; with proof of service hearing on 11/13/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 437[Disposed] [NV] Original NIBS Entry Number: 408

444 Filed: 10/30/2001

Entered: 10/31/2001

Opposition

Docket Text: Opposition of Redline Games, Inc to objection to claim [Group 5] with declaration of James Anhalt III; filed by David W. Meadows attorney for movant, Redline Games, Inc, with proof of service RE: Item# 366 [NV] Original NIBS Entry Number: 409

445 Filed: 11/02/2001

Entered: 11/07/2001

Terminated: 12/06/2001

Motion to approve compromise

Docket Text: Motion to approve compromise and settlement of claims between the debtor and Opttree, Inc.; declaration of Craig Grossman and Roger Blonder; filed

by Paul M. Brent, attorney for debtor [with proof of service] hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BP] Original NIBS Entry Number: 410

446 Filed: 11/02/2001

Entered: 11/07/2001

Notice of hearing

Docket Text: Notice of hearing on motion for debtor for order approving compromise and settlement of claims of Opptree, Inc. hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 445 [BP] Original NIBS Entry Number: 411

447 Filed: 11/02/2001

Entered: 11/07/2001

Terminated: 12/06/2001

Motion to approve compromise

Docket Text: Motion to approve compromise and settlement of claims between the debtor and Wongdoody, Inc.; declaration of Craig Grossman and Ben Weiner [with proof of service] hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BP] Original NIBS Entry Number: 412

448 Filed: 11/02/2001

Entered: 11/07/2001

Notice of hearing

Docket Text: Notice of hearing on motion of debtor for order approving compromise and settlement of claims of Wongdoody, Inc.; filed by Paul M. Brent hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [BP] Original NIBS Entry Number: 413

449 Filed: 11/02/2001

Entered: 11/07/2001

Terminated: 12/06/2001

Motion to approve compromise

Docket Text: Motion to approve compromise and settlement of claims between the debtor and Liquidity Solutions, Inc; declaration of Craig Grossman and Robert Minkoff; filed by Paul M. Brent, attorney for debtor [with proof of service] hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BP] Original NIBS Entry Number: 414

450 Filed: 11/02/2001

Entered: 11/07/2001

Notice of hearing

Docket Text: Notice of hearing on motion of debtor for order approving compromise settlement of claims of Liquidity Solutions, Inc.; filed by Paul M. Brent hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 449 [BP] Original NIBS Entry Number: 415

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No. Dates Description

451 Filed: 11/02/2001

Entered: 11/07/2001

Notice of hearing

Docket Text: Notice of hearing on motion of debtor for order approving settlement agreement and mutual release of claims between debtor and Oracle Corporation; filed by Paul M. Brent hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [BP] Original NIBS Entry Number: 416

452 Filed: 11/05/2001

Entered: 11/07/2001

Terminated: 12/17/2001

Motion to approve compromise

Docket Text: Motion to approve compromise and settlement agreement and mutual release of claims between the debtor and Oracle Corporation; declaration of Craig Grossman; filed by Paul M. Brent, attorney for debtor hearing on 11/27/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 451[Disposed] [BP] Original NIBS Entry Number: 417
453 Filed & Entered: 11/08/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon ing on objections to claims of system design solutions and redine games, GRANTED - with notice of entry RE: Item# 451 Original NIBS Entry Number: 418
Notice of continued hearing 2/18/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 451 Original NIBS Entry Number: 418

And [SKF] Original NIBS Entry Number: 418

454 Filed: 11/15/2001

Entered: 11/16/2001

Terminated: 12/17/2001

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses for Steinberg, Nutter & Brent, Law Corporation, counsel for chapter 11 debtor for allowance of compensation and reimbursement of expenses; declaration of Paul M. Brent; declaration of Craig Grossman; filed by Paul M. Brent [Third interim application] hearing on 12/11/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BP] Original NIBS Entry Number: 419

455 Filed: 11/15/2001

Entered: 11/16/2001

Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [Third interim application] for compensation by general bankrutpcy counsel of official committee of unsecured creditors; declaration of Aram Ordubegian; filed by Aram Ordubegain hearing on 12/11/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BP] Original NIBS Entry Number: 420

456 Filed: 11/16/2001

Entered: 11/19/2001

Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [Third interim application] of Brooks, Norton & Garbowitz, accountants for chapter 11 debtor for allowance of compensation and reimbursement of expenses; declaratonof Joseph C. B rooks and Craig Grossman; filed by Joseph C. Brooks [with proof of service] hearing on 12/11/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [BP] Original NIBS Entry Number: 421

457 Filed: 11/16/2001

Entered: 11/19/2001

Notice of hearing

Docket Text: Notice of hearing on third interim application for fees of Steinberg, Nutter & Brent, Law Corporation; Weinstein & Eisen; Brooks, Norton & Garbowitz; hearing on 12/11/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 454 [BP] Original NIBS Entry Number: 422

458 Filed: 11/19/2001

Entered: 11/21/2001

Supplemental (Generic)

Docket Text: Supplemental to application of debtor and debtor-in-possession for authority to employ Cowan Alexander Equipment Group, as auctioneer; filed by

Paul M Brent; declaration of Adam F Alexander; with proof of service RE: Item# 409 [RMA] Original NIBS Entry Number: 423
462 Filed: 11/21/2001
Entered: 11/27/2001

Comments

Docket Text: Comments of The United States Trustee to debtor's supplemental application to employ Cowan Alexander Equipment Group as auctioneer; filed by Dare Law; with proof of service RE: Item# 458 [RMA] Original NIBS Entry Number: 427

460 Filed: 11/24/2001
Entered: 11/26/2001

ORDER approving employment of professional

Docket Text: ORDER approving employment of professional Cowan Alexander Equipment Group as auctioneer; with notice of entry. RE: Item# 409 [RMA] Original NIBS Entry Number: 425

459 Filed: 11/25/2001
Entered: 11/26/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion of debtor approving settlement and compromise of claims between the debtor and Promo Shop, Inc., with notice of entry. RE: Item# 422 [RMA] Original NIBS Entry Number: 424

461 Filed: 11/26/2001
Entered: 11/27/2001

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon to extended court-ordered deadline for debtor to file its amended disclosure statement in support of amended plan of reorganization and to continue hearing on approval of debtor's disclosure statement; the date by which the debtor must file and serve its disclosure statement is December 12, 2001; the hearing on approval of debtor's disclosure statement shall be continued from November 27, 2001 at January 29, 2002 at 2:00 p.m. in courtroom 1468 of the United States Bankruptcy Court located at 255 E. Temple Street, Los Angeles, California. With Notice of Entry. [RMA] Original NIBS Entry Number: 426

463 Filed: 11/30/2001
Entered: 12/03/2001

Notice of continued hearing

Docket Text: Notice of continued hearing on motion of debtor for order approving compromise and settlement of claim of Oracle Corporation; filed by Paul M Brent, Counsel for debtor; with proof of service postponed to 12/05/2001 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 452 [RMA] Original NIBS Entry Number: 428

464 Filed: 12/03/2001
Entered: 12/04/2001

Declaration

Docket Text: Declaration of Paul M Brent in support of order approving compromise and settlement of claim between the debtor and Oracle Corporation; with proof of service RE: Item# 463 [RMA] Original NIBS Entry Number: 429
465 Filed & Entered: 12/04/2001

Declaration

Docket Text: Declaration of Paul M Brent in support of order approving compromise and settlement of claim between the debtors and Wongdoody, Inc., with proof of service RE: Item# 447 [RMA] Original NIBS Entry Number: 430
466 Filed & Entered: 12/04/2001

Declaration

Docket Text: Declaration of Paul M Brent in support of order approving compromise and settlement of claim between the debtor and Liquidity Solutions, Inc.; with proof of service RE: Item# 449 [RMA] Original NIBS Entry Number: 431

467 Filed & Entered: 12/04/2001

Declaration

Docket Text: Declaration of Paul M Brent in support of order approving compromise and settlement of claim between the debtor and Opptree, Inc., with proof of service RE: Item# 445 [RMA] Original NIBS Entry Number: 432

468 Filed: 12/04/2001

Entered: 12/05/2001

Comments

Docket Text: Comments of the U.S. Trustee on interim fee application; filed by Dare Law, attorney for U.S. Trustee, with proof of service RE: Item# 456 [NV] Original NIBS Entry Number: 433

469 Filed: 12/05/2001

Entered: 12/06/2001

Supplemental (Generic)

Docket Text: Supplemental declaration of Paul Brent in support of order approving compromise; filed by Paul Brent attorney for debtor, with proof of service RE: Item# 467 [NV] Original NIBS Entry Number: 434

470 Filed: 12/05/2001

Entered: 12/06/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion approving settlement and compromise of claims between the debtor and OPPTREE, Inc., a corporation formerly known as Poemation Recruiting and Roger Blonder. OPPTREE, Inc., a corporation formerly known as Poemation Recruiting and Roger Blonder, shall have a claim in the debtor's estate of \$12,320.00 and receive payment upon entry of a non-appealable order granting this motion, with notice of entry RE: Item# 445 [NV] Original NIBS Entry Number: 435

471 Filed: 12/05/2001

Entered: 12/06/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion approving settlement and compromise of claims between the debtor and Wongdoody, Inc., Pursuant to the terms of the compromise, Scour, Inc. shall pay to WONGDOODY, INC \$150,000.00 in full satisfaction of Wongdoody's approved claim [which was in the amount of \$221,611.23] upon entry of a non-appealable order granting this motion, with notice of entry RE: Item# 447 [NV] Original NIBS Entry Number: 436

472 Filed: 12/05/2001

Entered: 12/06/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion approving settlement and compromise of claims between the debtor and Liquidity Solutions, Inc., LIQUIDITY SOLUTIONS, INC., shall have a claim in the debtor's estate of \$142,018.10 and receive payment upon entry of a non-appealable order granting this motion; with notice of entry RE: Item# 449 [NV] Original NIBS Entry Number: 437

473 Filed: 12/05/2001

Entered: 12/06/2001

Declaration

Docket Text: Declaration of William A. Rudick re third interim application for compensation; filed by Aram Ordubegian attorney for official committee of unsecured creditors; with proof of service RE: Item# 454 [NV] Original NIBS Entry Number: 438

474 Filed: 12/06/2001

Entered: 12/07/2001

Application and ORDER rescheduling hearing -GRANTED

Docket Text: Application and ORDER rescheduling hearing - GRANTED [per stipulation filed by Paul Brent, attorney for debtor] - with notice of entry

postponed to 01/29/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 443 [SKF] Original NIBS Entry Number: 439
475 Filed: 12/10/2001
Entered: 12/12/2001

Declaration

Docket Text: Declaration of Craig Grossman in support of third interim application of Steinberg, Nutter & Brent, Law Corporation, Counsel for chapter 11 debtor, for allowance of compensation and reimbursement of expenses; filed by Paul M Brent; with proof of service RE: Item# 454 [RMA] Original NIBS Entry Number: 440

476 Filed: 12/11/2001
Entered: 12/12/2001

Declaration

Docket Text: Declaration of Craig Grossman in support of third interim application of Brooks, Norton & Garbowitz, accountant for chapter 11 debtor, for allowance of compensation and reimbursement of expenses; filed by Paul M Brent; with proof of service RE: Item# 456 [RMA] Original NIBS Entry Number: 441

477 Filed: 12/12/2001
Entered: 12/13/2001
Terminated: 12/17/2002

Amended Disclosure Statement

Docket Text: Amended disclosure statement [SECOND] descriing Chapter 11 plan; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 01/29/2002 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [SKF] Original NIBS Entry Number: 442

478 Filed: 12/12/2001
Entered: 12/13/2001

Notice of hearing

Docket Text: Notice of hearing on debtor's second amended disclosure statement; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 01/29/2002 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 477 [SKF] Original NIBS Entry Number: 443

479 Filed: 12/16/2001
Entered: 12/17/2001

ORDER granting/approving

Docket Text: ORDER granting/approving motion of debtor approving settlement and compromise of claims between the debtor and Oracle Corporation. With Notice of Entry. RE: Item# 452 [RMA] Original NIBS Entry Number: 444

480 Filed: 12/16/2001
Entered: 12/17/2001

ORDER re: application for fees, expenses or compensation

Docket Text: ORDER re: application for fees, expenses or compensation tter & Brent in fees: \$177,516.75 and expenses in the amount of \$8,685.56; Brooks, Norton & Garbowitz in fees: \$16,628.00; Weinstein, Eisen & Weiss in fees: \$31,359.50 and expenses: \$2,147.08. With Notice of Entry.

[DISPOSED]

[DISPOSED] RE: Item# 454 [RMA] Original NIBS Entry Number: 445

. Doc.

No. Dates Description

481 Filed: 01/04/2002
Entered: 01/07/2002
Terminated: 03/04/2002

Objection to Claim

Docket Text: Objection to claim [by motion] to disallow claims [Group 6]; memorandum of points and authorities; declaration of Craig Grossman; filed by Paul M. Brent hearing on 02/12/2002 at 11:00 a.m. at 255 E. Temple St.,

Courtroom 1468, Los Angeles, CA 90012[Disposed] [BP] Original NIBS Entry Number: 446

482 Filed: 01/08/2002

Entered: 01/09/2002

Comments

Docket Text: Comments to debtor's second amended disclosure statement; filed by Aram Ordubegian attorney for Official Committee of Unsecured Creditors; with proof of service RE: Item# 477 [NV] Original NIBS Entry Number: 447

483 Filed: 01/15/2002

Entered: 01/16/2002

Objection

Docket Text: Objection [Evidentiary] to declaration of James Anhalt III re: Redline Games, Inc.'s response to claim objection; filed by Paul M. Brent attorney for debtor; with proof of service [NV] Original NIBS Entry Number: 448

484 Filed: 01/15/2002

Entered: 01/16/2002

Reply

Docket Text: Reply to opposition to objection to claim and opposition to motion of Redline Games, Inc pursuant to bankruptcy rule 9024 in connection with response to objection to claim; filed by attorney for debtor; with proof of service RE: Item# 483 [NV] Original NIBS Entry Number: 449

485 Filed: 01/15/2002

Entered: 01/16/2002

Objection

Docket Text: Objection [Evidentiary] to declaration of William Rudick re: System Design Solutions, Inc.'s response to claim objection; filed by attorney for debtor; with proof of service [NV] Original NIBS Entry Number: 450

486 Filed: 01/15/2002

Entered: 01/16/2002

Reply

Docket Text: Reply to opposition to objection to claim, and opposition to motion of Systems Design Solutions, Inc pursuant to bankruptcy rule 9024 in connection with response to objection to claim; filed by attorney for debtor; with proof of service RE: Item# 485 [NV] Original NIBS Entry Number: 451

487 Filed: 01/16/2002

Entered: 01/17/2002

Statement of disinterestedness for employment of professional person under bankruptcy rule 2014

Docket Text: Statement of disinterestedness for employment of professional person under bankruptcy rule 2014 [AMENDED] filed by Aram Ordubegian attorney for Official Committee of Unsecured Creditors; with proof of service [NV] Original NIBS Entry Number: 452

488 Filed: 01/22/2002

Entered: 01/23/2002

Response

Docket Text: Response of Systems Design Solutions, Inc., filed by David W Meadows, attorney for System Design Solutions, Inc., and proof of service RE: Item# 485 [RMA] Original NIBS Entry Number: 453

489 Filed: 01/22/2002

Entered: 01/23/2002

Response

Docket Text: Response of Redline Games, Inc., to evidentiary objections; filed by David W Meadows; with proof of service RE: Item# 483 [RMA] Original NIBS Entry Number: 454

490 Filed: 01/22/2002

Entered: 01/23/2002

Response

Docket Text: Response of Redline Games, Inc., to debtor's opposition to motion pursuant to Rule 9024 in connection with objection to claim; filed by David W Meadows; with proof of service [RMA] Original NIBS Entry Number: 455
491 Filed: 01/22/2002
Entered: 01/23/2002

Response

Docket Text: Response of Systems Design Solutions, Inc., to debtor's opposition to motion pursuant to Rule 9024 in connection with objection to claim; supplemental declaration of William Rudick; filed & proof of service cy David W Meadows, attorney for Systems Design Solutions, Inc. [RMA] Original NIBS Entry Number: 456
492 Filed: 01/23/2002
Entered: 01/24/2002

Comments

Docket Text: Comments of the United States Trustee to second amended disclosure statement and amended chapter 11 plan of reorganization; COMMENTS: No Objections, filed by Dare Law, U.S. Trustee; with proof of service RE: Item# 477 [NV] Original NIBS Entry Number: 457
493 Filed: 01/28/2002
Entered: 01/29/2002
Terminated: 02/08/2002

Amended Disclosure Statement

Docket Text: Amended disclosure statement [THIRD] describing second amended chapter 11 plan of reorganization; filed by attorney for debtor, with proof of service hearing on 01/29/2002 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 477 [Disposed] [NV] Original NIBS Entry Number: 458
494 Filed & Entered: 01/31/2002
Terminated: 02/25/2002

Amended Disclosure Statement

Docket Text: Amended disclosure statement [FOURTH AMENDED] describing third amended chapter 11 plan, declaration of Craig Grossman; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 02/05/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 493 [Disposed] [SKF] Original NIBS Entry Number: 459
495 Filed & Entered: 01/31/2002

Document

Docket Text: Document: Guide to reviewing changes to concurrently filed fourth amended disclosure statement describing third amended plan; filed by Paul Brent, attorney for debtor, with proof of service RE: Item# 494 [SKF] Original NIBS Entry Number: 460
496 Filed & Entered: 01/31/2002
Terminated: 04/15/2002

Plan of reorganization

Docket Text: Plan of reorganization [THIRD AMENDED] filed by Paul Brent, attorney for debtor, with proof of service hearing on 02/05/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 293 [Disposed] [SKF] Original NIBS Entry Number: 461
497 Filed: 02/05/2002
Entered: 02/06/2002

ORDER not signed

Docket Text: ORDER not signed re fourth amended disclosure statement - NOT USED [different order being lodged by Brent, Esq.] RE: Item# 494 [SKF] Original NIBS Entry Number: 462
498 Filed & Entered: 02/08/2002
ORDER denying

Docket Text: ORDER denying motion of Redline Games, Inc., pursuant to bankruptcy rule 9024 in connection with objection to claim; [with notice of entry] RE: Item# 443 [NV] Original NIBS Entry Number: 463
499 Filed & Entered: 02/08/2002

ORDER denying

Docket Text: ORDER denying approval of Redlined third amended disclosure statement discribing second amended chapter 11 plan of reorganization; [with notice of entry] RE: Item# 493 [NV] Original NIBS Entry Number: 464
500 Filed & Entered: 02/08/2002

ORDER denying

Docket Text: ORDER denying motion of Systems Design Solutions, Inc., pursuant to bankruptcy rule 9024 in connection with objection to claim; [with notice of entry] RE: Item# 441 [NV] Original NIBS Entry Number: 465

501 Filed: 02/08/2002

Entered: 02/11/2002

Notice

Docket Text: Notice of Firm Name Change And New Billing Rates. Filed by David R Weinstein attorney for Official Committee of Unsecured Creditors; with proof of service [KM2] Original NIBS Entry Number: 466

502 Filed: 02/08/2002

Entered: 02/11/2002

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] RE: Claim No. 28 [Systems Design Solutions, Inc.,] filed by Steinberg, Nutter & Brent [with notice of entry] RE: Item# 441 [NV] Original NIBS Entry Number: 467

503 Filed: 02/11/2002

Entered: 02/13/2002

Declaration

Docket Text: Declaration re: entry of order without hearing pursuant to local bankruptcy rule 9013-1[g]; Aram Ordubegian [BP] Original NIBS Entry Number: 468

504 Filed: 02/12/2002

Entered: 02/13/2002

Terminated: 12/17/2002

Amended Disclosure Statement

Docket Text: Amended disclosure statement ected at hearing describing third amended chpater 11 plan, with exhibits; filed by Paul BGrent, attorney for debtor, with proof of service Original NIBS Entry Number: 469

[DISPOSED] RE: Item# 494 [SKF] Original NIBS Entry Number: 469

505 Filed: 02/12/2002

Entered: 02/13/2002

Amended plan of reorganization

Docket Text: Amended plan of reorganization with exhibits, filed by Paul M. Brent, attorney for debtor, with proof of service; Hearing on April 9, 2002 at 2:00 p.m., Courtroom 1468, 255 East Temple Street, Los Angeles, CA 90012 RE:

Item# 494 Original NIBS Entry Number: 470

[DISPOSED] RE: Item# 496 [SKF] Original NIBS Entry Number: 470

506 Filed: 02/12/2002

Entered: 02/13/2002

Notice of hearing

Docket Text: Notice of hearing on confirmation of debtor's third amended plan of reorganization [with exhibits]; filed by Paul Brent, attorney for debtor, with proof of service hearing on 04/09/2002 at 2:00 p.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 505 [SKF] Original NIBS Entry

Number: 471

507 Filed: 02/12/2002

Entered: 02/13/2002

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon [Joint] re: withdrawal of Kevin Smilak's claim No. 34, as duplicative of claim No. 69; [with notice of entry of judgment or order] [BP] Original NIBS Entry Number: 472
508 Filed: 02/21/2002
Entered: 02/25/2002

ORDER granting/approving

Docket Text: ORDER granting/approving 1. Fourth amended disclosure statement [as correct at hearing] describing third amended chapter 11 plan of reorganization [with exhibits] 2. Fixing time for acceptance or rejection of plan of reorganization; 3. Fixing time for objections to confirmation of plan; and 4. Fixing time for confirmation hearing; with proof of service RE: Item# 494 [NV] Original NIBS Entry Number: 473
509 Filed: 02/22/2002
Entered: 02/25/2002

Notice of motion/application

Docket Text: Notice of motion/application of fourth interim application of Steinberg, Nutter & Brent, Law Corporation filed by Paul M. Brent; Hearing 4/09/02 at 11:00 a.m. [MPM] Original NIBS Entry Number: 474
510 Filed: 02/27/2002
Entered: 02/28/2002

Request for special notice

Docket Text: Request for special notice and change of Firm Name filed by richard P.Seegman, attorney for Brown & Wood LLP, now known as Sidley Austin Brown & Wood LLP, filed with proof of service [CBK] Original NIBS Entry Number: 475

. Doc.
No. Dates Description
511 Filed: 02/28/2002
Entered: 03/01/2002

Request for special notice

Docket Text: Request for special notice filed by Richard P.Seegman, attorney for Creditor Brown & Wood LLP now known as Sidley Austin Brown & Wood LLP with proof of service [CBK] Original NIBS Entry Number: 476
512 Filed: 03/03/2002
Entered: 03/04/2002

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] re claim # 62, filed by Paul M. Brent, of Steinberg, Nutter & Brent [with notice of entry] RE: Item# 481 [NV] Original NIBS Entry Number: 477
513 Filed: 03/03/2002
Entered: 03/04/2002

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] of Jennifer Parker - Group 6; filed by Paul M. Brent of Steinberg, Nutter & Brent, with notice of entry RE: Item# 481 [NV] Original NIBS Entry Number: 478
514 Filed: 03/03/2002
Entered: 03/04/2002

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] of Mark Torres - Group 6; filed by Paul M. Brent of Steinberg, Nutter & Brent [with notice of entry RE: Item# 481 [NV] Original NIBS Entry Number: 479
515 Filed: 03/05/2002
Entered: 03/07/2002

ORDER approving employment of professional

Docket Text: ORDER approving employment of professional [to continue to employ] Weinstein, Eisen & Weiss as general bankruptcy counsel; [with notice of entry] [NV] Original NIBS Entry Number: 480

516 Filed: 03/15/2002
Entered: 03/18/2002
Terminated: 05/16/2002

Objection to Claim

Docket Text: Objection to claim /disallow claims [and notice] [GROUP 7], nos. 32,33,69,83,61,71; memorandum of points and authorities; declaration of James Ellis; filed by Paul Brent; attorney for debtor, with proof of service hearing on 04/16/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 481

517 Filed: 03/15/2002
Entered: 03/18/2002
Terminated: 05/01/2002

Objection to Claim

Docket Text: Objection to claim /disallow claims [and notice] [GROUP 8], nos. 65,68; memorandum of points and authorities; declaration of Craig Grossman; filed by Paul Brent, attorney for debtor, with proof of service hearing on 04/16/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 482

518 Filed: 03/15/2002
Entered: 03/18/2002
Terminated: 04/10/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses FOURTH INTERIM of STEINBERG, NUTTER and BRENT, counsel for Chapter 11 debtor for the period November 1, 2001 to February 28, 2002; declaration of Paul M. Brent, declaration of Craig Grossman; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 04/09/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 483

519 Filed: 03/15/2002
Entered: 03/18/2002
Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [FOURTH INTERIM] of Weinstein Eisen Weiss and Rothschild, attorney for creditor's committee for the period November 12, 2001 to February 28, 2002; declaration of Aram Ordubegian; filed by Aran Ordubegian, attorney for creditor's committee, with proof of service hearing on 04/09/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] Original NIBS Entry Number: 484

[DISPOSED] by item #497 [SKF] Original NIBS Entry Number: 484

520 Filed: 03/15/2002
Entered: 03/18/2002

Notice of hearing

Docket Text: Notice of hearing on Fourth Interim Application for fees of Steinberg, Nutter & Brent, a law corporation; Weinstein & Eisen; Brook, Norton & Garbowitz; filed by attorney for debtor [with proof of service] hearing on 04/09/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 519 [NV] Original NIBS Entry Number: 485

521 Filed: 03/15/2002
Entered: 03/19/2002
Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [FOURTH INTERIM] of Brooks Norton and Garbowitz, Accountant for debtor; declaration of Joseph C. Brooks; Declaration of Craig Grossman; filed by Joseph C. Brooks, attorney for debtor, with proof of service hearing on 04/09/2002 at

11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 519[Disposed] Original NIBS Entry Number: 486

[DISPOSED] by item # 497 [SKF] Original NIBS Entry Number: 486

522 Filed & Entered: 03/29/2002

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon to withdrawal of debtor's presently pending objection to claim No. 23 for CNP [with notice of entry] RE: Item# 366

[NV] Original NIBS Entry Number: 487

523 Filed: 03/29/2002

Entered: 04/01/2002

Summary of ballots

Docket Text: Summary of ballots /voting on debtor's third amended plan; declaration of Paul M. Brent; declaration of Craig Grossman; filed by Paul M.

Brent, attorney for debtor, with proof of service RE: Item# 496 [SKF] Original NIBS Entry Number: 488

524 Filed: 03/29/2002

Entered: 04/01/2002

Brief/Memorandum

Docket Text: Brief/Memorandum in support of confirmation of third amended plan of reorganization; declaration of Craig Grossman; filed by Paul M. Brent,

attorney for debtor, with proof of service RE: Item# 496 [SKF] Original NIBS Entry Number: 489

525 Filed: 04/02/2002

Entered: 04/03/2002

Opposition

Docket Text: Opposition by Travis Kalanick to motion to disallow Founders' claim; declaration in support; filed by Carmela Tan, attorney for Travis

Kalanick RE: Item# 516 [BP] Original NIBS Entry Number: 490

526 Filed: 04/03/2002

Entered: 04/04/2002

Terminated: 05/02/2002

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon to respond to motion to disallow Founders' Claims; ORDERED, the time for Claimants only to file and serve a response to Claims Objection shall be extended from 4-2-02 to 4-9-02; the time for debtor to reply to any response of Claimants shall be extended from 4-9-02 to 4-12-02; See Order for other details [with notice of entry of judgment or order] RE: Item# 516[Rescheduled] Original NIBS Entry Number: 491

Notice of continued hearing on objection to claims; continued postponed to 04/23/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [BP] Original NIBS Entry Number: 491

527 Filed & Entered: 04/05/2002

Declaration

Docket Text: Declaration of Lynne Carey re fourth interim application for compensation by general bankruptcy counsel for official committee of unsecured creditors; filed by David R. Weinstein attorney for official committee of unsecured creditors [with proof of service] RE: Item# 521 [NV] Original NIBS Entry Number: 492

528 Filed: 04/05/2002

Entered: 04/08/2002

Memorandum of points and authorities

Docket Text: Memorandum of points and authorities in opposition to objection to proof of claim; filed by Michael M. Hernandez attorney for creditor James Umphryes [with proof of service] RE: Item# 517 [NV] Original NIBS Entry Number: 493

529 Filed: 04/05/2002

Entered: 04/08/2002

Comments

Docket Text: Comments of the U.S. Trustee on Fourth Interim Fee applications; filed by Dare Law, attorney for U.S. Trustee, with proof of service RE: Item# 521 [NV] Original NIBS Entry Number: 494
530 Filed: 04/08/2002
Entered: 04/09/2002

Declaration

Docket Text: Declaration of Michael I. Gottfried in support of stipulation to continue time to respond to motion to disallow founders claims; filed by Michael I. Gottfried attorney for creditors Dan Rodrigues, Kevin Smilak, and Ilya Haykinson [with proof of service] RE: Item# 526 [NV] Original NIBS Entry Number: 495
531 Filed & Entered: 04/09/2002

Judge's instruction for entering discharge in chapter 11 cases

Docket Text: Judge's instructions for entering discharge in chapter 11 cases - No discharge will be entered because the debtor is not eligible for one [NV] Original NIBS Entry Number: 496
532 Filed: 04/09/2002
Entered: 04/10/2002

ORDER re: application for fees, expenses or compensation

Docket Text: ORDER re: application for fees, expenses or compensation Granted: Steinberg, Nutter & Brent allowed interim compensation of \$93,709.50 and expenses of \$5,554.93 for the period of November 1, 2001 to February 28, 2002 ; Brooks, Norton & Garbowitz is allowed compensation of \$28,957.50 and no expenses for period of November 10,2001 to March 11, 2002; Weinstein, Eisen & Weiss is allowed interim compensation of \$8,998.50 and expenses of \$1,605.34 for the period of November 13, 2001 to February 28, 2002; [with notice of entry of judgment or order] RE: Item# 518 [BP] Original NIBS Entry Number: 497
533 Filed: 04/09/2002
Entered: 04/10/2002

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon to continue time to respond to motion to disallow Founders' claims; The Claimants time to file and serve a response to the Claims Objection shall be extended from April 9, 2002 to April 16, 2002; The debtor to reply to response of Claimants shall be extended from April 12, 2002 to April 18, 2002 with a file stamped courtesy copy delivered to chambers immediated after filing; [with notice of entry of judgment or order] Re: Item #491 [BP] Original NIBS Entry Number: 498
534 Filed: 04/12/2002
Entered: 04/15/2002

ORDER confirming chapter 11 plan - granted

Docket Text: ORDER confirming chapter 11 plan - granted with notice of entry RE: Item# 496 [SKF] Original NIBS Entry Number: 499
535 Filed & Entered: 04/15/2002

Notice of order confirming chapter 11 plan (BNC)

Docket Text: Notice of order confirming chapter 11 plan [requested from BNC] RE: Item# 534 [SKF] Original NIBS Entry Number: 500
536 Filed: 04/15/2002
Entered: 04/16/2002

Application and ORDER rescheduling hearing -GRANTED

Docket Text: Application and ORDER rescheduling hearing - GRANTED [by Stipulation] on objection to claim Group 7; see Order for time to file and service response and reply [with notice of entry of judgment or order] Continue postponed to 05/15/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 526 [BP] Original NIBS Entry Number: 501
537 Filed: 04/15/2002
Entered: 04/16/2002

Application and ORDER rescheduling hearing -GRANTED

Docket Text: Application and ORDER rescheduling hearing - GRANTED [by Stipulation] re objection to claim of Travis Kalanick; see Order for time for filing and serving opposing papers and reply papers; [with notice of entry of judgment or order] Continue postponed to 05/15/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 516 [BP] Original NIBS Entry Number: 502
538 Filed: 04/15/2002
Entered: 04/16/2002

Application and ORDER rescheduling hearing -GRANTED

Docket Text: Application and ORDER rescheduling hearing - GRANTED [by Stipulation] re: objection of claim of James Umphrey; see Order for time to file and service response and reply [with notice of entry of judgment or order] Continue postponed to 05/15/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 517 [BP] Original NIBS Entry Number: 503
539 Filed: 04/18/2002
Entered: 04/19/2002

Certificate of Mailing

Docket Text: Certificate of mailing RE: Item# 535 [BNC] Original NIBS Entry Number: 504

540 Filed: 04/25/2002

Entered: 04/26/2002

ORDER disallowing claim(s)

Docket Text: ORDER disallowing claim[s] , Inc., in its entirety and deeming the claim of Redline Games, Inc to be withdrawn [Claim No. 68 only] with notice of entry. RE: Item# 535 Original NIBS Entry Number: 505
And [NV] Original NIBS Entry Number: 505
. Doc.

No. Dates Description

541 Filed: 04/30/2002

Entered: 05/01/2002

ORDER allowing and disallowing claim(s)

Docket Text: ORDER allowing and disallowing claim[s] /ALLOWING CLAIM IN A REDUCED AMOUNT [re claim of James Umphreys], with notice of entry RE: Item# 517 [SKF] Original NIBS Entry Number: 506

543 Filed: 04/30/2002

Entered: 05/02/2002

Terminated: 06/20/2002

Generic Motion

Docket Text: Motion and notice of motion to disallow claims of IX2 Networks, LLC; memorandum of points and authorities; declaration of Craig Grossman; filed by attorney for debtor with proof of service hearing on 06/04/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [NV] Original NIBS Entry Number: 508

544 Filed: 04/30/2002

Entered: 05/02/2002

Terminated: 06/07/2002

Generic Motion

Docket Text: Motion and notice of motion to disallow claims of Heidrick & Struggles, Inc.; memorandum of points and authorities; declaration of Craig Grossman; filed by attorney for debtor with proof of service hearing on 06/04/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [NV] Original NIBS Entry Number: 509

545 Filed: 04/30/2002

Entered: 05/02/2002

Terminated: 06/06/2002

Generic Motion

Docket Text: Motion and notice of motion to disallow Founder Claim of Michael Todd; memorandum of points and authorities; declaration of James Ellis; filed by attorney for debtor with proof of service hearing on 06/04/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [NV] Original NIBS Entry Number: 510

[DISPOSED] by item no. 536 [SKF] Original NIBS Entry Number: 510

542 Filed: 05/01/2002

Entered: 05/02/2002

Application and ORDER rescheduling hearing -GRANTED

Docket Text: Application and ORDER rescheduling hearing - GRANTED [and stipulation] for motion to disallow Founders' claims; with notice of entry postponed to 06/12/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 526 [NV] Original NIBS Entry Number: 507

546 Filed: 05/07/2002

Entered: 05/08/2002

Terminated: 12/17/2002

Motion to approve compromise

Docket Text: Motion to approve compromise [and notice] and settlement between the debtor and Heidrick & Struggles, Inc.; points and authorities; declaration of Craig Grossman; declaration of Jeanne Puckett; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 06/04/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] Original NIBS Entry Number: 511

[DISPOSED] by item 527 [SKF] Original NIBS Entry Number: 511

547 Filed: 05/08/2002

Entered: 05/10/2002

Objection

Docket Text: Objection [Evidentiary] to Travis Kalanick's opposition to motion to disallow founders claims; filed by attorney for debtors with proof of service RE: Item# 536 [NV] Original NIBS Entry Number: 512

548 Filed: 05/08/2002

Entered: 05/10/2002

Reply

Docket Text: Reply to Travis Kalanick's opposition to motion to disallow founders' claims; request for continuance; with declaration of Paul M. Brent with proof of service RE: Item# 536 [NV] Original NIBS Entry Number: 513

549 Filed: 05/13/2002

Entered: 05/14/2002

Notice to professionals to file application for compensation

Docket Text: Notice to professionals to file application for compensation of Fifth and Final Fee application of Steinberg, Nutter & Brent, a Law Corporation, filed by attorney for debtor with proof of service [NV] Original NIBS Entry Number: 514

550 Filed & Entered: 05/14/2002

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon resolving debtor's presently pending objection to claim of Travis Kalanick; with proof of service and notice of entry [NV] Original NIBS Entry Number: 515

551 Filed: 05/15/2002

Entered: 05/16/2002

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon resolving debtor's presently pending objection to claims of Dan Rodrigues, Kevin Smilak, Ilya Haykinson and Jason Droege and allowing for claims in reduced amounts; [court waives need for BR 9019 because settlement is not more favorable than what confirmed plan would give.] with notice of entry RE: Item# 516 [NV] Original NIBS Entry Number: 516

552 Filed: 05/20/2002

Entered: 05/21/2002

Opposition

Docket Text: Opposition [and notice of opposition] to motion to disallow claims of IX2 Networks, LLC; memorandum of points and authorities with declaration of William N. Peckovich; filed by Charbel F. Lahoud attorney for respondent, IX2 Networks, LLC; with proof of service RE: Item# 543 [NV] Original NIBS Entry Number: 517

553 Filed: 05/22/2002

Entered: 05/23/2002

ORDER to continue/reschedule hearing

Docket Text: ORDER to continue/reschedule hearing on debtor's motion to disallow Founder Claim of Michael Todd [By Stipulation]; with notice of entry. [RMA] Original NIBS Entry Number: 518

554 Filed: 05/22/2002

Entered: 05/23/2002

Notice of continued hearing

Docket Text: Notice of continued hearing postponed to 06/18/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 545 [RMA] Original NIBS Entry Number: 518A

555 Filed: 05/29/2002

Entered: 05/30/2002

ORDER to continue/reschedule hearing

Docket Text: ORDER to continue/reschedule hearing on motion to disallow claim of IX2 NETWORKS, LLC. [By Stipulation]; GRANTED and notice of entry. [RMA]

Original NIBS Entry Number: 519

556 Filed: 05/29/2002

Entered: 05/30/2002

Notice of continued hearing

Docket Text: Notice of continued hearing postponed to 06/19/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 543 [RMA] Original NIBS Entry Number: 519A

557 Filed: 05/31/2002

Entered: 06/03/2002

Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [FIFTH AND FINAL] by general bankruptcy counsel for Official committee of unsecured creditors for the period March 1, 2002 to May 30, 2002; declaration of Aram Ordubegian; filed by Aram Ordubegian, attorney for creditor's committee, with proof of service hearing on 06/26/2002 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [SKF] Original NIBS Entry Number: 520

558 Filed: 05/31/2002

Entered: 06/03/2002

Terminated: 12/17/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [FIFTH AND FINAL] of Steinberg, Nutter & Brent, counsel for debtor for the period, February 28, 2002 to May 20, 2002; declaration of Paul Brent; declaration of Craig Grossman; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 06/26/2002 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [Disposed] [SKF] Original NIBS Entry Number: 521

559 Filed: 05/31/2002

Entered: 06/03/2002

Terminated: 06/26/2002

Application for payment of interim or final fees and/or expenses

Docket Text: Application for payment of interim or final fees and/or expenses [FIFTH AND FINAL] of Brooks, Norton & Garbowitz, Accountants for Chpater 11 debtor, for the period March 12, 2002 to May 28, 2002; declaration of Joseph C. Brooks; declaration of Craig Grossman; filed by Joseph C. Brooks, accountant for debtor, with proof of service hearing on 06/26/2002 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 522

560 Filed: 05/31/2002

Entered: 06/03/2002

Notice of hearing

Docket Text: Notice of hearing on fifth and final fee applications; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 06/26/2002 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 559 [SKF] Original NIBS Entry Number: 523

561 Filed: 05/31/2002

Entered: 06/03/2002

Terminated: 07/01/2002

Motion to approve compromise

Docket Text: Motion to approve compromise [and notice] and settlement of claims between debtor and Michael Todd; points and authorities; declaration of Craig Grossman; declaration of Michael Todd; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 06/26/2002 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012[Disposed] [SKF] Original NIBS Entry Number: 524

562 Filed: 05/31/2002

Entered: 06/03/2002

Notice of hearing

Docket Text: Notice of hearing on motion to compromise; filed by Paul M. Brent, attorney for debtor, with proof of service hearing on 06/26/2002 at 10:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 [SKF] Original NIBS Entry Number: 525

563 Filed: 06/05/2002

Entered: 06/06/2002

Terminated: 06/25/2002

Notice of continued hearing

Docket Text: Notice of continued hearing on motion to disallow founders claim of Michael Todd; filed by attorney's for debtor with proof of service postponed to 06/19/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 545[Rescheduled] [NV] Original NIBS Entry Number: 526

564 Filed: 06/06/2002

Entered: 06/07/2002

ORDER granting/approving

Docket Text: ORDER granting/approving objection to claim of Heidrick & Struggles, Inc., and granting motion of debtor approving settlement and compromise of claims between the debtor and Heidrick & Struggles, Inc; [Heidrick & Struggles shall have a claim in the debtor estate of \$50,000.00 and receive payment upon entry of a non-appealable order granting this motion] with notice of entry RE: Item# 544 [NV] Original NIBS Entry Number: 527

565 Filed: 06/14/2002

Entered: 06/17/2002

Terminated: 08/16/2002

Final Decree

Docket Text: Motion for final decree ; memorandum of points and authorities; declaration of Paul M. Brent; filed by Paul M. Brent, attorney for debtor, with proof of service [Disposed] [SKF] Original NIBS Entry Number: 528

566 Filed: 06/14/2002

Entered: 06/17/2002

Notice of motion/application

Docket Text: Notice of motion/application for final decree; filed by Paul M. Brent, attorney for debtor, with proof of service RE: Item# 565 [SKF] Original NIBS Entry Number: 529
567 Filed: 06/14/2002
Entered: 06/17/2002

Status report

Docket Text: Status report re: debtor;s compliance with confirmed plan or reorganization; filed by Paul M. Brent, attorney for debtor, with proof of service RE: Item# 565 [SKF] Original NIBS Entry Number: 530
568 Filed: 06/18/2002
Entered: 06/19/2002

Declaration

Docket Text: Declaration of Lynne Cary re fifth and final application for compensation by general bankruptcy counsel for official committee of unsecured creditors; filed by Aram Ordubegian attorney for official committee of unsecured creditors; with proof of service RE: Item# 557 [NV] Original NIBS Entry Number: 531
569 Filed: 06/19/2002
Entered: 06/20/2002

Comments

Docket Text: Comments of the United States Trustee on Fifth and Final Fee application; filed by U.S. Trustee with proof of service RE: Item# 557 [NV] Original NIBS Entry Number: 532
570 Filed: 06/19/2002
Entered: 06/20/2002

Stipulation and ORDER thereon

Docket Text: Stipulation and ORDER thereon resolving debtor's presently pending objection to claim of IX2 Networks, LLC, and allowing for claim in a reduced amount; declaration of Craig Grossman and William N. Peckovich; [1. IX2 shall reduce its claim from \$43,629.07 to \$34,903.26 which represents 80% of its claim filed, 2. IX2 shall b entitled to a payment from the debtor in the amount of \$34,903.26 100% of its allowed claim 10 days after the date of entry of a final non-appealable order of the Bankruptcy Court approving this stipulation. [see stipulation from further orders] with notice of entry RE: Item# 543 [NV] Original NIBS Entry Number: 533

. Doc.

No. Dates Description

571 Filed: 06/24/2002
Entered: 06/25/2002

Notice of continued hearing

Docket Text: Notice of continued hearing on motion to disallow Founders Claim of Michael Todd; filed by Paul M. Brent, attorney for debtor, with proof of service postponed to 06/26/2002 at 11:00 a.m. at 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012 RE: Item# 563 [SKF] Original NIBS Entry Number: 534
572 Filed & Entered: 06/26/2002

ORDER granting/approving

Docket Text: ORDER granting/approving fifth and final allowances of compensation and reimbursement of expenses and final payment of same; [with notice of entry] RE: Item# 563 [NV] Original NIBS Entry Number: 535

[DISPOSED]

[DISPOSED]

[DISPOSED] RE: Item# 559 [SKF] Original NIBS Entry Number: 535

573 Filed: 06/28/2002

Entered: 07/01/2002

ORDER granting/approving

Docket Text: ORDER granting/approving motion for order approving compromise and settlement of claims between the debtor and Michael Todd [Payment shall be made on 100% of the allowed claim of Michael Todd within 7 days of the date of the hearing] with notice of entry RE: Item# 561 [NV] Original NIBS Entry Number: 536

574 Filed: 07/03/2002

Entered: 07/05/2002

Notice of motion/application

Docket Text: Notice of motion/application on final decree [hearing on July 31, 2002 at 10:00 a.m., Courtroom 1438, Los Angeles, CA 90012]; filed by Paul M. Brent, attorney for debtor, with proof of service RE: Item# 565 [SKF] Original NIBS Entry Number: 537

575 Filed: 07/03/2002

Entered: 07/05/2002

Supplemental (Generic)

Docket Text: Supplemental declaration [of Paul M. Brent] to motion for final decree re: status of distributions; with proof of service RE: Item# 567 [SKF] Original NIBS Entry Number: 538

576 Filed: 07/03/2002

Entered: 07/05/2002

Declaration

Docket Text: Declaration of Scott W. Simpson, re service by mail RE: Item# 574 [SKF] Original NIBS Entry Number: 539

577 Filed: 07/11/2002

Entered: 07/12/2002

Amendment/Amended

Docket Text: Amendment/Amended notice of hearing on motion of reorganized debtor for final decree pursuant to bankruptcy rule 3022 and 11 U.S.C. 350, filed by Paul M. Brent with proof of service RE: Item# 574 [CJS] Original NIBS Entry Number: 540

578 Filed: 08/15/2002

Entered: 08/16/2002

Final Decree

Docket Text: FINAL DECREE and Order Closing Chapter 11 Case; with notice of entry. RE: Item# 565 [RMA] Original NIBS Entry Number: 541

579 Filed & Entered: 09/20/2002

ORDER to reassign case

Docket Text: ORDER to reassign case and Adversary Proceedings from Bankruptcy Judge Kathleen March to Bankruptcy Judge Erithe A. Smith [YR] Original NIBS Entry Number: 542

580 Filed & Entered: 10/21/2002

ORDER granting/approving

Docket Text: ORDER granting/approving motion to reject executory contract with Oracle; with notice of entry RE: Item# 282 [SKF] Original NIBS Entry Number: 543

581 Filed: 10/29/2002

Entered: 10/30/2002

Declaration

Docket Text: Declaration of Linda T Bowen re: compliance with Local Rule 9013-7[a] with respect to uncontested motion for order authorizing debtor to reject unexpired leases of non-residential real property pursuant to 11 U.S.C. 365[a] and Federal Rule of Bankruptcy Procedure 6006; with proof of service RE: Item# 150 [RMA] Original NIBS Entry Number: 544

582 Filed & Entered: 11/04/2002

ORDER granting/approving

Docket Text: ORDER granting/approving debtor's motion to reject unexpired leases of non-residential real property with Maple Plaza Limited pursuant to 11 U.S.C. 365[a] and Federal Rule of Bankruptcy Procedure 6006, the rejection fo

the leases shall be deemed effective as of November 2, 2000 -[for additional information refer to file]- with notice of entry and proof of service; filed by Paul M. Brent Attorney for Debtor and Debtor-in-Possession RE: Item# 150 [LQ3]
Original NIBS Entry Number: 545

583 Filed & Entered: 12/17/2002

ORDER closing case

Docket Text: ORDER closing case FINAL DECREE [SRB] Original NIBS Entry Number: 546

PACER Service Center
Transaction Receipt

12/09/2005 07:28:12

PACER Login: nf0021 Client Code:

Description: History/Documents Search Criteria: 2:00-bk-38784-ES Type: History

Docket Text: DisplayDktText

Billable Pages: 49 Cost: 3.92

EXHIBIT H

1 PAUL M. BRENT, ESQ., SBN 125976
 2 STEINBERG, NUTTER & BRENT
 3 LAW CORPORATION
 4 501 COLORADO AVENUE, SUITE 300
 5 SANTA MONICA, CALIFORNIA 90401-2426
 6 PH: (310) 451-9714
 7 FAX: (310) 451-0929

8 Attorneys For: Debtor and Debtor-in-Possession, Scour, Inc.,
 9 Now Known as Apartment 433 Technologies, Inc.

10 [SPACE BELOW FOR FILING STAMP ONLY]
 11 **ENTERED**
 12 **AUG 14 2001**
 13 CLERK, U.S. BANKRUPTCY COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 Los Angeles

16 **UNITED STATES BANKRUPTCY COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**
 18 **LOS ANGELES DISTRICT**

19 Case No. LA 00-38784 KM
 20 Chapter 11

21 **STIPULATION TO CONTINUE THE**
 22 **HEARING ON THE MOTION OF DEBTOR**
 23 **AND DEBTOR-IN-POSSESSION TO**
 24 **DISALLOW TRANSFERRED CLAIMS OF**
 25 **ARGO PARTNERS; ORDER THEREON**

26 **Presently-Scheduled Hearing**
 27 **Date:** August 21, 2001
 28 **Time:** 11:00 a.m.
Place: Courtroom "1468"
 255 E. Temple Street
 Los Angeles, California

29 **In Re:**
 30 **SCOUR, INC., Now Known as**
 31 **APARTMENT 433 TECHNOLOGIES,**
 32 **INC.,**

33 Debtor and
 34 Debtor-in-Possession.

35 The Debtor and Debtor-in-Possession Scour, Inc. ("Debtor"), by and through its counsel, Paul

36 M. Brent of Steinberg, Nutter & Brent, Law Corporation, and Argo Partners, by and through its
 37 counsel Sidney Levinson of Hennigan, Bennett & Dorman, hereby stipulate, agree to and request the
 38 following:

- 39 1. That the Court continue the hearing on the Motion of Debtor to Disallow the Transferee
- 40 Claims held by Argo Partners which is presently scheduled to be heard on August 21, 2001, at 11:00
- 41 a.m., to thirty (30) days thereafter.
- 42 2. The continuance is requested to allow for negotiations to continue towards resolving
- 43 the parties' disputes concerning the claims of Argo Partners ("Argo").

44 **FILED**
 45 **AUG 10 2001**
 46 CLERK, U.S. BANKRUPTCY COURT
 47 CENTRAL DISTRICT OF CALIFORNIA
 48 Los Angeles

ORIGINAL

1000000

344 PA

1 3. Argo reserves the right to object to the Motion and Debtor reserves the right to file
 2 responsive pleadings thereto, prior to the continued hearing in accordance with the time limits set forth
 3 in the Local Bankruptcy Rules.

4 4. By having entered into the Stipulation, the Debtor in no way intends to imply that the
 5 right to object to the claims of Argo Partners has been waived.

6 **STENBERG, NUTTER & BRENT,
 7 LAW CORPORATION**

8 Dated: August 8, 2001

9 
 10 **PAUL M. BRENT, Attorney for
 11 Seacor, Inc., Debtor and Debtor-in-
 12 Possession**

11 **HENNINGAN, BENNETT & DORMAN**

12 Dated: August 7, 2001

13 
 14 **SIDNEY Y. LEVINSON, Attorney for
 15 Argo Partners**

ORDER

The Court, having reviewed the foregoing Stipulation and GOOD CAUSE APPEARING, IT IS ORDERED as follows:

1. The hearing on the Debtor's Motion to Disallow Transferee Claims of Argo Partners ("Motion"), presently scheduled to be heard on August 7, 2001, at 11:00 a.m. in Courtroom "1468" is hereby continued to September 25, 2001 at 11:00 a.m.
2. Continuance of the Motion shall be without prejudice to the right of all parties-in-interest to file objections to the Motion and any responsive pleadings thereto, prior to the continued hearing, in accordance with the time limits set forth on the Local Bankruptcy Rules.

Dated: Aug. 10, 2001, 2001


THE HONORABLE KATHLEEN P. MARCH,
UNITED STATES BANKRUPTCY JUDGE

[scourtdisallow claims/GROUP 4/transferee claims-continue hearing stipulation-order.wpd]

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Scott W. Simpson, an an employee in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is: 501 Colorado Avenue, Suite 300, Santa Monica, CA 90401-2426. On August 8, 2001, I served the foregoing document(s) described as:

**STIPULATION TO CONTINUE THE HEARING ON THE MOTION OF
DEBTOR AND DEBTOR-IN-POSSESSION TO DISALLOW TRANSFEREE
CLAIMS OF ARGO PARTNERS; ORDER THEREON**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Santa Monica, CA, addressed as follows:

U.S. Trustee
Office of the U.S. Trustee
221 North Figueroa Street, Suite 800
Los Angeles, CA 90012

Counsel for Argo Partners
Sidney P. Levinson
Hennigan, Bennett & Dorman
601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017

Counsel for Committee
David R. Weinstein, Esq.
1925 Century Park East, Suite 1150
Los Angeles, CA 90067-2712

✓
(By Mail) I caused such envelope with postage thereon, fully prepaid to be placed in the United States mail. Executed August 8, 2001 at Santa Monica, CA.

— (By Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on August _____, 2001 at Santa Monica, CA.

— (By Facsimile) I caused such documents to be served upon the above-referenced parties by facsimile. Executed on August _____, 2001 at Santa Monica, California.

* — (Federal) I declare that I am an employee in the offices of a member of the State Bar of this court at whose direction the service was made.


* SCOTT W. SIMPSON

**Paul M. Brent
Steinberg, Nutter & Brent
501 Colorado Avenue, Suite 300
Santa Monica, CA 90401-2426**

**Office of the U.S. Trustee
221 North Figueroa St., Suite 800
Los Angeles, CA 90012**

**David R. Weinstein, Esq.
1925 Century Park East, Suite 1150
Los Angeles, CA 90067-2712**

**Sidney P. Levinson
Hennigan, Bennett & Dornan
601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017**

EXHIBIT I



VLS 10/17/00 9:41

3:94-CV-00737 SEC V. CONTINENTAL WIRE

808

NTCF.

1 Michael Singer
2 Mathew Gold
3 Argo Partners, Inc.
4 12 West 37th Street
5 Ninth Floor
6 New York, NY 10018
7 Telephone: (212) 643-5445
8 Telecopy: (212) 643-6401; *and*

9 James O. Johnston, Esq.
10 Hennigan, Bennett & Dorman
11 601 South Figueroa Street
12 Suite 3300
13 Los Angeles, CA 90017
14 Telephone: (213) 694-1200
15 Telecopy: (213) 694-1234

16 The foregoing request includes, without limitation, orders on and notices of any motion,
17 application, petition, pleading, plan of reorganization, disclosure statement, or complaint, whether
18 formal or informal, written or oral, transmitted or conveyed by mail, telephone, telecopy, or
19 otherwise in these cases.

20 Neither this request for notice nor any subsequent appearance, pleading, proof of claim, or
21 other writing or conduct shall constitute a waiver of any (a) rights to trial by jury in any proceeding
22 as to any and all matters so triable; or (b) other rights, claims, defenses, setoffs, or other matters
23 under any agreement, law or equity. All of such rights hereby are reserved and preserved, without
24 exception and with no purpose of confessing or conceding jurisdiction in any way by this filing or
25 by any other participation in this case.

26 DATED: October 12, 2000

27 **HENNIGAN, BENNETT & DORMAN**

28 By: _____

James O. Johnston

Counsel for Argo Partners, Inc.

EXHIBIT J

Exhibit J - Chronology of Conflicted Representation

Apr 5, 2000

Aureal files application to employ HBD. Exhibit A.

Jun 19, 2000

Court issues order authorizing employment of H&B. Exhibit B.

Jul 13, 2000

Sidney Levinson telephone conference with Argo Partners. Exhibit C, p. 2 (second fee application).

Apr 5, 2000

Apr 6, 2000

Jun 19, 2000

Jun 20, 2000

Jul 13, 2000

Jul 14, 2000

Exhibit J - Chronology of Conflicted Representation

Oct 11, 2000

90 days after H&B discussed status of Aureal case with Argo, HBD was retained by Argo in connection with Receivership Cases ("**First Conflicted Representation**"). Exhibit D, Supplemental Declaration of Sidney P. Levinson, (filed by Fax on June 7, 2001), p. 2 par 5.

Oct 2, 2000

One of Argo's Notice of Transfers of Claim filed in Aureal case. Exhibit F.

Oct 3, 2000

Sidney Levinson telephone conference with Argo Partners regarding purchased claims. Exhibit C, p. 6, 10 (3rd fee application).

Oct 6, 2000

Joshua Morse telephone conference with Argo Partners. Exhibit C, p.7 & 12 (third fee application).

Oct 10, 2000

Sidney Levinson telephone conference with Argo Partners. Exhibit C, p. 7 & 11 (third fee application).

Oct 2, 2000

Oct 3, 2000

Oct 6, 2000

Oct 7, 2000

Oct 10, 2000

Oct 11, 2000

Exhibit J - Chronology of Conflicted Representation

Oct 12, 2000

A Notice of Appearance for Argo Partners was signed by H&B, filed by HBD on 12/16/00 in **First Conflicted Representation**. Exhibit I, Receivership Cases Notice of Appearance.

Oct 13, 2000

Sidney Levinson telephone conference with Argo Partners. Exhibit C, p. 5, 9 (third fee application).

Dec 1, 2000

Joshua Morse telephone conference with Argo Partners. Exhibit C, p.15 (fourth fee application).

Dec 5, 2000

Sidney Levinson telephone conference with Argo Partners. Exhibit C, p. 15 (fourth fee application).

Oct 12, 2000

Oct 13, 2000

Dec 1, 2000

Dec 2, 2000

Dec 5, 2000

Dec 6, 2000

Exhibit J - Chronology of Conflicted Representation

Feb ??, 2001

HBD's representation of Argo in **First Conflicted Representation** apparently concluded, but a more specific date was not offered. Exhibit D, p. 2, par 5.

Jun 7, 2001

239 days after H&B's **First Conflicted Representation**, Sidney Levinson files a declaration disclosing same. Exhibit D, p. 1.

Dec 12, 2000

Joanne B. Stern telephone conference with Argo Partners regarding Argo Partners information. Exhibit C, p. 14 (fourth fee application).

Jun 6, 2001

Joanne B. Stern review creditor database regarding Argo Partners claims. Exhibit C, p. 17 (tenth fee application).

Dec 12, 2000

Joanne B. Stern preparation of correspondence to Ms. Sargent of Argo Partners regarding Argo Partners information. Exhibit C, p. 14 (fourth fee application).

Dec 12, 2000

Dec 13, 2000

Feb 1, 2001

Feb 2, 2001

Jun 6, 2001

Jun 7, 2001

Exhibit J - Chronology of Conflicted Representation

Jul 16, 2001

Levinson tel conf. with Argo Partners. Exhibit C, p. 19 (eleventh fee application).

Jul 16, 2001

Sidney Levinson review Argo ballots. Exhibit C, p. 19 (eleventh fee application).

Jul 16, 2001

Levinson tel conf. w/ Argo re: ballots cast on Cmte plan. Exhibit C, p. 19 (eleventh fee application).

< Aug 7, 2001

Argo retained H&B a second time. On this day, CA Attorney Levinson continued a hearing date in the **Second Conflicted Representation**.

Argo was therefore retained a second time beginning sometime before this date, but after June 7, 2001, the date of the late filing of the disclosure of the **First Conflicted Representation**. Exhibit H, p. 2.

Sep 21, 2001

The docket in the **Second Conflicted Representation** indicates that Sidney Levinson filed a pleading as counsel for Argo on September 20, 2001. Exhibit G, p. 50.

Jul 16, 2001

Jul 17, 2001

Aug 7, 2001

Aug 8, 2001

Sep 21, 2001

Sep 22, 2001

Exhibit J - Chronology of Conflicted Representation

Sep 25, 2001

H&B represents Argo at a hearing on objections to Argo claims in **Second Conflicted Representation**. H&B represents that these objections have been resolved, representation apparently continues. Exhibit E, par 6.

Oct 24, 2001

at least **78 days**, possibly more, after the first known date of the **Second Conflicted Representation**, Sidney Levinson files a supplemental declaration for the Second Conflicted Representation.

Levinson implies that the Second Conflicted Representation began 9/25/01; actual dates are omitted. Exhibit E, par 6.

01

Sep 25, 2001

Sep 26, 2001

Oct 24, 2001

EXHIBIT K

ORIGINAL

FILED

MAY 03 2002

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

HENNIGAN, BENNETT & DORMAN
MICHAEL A. MORRIS (SBN 89842)
SIDNEY P. LEVINSON (SBN 139419)
JOSHUA D. MORSE (SBN 211050)
601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017
Telephone: (213) 694-1200
Fax: (213) 694-1234

Reorganization Counsel for
Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re) Case No.00-42104-T11

AUREAL, INC., d/b/a SILO.COM, f/k/a) (Chapter 11)

AUREAL SEMICONDUCTOR, INC., f/k/a)

MEDIA VISION TECHNOLOGY, INC., a)

Delaware corporation,)

Debtor.)

[No Hearing Required]

The following "Stipulation And Order Authorizing Allowance Of Claim Number 107 (Filed
By Center Capital Corporation)" (the "Stipulation") is entered into, by and through counsel, on
behalf of Aureal Inc., the debtor and debtor in possession herein (the "Debtor"), Argo Partners, Inc.
("Argo"), as successor in interest to Center Capital Corporation ("Center"), and the Official
Committee of Unsecured Creditors (the "Committee") with respect to the following facts:
A. On April 5, 2000 (the "Petition Date"), the Debtor commenced its reorganization case
by filing a voluntary petition for relief under chapter 11 of title 11 United States Code (the
"Bankruptcy Code").
B. The Debtor is continuing in possession of its assets and is operating and managing its
business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

1 C. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3 D. Prior to the commencement of this bankruptcy case, the Debtor's business was in the
4 field of digital audio imaging, which is the process of creating a highly realistic audio experience by
5 closely simulating the real world physics of audio.

6 E. On or about May 11, 2000, the Debtor filed its Schedules of Assets and Liabilities
7 (the "Schedules"), which represented an amount owing to Center of \$44,904.76 (the "Scheduled
8 Amount").

9 F. Thereafter, On August 31, 2000, Center filed a proof of claim for \$39,668.22 (the
10 "Center Claim"), which apparently is a claim for payments due under the terms of a plan of
11 reorganization¹ from a bankruptcy of the Debtor's predecessor in interest, Media Vision
12 Technology, Inc. ("MV"). A true and correct copy of the Center Claim is attached hereto as
13 Exhibit A, and has been assigned Claim Number 107 on the Official Claims Register in this case.

14 G. Center assigned the Center Claim to Argo pursuant to the Assignment of Claim dated
15 September 25, 2000 (the "Assignment"). A true and correct copy of the Assignment contained
16 within the "Notice Of Transfer Of Claim Pursuant To Rule 3001(E)(1) or (3) Of The Federal Rules
17 Of Bankruptcy Procedure" (the "Notice") is attached hereto as Exhibit B.²

18 H. On December 7, 2000, the Debtor filed the "Notice Of Objection And Debtor's First
19 Omnibus Objection To Claims (Duplicate Claims, Cured Claims, Reclassified Claims, No Basis
20 Claims, Equity Claims, Amended Claims, And Late Claims)" (the "Objection"). Through the
21 Objection, the Debtor sought to expunge the Center Claim in its entirety on the grounds that (i) the
22 Center Claim was filed with insufficient evidence to substantiate the amount claimed and (ii) the
23 _____

1 Center's original claim in the MV bankruptcy appears to originate from a lease agreement
2 between Center and MV (the "MV Liability").

2 The reference contained in the Notice and the Assignment that the Center Claim was valued
at \$44,904.76 (representing the Scheduled Amount) is incorrect inasmuch as Center filed the
Center Claim for \$39,668.22 after the Debtor filed the Schedules, which acted to supercede
the Schedule Amount. Accordingly, for the purposes of this Stipulation, the amount of the
Center Claim is deemed to be \$39,668.22.

1 amount sought through the Center Claim exceeded the amount reflected in the Debtor's books and
2 records.

3 I. The Debtor did not receive any opposition to the relief requested in the Objection
4 with respect to the Center Claim. Accordingly, at a hearing on January 17, 2001, the Honorable
5 Leslie Tchaikovsky sustained the Objection with respect to the Center Claim.³ Thus, the Center
6 Claim was disallowed in its entirety.

7 J. Upon further review of the Center Claim, however, the Debtor discovered that it
8 does, in fact, owe the amount sought through the Center Claim. It appears that the Debtor's books
9 and records only indicate a portion of the total MV Liability and not the entire amount due and
10 owing.⁴ See accompanying Declaration Of Gerrie Sargent In Support Of Stipulation And Order
11 Authorizing Allowance Of Claim Number 107 (Filed By Center Capital Corporation) (the "Sargent
12 Declaration"). Moreover, a review of the Declaration of Service for the Objection reveals that the
13 Debtor served Center, but not Argo, with notice of the Objection.

14 K. In order to prevent Argo from being required to seek reconsideration of the Order
15 with respect to the disallowance of the Center Claim, the Debtor and the Committee are willing to
16 stipulate that this Court may authorize the Center Claim to be treated as an allowed general
17 unsecured claim in the amount of \$39,668.22.

18 **NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND FOR OTHER**
19 **GOOD AND VALUABLE CONSIDERATION, THE DEBTOR, ARGO (AS SUCCESSOR IN**
20 **INTEREST TO CENTER), AND THE COMMITTEE, AGREE AS FOLLOWS:**

21 1. This Prepetition Claim Stipulation shall have no force or effect unless and until it is
22 approved by the Court through the entry of this Order.
23

24
25 ³ Thereafter, on February 9, 2001, the Order Sustaining Debtor's First Omnibus Objection
26 To Claims (Duplicate Claims, Cured Claims, Reclassified Claims, No Basis Claims, Equity
27 Claims, Amended Claims, And Late Claims) was entered.

28 ⁴ As of the Petition Date, the Debtor owed Center \$38,941.52, however only \$16,252.68 of
that amount (three monthly installments of \$5,417.56) was reflected on the Debtor's books
and records, as the Debtor only booked monthly installments of the MV Liability as they
accrued on a monthly basis.

HENNIGAN, BENNETT & DORMAN
LAWYERS
LOS ANGELES, CALIFORNIA

1 2. The Debtor agrees, upon the entry of an Order approving this Stipulation in form and
2 content satisfactory to Argo and the Committee, to treat the Center Claim as an allowed general
3 unsecured claim in the amount of \$39,668.22 in full satisfaction of any and all outstanding
4 obligations owing by the Debtor to Argo (as successor in interest to Center).

5 3. The provisions of this Stipulation shall be binding upon Argo (as successor in interest
6 to Center), the Committee and the Debtor and their respective successors and assigns (including any
7 chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtor) and
8 inure to the benefit of Argo (as successor in interest to Center), the Committee and the Debtor and
9 (except with respect to any trustee hereinafter appointed or elected for the estate of the Debtor) their
10 respective successor and assigns.

11 4. The Debtor shall promptly mail copies of this Stipulation and the Sargent Declaration
12 to the Committee, the Office of the United States Trustee, and to any other party which has filed a
13 request for notices with this Court.

14 5. In the event that an objection is filed to this Stipulation, a final hearing to approve
15 this Stipulation shall be scheduled by the Debtor on no less than ten (10) days notice. Any objection
16 to the relief provided under this Stipulation shall serve and file written objections; which objections
17 shall be served upon

18 Hennigan, Bennett & Dorman
19 601 South Figueroa Street, Suite 3300
20 Los Angeles, California 90017
21 Attention: Joshua D. Morse, Esq.
22 Reorganization Counsel for Debtor and Debtor in Possession

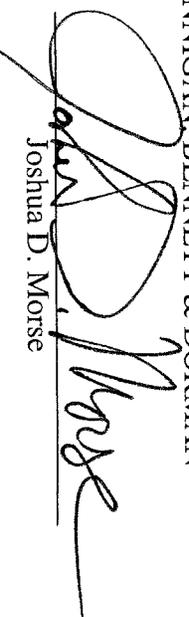
23 Argo Partners, Inc.
24 12 West 37th St.
25 9th Floor
26 New York, NY 10018
27 Attention: Matthew Gold, Esq.

28 McCutchen, Doyle, Brown & Enersen, LLP
29 3 Embarcadero Center
30 San Francisco, CA 94111
31 Attention: Randy Michelson, Esq.
32 Attorneys for the Official Committee of Unsecured Creditors

1 and shall be filed with the Clerk of the United States Bankruptcy Court for the Northern District of
2 California, Oakland, California, in each case no later than fifteen (15) days from the date of service
3 of this Stipulation. In the event that no objection is filed on or before fifteen (15) days from the date
4 of service of this Stipulation, this Order shall automatically become a final order without the need
5 for any further order of this Court.
6 6. This Prepetition Claim Stipulation may be executed by facsimile and in counterparts
7 by the parties hereto.

8 DATED: April 29, 2002

HENNIGAN, BENNETT & DORMAN

9 By: 
10 Joshua D. Morse
11 Reorganization Counsel for
12 Debtor and Debtor in Possession

13 DATED: April __, 2002

ARGO PARTNERS, INC.

14 By: _____
15 Matthew Gold
16 MCCUTCHEEN, DOYLE, BROWN & ENERSEN,
17 LLP

18 DATED: April __, 2002

19 By: _____
20 Randy Michelson
21 Attorneys for the Official Committee of
22 Unsecured Creditors

23 APPROVED AND SO ORDERED

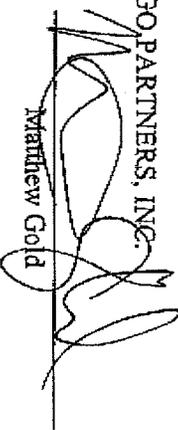
24 Dated: May 3, 2002
25 
26 THE HONORABLE LESLIE TCHARKOVSKY,
27 UNITED STATES BANKRUPTCY JUDGE
28

1 and shall be filed with the Clerk of the United States Bankruptcy Court for the Northern District of
 2 California, Oakland, California, in each case no later than fifteen (15) days from the date of service
 3 of this Stipulation. In the event that no objection is filed on or before fifteen (15) days from the date
 4 of service of this Stipulation, this Order shall automatically become a final order without the need
 5 for any further order of this Court.

6 6. This Prepetition Claim Stipulation may be executed by facsimile and in counterparts
 7 by the parties hereto.

8 DATED: April __, 2002 HENNIGAN, BENNETT & DORMAN

9 By: _____
 10 Joshua D. Morse
 11 Reorganization Counsel for
 12 Debtor and Debtor in Possession

13 DATED: April 29, 2002 ARGO PARTNERS, INC.
 14 By: 
 15 Matthew Gold
 16 MCCUTCHEEN, DOYLE, BROWN & ENERSEN,
 17 LLP

18 DATED: April __, 2002
 19 By: _____
 20 Randy Michelson
 21 Attorneys for the Official Committee of
 22 Unsecured Creditors

23 APPROVED AND SO ORDERED
 24 Dated: _____
 25 THE HONORABLE LESLIE TCHAIKOVSKY,
 26 UNITED STATES BANKRUPTCY JUDGE

27

28

Hennigan, Bennett & Dorman
Lawyers
Los Angeles, California

41715\02

STIPULATION AND ORDER AUTHORIZING ALLOWANCE OF CLAIM NUMBER 107

(FILED BY CENTER CAPITAL CORPORATION) - Case No. 00-42104-T11

1 and shall be filed with the Clerk of the United States Bankruptcy Court for the Northern District of
2 California, Oakland, California, in each case no later than fifteen (15) days from the date of service
3 of this Stipulation. In the event that no objection is filed on or before fifteen (15) days from the date
4 of service of this Stipulation, this Order shall automatically become a final order without the need
5 for any further order of this Court.

6 6. This Prepetition Claim Stipulation may be executed by facsimile and in counterparts
7 by the parties hereto.

8 DATED: April __, 2002 HENNIGAN, BENNETT & DORMAN

9 By: _____
10 Joshua D. Morse
11 Reorganization Counsel for
12 Debtor and Debtor in Possession

13 DATED: April __, 2002 ARGO PARTNERS, INC.

14 By: _____
15 Matthew Gold
16
17 MCCUTCHEM, DOYLE, BROWN & ENERSEN,
18 LLP

19 DATED: April 30, 2002
20 By: *Randy Michelson*
21 Randy Michelson
22 Attorneys for the Official Committee of
23 Unsecured Creditors

24 APPROVED AND SO ORDERED
25 Dated: _____
26
27 THE HONORABLE LESLIE TCHAIKOVSKY,
28 UNITED STATES BANKRUPTCY JUDGE

Hennigan, Bennett & Dorman
Lawyers
Los Angeles, California

United States Bankruptcy Court

NORTHERN District of CALIFORNIA

PROOF OF CLAIM

Case Number

00 42104 T11

FILED

AUG 31 2000

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor
(The person or entity to whom the debtor owes money or property)
CENTER CAPITAL, F/K/a TUCKER FINANCIAL

Name and Addresses Where Notices Should be Sent
c/o Kenneth C. Greene, Esq.
300 Drakes Landing Road, Suite 250
Greenbrae, CA 94904

Telephone No. (415) 925-0700

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:

0082592 090

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR
COURT USE ONLY

Check here if this claim: replaces a previously filed claim, dated: _____
 amends _____

1. BASIS FOR CLAIM:

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other (Describe briefly) Lease Agreement and Plan of Reorganization w/Media Vision

- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries, and compensations (Fill out below)

Your social security number _____
Unpaid compensations for services performed from _____ to _____ (date) (date)

2. DATE DEBT WAS INCURRED:

Prior to 1998

3. IF COURT JUDGMENT, DATE OBTAINED:

4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES THAT BEST DESCRIBE YOUR CLAIM AND STATE THE AMOUNT OF THE CLAIM.

- SECURED CLAIM \$ _____
Attach evidence of perfection of security interest:
Brief Description of Collateral: Real Estate Motor Vehicle Other (Describe briefly)

UNSECURED PRIORITY CLAIM \$ _____

- Specify the priority of the claim.
 - Wages, salaries, or commissions (up to \$2000), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier—11 U.S.C. § 507(a)(3)
 - Contributions to an employee benefit plan—U.S.C. § 507(a)(4)
 - Up to \$900 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use—11 U.S.C. § 507(a)(6)
 - Taxes or penalties of governmental units—11 U.S.C. § 507(a)(7)
 - Other—11 U.S.C. §§ 507(a)(2), (a)(5)—(Describe briefly)

Amount of arrearages and other charges included in secured claim above, if any \$ _____
 UNSECURED NONPRIORITY CLAIM \$ 39,668.22
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: (Unsecured) \$ 39,668.22 (Secured) \$ _____ (Priority) \$ _____

\$ 39,668.22
(Total)

Check this box if claim includes prepetition charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

THIS SPACE IS FOR
COURT USE ONLY

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. TIME-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date _____
Sign and print the name and title of any of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

8/29/00

Kenneth C. Greene
Kenneth C. Greene, Attorney for Center Capital

ORIGINAL
EXHIBIT A

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

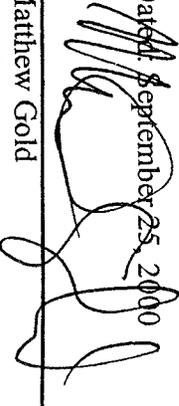
Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: Center Capital Corporation
PO Box 1188
Farmington, CT 06034

2. Your entire claim as shown in the amount of \$44,904.76 has
been transferred pursuant to the Purchase Letter dated as of
September 25th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: ~~September 25, 2000~~

Matthew Gold
Argo Partners, Inc.
(212) 643-5444

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor herunto sets its hand this 25 day of September 2000.

ATTEST:
By: Wagner Johnson
Signature

Wagner Johnson, Special Asset Manager
Print Name/Title
Center Capital Corporation

812-442-2811
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has herunto sets its hand this 25 day of September 2000.

ATTEST
By: Matthew A. Gold
Matthew A. Gold
Argo Partners, Inc.
212-643-5445

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DECLARATION OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On April 30, 2002, I served the following pleading:

**STIPULATION AND ORDER AUTHORIZING ALLOWANCE OF CLAIM NUMBER 107
(FILED BY CENTER CAPITAL CORPORATION).**

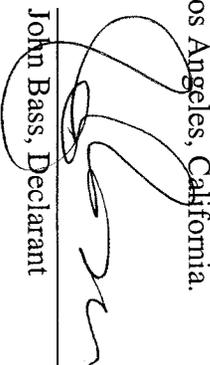
on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

See attached service list

I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in an affidavit

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made. I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

EXECUTED on April 30, 2002, at Los Angeles, California.



John Bass, Declarant

Debtor:
AUREAL, INC.
Attn: Steve Mitchell
PO Box 12587
Pleasanton, CA 94588-2587

Debtor's Counsel:
Sidney Levinson
Hennigan, Bennett & Dorman
601 S Figueroa St., Suite 3300
Los Angeles, CA 90017

Office of the U.S. Trustee:
U.S. Trustee
Attn: Mark L. Pope, Esq.
1301 Clay Street, Suite 690N
Oakland, CA 94612

Secured Creditor as Agent:
Oaktree Capital Management LLC
Attn: Richard Masson
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

Counsel to Oaktree Capital Mgmt.:
Eric Reimer, Esq.
McDermott, Will & Emory
2049 Century Park East, 34th Floor
Los Angeles, CA 90067

Creditors' Committee Member:
Ocean Data Products
5th Floor Kader Industrial Bldg.
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

Creditors' Committee Member:
UMC Group (USA)
Attn: Huai-Jen Lu, Credit Manager
488 Deguigne Drive
Sunnyvale, CA 94086

Creditors' Committee Member:
Flatland Online, Inc.
Attn: Terry Campbell
4104 24th Street
San Francisco, CA 94114

Creditors' Committee Member:
Juan Gonzalez
KPMG
3 Embarcadero Center, Suite 2000
San Francisco, CA 94111

Creditors' Committee Member:
Highsoft, Inc.
Attn: R. Scott Holmgren, Gen. Mgr.
1965 Latham Street
Mountain View, CA 94040-2107

Creditors' Committee Member:
Finova Technology Finance, Inc.
Attn: O'Neil Petrone, Collections Mgr.
115 West Century Road, 3rd Floor
Paramus, NJ 07652

Creditors' Committee Member:
Imagine Media Inc. d/b/a PC Gamer
Attn: David Palavi
150 North Hill Drive
Brisbane, CA 94005

20 Largest Unsecured Creditor:
Caesar International, Inc.
Attn: JoJo Estavillo
1735 Technology Dr, Suite 300
San Jose, CA 95110-1333

20 Largest Unsecured Creditor:
Cadence Design Systems, Inc.
Attn: Steve Mih
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditor:
Houlihan Lokey Howard & Zukin
Attn: Glenn Daniel, Managing Director
One Sansome Street, Suite 1700
San Francisco, CA 94104

20 Largest Unsecured Creditor:
PC World Communications
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0767

20 Largest Unsecured Creditor:
VIFA-Speak AVS
Attn: David Stephens
1860 Renaissance Blvd
Surreyvant, WI 53177

20 Largest Unsecured Creditor:
GE Capital
Attn: Chris Smythe
44 Old Ridgebury Road
Danbury, CT 06810

20 Largest Unsecured Creditor:
Integra-Dyne Corp.
Attn: Ren Condotta
145 King Street, West, Suite 1000
Toronto, ON M5H 1J8
Canada

20 Largest Unsecured Creditor:
3DSL
Attn: John Byrne
Stone Barn Blisworth Hill Barns
Stoke Road, Blisworth
Northants, NN73DB, UK

20 Largest Unsecured Creditor:
Activision, Inc.
Attn: George Rose
3100 Ocean Park Boulevard
Santa Monica, CA 90405

20 Largest Unsecured Creditor:
Creative Labs, et al Reg. Spec. Notice:
Erika Rottenberg, Esq.
Creative Labs, Inc.
1901 McCarthy Boulevard
Milpitas, CA 95035

Request For Special Notice:
Orrick, Herrington & Sutcliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-3143

Creative Labs Reg For Spec Notice:
Andrea J. Weiss, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071-1560

20 Largest Unsecured Creditor:
Creative Labs, et al Reg. Spec. Notice:
Erika Rottenberg, Esq.
Creative Labs, Inc.
1901 McCarthy Boulevard
Milpitas, CA 95035

Caesar Intl Reg for Special Notice:
William C. Lewis, Esq.
Law Offices of William C. Lewis
510 Waverley Street
Palo Alto, CA 94031

Ocean Data Products Reg Spec. Not:
Patricia S. Mar, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

I/O Magic Reg. for Spec. Notice:
Lawrence M. Cron, Esq.
Senn Palumbo Meulemans LLP
18301 Von Karman Avenue, Suite 850
Irvine, CA 92612

Request for Special Notice:
Ritter, Van Pelt & Yi, LLP
Attn: Jack Limper
4906 El Camino Real, Suite 205
Los Altos, CA 94022

20 Largest Unsecured Creditors:
Ziff Davis
Attn: Customer Service Dept.
One Park Avenue
New York, NY 10016

Finova Reg. for Special Notice:

Sachnoff & Weaver, Ltd.
Attn: Charles P. Schulman, Esq.
30 South Wacker Drive, Suite 2900
Chicago, IL 60606

Request for Special Notice:

Christopher Beard, Esq.
Beard & Beard
4601 North Park Avenue
Chevy Chase, MD 20815

Request for Special Notice:

Peter A. Chapman, Esq.
24 Perdicaris Place
Trenton, NJ 08618

Request For Special Notice:

Maggie Lewsadder
Makefield Securities Corporation
789 S. Federal Hwy., Suite 102
Stuart, FL 34994

Creditors' Committee Member:

IT&E Corporation
Attn: Anthony D. Allocca
11 N. Market Street, Suite 730
San Jose, CA 95113

Creditor's Committee Counsel:

Randy Michelson, Esq.
McCutcheon, Doyle, Brown & Eneroso
3 Embarcadero Center
San Francisco, CA 94111

Fremont Landlord:

Lam Research, Inc.
Attn: George M. Schisler, Jr.
4560 Cushing Parkway
Fremont, CA 94538-6470

Counsel to Lam Research:

Dale L. Bratton, Esq.
Heller, Ehrman, White & McAuliffe
333 Bush Street, Suite 3000
San Francisco, CA 94104-2878

Yifa/Scan-Speak Reg for Spec. Not:

David M. Meegan, Esq.
Meegan, Hanschu & Kassenbrock
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Sacramento, CA 95815

SEC Reg. For Spec. Notice:

Sarah D. Moyed, Esq.
Securities & Exchange Commission
Pacific Regional Office
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036-3648

Reg. for Spec. Notice:

Howard, Rice, et al
Attn: James Lopes/Gary Kaplan
3 Embarcadero Center, Suite 700
San Francisco, CA 94111

Creative Labs Reg. for Spec. Not:

Creative Labs, Inc.
Attn: Stacey Leong
1901 McCarthy Boulevard
Milpitas, CA 95035

Reg. for Special Notice:

Alan Yee
764 Pollard Road
Los Gatos, CA 95032

Debtor's Financial Advisor:

E&Y Restructuring LLC
Attn: Robert H. Warshauer
555 California Street,
San Francisco, CA 94104

Auditor to the Debtor:

Mohter, Nixon & Williams
Attn: Steve Vidlock
635 Campbell Technology Pkwy, #10C
Campbell, CA 95008

New York Dept of Tax reg for not:

New York Dept of Taxation and Finance
Deputy Commissioner and Counsel
Attn: Amy J. Murphy
77 Broadway, Suite 112
Buffalo, NY 14203-1670

Copelco Reg. for Spec. Notice:

Kenneth G. Lau
Hemar & Rousso
1510 Ventura Boulevard, 12th Flr.
Encino, CA 91436-2829

Regen Capital Reg. For Notice:

Elliott Herskowitz
Regen Capital I, Inc.
PO Box 626 Planetarium Station
New York, New York 10024-0540

Creditor:

Circle International, Inc.
385 Valley Drive
Brisbane, CA 94005

Debtor's Special Patent Counsel:

David N Lathrop, Esq.
Gallagher & Lathrop, A Prof Corp.
601 California Street, Suite 1111
San Francisco, California 94108-2805

Interra-Dyne Reg. for Special Notice:

Tracy Green, Esq.
Wendel, Rosen, Black & Dean
1111 Broadway, 24th Floor
Oakland, CA 94607

Landlord:

Fifth Street Properties, LLC
c/o Commonwealth Partners, LLC
Attn: Mr. David Armstrong
633 West Fifth St., 72nd Floor
Los Angeles, CA 90071

Counsel to 3DPX:

Hopkins & Carley
Attn: John Easterbrook, Esq.
70 South First Street
San Jose, CA 95113-2406

Tax Accountants:

Neilson, Elgerren LLP
Attn: Vernon Calder
230 South 500 East, Suite 425
Salt Lake City, UT 84102

Fifth Street Properties Reg for Notice:

Pillsbury, Winthrop LLP
Attn: Craig Barbarosh/Kalman Steinberg
650 Town Center Drive, 7thFlr.
Costa Mesa, CA 92626-7122

Dice, Inc.

PO Box 560573
The Colony, TX 85056

Dice Inc. request for notice:

J. Mark Chevallier, Esq.
3550 Lincoln Plaza
500 N. Akard
Dallas, TX 85201

RCG Carpathia Master reg for notice:

RCG Carpathia Master Fund Ltd
Attn: Allison Covello
666 Third Avenue, 26th Fl
New York, NY 10017

Counsel to Krystaltech:

Michael Y. Sukhman, Esq.
Law Office of M. Scott Vayer
620 Fifth Avenue
New York, New York 10020

Argo Partners Request for Notice:

Matthew A. Gold, Esq.
Argo Partners, Inc.
12 West 37th St. 9th Fl
New York, NY 10018

Request for Notice Debt Acquisition:

DACA V. LLC
Attn: Tom Scheidt
2120 W. Washington Street
San Diego, CA 92110

Next Factor Request for Notice:

Edward Archanbault
Next Factor, Inc.
72 Van Reipen Avenue, Suite 37
Jersey City, NJ 07306

Counsel to the Examiner:

Daniel M. Linchey, Esq.
Goldberg, Sinnamon, Meyers & Davis
44 Montgomery Street, Suite 2900
San Francisco, CA 94104

Next Factor Request for Notice:

William Webb Farrer, Esq.
Law Offices of William Webb Farrer
300 Montgomery Street, Suite 789
San Francisco, CA 94104

EXHIBIT L

ORIGINAL

FILED

BRUCE BENNETT (SBN 105430)
MICHAEL A. MORRIS (SBN 89842)
SIDNEY P. LEVINSON (SBN 139419)
HENNIGAN, BENNETT & DORMAN
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Fax: (213) 694-1234

DEC - 7 2000
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

Reorganization Counsel for
Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

12 In re
13 AUREAL INC., d/b/a SILO.COM,
14 f/k/a AUREAL
15 SEMICONDUCTOR, INC., f/k/a
16 MEDIA VISION TECHNOLOGY,
17 INC., a Delaware corporation,
18 Debtor.

Case No. 00-42104-T11
(Chapter 11)
NOTICE OF OBJECTION AND DEBTOR'S
FIRST OMNIBUS OBJECTION TO
CLAIMS (DUPLICATE CLAIMS, CURED
CLAIMS, RECLASSIFIED CLAIMS, NO
BASIS CLAIMS, EQUITY CLAIMS,
AMENDED CLAIMS, AND LATE CLAIMS)

Hearing
Date: January 17, 2001
Time: 2:00 p.m.
Place: Hon. Leslie Tchaikovsky
1300 Clay St., Courtroom 201
Oakland, CA 94612

21 }
22 } PLEASE TAKE NOTICE that on January 17, 2001, at 2:00 p.m., or as soon
23 } thereafter as counsel may be heard, in Courtroom 201 of the Honorable Leslie
24 } Tchaikovsky, located at 1300 Clay Street, Oakland, California 94612, a hearing will be
25 } held on the following "First Omnibus Objection to Claims (Duplicate Claims, Cured
26 } Claims, Reclassified Claims, No Basis Claims, Paid Claims, Postpetition Amount Claims,
27 } Wrong Case Claims, Late Claims, Equity Claims, and Amended Claims) (the
28 }

265

1 “Objection”), submitted by Aural Inc, the debtor and debtor in possession in the above-
2 captioned case (the “Debtor”).

3 **PLEASE TAKE FURTHER NOTICE** that, if a proof of claim that you filed against
4 the Debtor (or a claim that was scheduled on you behalf by the Debtor) is identified on
5 any of the schedules attached to the Objection as Exhibits A through H, the Debtor has
6 objected to that claim through the Objection. The Objection therefore directly affects
7 your rights, and your claim may be reduced, modified, or disallowed, expunged and
8 eliminated by the relief sought by the Debtor in the Objection.

9 **PLEASE TAKE FURTHER NOTICE** that due to the voluminous nature of the
10 claims attached to the Exhibits, the Exhibits with copies of the claims attached thereto
11 are only being filed with the Court in the original copy of this Objection. If you would
12 like to receive a copy of the Exhibits with copies of the claims attached thereto, please
13 contact Joshua D. Morse of Hennigan, Bennett & Dorman, the Debtor’s counsel, at (213)
14 694-1200.

15 **PLEASE TAKE FURTHER NOTICE** that responses, if any, to the relief requested
16 in the Objection must be in writing and be filed with the United States Bankruptcy Court
17 for the Northern District of California, 1300 Clay Street, Oakland, California 94612, and
18 received by the undersigned counsel for the Debtor no later than 4:00 p.m., Prevailing
19 Pacific time on January, 2001. Only those parties who have timely filed and served
20 responses will be heard at such hearing.

21 **PLEASE TAKE FURTHER NOTICE** that every response to the Objection must
22 contain at a minimum the following:

- 23 a. A caption setting forth the name of the Court, the case number and the title
24 of the Objection to which the response is directed;
- 25 b. The name of the claimant and description of the basis for the amount of the
26 claim;
- 27
- 28

1 c. A concise statement setting forth the reasons why such claim should not be
2 disallowed or reclassified for the reasons set forth in the Objection, including, but not
3 limited to, the specific factual and legal basis upon which the claimant will reply in
4 opposing the Objection;

5 d. All documentation or other evidence of the claim, to the extent not
6 included with the proof of claim previously filed with the Claims Agent, upon which the
7 claimant will rely in opposing the Objection at the hearing;

8 e. The address to which the Debtor must return any reply to the response;
9 and

10 f. The name, address, and telephone number of the person (which may be
11 the claimant or his/her/its legal representative) possessing ultimate authority to
12 reconcile, settle, or otherwise resolve the claim on behalf of the claimant. If you have
13 questions about why your claim is identified on any of the Exhibits to the Objection,
14 please contact Joshua D. Morse of Hennigan, Bennett & Dorman, the Debtor's counsel, at
15 (213) 694-1200.

16 **I. SUMMARY OF RELIEF REQUESTED**

17 The Debtor, pursuant to sections 502(b), 506(a), and 507 of title 11 of the United
18 States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy
19 Procedure (the "Bankruptcy Rules"), hereby objects to each of the proofs of claim
20 identified on the schedules attached hereto as Exhibits A through H other than those
21 claims identified as "Remaining Claims" (collectively, the "Disputed Claims"), and
22 request that the Court enter an order disallowing, expunging, reclassifying, and/or
23 reducing, as set forth below, each of such Disputed Claims.

24 **ATTENTION ALL PERSONS THAT HAVE FILED A PROOF OF CLAIM OR**

25 **HAD SCHEDULED A CLAIM AGAINST ANY OF THE DEBTORS: Please take**

26 **notice that, if a proof of claim that you filed against the Debtor (or a claim that was**
27 **scheduled on your behalf by the Debtor) is identified on any of the schedules that are**
28 **attached to this Objection as Exhibits A through H, the Debtor has objected to that**

1 claim through this Objection. This Objection therefore directly affects your rights,
2 and your claim may be reduced, modified, or disallowed, expunged, and eliminated
3 by the relief sought by the Debtor in this Objection. Please carefully review the
4 accompanying Notice for important information regarding the date of the hearing on
5 this Objection, as well as the deadlines and procedures for filing a response to this
6 Objection. If you or your attorney do not respond to this Objection by the deadline
7 set forth in that Notice, the Court may decide that you do not oppose the Objection as
8 to your claim. If you have questions about why your claim is identified on any of the
9 Exhibits to this Objection, please contact Joshua D. Morse, of Hennigan, Bennett &
10 Dorman, the Debtor's counsel, at (213) 694-1200.

11 This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and
12 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of
13 this case and this Objection in this district is proper pursuant to 28 U.S.C. §§ 408 and
14 1409. The statutory predicate for the relief requested herein is sections 502(b), 506(a),
15 507, 1106(a), and 1107(a) of the Bankruptcy Code and Bankruptcy Rules 3003(c) and
16 3007.

17 This Objection is based upon the accompanying Declaration of Joshua D. Morse
18 and the facts and argument set forth below.

19 II. BACKGROUND

20 1. On April 5, 2000 (the "Petition Date"), the Debtor commenced its
21 reorganization case by filing a voluntary petition for relief under chapter 11 of the
22 Bankruptcy Code.

23 2. The Debtor is continuing in possession of its assets and is operating and
24 managing its business as debtor in possession pursuant to sections 1107 and 1108 of the
25 Bankruptcy Code.

26 3. Prior to the commencement of this bankruptcy case, the Debtor's business
27 was in the field of digital audio imaging, which is the process of creating a highly
28 realistic audio experience by closely simulating the real world physics of audio.

1 4. At the time it filed the bankruptcy petition, the Debtor provided the Court
2 with a list of its then-identified creditors, including the address of each creditor (the
3 “Creditors Matrix”). On April 6, 2000, the Court provided notice of the chapter 11
4 bankruptcy case to the creditors set forth in the Creditors Matrix (the “Notice”). The
5 Notice established, among other things, that the bar date deadline for filing proofs of
6 claim was July 31, 2000 (the “Bar Date”) for all creditors except governmental units.

7 5. Subsequent to the Bar Date, the Debtor learned that it had inadvertently
8 failed to include on the original Creditor Matrix submitted to the Court the names and
9 addresses of certain potential creditors, nearly all of which are either shareholders of the
10 Debtor or are former or current parties to contracts with the Debtor (collectively referred
11 to as the “Additional Creditors”). By order dated August 25, 2000, this Court approved
12 the “Stipulation Between Debtor, Official Committee of Unsecured Creditors (the
13 “Committee”), and Lender to Extend the Bar Date for Certain Potential Creditors; Order
14 Thereon” (the “Stipulated Bar Date Extension”), by which the Court, *inter alia*,
15 authorized the Debtor to send out the “Supplemental Notice of Extension of Bar Date
16 Deadline” (the “Supplemental Bar Date Notice”) and established September 30, 2000
17 (the “Extended Bar Date”), as the deadline for the filing of proofs of claim and interest
18 against the Debtor.

19 6. On July 18, 2000, the Debtor filed a motion to sell certain of its operating
20 assets (including numerous executory contracts) to Guillemot Corporation (“Guillemot”)
21 for the sum of \$8 million (the “Sale Motion”). The hearing on the Sale Motion was
22 commenced on August 15, 2000, and was subsequently continued to August 17, 2000
23 and August 18, 2000. At the hearing, the Debtor received competing qualified bids for
24 the purchase of certain of its assets, and at the conclusion of the hearing recommended
25 that the Court accept the offer from Creative Technology, Ltd. (“Creative”).

26 7. On or about September 21, 2000, the Court entered the “Order (1)
27 Approving Sale of Certain Assets of the Estate, Free and Clear of Liens Asserted by
28 OCM Administrative Services II, as Agent for Secured Lenders, Caesar Technology,

1 Circle International (Holland) B.V. and UMC Group, (2) Authorizing Assumption and
2 Assignment of Leases and Executive Contracts and (3) Authorizing the Release of
3 Claims and Dismissal of Actions," (the "Sale Order"). Pursuant to the Sale Order, the
4 Debtor's sale to Creative closed on or about November 2, 2000.

5 8. In response to the Notice and the Supplemental Bar Date Notice,
6 approximately 145 proofs of claim and interest have been filed in this case. The Debtor
7 has begun its review and analysis of those claims, as well as the various claims that
8 appear in the Schedules. Based upon that review, the Debtor has determined that the
9 Disputed Claims cannot be allowed as filed and, for the reasons set forth below, must be
10 disallowed, expunged, reclassified, and/or reduced in the manner described below.

11 **III. RELIEF REQUESTED**

12 9. By this Objection, the Debtor respectfully requests that the Court enter an
13 Order granting the following relief with respect to the Disputed Claims:

14 a. Disallowing and expunging the claims identified on Exhibit A as
15 "Claims to be Expunged" (collectively, the "Duplicative Claims"), which claims
16 the Debtor believes duplicate one or more other proofs of claim filed against the
17 Debtor or are included within other proofs of claim filed against the Debtor
18 (identified on Exhibit A as the "Remaining Claims");

19 b. Disallowing and expunging the claims identified on Exhibit B as
20 "Cured Claims" (collectively, the "Cure Payment Claims"), which claims the
21 Debtor believes to have been satisfied through the payment of cure claims in
22 connection with the Debtor's previously-approved sale of assets to Creative;

23 c. Reclassifying, and where indicated, reducing the amount of the
24 claims identified on Exhibit C as "Originally Filed Claims" (collectively, the
25 "Reduced and/or Reclassified Claims"), as specifically set forth on Exhibit C,
26 which claims the Debtor believes to have been filed as priority and/or secured
27 claims without an appropriate basis for doing so and/or to have been filed in
28 amounts that exceed the amounts reflected in the Debtor's books and records

1 and/or to have been filed in amounts including postpetition amounts and/or
2 interest without an appropriate basis for doing so;

3 d. Disallowing and expunging or reducing the claims identified on
4 Exhibit D as "No Basis Claims" (collectively, the "No Basis Claims"), which
5 claims the Debtor believes to have been filed without sufficient evidentiary
6 support (or the support provided does not verify the amount listed on the claim
7 form attached thereto) and/or from which the Debtor's books and records reveal
8 no liability and for which the Debtor otherwise believes to have no basis in fact or
9 law;

10 e. Reclassifying as equity interests in the Debtor (subject to future
11 proof, if necessary, of the ownership of shares in the Debtor) the claims identified
12 on Exhibit E as "Claims to be Reclassified as Equity Interest" (collectively, the
13 "Equity Interests"), which claims the Debtor believes to represent the assertion of
14 equity interests by shareholders of the Debtor;

15 f. Disallowing and expunging the claims identified on Exhibit F as
16 "Claims to be Expunged" (collectively, the "Superseded Claims"), which claims
17 the Debtor believes to have been amended and superseded by one or more
18 subsequent proofs of claim filed against the Debtor (identified on Exhibit F as the
19 "Remaining Claims");

20 g. Disallowing and expunging the claims identified on Exhibit G as the
21 "Claims to be Expunged" (collectively, the "Late Claims"), which claims were
22 filed after the Extended Bar Date; and

23 h. Disallowing and expunging or reclassifying the claims identified on
24 Exhibit H as "Multiple Issue Claims" (collectively, the "Multiple Issue Claims"),
25 which claims the Debtor believes to have more than one of the defects identified
26 above.
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IV. BASIS FOR THE RELIEF REQUESTED

10. Section 502(b) of the Bankruptcy Code provides a number of grounds on which a proof of claim may be disallowed, including where “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmaturred” and where “proof of such claim is not timely filed.” 11 U.S.C. §§ 502(b)(1), (9). For the reasons set forth below, valid objections under section 502(b) of the Bankruptcy Code exist with respect to each of the Disputed Claims.

A. The Duplicative Claims

11. The Debtor’s review of the Disputed Claims indicates that each of the Duplicative Claims duplicates (either identically or materially) one or more other proofs of claim filed against the Debtor, as identified on Exhibit A as the “Remaining Claims.” The Debtor, therefore, requests that the Court disallow and expunge the Duplicative Claims, while leaving the Remaining Claims for consideration at a future date (subject to the rights of all parties in interest to object to such Remaining Claims on any and all available grounds).

12. A failure to disallow the Duplicative Claims could result in the relevant creditor receiving an unwarranted double recovery against the bankruptcy estates, in contravention of section 502(b)(1) of the Bankruptcy Code and to the detriment of other similarly situated creditors. Moreover, no prejudice will accrue because holders of the Duplicative Claims nevertheless will have their Remaining Claims pending against the Debtor.

B. The Cure Payment Claims

13. The Debtor’s review of the Disputed Claims indicates that each of the Cure Payment Claims was satisfied through the payment of cure claims in connection with the Debtor’s previously-approved sale of assets to Creative. The Debtor also believes that no claimant has sought relief from the Sale Order. Accordingly, pursuant to

1 section 502(b)(1) of the Bankruptcy Code, the Debtor requests that the Court disallow
2 and expunge the Cure Payment Claims.

3 **C. The Reduced and/or Reclassified Claims**

4 14. The Debtor's review of the Disputed Claims indicates that the Reduced
5 and/or Reclassified Claims either: (i) were filed as priority and/or secured claims
6 without an appropriate basis for doing so; and/or (ii) were filed in amounts that exceed
7 the amounts reflected in the Debtor's books and records as due and owing with respect
8 to such claims; and/or (iii) were filed in amounts including postpetition amounts
9 and/or interest without an appropriate basis for doing so.

10 15. The Debtor therefore requests that the Court enter an order reclassifying
11 and/or reducing the amounts of the Reduced and/or Reclassified Claims as set forth on
12 Exhibit C. Specifically, the Debtor requests that, with respect to each Reduced and/or
13 Reclassified Claim, the Court order that the Claim be deemed filed in the status and the
14 amount identified for such claim on Exhibit C in the row entitled "Claim Reduced
15 and/or Reclassified To."

16 **D. No Basis Claims**

17 16. Upon review of the Disputed Claims and the Debtor's books and records,
18 the Debtor has determined that the No Basis Claims represent proofs of claim that: (i)
19 are not reflected as liabilities in the Debtor's books and records; (ii) are not otherwise
20 justified as valid; and (iii) were filed by parties with no valid claims to assert. For
21 example, many of the No Basis Claims identified on Exhibit D lack any supporting
22 documentation or otherwise provide any indication of the alleged liability of the Debtor.
23 Other No Basis Claims previously were satisfied by the Debtor in the ordinary course of
24 business. And, the supporting documentation attached to other No Basis Claims clearly
25 indicates that the appropriate obligor is an entity other than the Debtor.

26 17. Accordingly, the Debtor requests that the Court disallow and expunge or
27 reduce the No Basis Claims.
28

1 **E. The Equity Interests**

2 18. The Debtor's review of the Disputed Claims indicates that each of the
3 Equity Interests represents the assertion of an equity interest by a shareholder of the
4 Debtor.¹ The Debtor therefore requests that the Court reclassify the Equity Interests as
5 equity interests in the Debtor (subject to the future right of parties in interest to object to
6 such reclassified equity interests and to demand proof of the ownership of shares in the
7 Debtor by claimant).

8 **F. The Superseded Claims**

9 19. The Debtor's review of the Disputed Claims indicates that each of the
10 Superseded Claims was amended and superseded by one or more subsequent proofs of
11 claim filed against the Debtor, as identified on Exhibit F as the "Remaining Claims." The
12 Debtor therefore requests that the Court disallow and expunge the Superseded Claims,
13 while leaving the Remaining Claims for consideration at a future date (subject to the
14 rights of all parties in interest to object to such Remaining Claims on any and all
15 available grounds).

16 **G. The Late Claims**

17 20. The Debtor's review of the Disputed Claims indicates that each of the Late
18 Claims was filed after the Extended Bar Date. Accordingly, pursuant to the
19 Supplemental Bar Date Notice (which provides that claimants who do not file claims by
20 the Extended Bar Date "will be forever barred from participating in the estate of the
21 Debtor") and section 502(b)(9) of the Bankruptcy Code (which provides for the
22 disallowance of untimely proofs of claim), the Debtor requests that the Court disallow
23 and expunge the Late Claims.

24
25
26 ¹ In fact, many of the Equity Interests were filed as "proofs of interest" in this case. The Debtor has filed
27 this Objection solely as a precautionary measure with respect to such proofs of interest, in order to
28 ensure that there is no question that each of the claims/interests identified on Exhibit E actually
 represents an equity interest, rather than a claim.

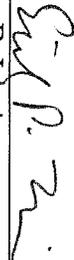
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VI. CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court grant the relief requested in this Objection and grant such other and further relief as is just and proper.

DATED: December 6, 2000

HENNIGAN, BENNETT & DORMAN

By: 
Sidney P. Levinson

Reorganization Counsel for
Debtor and Debtor in Possession

EXHIBIT H

MULTIPLE ISSUE CLAIMS

Claim No.	Claimant	Date Claim Filed	Multiple Issue Claims	Relief Requested	Objections	Allowed Claim
33	Martek Sale Attn: Mike Hogue 5101 Ironwood Drive Soquel, CA 95073	05/01/00	\$2,828.54	Claim to be Expunged	Insufficient evidence provided with proof of claim; Duplicative	\$0
34	Aaron Martin 6225 Edwars Mt. Cove Austin, TX 78731	05/01/00	\$18,000.00	Claim to be Expunged	Not a secured claim; Claimant previously paid amount of allowed claim; Insufficient evidence provided with proof of claim	\$0
35	Antonio Ginart 3684 River Heights Crossing Marietta, GA 30067	05/01/00	\$15,588.00	Claim to be Expunged	Not entitled to priority wage status - not employee of Debtor; Claimant previously paid amount of allowed claim; Insufficient evidence provided with proof of claim	\$0
40	Alameda County Water District Finance and Administration Manager 43885 S. Grimmer Blvd. Fremont, CA 94538	05/04/00	\$106.02	Claim to be Expunged	Insufficient evidence provided with proof of claim; Claimant previously paid amount of allowed claim	\$0

Claim No.	Claimant	Date Claim Filed	Multiple Issue Claims	Relief Requested	Objections	Allowed Claim
74	Sherri L. Drehobl Corporate Legal Department, C-3 Kemper Insurance Companies One Kemper Drive Long Grove, IL 60049	07/17/00	\$0 (unliquidated)	Claim to be Expunged	Includes postpetition amounts; Not entitled to unsecured priority status; Insufficient evidence provided with proof of claim	\$0
81	Delaware Secretary of State Division of Corporations C/O MNB Dept. 74072 Baltimore, MD 21274-4072	07/24/00	\$184,911.15	Claim to be Expunged	Insufficient evidence provided with proof of claim; Claimant previously paid amount of allowed claim	\$0
91	Infogrames North America, Inc. 5300 Stevens Creek Blvd. Suite 500 San Jose, CA 95129	07/31/00	\$50,000.00	Claim to be Expunged	Insufficient evidence provided with proof of claim; Claimant previously paid amount of allowed claim	\$0
101	Scott & Alyce Diehl 762 Via De La Paz Pacific Palisades, CA 90272	07/26/00	\$6,338.20 (198 shares of common stock)	Claim to be Reclassified and allowed as Equity Interest	Not entitled to Unsecured Priority status; equity interest asserted	Reclassified as equity interest
107	Center Capital, f/k/a Tucker Financial c/o Kenneth C. Greene, Esq. 300 Drakes Landing Road Suite 250 Greenbrae, CA 94904	08/31/00	\$39,668.22	Claim to be Expunged	Insufficient evidence provided with proof of claim; exceeds amounts listed on Debtor's books and records	\$0
110	Paul Carrubba [address not provided]	09/13/00	\$7,692.28	Claim to be Expunged	Insufficient evidence provided with proof of claim; Not entitled to unsecured priority wage status	\$0

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DECLARATION OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On December 6, 2000, I served the following pleading:

NOTICE OF OBJECTION AND DEBTOR'S FIRST OMNIBUS OBJECTION TO CLAIMS (DUPLICATE CLAIMS, CURE PAYMENT CLAIMS, AND RECLASSIFIED CLAIMS, NO BASIS CLAIMS, EQUITY CLAIMS, AMENDED CLAIMS AND LATE CLAIMS))

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

See attached Service List

The above-described pleading also was transmitted to the indicated parties set forth above in the manner described below:

By air courier service, for next business-day delivery by

By messenger service, for same-day delivery by hand by

by telecopy, for immediate receipt.

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made.

EXECUTED on December 6, 2000, at Los Angeles, California.


Kathy Bowman, Declarant

Antonio Ginart
3684 River Heights Crossing
Marietta, GA 30067

Alameda County Water District
Finance and Administration Manager
43885 S. Grimmer Blvd.
Fremont, CA 94538

Sherril L. Drehobl
Corporate Legal Department, C-3
Kemper Insurance Companies
One Kemper Drive
Long Grove, IL 60049

Delaware Secretary of State
Division of Corporations
C/O MNB Dept. 74072
Baltimore, MD 21274-4072

Infogrames North America, Inc.
5300 Stevens Creek Blvd.
Suite 500
San Jose, CA 95129

Scott & Alyce Diehl
762 Via De La Paz
Pacific Palisades, CA 90272

Center Capital, f/k/a Tucker Financial
c/o Kenneth C. Greene, Esq.
300 Drakes Landing Road, Suite 250
Greenbrae, CA 94904

Paul Carrubba
[address not provided]

Ann Frances McGrath
20810-3 Fourth Street
Saratoga, CA 95070

Evelyn DeVaul
20 Montsalas Dr.
Monterey, CA 93940

Russell D. Miede
Michael R. Miede JT TEN
1353 Arbor Park Dr.
San Jose, CA 95126

Dinh Nguyen
[address not provided]

William Husbards
9465 Dover Dr.
Grantie Bay, CA 95746

Helix Convertible Opportunities, LP
1930 Century Park West
Suite 302
Los Angeles, CA 90067-6807

Eugene Kurt Steinmann
2610 Richards Ave.
Cayucos, Ca 93430

Ocean Information System (China) Limited
Units 15-17, 9/F, Chevalier Comm. Centre
8 Wang Hoi Road
Kowloon Bay, Kowloon, H.K.

Ellen Sondheim
P.O. Box 480097
Los Angeles, CA 90048

Robert M. Gromis
608 N. Roxbury Drive
Beverly Hills, CA 90210

Peake Printers, Incorporated
c/o Lawrence S. Jacobs
110 N. Washington Street
Suite 540
Rockville, MD 20850

Maureen V. Jandorf
115-19 Hilltop Road
Kinnelon, NJ 07405

Finova Capital Corporation
C/o Charles P. Schulman
Sachnoff & Weaver, Ltd.
30 South Wacker Drive
Suite 2900
Chicago, IL 60606

Commonwealth of Massachusetts
 Department of Revenue
 Box 9484
 Boston, MA 02210

Highsoft, Inc.
 1965 Latham Street
 Mountain View, CA 94040

Joseph N. Delsignore
 Agnes Delsignore
 76 Woodland Ave.
 Campbell, OH 44405-1046

IT&E Corporation
 111 N. Market Street
 Suite 730
 San Jose, CA 95113

Alterflex Corporation
 1717 Oakland Road
 San Jose, CA 95131

Telogy Test Equipment
 Management Services
 Box 96994
 Chicago, IL 60693

Pacific Gas and Electric Company
 PO Box 8329
 Stockton, CA 95208

Recall Total Infor Mgmt Inc.
 PO Box 101184
 Atlanta, GA 30392-1184

PR Newswire
 GPO Box 5897
 New York, NY 10087-5897

Minolta Business Solutions
 Attn: Lisa Schmiedeskamp
 1800 Overcenter Dr.
 Moberly, MO 65270

Heller Ehrman White & McAuliffe LLP
 Peter J. Benvenuti, Esq.
 333 Bush Street
 San Francisco, CA 94111-2878

Brooks Technical Group Inc.
 10080 North Wolfe Road
 SW#-100
 Cupertino, CA 95014

Annominids Software Inc.
 2328G Walsh Avenue
 Santa Clara, Ca 95051-1312

Gray Cary Ware & Freidenrich LLP
 Attn: Lillian G. Stenfeldt, Esq.
 400 Hamilton Avenue
 Palo Alto, Ca 94301-1825

Aon Consulting, Inc.
 2540 N. First Street, Suite 400
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 Suite 730
 San Jose, CA 95113

Alterflex Corporation
 1717 Oakland Road
 San Jose, CA 95131

PR Newswire
 GPO Box 5897
 New York, NY 10087-5897

Pacific Gas and Electric Company
 PO Box 8329
 Stockton, CA 95208

Recall Total Infor Mgmt Inc.
 PO Box 101184
 Atlanta, GA 30392-1184

Commonwealth of Massachusetts
 Department of Revenue
 ATTN: Anne Chan, Tax Examiner
 Box 9484
 Boston, MA 02205-9484

TLC Administrators Lipman Co.
 3340 Walnut Avenue, Suite 290
 Fremont, CA 94538-2215

Wall Street Interviews Inc.
 250 West 40th Street, Suite 410
 New York, NY 10018

Combs & Greenley
 49 Stevenson St., Suite 400
 San Francisco, CA 94105

AT&T Corp.
 55 Corporate Drive
 Bridgewater, NJ 08807-1265

Video Solutions
 50 First St., Suite 507
 San Francisco, Ca 94105

Partners By Design Inc.
 24300 Town Center Drive
 Suite 380
 Valencia, CA 91355

Romac International Inc.
PO Box 277997
Atlanta, GA 30384-7997

AIG Law Department - Bankruptcy
Michelle A. Levitt, Esq.
70 Pine Street, 31st Floor
New York, NY 10270

Preferred Software Inc.
Attn Dr. Philip J. Failace
800 Dixon Way
Los Altos, CA 94022-1106

Gareth, Inc.
Gareth Loy, President
PO Box 151185
San Rafael, CA 94915

Department of the Treasury
Internal Revenue Service
1301 Clay Street, Stop 1400S
Oakland, CA 94612-5210

Computer Modules, Inc.
2350 Walsh Ave.
Santa Clara, Ca 95051

DSM Technologies
2355 Oakland Road, Suite 44
San Jose, Ca 95131

Momentum Data Systems, Inc.
1733 Bruckhurst
Fountain Valley, CA 92708

Arthur R. Ellard Jr.
Alameda B. Ellard JT TEN
[no address provided]

Joseph N. Delsignore
Agnes Delsignore JT TEN
[no address provided]

Skjerven Morrill MacPherson LLP
25 Metro Drive, Suite 700
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Sandra McDiarmid
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Barbara Spear
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Jim Stahl (Ziff Davis, Inc.)
28 E. 28th St.
New York, NY 10016

Imperial A.I. Credit Corp.
160 Water St., 19th Floor
New York, NY 10038-4922

Jeffrey G. Locke
Trustee of Bankruptcy Estate of MTC
Telmanagement Corp., Nelsource
Communications, Inc., and MTC International, Inc.
c/o Stronshelm & Associates
353 Sacramento St, Suite 860
San Francisco, CA 94110

Ocean Data Products, Inc.
c/o Patricia S. Mar
Morrison & Foerster LLP
425 Market Street
San Francisco, Ca 94105-2482

Ziff Davis, Inc.
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New York, NY 10016

Imperial A.I. Credit Corp.
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New York, NY 10038-4922

Aaron Martin
6225 Edwards Mt. Cove
Austin, TX 78731

Thomson Consumer Electronic Sales GmbH
Karl Wiechert Allee 74
30625 Hanover
many

Martek Sale
Attn: Mike Hogue
5101 Ironwood Drive
Soquel, CA 95073

Supercorn Canada Ltd.
4011 14th Avenue
Markham, Ontario Canada
L3R029

Debtor:
AUREAL, INC.
Attn: Steve Mitchell
45757 Northport Loop West
Fremont, CA 94538

Debtor's Counsel:
Sidney Levinson/Kelly Frazier
Hennigan, Bennett & Dorman
601 S Figueroa St., Suite 3300
Los Angeles, CA 90017

Office of the U.S. Trustee:
U.S. Trustee
Attn: Mark L. Pope, Esq.
1301 Clay Street, Suite 690N
Oakland, CA 94612

Secured Creditor as Agent:
Oaktree Capital Management LLC
Attn: Richard Masson
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

Counsel to Oaktree Capital Mgmt.:
Eric Reimer, Esq.
McDermott, Will & Emory
2049 Century Park East, 34th Floor
Los Angeles, CA 90067

Creditors' Committee Member:
Ocean Data Products
5th Floor Kader Industrial Bldg.
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

Creditors' Committee Member:
UMC Group (USA)
Attn: Hui-jen Lu, Credit Manager
488 Deguigne Drive
Sunnyvale, CA 94086

Creditors' Committee Member:
Flatland Online, Inc.
Attn: Terry Campbell
2325 Third Street, Suite 335
San Francisco, CA 94107

Creditors' Committee Member:
Juan Gonzalez
KPMG
3 Embarcadero Center, Suite 2000
San Francisco, CA 94111

Creditors' Committee Member:
Highsoft, Inc.
Attn: R. Scott Holmgren, Gen. Mgr.
1965 Latham Street
Mountain View, CA 94040-2107

Creditors' Committee Member:
Finova Technology Finance, Inc.
Attn: O'Neil Petrone, Collections Mgr.
115 West Century Road, 3rd Floor
Paramus, NJ 07652

Creditors' Committee Member:
Imagine Media Inc. d/b/a PC Gamer
Attn: John Lysdahl, Credit Manager
150 North Hill Drive
Brisbane, CA 94005

20 Largest Unsecured Creditor:
Caesar International, Inc.
Attn: Jolo Estavillo
2860 Zanker Road, Suite 210
San Jose, CA 95134

20 Largest Unsecured Creditor:
Cadence Design Systems, Inc.
Attn: Steve Mith
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditor:
Houlihan Lokey Howard & Zukin
Attn: Glenn Daniel, Managing Director
49 Stevenson Street, 14th Floor
San Francisco, CA 94105

20 Largest Unsecured Creditor:
PC World Communications
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0767

20 Largest Unsecured Creditor:
VIFA-Speak A/S
Attn: David Stephens
1860 Renaissance Blvd
Sturtevant, WI 53177

20 Largest Unsecured Creditor:
GE Capital
Attn: Chris Smythe
44 Old Ridgebury Road
Danbury, CT 06810

20 Largest Unsecured Creditor:
Integra-Dyne Corp.
Attn: Ren Condotta
145 King Street, West, Suite 1000
Toronto, ON M5H 1J8
Canada

20 Largest Unsecured Creditor:
3DSL
Attn: John Byrne
Blissworth Base Hill
Stokes Road, Busworth
Northants, UK NN73DB

20 Largest Unsecured Creditor:
Activision, Inc.
Attn: George Rose
3100 Ocean Park Boulevard
Santa Monica, CA 90405

20 Largest Unsecured Creditor:
Hruska Productions Audio, Inc.
Attn: Jennifer Hruska
66 Rear Dudley Street
Arlington, MA 02476

Request For Special Notice:
Ortick, Herrington & Sutcliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-3143

Creative Labs Req For Spec Notice:
Andrea J. Weiss, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071-1560

Creative Labs, et al Req. Spec. Notice:
Erika Rottenberg, Esq.
Creative Labs, Inc.
1901 McCarthy Boulevard
Milpitas, CA 95035

Caesar Intl Req for Special Notice:
William C. Lewis, Esq.
Law Offices of William C. Lewis
510 Waverley Street
Palo Alto, CA 94031

Ocean Data Products Req Spec. Not:
Patricia S. Mar, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

I/O Magic Req. for Spec. Notice:
Horowitz & Beam
Attn: Lawrence M. Cron, Esq.
Two Ventura Plaza, Suite 350
Irvine, CA 92618

Request for Special Notice:
Ritter, Van Pelt & Yi, LLP
Attn: Jack Limper
4906 El Camino Real, Suite 205
Los Altos, CA 94022

20 Largest Unsecured Creditors:
Ziff Davis
Attn: Customer Service Dept.
One Park Avenue
New York, NY 10016

Finova Reg. for Special Notice:

Sachnoff & Weaver, Ltd
Attn: Charles P. Schullman, Esq.
30 South Wacker Drive, Suite 2900
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Request for Special Notice:

Christopher Beard, Esq.
Beard & Beard
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Chevy Chase, MD 20815

Request for Special Notice:

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Trenton, NJ 08618

Request For Special Notice:

Maggie Lewsadder
Makefield Securities Corporation
789 S. Federal Hwy., Suite 102
Stuart, FL 34994

Reg For Special Notice Center Capital:

Kenneth C. Green , Esq.
KENNETH C. GREEN & ASSOCIATES
300 Drakes Landing Rd., Ste. 250
Greenbrae, CA 94904

Creditors' Committee Member:

IT&E Corporation
Attn: Anthony D. Allocca
11 N. Market Street, Suite 730
San Jose, CA 95113

Fremont Landlord:

Lann Research, Inc.
Attn: George M. Schisler, Jr.
4560 Cushing Parkway
Fremont, CA 94538-6470

Counsel to Lann Research:

Dale L. Bratton, Esq.
Heller, Ehrman, White & McAuliffe
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Vita/Scan-Speak Reg for Spec. Not:

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Meegan, Hanschu & Kassenbrock
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Sacramento, CA 95815

SEC Reg. For Spec. Notice:

Sarah D. Moyed, Esq.
Securities & Exchange Commission
Pacific Regional Office
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036-3648

Reg. for Spec. Notice:

Howard, Rice, et al
Attn: James Lopes/Gary Kaplan
3 Embarcadero Center, Suite 700
San Francisco, CA 94111

Creative Labs Reg. for Spec. Not:

Creative Labs, Inc.
Attn: Stacey Leong
1901 McCarthy Boulevard
Milpitas, CA 95035

Reg. for Special Notice:

Alan Yee
764 Pollard Road
Los Gatos, CA 95032

Debtor's Financial Advisor:

E&Y Restructuring LLC
Attn: Robert H. Warshauer
555 California Street,
San Francisco, CA 94104

Creditor's Committee Counsel:

Randy Michelson, Esq.
McCutcheon, Doyle, Brown & Enerson
3 Embarcadero Center
San Francisco, CA 94111

Counsel to Intel:

Jonathan Landers, Esq.
Gibson, Dunn & Crutcher
One Montgomery St.,
Teleists Tower, 26th and 31st Floors
San Francisco, CA 94104

Copelco Reg. for Spec. Notice:

Kenneth G. Lau
Hemar & Roussso
15910 Ventura Boulevard, 12th Flr.
Encino, CA 91436-2829

Auditor to the Debtor:

Mohler, Nixon & Williams
Attn: Steve Vidlock
42 West Campbell Avenue
Campbell, CA 95008

Creditor:

Circle International, Inc.
385 Valley Drive
Brisbane, CA 94005

Debtor's Special Patent Counsel:

David N. Lathrop, Esq.
Gallagher & Lathrop, A Prof Corp.
601 California Street, Suite 1111
San Francisco, California 94108-2805

Regen Capital Reg. For Notice:

Elliott Herskowitz
Regen Capital I, Inc.
PO Box 626 Planetarium Station
New York, New York 10024-0540

Landlord:

Fifth Street Properties, LLC
c/o Commonwealth Partners, LLC
Attn: Mr. David Armstrong
633 West Fifth St., 72nd Floor
Los Angeles, CA 90071

Counsel to 3DFFX:

Hopkins & Carley
Attn: John Easterbrook, Esq.
70 South First Street
San Jose, CA 95113-2406

Integra-Dyne Reg. for Special Notice:

Tracy Green, Esq.
Wendel, Rosen, Black & Dean
1111 Broadway, 24th Floor
Oakland, CA 94607

Tax Accountants:

Neilson, Elggen LLP
Attn: Vernon Calder
230 South 500 East, Suite 425
Salt Lake City, UT 84102

Fifth Street Properties Reg for Notice:

Pillsbury, Madison & Sutro LLP
Attn: Craig Barbarosh/Kalman Steinberg
650 Town Center Drive, 7th Flr.
Costa Mesa, CA 92626-7122

Dice Inc. request for notice:

J Mark Chevallier, Esq.
3550 Lincoln Plaza
500 N. Akard
Dallas, TX 85201

Dice, Inc.
PO Box 560573
The Colony, TX 85056

EXHIBIT M

FILED

JAN 18 2001

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

MINUTES

UNITED STATES BANKRUPTCY COURT AT OAKLAND, CALIFORNIA-TERM 2001

JUDGE LESLIE TCHAIKOVSKY COURT TIME: 2:00 P.M.

COURTROOM: 201 DATE: WEDNESDAY, JANUARY 17, 2001

ECRO: DONNA DIGGS COURTROOM DEPUTY: HANKA SIDZINSKA

AUREAL, INC.

00 42104 T11

OBJECTION TO CLAIM OF
OMNIBUS

JOSHUA MORSE (X) FOR
DEBTOR

CHAPTER 11

PATRICIA MAR (X) FOR
OCEAN DATA PRODUCTS

PETITION FILED 4-5-00

MINUTES OF PROCEEDING:

- 1) FOR ANY CLAIMS THAT WERE SETTLED MR. MORSE MAY SUBMIT THE ORDER.
- 2) THE COURT IS WILLING TO SUSTAIN OBJECTIONS AS TO THE INDIVIDUALS THAT DID NOT FILE THEIR RESPONSES, IF THE NOTICES ARE CORRECTED. THE PROPOSED FORM OF ORDER TO BE SUBMITTED WITH PROOFS OF PROPER NOTICES.

EXHIBIT N

ORIGINAL

1 BRUCE BENNETT (SBN 105430)
2 SIDNEY P. LEVINSON (SBN 139419)
3 JOSHUA D. MORSE (SBN 211050)
4 HENNIGAN, BENNETT & DORMAN
5 601 South Figueroa Street, Suite 3300
6 Los Angeles, California 90017
7 Telephone: (213) 694-1200
8 Fax: (213) 694-1234

Reorganization Counsel for
Debtor and Debtor in Possession

FILED
FEB 09 2001
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

11 In re
12 AUREAL INC., d/b/a SILO.COM,
13 f/k/a AUREAL
14 SEMICONDUCTOR, INC., f/k/a
15 MEDIA VISION TECHNOLOGY,
16 INC., a Delaware corporation,
17
18 Debtor.

Case No. 00-42104TT11
(Chapter 11)
ORDER SUSTAINING DEBTOR'S FIRST
OMNIBUS OBJECTION TO CLAIMS
(DUPLICATE CLAIMS, CURED CLAIMS,
RECLASSIFIED CLAIMS, NO BASIS
CLAIMS, EQUITY CLAIMS, AMENDED
CLAIMS, AND LATE CLAIMS)

Hearing
Date: January 17, 2001
Time: 2:00 p.m.
Place: Hon. Leslie Tchaikovsky
1300 Clay St., Courtroom 201
Oakland, CA 94612

21 This matter coming before the Court on the "Debtor's First Omnibus Objection To
22 Claims (Duplicate Claims, Cured Claims, Reclassified Claims, No Basis Claims, Equity
23 Claims, Amended Claims, and Late Claims)" (the "Objection") filed by Aureal Inc., the
24 above-captioned debtor and debtor in possession (the "Debtor"); and the Court having
25 reviewed the Objection, the Declaration of Joshua D. Morse in support of the Objection,
26 any and all responses and objections to the Objection, and the record in this case;
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28

1 Exhibits to this Order on all available grounds, and the filing and prosecution of the
2 Objection shall not prejudice or diminish those grounds.

3 DATED: Feb. 9, 2001

4 Leslie Tchirsky
5 HONORABLE LESLIE TCHIRSKY
6 UNITED STATES BANKRUPTCY JUDGE

7 Submitted by:

8 HENNIGAN, BENNETT & DORMAN

9 By: Joshua D. Morse
10 Joshua D. Morse

11 Reorganization Counsel for
12 Debtor and Debtor in Possession

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EXHIBIT A

DUPLICATE CLAIMS

CLAIMS TO BE EXPUNGED

Claim No.	Duplicate Claim No.	Claimant	Date Claim Filed	Amount of Claim
115	117	Joseph N. Delsignore Agnes Delsignore 76 Woodland Ave. Campbell, OH 44405-1046	09/25/00	\$335.00

REMAINING CLAIMS

Claim No.	Claimant	Date Claim Filed	Amount of Claim
115	Joseph N. Delsignore Agnes Delsignore 76 Woodland Ave. Campbell, OH 44405-1046	09/25/00	\$335.00 (A)

(A) Claim No. 115 is further objected to as an Equity Claim and listed on Exhibit E.

Claim No.	Claimant	Date Claim Filed	Multiple Issue Claims	Relief Requested	Objections	Allowed Claim
107	Center Capital, f/k/a Tucker Financial 300 Drakes Landing Rd., Ste. 250 Greenbrae, CA 94904 Attn: Kenneth C. Greene, Esq./ Attorney for Center Capital	08/31/00	\$39,668.22	Claim to be expunged	Insufficient evidence provided with proof of claim; exceeds amounts listed on Debtor's books and records	\$0
110	Paul Carruba [address not provided/ telephone number provided, but no answer]	09/13/00	\$7,692.28	Claim to be expunged	Insufficient evidence provided with proof of claim; not entitled to unsecured priority wage status	\$0
121	Ann Frances McGrath 20810-3 Fourth Street Saratoga, CA 95070	09/25/00	\$358.06	Claim to be expunged	Not entitled to secured status; Insufficient evidence provided with proof of claim; Only entitled to equity interest	\$0
122	Evlyn DeVaul 20 Montsalas Dr. Monterey, CA 93940	09/27/00	\$21,629.08	Claim to be expunged	Insufficient evidence provided with proof of claim; Only entitled to equity interests	\$0
133	Russell D. Mieke Michael R. Mieke JT TEN 1353 Arbor Park Dr. San Jose, CA 95126	10/02/00	\$6.60 (33 shares of common stock)	Claim to be expunged	Insufficient evidence provided with proof of claim; Only entitled to equity interests; Late filed claim	\$0
135	Lillian Husbands 8465 Dover Dr. Grantie Bay, CA 95746	10/02/00	\$0 (undetermined)	Claim to be expunged	Only entitled to equity interest; Late filed claim	\$0
137	Eugene Kurt Steinmann 2610 Richards Ave. Cayucos, CA 93430	10/02/00	\$187,000.00	Claim to be expunged	Only entitled to equity interest; Late filed claim	\$0

EXHIBIT O

Hennigan, Bennett & Dorman
145420
Los Angeles, California

1 payments and interest owing to Center pursuant to a settlement agreement (the "Agreement")
2 implemented through a plan of reorganization from a bankruptcy of the Debtor's predecessor in
3 interest, Media Vision Technology, Inc. ("MV").

4 4. I do not have personal knowledge of the actual terms of the Agreement, however, in
5 my capacity as the Debtor's Senior Accounting Manager, I maintained the Center Capital
6 Amortization Schedule (the "Schedule"), a copy of which is attached hereto as Exhibit A. From
7 maintaining the Schedule and making payments to Center pursuant to the Schedule prior to the
8 Petition Date (as that term is defined in the Stipulation), I understand that such Schedule represents
9 the stream of payments due to MV pursuant to the Agreement.

10 5. As of the Petition Date, the Debtor owed Center payments totaling \$38,941.52, plus
11 interest amortized at 9% per annum from January 1, 2000 through the Petition Date. Of that
12 amount, \$16,252.68 (three monthly installments of \$5,417.56) was reflected on the Debtor's
13 corrected books and records. This is consistent with the fact that the Debtor only booked monthly
14 installments of the MV Liability as they accrued on a monthly basis given that the last payment to
15 Center was made on or about January 1, 2000. The \$16,252.68 represents payments that were not
16 made prior to the Petition Date.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct to the best of my knowledge and belief.

19 Executed this 10 day of April, 2002 at Tracy, California.

20
21 
22 Gerrie K. Sargent

151053\01

-2-

DECLARATION OF GERRIE SARGENT IN SUPPORT OF STIPULATION AND ORDER AUTHORIZING
ALLOWANCE OF CLAIM NUMBER 107 (FILED BY CENTER CAPITAL CORPORATION) - Case No. 00-42104-T11

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Aug. 11, 1997

CENTER CAPITAL AMORTIZATION SCHEDI
CENTER S/T **CENTER L/T**
01-0400-2707 **01-0400-2907**

	NEW	INT	PRIN	PRIN			
	PAYMENTS	9.00%		BALANCE			
1995	1-Dec	5,417.56	1,983.66	8,562.00	264,487.98		
1996	1-Jan	5,417.56	1,957.91	3,433.90	261,054.08		
	1-Feb	5,417.56	1,931.96	3,459.65	257,594.43		
	1-Mar	5,417.56	1,905.82	3,485.60	254,108.82		
	1-Apr	5,417.56	1,879.48	3,511.74	250,597.08		
	1-May	5,417.56	1,852.94	3,538.08	247,059.00		
	1-Jun	5,417.56	1,826.21	3,564.62	243,494.38		
	1-Jul	5,417.56	1,799.27	3,591.35	239,903.03		
	1-Aug	5,417.56	1,772.14	3,618.29	236,284.74		
	1-Sep	5,417.56	1,744.79	3,645.42	232,639.32		
	1-Oct	5,417.56	1,717.25	3,672.77	228,966.55		
	1-Nov	5,417.56	1,689.50	3,700.31	225,266.24		
	1-Dec	5,417.56	1,661.54	3,728.06	221,538.18		
1997	1-Jan	5,417.56	1,633.37	3,756.02	217,782.15		
	1-Feb	5,417.56	1,604.98	3,784.19	213,997.96		
	1-Mar	5,417.56	1,576.39	3,812.58	210,185.38		
	1-Apr	5,417.56	1,547.58	3,841.17	206,344.21		
	1-May	5,417.56	1,518.56	3,869.98	202,474.24		
	1-Jun	5,417.56	1,489.31	3,899.00	198,575.23		
	1-Jul	5,417.56	1,459.85	3,928.25	194,646.99		
	1-Aug	5,417.56	1,430.30	3,957.71	190,689.28		
	Special	14,566.34	0.00	14,566.34	176,122.94	51,179.75	124,943.19
	1-Sep	5,417.56	1,375.55	4,042.01	172,080.93	51,618.22	120,462.70
	1-Oct	5,417.56	1,290.61	4,126.95	167,953.97	52,005.36	115,948.61
	1-Nov	5,417.56	1,259.65	4,157.91	163,796.07	52,395.40	111,400.67
	1-Dec	5,417.56	1,228.47	4,189.09	159,606.98	52,788.36	106,818.61
1998	1-Jan	5,417.56	1,197.05	4,220.51	155,386.47	53,184.28	102,202.19
	1-Feb	5,417.56	1,165.40	4,252.16	151,134.31	53,583.16	97,551.15
	1-Mar	5,417.56	1,133.51	4,284.05	146,850.26	53,985.03	92,865.22
	1-Apr	5,417.56	1,101.38	4,316.18	142,534.07	54,389.92	88,144.15
	1-May	5,417.56	1,069.01	4,348.55	138,185.52	54,797.84	83,387.67
	1-Jun	5,417.56	1,036.39	4,381.17	133,804.35	55,208.83	78,595.52
	1-Jul	5,417.56	1,003.53	4,414.03	129,390.32	55,622.89	73,767.43
	1-Aug	5,417.56	970.43	4,447.13	124,943.19	56,040.07	68,903.12
	1-Sep	5,417.56	937.07	4,480.49	120,462.70	56,460.37	64,002.34
	1-Oct	5,417.56	903.47	4,514.09	115,948.61	56,883.82	59,064.79
	1-Nov	5,417.56	869.61	4,547.95	111,400.67	57,310.45	54,090.22
	1-Dec	5,417.56	835.51	4,582.05	106,818.61	57,740.28	49,078.34
1999	1-Jan	5,417.56	801.14	4,616.42	102,202.19	58,173.33	44,028.86
	1-Feb	5,417.56	766.52	4,651.04	97,551.15	58,609.63	38,941.52
	1-Mar	5,417.56	731.63	4,685.93	92,865.22	59,049.20	33,816.02
	1-Apr	5,417.56	696.49	4,721.07	88,144.15	59,492.07	28,652.08
	1-May	5,417.56	661.08	4,756.48	83,387.67	59,938.26	23,449.41
	1-Jun	5,417.56	625.41	4,792.15	78,595.52	60,387.80	18,207.72
	1-Jul	5,417.56	589.47	4,828.09	73,767.43	60,840.71	12,926.72

2000	1-Aug	5,417.56	553.26	4,864.30	68,903.12	61,297.01	7,606.11
	1-Sep	5,417.56	516.77	4,900.79	64,002.34	61,756.74	2,245.60
	1-Oct	5,417.56	480.02	4,937.54	59,064.79	59,064.79	-
	1-Nov	5,417.56	442.99	4,974.57	54,090.22	54,090.22	-
	1-Dec	5,417.56	405.68	5,011.88	49,078.34	49,078.34	-
	1-Jan	5,417.56	366.09	5,049.47	44,028.86	44,028.86	-
	1-Feb	5,417.56	330.22	5,087.34	38,941.52		
	1-Mar	5,417.56	292.06	5,125.50	33,816.02		
	1-Apr	5,417.56	253.62	5,163.94	28,652.08		
	1-May	5,417.56	214.89	5,202.67	23,449.41		
	1-Jun	5,417.56	175.87	5,241.69	18,207.72		
	1-Jul	5,417.56	136.56	5,281.00	12,926.72		
	1-Aug	5,417.56	96.95	5,320.61	7,606.11		
	1-Sep	5,417.56	57.05	5,360.51	2,245.60		
	1-Oct	2,262.44	16.84	2,245.60	0.00		
2001	1-Dec						
	1-Jan						
	TOTALS	<u>325,629.70</u>	<u>61,141.72</u>	<u>273,049.98</u>			
	TOTALS	<u>320,212.14</u>	<u>59,158.06</u>	<u>261,054.08</u>			

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DECLARATION OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On April 30, 2002, I served the following pleading:

DECLARATION OF GERIE SARGENT IN SUPPORT OF STIPULATION AND ORDER AUTHORIZING ALLOWANCE OF CLAIM NUMBER 107 (FILED BY CENTER CAPITAL CORPORATION).

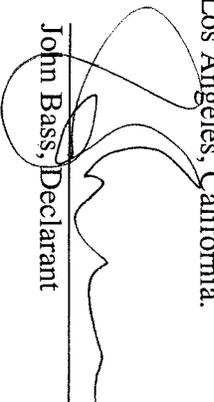
on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

See attached service list

I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in an affidavit

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made. I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

EXECUTED on April 30, 2002, at Los Angeles, California.



John Bass, Declarant

Debtor:

AUREAL, INC.
Attn: Steve Mitchell
PO Box 12587
Pleasanton, CA 94588-2587

Debtor's Counsel:

Sidney Levinson
Hennigan, Bennett & Dorman
601 S Figueroa St., Suite 3300
Los Angeles, CA 90017

Office of the U.S.Trustee:

U.S. Trustee
Attn: Mark L. Pope, Esq.
1301 Clay Street, Suite 690N
Oakland, CA 94612

Secured Creditor as Agent:

Oaktree Capital Management LLC
Attn: Richard Masson
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

Counsel to Oaktree Capital Mgmt.:

Eric Reimer, Esq.
McDermott, Will & Emory
2049 Century Park East, 34th Floor
Los Angeles, CA 90067

Creditors' Committee Member:

Ocean Data Products
5th Floor Kader Industrial Bldg.
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

Creditors' Committee Member:

UMC Group (USA)
Attn: Huai-Jen Lu, Credit Manager
488 Deguigne Drive
Sunnyvale, CA 94086

Creditors' Committee Member:

Flatland Online, Inc.
Attn: Terry Campbell
4104 24th Street
San Francisco, CA 94114

Creditors' Committee Member:

Juan Gonzalez
KPMG
3 Embarcadero Center, Suite 2000
San Francisco, CA 94111

Creditors' Committee Member:

Highsoft, Inc.
Attn: R. Scott Holmgren, Gen. Mgr.
1965 Latham Street
Mountain View, CA 94040-2107

Creditors' Committee Member:

Finova Technology Finance, Inc.
Attn: O'Neil Petrone, Collections Mgr.
115 West Century Road, 3rd Floor
Paramus, NJ 07652

Creditors' Committee Member:

Imagine Media Inc. d/b/a PC Gamer
Attn: David Palavi
150 North Hill Drive
Brisbane, CA 94005

20 Largest Unsecured Creditor:

Caesar International, Inc.
Attn: Jolo Estavillo
1735 Technology Dr, Suite 300
San Jose, CA 951110-1333

20 Largest Unsecured Creditor:

Cadence Design Systems, Inc.
Attn: Steve Mith
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditor:

Houlihan Lokey Howard & Zukin
Attn: Glenn Daniel, Managing Director
One Sansome Street, Suite 1700
San Francisco, CA 94104

20 Largest Unsecured Creditor:

PC World Communications
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0767

20 Largest Unsecured Creditor:

VIFA-Speak A/S
Attn: David Stephens
1860 Renaissance Blvd
Sturtevant, WI 53177

20 Largest Unsecured Creditor:

GE Capital
Attn: Chris Smythe
44 Old Ridgebury Road
Danbury, CT 06810

20 Largest Unsecured Creditor:

Integra-Dyne Corp.
Attn: Ren Condotta
145 King Street, West, Suite 1000
Toronto, ON M5H 1J8
Canada

20 Largest Unsecured Creditor:

3DSL
Attn: John Byrne
Stone Barn Blisworth Hill Barns
Stoke Road, Blisworth
Northants, NN73DB, UK

20 Largest Unsecured Creditor:

Activision, Inc.
Attn: George Rose
3100 Ocean Park Boulevard
Santa Monica, CA 90405

Request For Special Notice:

Orrick, Herrington & Sutcliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-3143

Request For Special Notice:

William C. Lewis, Esq.
Law Offices of William C. Lewis
510 Waverley Street
Palo Alto, CA 94031

Creative Labs Reg For Spec Notice:

Andrea J. Weiss, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071-1560

Creative Labs, et al Reg. Spec. Notice:

Erika Rotenberg, Esq.
Creative Labs, Inc.
1901 McCarthy Boulevard
Milpitas, CA 95035

Caesar Intl Reg for Special Notice:

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Law Offices of William C. Lewis
510 Waverley Street
Palo Alto, CA 94031

Ocean Data Products Reg Spec. Noti:

Patricia S. Mar, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

I/O Magic Reg. for Spec. Notice:

Lawrence M. Cron, Esq.
Senn Palumbo Meulemans LLP
18301 Von Karman Avenue, Suite 850
Irvine, CA 92612

Request for Special Notice:

Ritter, Van Pelt & Yi, LLP
Attn: Jack Limper
4906 El Camino Real, Suite 205
Los Altos, CA 94022

20 Largest Unsecured Creditors:

Ziff Davis
Attn: Customer Service Dept.
One Park Avenue
New York, NY 10016

Finova Reg. for Special Notice:
Sachnoff & Weaver, Ltd.
Attn: Charles P. Schulman, Esq.
30 South Wacker Drive, Suite 2900
Chicago, IL 60606

Request for Special Notice:
Christopher Beard, Esq.
Beard & Beard
4601 North Park Avenue
Chevy Chase, MD 20815

Request for Special Notice:
Peter A. Chapman, Esq.
24 Perdicaris Place
Trenton, NJ 08618

Request For Special Notice:
Maggie Lewsadder
Makefield Securities Corporation
789 S. Federal Hwy., Suite 102
Stuart, FL 34994

Creditors' Committee Member:
IT&E Corporation
Attn: Anthony D. Allocca
11 N. Market Street, Suite 730
San Jose, CA 95113

Creditor's Committee Counsel:
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McCutcheon, Doyle, Brown & Enerson
3 Embarcadero Center
San Francisco, CA 94111

Fremont Landlord:
Lam Research, Inc.
Attn: George M. Schisler, Jr.
4560 Cushing Parkway
Fremont, CA 94538-6470

Counsel to Lam Research:
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Heller, Ehrman, White & McAuliffe
333 Bush Street, Suite 3000
San Francisco, CA 94104-2878

Vifa/Scan-Speak Reg for Spec. Not:
David M. Meegan, Esq.
Meegan, Hanschu & Kassenbrock
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Sacramento, CA 95815

SEC Reg. For Spec. Notice:
Sarah D. Moyed, Esq.
Securities & Exchange Commission
Pacific Regional Office
5670 Wilshire Blvd., 11th Floor
Los Angeles, CA 90036-3648

Reg. for Spec. Notice:
Howard, Rice, et al
Attn: James Lopes/Gary Kaplan
3 Embarcadero Center, Suite 700
San Francisco, CA 94111

Creative Labs Reg. for Spec. Not:
Creative Labs, Inc.
Attn: Stacey Leong
1901 McCarthy Boulevard
Milpitas, CA 95035

Reg. for Special Notice:
Alan Yee
764 Pollard Road
Los Gatos, CA 95032

Debtor's Financial Advisor:
E&Y Restructuring LLC
Attn: Robert H. Warshauer
555 California Street,
San Francisco, CA 94104

Auditor to the Debtor:
Mohler, Nixon & Williams
Attn: Steve Vidlock
635 Campbell Technology Pkwy, #100
Campbell, CA 95008

New York Dept of Tax reg for not:
New York Dept of Taxation and Finance
Deputy Commissioner and Counsel
Attn: Amy J. Murphy
77 Broadway, Suite 112
Buffalo, NY 14203-1670

Copelco Reg. for Spec. Notice:
Kenneth G. Lau
Hemar & Rousso
15910 Ventura Boulevard, 12th Flr.
Encino, CA 91436-2829

Regen Capital Reg. For Notice:
Elliott Herskowitz
Regen Capital I, Inc.
PO Box 626 Planetarium Station
New York, New York 10024-0540

Creditor:
Circle International, Inc.
385 Valley Drive
Brisbane, CA 94005

Debtor's Special Patent Counsel:
David N. Lathrop, Esq.
Gallagher & Lathrop, A Prof Corp.
601 California Street, Suite 1111
San Francisco, California 94108-2805

Integra-Dyne Reg. for Special Notice:
Tracy Green, Esq.
Wendel, Rosen, Black & Dean
1111 Broadway, 24th Floor
Oakland, CA 94607

Landlord:
Fifth Street Properties, LLC
c/o Commonwealth Partners, LLC
Attn: Mr. David Armstrong
633 West Fifth St., 72nd Floor
Los Angeles, CA 90071

Counsel to 3DFX:
Hopkins & Carley
Attn: John Easterbrook, Esq.
70 South First Street
San Jose, CA 95113-2406

Tax Accountants:
Neilson, Elggen LLP
Attn: Vernon Calder
230 South 500 East, Suite 425
Salt Lake City, UT 84102

Fifth Street Properties Reg for Notice:
Pillsbury, Winthrop LLP
Attn: Craig Barbarosh/Kalman Steinberg
650 Town Center Drive, 7thFlr.
Costa Mesa, CA 92626-7122

Dice, Inc.
PO Box 560573
The Colony, TX 85056

Dice Inc. request for notice:
J. Mark Chevallier, Esq.
3550 Lincoln Plaza
500 N. Akard
Dallas, TX 85201

RCG Carpathia Master req for notice:
RCG Carpathia Master Fund Ltd
Attn: Allison Covello
666 Third Avenue, 26th Fl
New York, NY 10017

Counsel to Krystaltech:
Michael Y. Sukhman, Esq.
Law Office of M. Scott Vayer
620 Fifth Avenue
New York, New York 10020

Argo Partners Request for Notice:
Matthew A. Gold, Esq.
Argo Partners, Inc.
12 West 37th St. 9th Fl
New York, NY 10018

Request for Notice Debt Acquisition:

DACA V. LLC
Attn: Tom Scheidt
2120 W. Washington Street
San Diego, CA 92110

Counsel to the Examiner:

Daniel M. Linchey, Esq.
Goldberg, Stinnett, Meyers & Davis
44 Montgomery Street, Suite 2900
San Francisco, CA 94104

Next Factor Request for Notice:

William Webb Farrer, Esq.
Law Offices of William Webb Farrer
300 Montgomery Street, Suite 789
San Francisco, CA 94104

Next Factor Request for Notice:

Edward Archambault
Next Factor, Inc.
72 Van Reipen Avenue, Suite 37
Jersey City, NJ 07306

EXHIBIT P

Exhibit P - Chronology of Attorney Misconduct

~ May 11, 2000

Aureal files Schedule of Assets and Liabilities which represented an amount owing to Center Capital Corp. of \$44,904.76. Exhibit K, p.2:6.

Note that Aureal's books and records were corrected to reflect an amount owing to Center Capitol Corp. of \$16,252.68. Exhibit O, p.2:12.

Jul 13, 2000

Sidney Levinson telephone conference with Argo Partners re status of case. Exhibit C, p. 2 (second fee application).

Aug 31, 2000

Center Capital files their proof of claim for \$39,668.22.

This claim supercedes the Center Capital claim for \$44,904.76 (the amount listed on Aureal's Schedule of Assets and Liabilities). Fed. R. Bankr. P. 3003(C)(4).

The basis for the claim was identified as "Lease Agreement and Plan of Reorganization Media Vision". Exhibit K, p.8.

May 11, 2000

May 12, 2000

Jul 13, 2000

Jul 14, 2000

Aug 31, 2000

Exhibit P - Chronology of Attorney Misconduct

Sep 27, 2000

Argo filed their Notice of Transfer of Claim identifying a Center claim for \$44,904.76. Exhibit Q, p.1.

This purported transfer was to no effect because:

- 1) there was no \$44,904.76 claim to transfer. Center's earlier filed proof of claim for \$39,668.22 superceded any prior claim amount Exhibit Q, p.1, therefore, Center remained the record owner of this claim and
- 2) the attempted transfer under Fed. R. Bankr. P. 3001(E)(1) or (3) was invalid as attempting to transfer before a proof of claim was filed, but Center Capitol already filed a proof of claim on Aug. 31, 2000.

Sep 25, 2000

Center assigned their claim of an amount not less than \$44,904.76 to Argo. Exhibit Q, p.2.

Center Capital Corp. did not have a claim for \$44,904.76 at this time. This claim was superceded by Center Capital's prior filing of a proof of claim for \$39,668.22. Fed. R. Bankr. P. 3003(C)(4)

Oct 3, 2000

Sidney Levinson telephone conference with Argo Partners regarding purchased claims. Exhibit C, p. 6, 10 (3rd fee application).

Sep 1, 2000

Sep 25, 2000

Sep 26, 2000

Sep 27, 2000

Oct 3, 2000

Oct

Exhibit P - Chronology of Attorney Misconduct

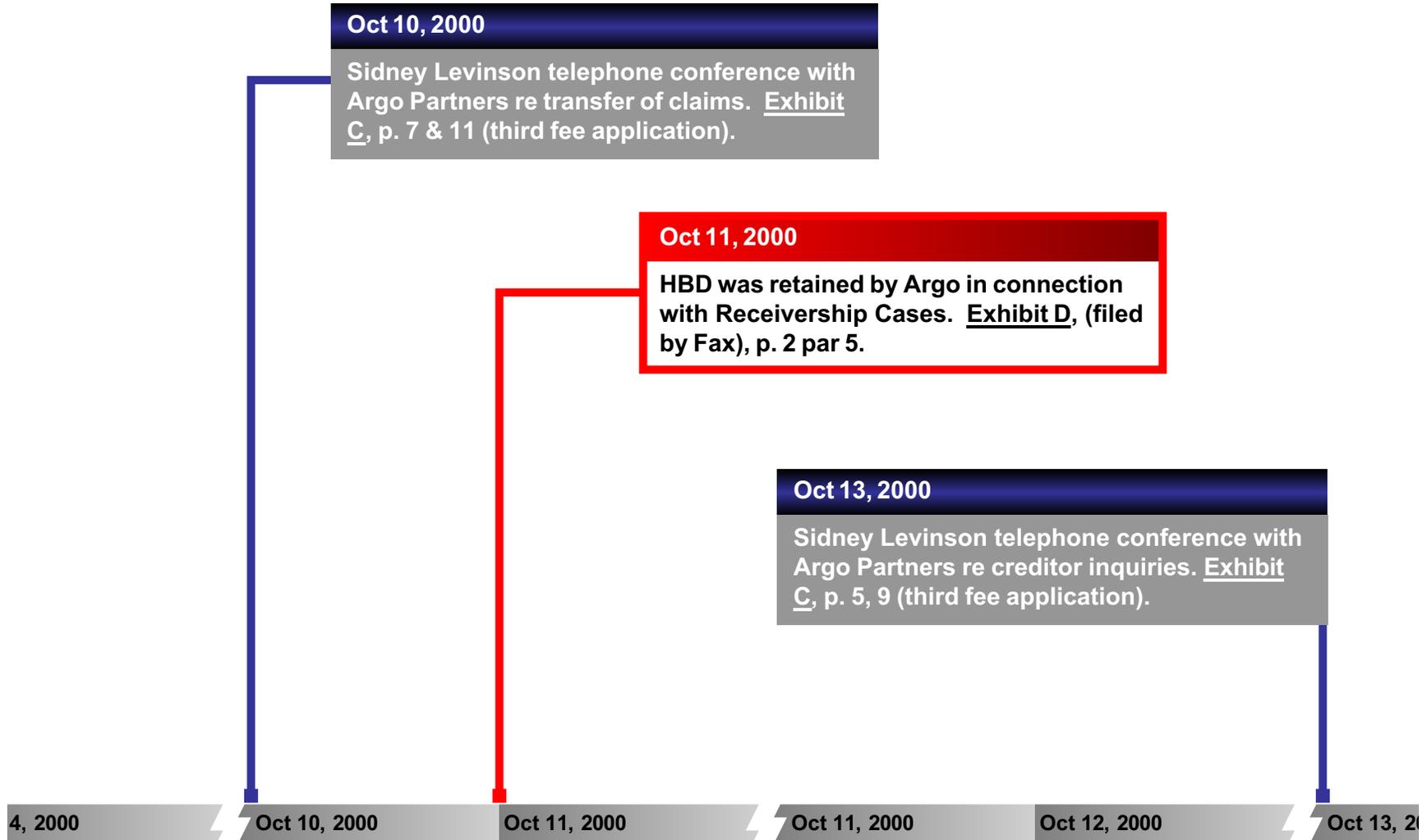


Exhibit P - Chronology of Attorney Misconduct

Dec 6, 2000

CA Attorney Sidney Levinson signs the debtors First Omnibus Objection which included an objection to Argo's "Center claim". Exhibit L, p.12. This was filed the next day.

Dec 5, 2000

Sidney Levinson telephone conference with Argo Partners re status. Exhibit C, p. 15 (fourth fee application).

Dec 1, 2000

Joshua Morse telephone conference with Argo Partners re claims. Exhibit C, p. 15 (fourth fee application).

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Oct 14, 2000

Dec 1, 2000

Dec 2, 2000

Dec 5, 2000

Dec 6, 2000

Exhibit P - Chronology of Attorney Misconduct

Dec 12, 2000

Joanne B. Stern telephone conference with Argo Partners regarding Argo Partners information. Exhibit C, p. 14 (fourth fee application).

Dec 12, 2000

Joanne B. Stern preparation of correspondence to Ms. Sargent of Argo Partners regarding Argo Partners information. Exhibit C, p. 14 (fourth fee application).

Jan 17, 2001

The Court sustained the CA Attorney's objection to Argo's Center claim. Exhibit M. At that hearing, the Court ruled it would sustain any objections to individuals whose notice need correction.

Feb 9, 2001

Court entered Order sustaining the objection to Argo's Center claim which was disallowed and expunged in its entirety. Exhibit N.

Dec 12, 2000

Dec 13, 2000

Jan 17, 2001

Jan 18, 2001

Feb 9, 2001

Exhibit P - Chronology of Attorney Misconduct

Jun 6, 2001

Joanne B. Stern review creditor database regarding Argo Partners claims. Exhibit C, p. 17 (tenth fee application).

< Aug 7, 2001

Argo retained H&B a second time. On this day, CA Attorney Levinson continued a hearing date in the **Second Conflicted Representation**.

Argo was therefore retained a second time beginning sometime before this date, but after June 7, 2001, the date of the late filing of the disclosure of the **First Conflicted Representation**. Exhibit H, (Stipulation Filed in Second Conflicted Representation, signed by Sidney Levinson for H&B as attorney for Argo), p.2.

Apr 29, 2002

CA Attorneys sign stipulation between Argo and the Unsecured Creditors Committee on April 29, 2002 whereby Argo will be paid on the Center claim. Exhibit K.

This result came after the CA Attorneys previously obtained a valid and final **Court Order disallowing the Center claim in its' entirety**.

Note, the price Argo paid to Center for the claim is redacted in their pleading for the stipulation allowing the Center Claim. Exhibit K, p.10.

Feb 10, 2001

Jun 6, 2001

Jun 7, 2001

Aug 7, 2001

Aug 8, 2001

Apr

EXHIBIT Q

United States Bankruptcy Court

Northern District of California, Oakland Division

FILED

SEP 27 2000

**BANKRUPTCY COURT
OAKLAND, CALIFORNIA**

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

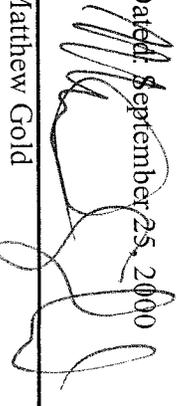
Debtor

**NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

1. TO: **Center Capital Corporation
PO Box 1188
Farmington, CT 06034**

2. Your entire claim as shown in the amount of **\$44,904.76** has been transferred pursuant to the Purchase Letter dated as of September 25th, 2000 to:

**Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018**

Dated ~~September 25, 2000~~


Matthew Gold
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Center Capital Corporation, having a mailing address at **PO Box 1188, Farmington, CT 06034** ("Assignor"), in consideration of the sum of:

⁴ (the "Purchase Price"), does hereby transfer to **Argo Partners, Inc.**, having an address at **12 West 37th Street, 9th Floor, New York, NY 10018** ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against **Avreal, Inc.** ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than **\$44,904.76** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$44,904.76** that the Claim in that amount is valid and that no objection to the Claim has been made. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information, made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee, with specific limited authority, to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignee agrees to take any such further action, at its own expense, as it may deem necessary or desirable to effect any payments or distributions on account of the Claim to Assignee.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 25 day of September 2000.

ATTEST:

By: *Matthew A Gold*
Signature

Wayne Johnson, Special Asset Manager
Print Name/Title
Center Capital Corporation

800-908-2810
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 25th day of September 2000.

ATTEST

By: *Matthew A Gold*
Matthew A Gold
Argo Partners, Inc.
212-643-5445

EXHIBIT R

December 28, 2005

Office of the Chief Trial Counsel/Intake
State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

RE: California Bar Complaint Against Members of Hennigan, Bennett & Dorman LLP as Reorganization Counsel for Aureal, Inc. and Adverse Counsel for Oaktree.

Dear Chief Trial Counsel, California Bar:

This is my answer to question #7 on the accompanying California Bar ("Bar") Compliant Form against the named California-licensed attorneys ("CA Attorneys"), all of whom are present or former attorneys with the firm Hennigan, Bennett & Dorman LLP ("H&B"), in your state.

1.0 Nature of Complaint

The sole concern of this complaint is the CA Attorney's apparent failure to adhere to the California Bar Rule 3-310 which requires attorneys to obtain written informed consent of each client in circumstances where the interests of those clients are adverse to each other, in order to avoid the representation of adverse interests of those clients. The apparent failure to act in accordance with CRPC 3-310 is evidenced by specific events surrounding the initial retention of H&B by Aureal. It further apparently resulted in the impairment to Next Factors ("Next") and other unsecured creditors in the Aureal case, as discussed in section *2.9 Apparent Harm to Next and Other Unsecured Creditors*.

I complain that while the circumstances requiring attorneys to obtain written informed consent were present in the Aureal case, it appears that H&B neither obtained the required written informed consent nor obtained a blanket waiver that the conflicted parties could knowingly and intelligently enter into. I further complain that any consent obtained by H&B must follow a written disclosure of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client¹, in accordance with CRPC 3-310(A).

¹This complaint is in regards to the apparent failure of H&B to obtain a written informed consent from their concurrent adverse clients: Aureal, the debtor-in-possession; Oaktree and the Oaktree Funds, the largest creditor in the Aureal case, as detailed in section *2.3 Adverse Representation (CRPC 3-310)* of this complaint; and the Creditors Committee as detailed in section *2.4 Relevance of CRPC 3-310 to CA Attorneys as Creditors Committee Fiduciary*, with respect to the initial retention of H&B by Aureal.

First I will set out what I believe to be the relevant portion of the California Rules of Professional Conduct (“CRPC”), followed by a brief note on ethics opinions, laws, rules, opinions of California courts, and standards regarding disclosure requirements of any actual or potential conflict under bankruptcy law that I ask to be considered when evaluating the conduct that forms the basis of this complaint; the apparent failure to obtain written informed consent at the outset of the Aureal case as required by CRPC 3-310. I do not know whether any other CRPC requirements may also be connected with the particular facts I set out below.

1.1 CRPC 3-310

The CA Attorneys apparently violated California Bar Rule 3-310 by failing to obtain written informed consent of each client, and other parties entitled to such related disclosure. This apparent failure would have occurred on the initial retention of H&B in the Aureal case, and in every subsequent instance when new potential or actual adverse issues arose between clients, as discussed in sections 2.3 *Adverse Representation* and 2.8 *Failure to Seek Renewed Consent*.

Rule 3-310. Avoiding the Representation of Adverse Interests.

(A) For purposes of this rule:

(1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by the resolution of the matter; or

(C) A member shall not, without the informed written consent of each client:

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

1.2 Bankruptcy Proceedings

The need for full disclosure, as a prerequisite to valid consent among conflicted parties, is an integral element of CRPC 3-310 and the prime concern of this complaint. It is a necessary element of federal bankruptcy practice as well; and central to the context in which the conduct complained of takes place.

Full disclosure is of paramount import because it enables creditors and the US Trustee to be informed of the facts necessary to determine whether they should object to the employment of a debtor's attorney. Such possible objection to debtor's retention of an attorney by creditors or the US Trustee is provided for within 11 U.S.C. 327(a) and (c):

11 USC § 327. Employment of professional persons

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

The statute does not automatically cause a conflicted attorney to be disqualified as debtor's counsel, but rather requires disapproval of such employment if an actual conflict exists, after there has been an "*objection by another creditor or the United States trustee*". This begs the question: How will another creditor or the United States trustee know that an objection should be made?

The answer to this question lies in part with the CA Attorneys requirements of CRPC 3-310: the full disclosure required by this rule provides another creditor or the United States trustee with the information needed to determine if an objection should be made. This determination would be based on knowledge of an actual or apparent lack of

disinterestedness² or holding of any interest, or representing any interest adverse to the bankruptcy estate. Such a determination is dependent upon the disclosure provided to the court by the appointed lawyer or firm.

A full written disclosure and informed consent required by CRPC 3-310 thereby helps protect the members of the public who are creditors in bankruptcy proceedings in California, while further engendering confidence in the legal system by ensuring that bankruptcy lawyers provide the broad³, full⁴, and candid disclosure of all facts and connections which may be relevant in determining their eligibility for employment under § 327. Who then must come forward with the information concerning the conflict?

It is the duty of the attorney to make full disclosure of the conflict in a meaningful manner⁵. This is so regardless of the legal arena within which a conflict arises, whether it is bankruptcy or other law. An effective consent to waive a conflict must be in writing, and must fully inform the client⁶ about the nature and extent of the conflict.

2.0 Facts to My Understanding

2.1 About Next Factors

Next is a claims trader. Claims trading has become “big business” and has attracted a wide variety of players. However, as the scope of the claims trading activity has increased, so too has the potential for corrupt practices and actions involving the professionals retained in those related proceedings. Despite the rampant claims trading

² In re Sullivan, 1992 U.S. Dist. LEXIS 3954, at *14 (E.D. Pa. 1992) (“It is not sufficient that the trustee and his counsel actually be disinterested; the appearance of interestedness must also be avoided”).

³ See *Diamond Lumber v. Unsec'd Creditors' Comm.*, 88 B.R. 773, 777 (N.D. Tex. 1988) (noting that the disclosure duty is so broad because the court, rather than the attorney, must decide whether the facts constitute an impermissible conflict).

⁴ See *In re Bolton-Emerson*, 200 B.R. 725, 731 (D. Mass. 1996); *In re Blinder, Robinson & Co.*, 131 B.R. 872 (cautioning that, in bankruptcy cases, full disclosure of all potential adverse interests should be a principle of first magnitude).

⁵ *In re California Cannery and Growers (Bkrcty)*, N.D. Cal. 1987) 74 B.R. 336. See also *Image Technical Services, Inc. v. Eastman Kodak Company* (N.D. Cal. 1993) 820 F. Supp. 1212, 1217. See also *Schmitz v. Zilveti* (9th Cir. 1994) 20 F.3d 1043, 1048-1049 (a lawyer has a duty to investigate for his own potential conflicts of interest).

⁶ See *Image Technical Services, Inc. v. Eastman Kodak Company* (N.D. Cal. 1993) 820 F. Supp. 1212, 1216-1217 (Consent to waive a conflict under CRPC 3-310 was not effective where it was not in writing and where the client was not informed (i) how the proposed representation would be adverse to the client's interest, (ii) that the law firm was actually going to appear on a brief against the client or (iii) of the potential exposure to the client.).

involved in large bankruptcy cases, there are few precautions in place to avoid corrupt practices and actions involving bankruptcy professionals.

Next is engaging itself in the national debate for federal bankruptcy reformation as a result of the harm that Next and similarly situated creditors have as a result of a number of such practices. Our first area of focus relates to state bar ethical requirements of bankruptcy lawyers in connection to their disclosure requirements under federal bankruptcy practice.

2.2 About H&B

A substantial portion of H&B's business involves the representation of large corporate 11 debtors. The CA Attorneys named in this complaint served as reorganization counsel for Aureal, Inc.

2.3 Adverse Representation (CRPC 3-310)

H&B engaged in concurrent representation of the debtor and an entity which was both the secured creditor and majority shareholder in the Aureal case. The CA Attorneys apparently did so without adhering to the requirements of CRPC 3-310. The employment began with Aureal, Inc, filing their "Application Of Debtor And Debtor In Possession For Authority To Employ Hennigan & Bennett As Reorganization Counsel" on April 5, 2000 with the US Bankruptcy Court for the Northern District of California attached as Exhibit A (the "Application"), and the CA Attorney James O. Johnston Declaration in support of that Application on April 5, 2000, attached as Exhibit E (the "First Declaration").

The First Declaration disclosed that H&B was representing an affiliate of the largest secured creditor and shareholder. The First Disclosure further informed the Court about an unrelated court case in which H&B was serving as counsel for Oaktree Capital Management, LLC ("Oaktree"). The CA Attorney's were thereby concurrently serving as adverse counsel for a firm that was affiliated with the largest creditor and equity holder in the case, the Oaktree Funds. The information in this declaration clearly required the CA Attorneys to seek written informed consent of each client. A subsequent declaration by CA Attorney Johnston provided new disclosure.

On April 13, 2000, a Supplemental Declaration of CA Attorney James O. Johnston was filed with the court. This declaration provided additional information about

H&B's representation of Oaktree attached as Exhibit B (the "Oaktree Disclosure"). The information in this declaration, omitted from the First Declaration, clearly required the CA Attorneys to seek, for the second time, written informed consent of each client.

The Oaktree Disclosure informed the court that Oaktree was an affiliate of, related to, or manager of various funds (the "Oaktree Funds") that asserted secured claims against Aureal, Inc. in the amount of approximately \$18,151,739.00. This amount constituted the majority of the liabilities of the Aureal. An enumeration of the entities constituting the Oaktree Funds was also disclosed.

The Oaktree Funds represented 8 separate entities: 1) OCM Opportunities Fund II, L.P., 2) PCW Special Credits Funds IIIb, 3) TCW Special Credits Trust, 4) TCW Special Credits Trust IIIb, 5) The Board of Trustees of the Delaware State Employees' Retirement Fund, 6) Weyerhaeuser Company Master Retirement Trust, 7) Columbia/HCA Master Retirement Trust, and 8) OCM Administrative Services II, LLC. The Oaktree Disclosure represented that one or more of the Oaktree Funds were affiliates of, related to, or managed by Oaktree. The conflicts that did or could arise between Aureal and Oaktree required that the CA Attorneys obtain the informed written consent required in CRPC 3-310 for each of their clients affected by this actual or potential adversity: Aureal, Oaktree, and each of the Oaktree Funds.

2.4 Relevance of CRPC 3-310 to CA Attorneys as Creditors Committee Fiduciary

Aureal was the debtor-in-possession ("DIP") in their bankruptcy case, a fact which impacts their attorney's requirements under CRPC 3-310⁹. This impact stems from the special trustee powers that a DIP enjoys under the bankruptcy code, and the attached responsibility the DIP inherits to act as a fiduciary for creditors. A lawyer who undertakes to fulfill instructions of the client in cases where the client is a fiduciary may actually assume a relationship not only with the client but also with the client's intended beneficiaries¹⁰. In this way, the CA Attorneys owe a duty to third-party creditor beneficiaries when representing a debtor-in-possession with fiduciary duties. Therefore, the CA Attorneys should have provided a written disclosure to the Creditors Committee.

⁹ A debtor-in-possession in Chapter 11 bankruptcy cases acts as the bankruptcy trustee in the case, with all of the attendant duties of a fiduciary toward each creditor in the case. In re Kelton Motors Inc., 109 B.R. 641, 645 (Bankr. D. Vt. 1989). Cf. In re Grabill Corp., 113 B.R. at 970.

¹⁰ See Lucas v. Hamm (1961) 56 Cal.2d 583, 15 Cal.Rptr. 821, 364 P.2d 685 (when a lawyer is retained to draft a will, the document's very purpose is to create a benefit for a legatee, and hence a duty is owed to the legatee even though the legatee and the lawyer are not in privity of contract); Morales v. Field, DeGoff, Huppert & MacGowan (1st Dist. 1979) 99 Cal.App.3d 307, 160 Cal.Rptr. 239 (a lawyer representing a trustee assumes a relationship with the beneficiary akin to that between trustee and beneficiary and thus assumes a duty of care toward the beneficiary).

2.5 Facts Illustrating Egregious Nature of Conflict¹¹

To the extent that H&B may have failed to adhere to CRPC 3-310 with respect to Aureal, Oaktree, Oaktree Funds, and the Creditors Committee, it is a potential willful breach made more egregious by the surrounding facts and circumstances. I understand that an overview of the factual context in which the possible unethical conduct complained of occurred is not a prerequisite to the applicability of CRPC 3-310. However, this context does illuminate the need to obtain the clients informed written consent in this case¹².

Aureal may have had a cause of action with one or more of Oaktree and the Oaktree Funds, or Aureal may have wanted to subordinate Oaktree or the Oaktree Funds claims behind that of the other creditors in the case, either of which would certainly place the CA Attorney client's interests adverse to those of the debtor. Such a cause of action may be found within the facts surrounding Aureal's entry into bankruptcy. According to the Aureal ex-CEO, Kenneth Kokinakis, as reported by Ziff Davis Media and attached here as Exhibit C (the "Aureal Power Struggle"):

"Management hoped to sell to avoid bankruptcy, while the shareholders thought we should hold out for a better deal. So we left"

According to the Aureal Power Struggle article, there was a management walkout at Aureal involving all eight corporate officers listed in Aureal's annual report. Moreover, four out of the five members of the board of directors also left the company. The sole remaining board member was a principal at Oaktree. At the time, Oaktree held the majority interest in Aureal.

By way of review, we ask the following rhetorical questions: Who was the shareholder holding out for a better deal? Oaktree; Who funded Aureal? Oaktree; Who was left running Aureal prior to filing for bankruptcy? Oaktree; Who became a secured party at the 11th hour? Oaktree; Who made the decision to file for bankruptcy? Oaktree¹³.

¹¹ "Integrity is the very breath of justice. Confidence in our law, our courts, and in the administration of justice is our supreme interest. No practice must be permitted to prevail which invites towards the administration of justice a doubt or distrust of its integrity." Erwin M. Jennings Co. v DiGenova, 107 Conn. 491, 499, 141 A. 866, 868 (1928).

¹² The text of CRPC 3-310 contains no "material adverse effect" requirement as a prerequisite to the rule's applicability in a case of concurrent adverse representation. Similarly, the rule applies regardless of the CA Attorney's reasonable belief about the lack of adverse effect on the representation of their clients.

¹³ Indeed, it would appear to me that Aureal acts as the mere "Alter Ego" of its largest shareholder, sole secured creditor, and sole board member.

Among the potential claims or against Oaktree and the Oaktree Funds, or the defenses to their claims, at the time the CA Attorney's undertook concurrent representation would have been all those based on theories of aiding and abetting, equitable subordination, validity of the security interest, deepening insolvency and fraudulent conveyance ("Lender Issues"). These facts underscore the importance of full disclosure and informed consent of the parties prior to such representation¹⁴. They also are instructive to the CA Attorneys: any written disclosure of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client would have to include, without limitation, a full disclosure of these Lender Issues, as required by and in accordance with CRPC 3-310(A).

2.6 Blanket Waiver

Any blanket waiver which H&B may have received from Aureal could not serve to contractually circumvent the CA Attorney's obligations to obtain an informed written consent under CRPC 3-310 during the initial retention of H&B by Aureal. The disclosure required must further have conformed to the definition in CRPC 3-310(A). Each of the CA Attorneys has the duty to make a full disclosure of the actual or potential conflicts to their clients, in a meaningful manner²⁰. Such disclosure should, at a minimum, include the information as discussed in section 2.5 *Facts Illustrating Egregious Nature of Possible CRPC 3-310 Violation*, including, without limitation, the Lender Issues. In this case, the CA Attorneys did obtain from Aureal advance consent to conflicts of interest that presently existed or that might arise in the future. It appears that the CA Attorney's did not, however, obtain the informed written consent prior to obtaining this blanket waiver.

The advanced consent H&B did obtain appears in their Retainer Agreement with Aureal in the form of a "Blanket Waiver" on pages 3 and 4 of the attached Exhibit D (the "Blanket Waiver"). The CA Attorneys knew or should have known that Oaktree/Oaktree Funds were creditors in the Aureal bankruptcy case as they were listed on the proof of service list attached to the Application. Similarly, they would also have been informed as to the Lender Issues. These facts highlight the need for the CA Attorney's to have obtained an informed written consent. However, in accordance with

¹⁴"A lawyer for the debtor in possession represents the estate and owes duties to the entire creditor body. Because the bankruptcy process involves a competition among all of the creditors and shareholders for a share of a limited pie, all of the creditors' interests are potentially adverse to one another." Christopher W. Frost, *Are you really disinterested? Chapter 11 presents real problems in ethics*, ABA Section of Business Law Today, November/December (1998).

²⁰ In re California Cannery and Growers (Bkrcty.N.D.Cal. 1987) 74 B.R. 336.

CRPC 3-310, such consent was required *even in the absence of these additional facts* which reflect the egregious circumstances surrounding the apparent failure of the CA Attorney to obtain the informed written consent.

2.7 Apparent Failure to Obtain Informed Written Consent

On April 4, 2000, Aureal executed the H&B retainer agreement and became their client. Exhibit D. Oaktree was on the attached Service List. Exhibit B. H&B was required to obtain a written informed consent before April 4, 2000 between these concurrent adverse clients as required under CRPC 3-310. The only indication available from the bankruptcy court that these clients had consented to the concurrent and adverse representation of Aureal and Oaktree is from the statement of Attorney Johnston: "I am informed by other members of H&B that each of the Debtor, the Oaktree Funds, and Oaktree have consented to H&B's concurrent representation of the Debtor and Oaktree Funds." Exhibit B. In this case, the omitted information is more telling than the proffered hearsay.

Attorney Johnston does not state that he has either fully disclosed the true nature of the adversarial conflicts, including the Lender Issues, or has received written consent to the conflicted representation²³. No conflict waiver letter or written consent from Aureal, Oaktree, Oaktree Funds, or the Creditors Committee which mentions the Lender Issues was submitted into court, and we have reason to believe that none exists²⁴. Indeed, Next made requests for such written waivers with respect to the Oaktree Affiliates to the CA Attorneys and the Liquidating Trustee in this case; Next has yet to receive a response.

A separate violation of CRPC 3-310 may be associated with Attorney Johnston's subsequent statement: "The representation of large corporate chapter 11 debtors, who typically have sizable corporate and institutional creditors, constitutes a substantial portion of H&B's business. In fact, other members of H&B have informed me that H&B currently represents a chapter 11 debtor against which an Oaktree Affiliate also asserts significant secured claims. To the best of my knowledge, no person has asserted that H&B is not disinterested in that case."

Attorney Johnston does not indicate whether or not informed written consent was received in this instance. If such informed written consent was not obtained, then it would appear that this CA Attorney believes the burden of CRPC 3-310 rests not with

²³ See, e.g., *In re Jaeger*, 213 B.R. 578, 585-586 (Bankr. C.D. Cal. 1997).

²⁴ If any such waiver was received from Aureal, it should have been filed with the court.

himself but rather on CA Attorney's clients or opposing parties. This would not be the first instance where a CA Attorney misconstrued CRPC 3-310.

Page four of the Retainer Agreement (Exhibit D) discusses "Relationship Conflicts" involving H&B attorney spouses and other relatives who work at other law firms and companies. The blanket waiver that H&B obtained from Aureal was subject to the disclosure by H&B in the event that "[H&B] determines than any of the relationships likely would lead to a conflict situation." By this language, it appears that H&B again misconstrues CRPC 3-310 as applying to their clients only where the CA Attorney has a reasonable belief that the conflict may have an adverse effect on the representation of a client. On the contrary, CRPC 3-310 applies regardless of the CA Attorney's reasonable belief about the lack of adverse effect a conflict of interest will have on the representation of a client. Next has no knowledge of any H&B Relationship Conflicts, but we assert that if any exist, H&B must obtain the informed written consent required by CRPC 3-310.

2.8 Failure to Seek Renewed Consent

On April 13, 2000, the Oaktree Disclosure was filed with the Court. This supplemental declaration (Exhibit B) was submitted not at the CA Attorney's initiative, but rather in response to concerns raised by the Court at the initial hearing on the Application. In this supplemental declaration, Attorney Johnston discloses the following facts: 1) Oaktree asserts claims against Aureal in the amount of approximately \$18M, and 2) the CA Attorneys represent Oaktree in an unrelated action pending in the California Superior Court.

Even if the CA Attorneys had obtained the informed written consent from Oaktree, Oaktree Funds, and the Creditors Committee as required by CRPC 3-310 when first engaging the client, they were required to receive renewed informed written consent as a result of the new facts in the supplemental declaration.²⁵

2.9 Apparent Harm to Next and Other Unsecured Creditors

The unsecured creditors in this case were impaired as a result of H&B's apparent breach of their promise made to their concurrent and adverse clients that they "zealously pursue the interests of each of our clients, including in those circumstances in which we represent the adversary of an existing client in an unrelated case." Exhibit D. This harm occurred in at least two separate respects.

²⁵See, e.g., Klemm v. Superior Court, 75 Cal. App. 3d 893, 142 Cal. Rptr. 509, 513 (1977) opining that, once an actual conflict develops, a previous waiver of potential conflicts becomes ineffective). Cf. Cal. State Bar Standing Comm. On Prof'l Responsibility & Conduct, Formal Op. 1989-115 (1989) (approving blanket prospective waivers, but requiring a new waiver once a potential conflict ripens into an actual one).

First, the unsecured creditors, Next, and the US Trustee (“Harmed Parties”) were harmed by the absence of a disclosure of information relevant and necessary to them in determining whether or not they should object to the employment of H&B by the debtor in this case. Such a right is specifically provided for and fundamental to the bankruptcy code. 11 U.S.C. 327(A). Had H&B obtained the written informed consent of each client after first making a full disclosure of all issues relating to CRPC 3-310, which disclosure would include, at a minimum, the Lender Issues, either in their First Declaration, the Oaktree Disclosure, or to each client, then one or more of the Harmed Parties could have made an objection to the employment of the conflicted CA Attorneys. However, apparently such information was not disclosed and the case was managed in a fashion that resulted in speedy liquidation of debtor assets. The CA Attorneys appear to have either failed to address the Lender Issues or simply resolved all such issues in favor of the wealthier non-liquidating client²⁶. In either event, this first harm has resulted in additional harm.

Second, H&B did not retain outside counsel to review Lender Issues. As a result of the management of the case, the unsecured creditors, and Next, were left impaired while the only secured creditor, Oaktree, was paid in full. Had H&B retained outside counsel to review issues where Aureal and Oaktree’s interests were adverse, such as involving the Lender Issues discussed above, then an action may have been filed against one or more parties, such as Oaktree, that could have left Next and other creditors unimpaired while the conflicted client, Oaktree, would possibly have been paid less.

A written informed consent in compliance with CRPC 3-310(A), wherein all of the relevant circumstances, such as the Lender Issues, and of the actual and reasonably foreseeable adverse consequences was first disclosed and obtained by H&B, then Next and the other creditors may have been left unimpaired. This consent was required under CRPC 3-310 before April 4, 2000, when H&B retained a concurrent adverse client, and subsequently on April 13, 2000, when the Oaktree Disclosure was made.

²⁶ The Lender Issues discussed are common in fact situations similar to the one presented in this complaint. However, an attorney may not determine alone whether or not such potential issues may have an adverse effect on the representation of a client. Such an incredulous position would render CRPC 3-310 moot whenever a CA attorney holds a “reasonable belief” about the adverse affect an issue may have for a client.

3.0 Request

Given that H&B's conduct appears to violate the California Rules of Professional Conduct, 3-310, I respectfully request that the Office of the Chief Trial Counsel investigate this matter to see if the CA Attorneys should be subject to sanctions for their actions.

In order to ensure transparency in the Bar investigatory process, and to aid members of the Bar in determining what constitutes a disclosure in conformity with the definition in CRPC 3-310(A) in bankruptcy practice, I would ask that any purported written waiver produced by H&B be made available for public inspection. Further, I ask that H&B provide a complete statement of Relationship Conflicts, available for public inspection.

The simple facts giving rise to the complaint regarding the concurrent adverse representation of H&B and Oaktree appear straight-forward. Significant effort was expended in focusing this complaint solely on that topic in hopes that your investigation could proceed quickly. I look forward to learning about the outcome of your investigation in the near future. Meanwhile, I am available to answer any questions you may have.

Sincerely,

David P. O'Donnell, President

Date: _____

EXHIBIT A

COPIES

BRUCE BENNETT (SBN 105430)
JAMES O. JOHNSTON (SBN 167330)
JOSHUA M. MESTER (SBN 194783)
HENNIGAN & BENNETT
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Proposed Reorganization Counsel for
Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Case No. **00 42104**
(Chapter 11)

In re
AUREAL, INC., d/b/a SILO.COM,
f/k/a AUREAL
SEMICONDUCTOR, INC., f/k/a
MEDIA VISION TECHNOLOGY,
INC., a Delaware corporation;

Debtor.

APPLICATION OF DEBTOR AND DEBTOR
IN POSSESSION TO EMPLOY HENNIGAN
& BENNETT AS REORGANIZATION
COUNSEL; DECLARATION OF JAMES O.
JOHNSTON IN SUPPORT

[No Hearing Required]

Aureal, Inc., the debtor and debtor in possession herein (the "Debtor"), hereby
applies to this Court for the entry of an order, in substantially the form of the proposed
order attached hereto as Exhibit A, authorizing it to employ the law firm of Hennigan &
Bennett ("H&B") as its reorganization counsel. In support of this Application, the Debtor
submits the accompanying Declaration of James O. Johnston (the "Johnston
Declaration") and respectfully represents as follows:

28

HENNIGAN & BENNETT

1 7. Among other things, as indicated in the Retention Agreement, the Debtor
2 requires H&B to render the following types of professional services:
3 • To advise the Debtor regarding matters of bankruptcy law;
4 • To represent the Debtor in proceedings or hearings before this Court
5 involving matters of bankruptcy law;
6 • To assist the Debtor in the preparation of reports, accounts,
7 applications, and orders;
8 • To advise the Debtor concerning the requirements of the
9 Bankruptcy Code, Bankruptcy Rules, and United States Trustee Guidelines and
10 Requirements relating to the administration of this case and the operation of the
11 Debtor's business; and
12 • To assist the Debtor in the negotiation, preparation, confirmation,
13 and implementation of a plan of reorganization.
14 8. As indicated in the Retention Agreement, however, except as set forth in
15 paragraphs 9, 10, and 11 below, the Debtor does not intend for H&B to be responsible for
16 appearances before any court or agency, other than before this Court and the office of
17 the United States Trustee; litigation before this Court with respect to matters which are,
18 in essence, disputes involving issues of nonbankruptcy law; or the provision of
19 substantive legal advice outside of the insolvency area, such as in areas implicating
20 patent, trademarks, intellectual property, corporations, taxation, securities, torts,
21 environmental, labor, criminal, or real estate law. Further, the Debtor does not intend
22 for H&B to be required to devote attention to, form professional opinions as to, or advise
23 the Debtor with respect to their disclosure obligations under nonbankruptcy laws or
24 agreements.
25 9. The Debtor anticipates that in addition to employing H&B as
26 reorganization counsel, the Debtor will require the services of litigation, corporate,
27 trademark and patent counsel. However, the Debtor does not expect that there will be
28 duplication in the services to be rendered to the Debtor by the separate counsel.

1 10. The Debtor may, from time to time, request that H&B undertake specific
2 matters beyond the limited scope of the responsibilities set forth above. Should H&B
3 agree in its discretion to undertake any such specific matters, the Debtor seeks authority
4 by this Application to employ H&B for such matters, in addition to those set forth above,
5 without further order of this Court.

6 11. H&B also has agreed to serve as counsel to the Debtor with respect to
7 certain nonbankruptcy litigation to be commenced on behalf of the Debtor. The terms
8 and conditions of that engagement are set forth in a separate engagement letter, which
9 will be submitted to the Court for approval with the appropriate notice.

10 **H&B's Compensation as Reorganization Counsel**

11 12. H&B has received a retainer of \$300,000 for services to be rendered to the
12 Debtor in connection with this chapter 11 case. H&B has deposited the unearned
13 portion of that retainer into a trust account in the name of the Debtor, as a trust
14 fund/security retainer, to secure the payment of H&B's allowed fees and expenses in
15 this case. During the one year period prior to the filing date of the chapter 11 petition,
16 H&B did not receive from the Debtor any other payments for services rendered to the
17 Debtor in connection with this case and the reorganization of its business.

18 13. H&B has agreed to accept as compensation for its services its retainer and
19 such additional reasonable sums as may be allowed by this Court in accordance with
20 law, based upon the time spent and services rendered, the results achieved, the
21 difficulties encountered, the complexities involved, and other appropriate factors, as set
22 forth in the Retention Agreement. A list of the guideline hourly rates for H&B and of
23 those members of H&B expected to render services to the Debtor is attached hereto as
24 Exhibit "D".

25 14. No additional compensation will be paid by the Debtor to H&B except
26 upon application to and approval by the Bankruptcy Court after notice and a hearing.

27 ///
28 ///

HENNIGAN & BENNETT

18. The name, address and phone number of the person signing this

Application on behalf of H&B and the relationship of such person to H&B is:

James O. Johnston, Partner
Hennigan & Bennett

601 S. Figueroa Street, Suite 3300

Los Angeles, California 90017

Telephone: (213) 694-1200

Summary

19. The employment of H&B as the Debtor's reorganization counsel is in the best interest of the estate.

20. The Debtor has served copies of the Application and certain related pleadings and documents on the Office of the United States Trustee, the creditors identified on the lists of creditors holding the twenty largest unsecured claims against the Debtor, and counsel to the Debtor's primary secured lender, Oaktree Capital Management, LLC.

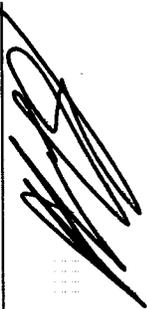
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HENNIGAN & BENNETT

1 WHEREFOR, the Debtor requests that it be authorized to employ H&B as its
2 reorganization counsel with compensation to be at the expense of the estate in such
3 amount as the Court may hereafter allow in accordance with law.

4
5 DATED: April 5, 2000

AUREAL, INC.

6
7
8
9 By: 
10 Steve Mitchell,
11 Chief Operating Officer

12 Submitted By:

13
14 By: 
15 James O. Johnston
16 Hennigan & Bennett
17 Proposed Reorganization Counsel for Debtor
18 And Debtor in Possession
19
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HENNIGAN & BENNETT

EXHIBIT B

1 BRUCE BENNETT (SBN 105430)
2 JAMES O. JOHNSTON (SBN 167330)
3 JOSHUA M. MESTER (SBN 194783)
4 HENNIGAN & BENNETT
5 601 South Figueroa Street, Suite 3300
6 Los Angeles, California 90017
7 Telephone: (213) 694-1200
8 Facsimile: (213) 694-1234

Proposed Reorganization Counsel for
Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

11 In re

12 AUREAL, INC., d/b/a SILO.COM,
13 f/k/a AUREAL SEMICONDUCTOR,
14 INC., f/k/a MEDIA VISION
15 TECHNOLOGY, INC., a Delaware
16 corporation;

Debtor.

Case No. 00-42104-TT1

(Chapter 11)

SUPPLEMENTAL DECLARATION OF
JAMES O. JOHNSTON IN SUPPORT OF
APPLICATION OF DEBTOR AND
DEBTOR IN POSSESSION TO EMPLOY
HENNIGAN & BENNETT AS
REORGANIZATION COUNSEL

Date: April 17, 2000
Time: 3:30 P.m.
Place: Courtroom 201
1300 Clay Street
Oakland, CA 94612

22 I, James O. Johnston, declare:

23 1. I am a member in good standing of the Bar of the State of California, and I
24 am admitted to practice before, among other courts, the United States District Court for
25 the Northern District of California. I am a partner in Hennigan & Bennett ("H&B"),
26 proposed reorganization counsel for Aureal, Inc., the debtor and debtor in possession
27 (the "Debtor") in the above-captioned bankruptcy case. I make this Supplemental
28 Declaration in further support of the "Application Of Debtor And Debtor In Possession

HENNIGAN & BENNETT

SUPPLEMENTAL DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF APPLICATION OF DEBTOR AND DEBTOR IN
POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

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COURT CLERK

1 For Authority To Employ Hennigan & Bennett As Reorganization Counsel" (the
2 "Application") and in response to concerns that I understand to have been raised by the
3 Court at the initial hearing on the Application. Except where otherwise indicated, I have
4 personal knowledge of the matters set forth below and, if called to testify, I would and
5 could competently testify thereto.

6 2. Based upon my review of the Debtor's books and records, it appears that
7 OCM Opportunities Fund II, L.P., TCW Special Credits Fund IIIb, TCW Special Credits
8 Trust, TCW Special Credits Trust IIIb, The Board of Trustees of the Delaware State
9 Employees' Retirement Fund, Weyerhaeuser Company Master Retirement Trust,
10 Columbia/HCA Master Retirement Trust, and OCM Administrative Services II, LLC
11 (collectively, the "Oaktree Funds") assert secured claims against the Debtor in the
12 amount of approximately \$18,151,739 and also that the Oaktree Funds own a majority of
13 the shares of the Debtor. H&B has been informed by the Oaktree Funds that one or
14 more of the Oaktree Funds are affiliates of, related to, or managed by Oaktree Capital
15 Management LLC ("Oaktree").

16 3. H&B represents Oaktree, on a contingent-fee basis, in an unrelated action
17 entitled Farallon Capital Partners, L.P., et. al. v. Gleacher & Co, Inc. et. al, which action
18 currently is pending in the California Superior Court in Los Angeles as Case Number BC
19 215260 (the "Farallon Litigation"). The Farallon Litigation involves alleged fraud by the
20 underwriters for a Thai steel company in connection with the issuance of bonds by that
21 Thai steel company. In the Farallon Litigation, Oaktree, as plaintiff, alleges that it was
22 damaged through the purchase of the Thai steel company's bonds, and Oaktree is
23 pursuing remedies against the underwriters.

24 4. To the best of my knowledge, none of the parties to the Farallon Litigation,
25 other than Oaktree, are parties in interest, or are affiliated with parties in interest, in the
26 above-captioned case in which H&B seeks employment. Also, to the best of my
27 knowledge, the controversies for which H&B represents Oaktree in the Farallon
28

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HENNIGAN & BENNETT

- 2 -

SUPPLEMENTAL DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF APPLICATION OF DEBTOR AND DEBTOR IN
POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

1 Litigation are entirely unrelated to any of the transactions conducted by any of the
2 Oaktree Funds with the Debtor.

3 5. I believe that H&B is "disinterested" with respect to the Debtor, within the
4 meaning of sections 101(14) and 327 of the Bankruptcy Code, notwithstanding its
5 ongoing representation of Oaktree on the Farallon Litigation.

6 6. Specifically, as indicated in that Declaration, H&B does not fall within the
7 criteria set forth in subsections (A) through (D) of section 101(14). Moreover, I do not
8 believe that H&B has an interest materially adverse to the interest of the Debtor's estate,
9 or to any class of creditors or equity security holders, for at least the following reasons:

10 a. As noted above, to the best of my knowledge, none of the parties to
11 the Farallon Litigation, other than Oaktree, are parties in interest, or are affiliated
12 with parties in interest, in the above-captioned case. Moreover, I believe that the
13 controversies for which H&B represents Oaktree in the Farallon Litigation are
14 entirely unrelated to any of the transactions conducted by any of the Oaktree
15 Funds with the Debtor.

16 b. The Farallon Litigation does not constitute a material percentage of
17 H&B's revenues or overall client base. Specifically, based upon information
18 provided to me from H&B personnel who regularly monitor and administer our
19 books and records, I believe that H&B devoted to the Farallon Litigation only
20 approximately 1.14% of the total hours billed by H&B professionals and
21 employees from March 1, 1999 through February 29, 2000. Thus, I believe that
22 H&B's representation of Oaktree in the Farallon Litigation does not constitute a
23 material portion of H&B's business. The overwhelming majority of H&B's
24 business relates to litigation and bankruptcy matters that do not involve Oaktree
25 or any of its affiliates.

26 c. I am informed by other members of H&B that each of the Debtor,
27 the Oaktree Funds, and Oaktree have consented to H&B's concurrent
28 representation of the Debtor and the Oaktree Funds.

HENNIGAN & BENNETT

- 3 -

SUPPLEMENTAL DECLARATION OF JAMES C. JOHNSTON IN SUPPORT OF APPLICATION OF DEBTOR AND DEBTOR IN
POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

1 d. The representation of large corporate chapter 11 debtors, who
 2 typically have sizable corporate and institutional creditors, constitutes a
 3 substantial portion of H&B's business. In fact, other members of H&B have
 4 informed me that H&B currently represents a chapter 11 debtor against which an
 5 Oaktree affiliate also asserts significant secured claims. To the best of my
 6 knowledge, no person has asserted that H&B is not disinterested in that case.
 7 7. In summary, I believe that H&B is disinterested notwithstanding H&B's
 8 representation of Oaktree in the unrelated Farallon litigation, and I believe that the
 9 employment of H&B as requested in the Application is reasonable and appropriate
 10 under the circumstances.

11 I declare under penalty of perjury that the foregoing is true and correct.
 12 Executed this 12th day of April, 2000, at Los Angeles, California.

13 By: 
 14 James O. Johnston
 15 Proposed Reorganization Counsel for Debtor
 16 And Debtor in Possession

17

18

19 HENNIGAN & BENNETT

20 - 4 -

DECLARATION OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Hennigan, Mercer & Bennett, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On April 13, 2000, I served the following pleading:

SUPPLEMENTAL DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF APPLICATION OF DEBTOR AND DEBTOR IN POSSESSION TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

See attached Service List

The above-described pleading also was transmitted to the indicated parties set forth above in the manner described below:

By air courier service, for next business-day delivery by

By messenger service, for same-day delivery by hand by

By telecopy, for immediate receipt to those creditors marked with an asterisk.

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made.

EXECUTED on April 13, 2000, at Los Angeles, California.

Kathryn S. Bowman
Kathryn S. Bowman, Declarant

PROOF OF SERVICE

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Sent by: HMB FAX #1

213 694 1234;

04/13/00 12:39PM; JEFFREY #1553; page 1111

Debtor:
AUREAL, INC.
Attn: Steve Mitchell
7 Northport Loop West
Mountain, CA 94538

Debtor's Counsel:
Bruce Bonauer/Joshua Mester
Hannigan & Bennett
601 S Figueroa St., Suite 3300
Los Angeles, CA 90017

Office of the U.S. Trustee: ★
U.S. Trustee
1301 Clay Street, Suite 690N
Oakland, CA 94612

Secured Creditor as Agent:
Oaktree Capital Management LLC
Attn: Richard Masson
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

Counsel to Oaktree Capital Mgmt.:
Eric Reimer, Esq.
McDermott, Will & Emory
2049 Century Park East, 34th Floor
Los Angeles, CA 90067

20 Largest Unsecured Creditors:
Ocean Data Products
5th Floor Kader Industrial Bldg.
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

20 Largest Unsecured Creditors:
UMC Group (USA)
Attn: Tam Kalvin
488 Deguigne Drive
Sunnyvale, CA 94086

20 Largest Unsecured Creditors:
Finland Online, Inc.
Attn: Michael K. Powers
2325 Third Street, Suite 215
San Francisco, CA 94107

20 Largest Unsecured Creditors:
Caesar International, Inc.
Attn: Jolo Estevillo
2860 Zanker Road, Suite 210
San Jose, CA 95134

20 Largest Unsecured Creditors:
Cadence Design Systems, Inc.
Attn: Steve Milh
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditors:
KPMG, LLP
Attn: Juan Gonzales
Dept. 0922
PO Box 120001
Dallas, TX 75312-0922

20 Largest Unsecured Creditors:
Aynet Electronics Marketing
Attn: Judy O'Brien
2105 Lundy Avenue
San Jose, CA 95131

20 Largest Unsecured Creditors:
Ziff-Davis, Inc.
Attn: Customer Service
File #2082
Los Angeles, CA 90074-2082

20 Largest Unsecured Creditors:
Houlihan Lokey Howard & Zukin
Attn: Glenn R. Daniel, Managing Director
49 Stevenson Street, 14th Floor
San Francisco, CA 94105

20 Largest Unsecured Creditors:
Finova Technology Finance, Inc.
Attn: Lori P. Sullivan
115 West Century Road, 3rd Floor
Paramus, NJ 07652

20 Largest Unsecured Creditors:
World Communications
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0767

20 Largest Unsecured Creditors:
VFA-Speak A/S
Stationsvej 5
6920 Videbaek
Denmark

20 Largest Unsecured Creditors:
GE Capital
Attn: Brian Haber
Dept. 3123
Pasadena, CA 91051-3123

20 Largest Unsecured Creditors:
Integra-Dyne Corp.
Attn: Ren Condotta
145 King Street, West, Suite 1000
Toronto, ON M5H 1J8
Canada

20 Largest Unsecured Creditors:
3DSTL
Attn: John Byrne
Blissworth Base Hill
Stoke Road, Busworth
Northants, UK NN73DB

20 Largest Unsecured Creditors:
Activation, Inc.
Attn: Andrea Tedeschi
3100 Ocean Park Boulevard
Santa Monica, CA 90405

20 Largest Unsecured Creditors:
Highsoft, Inc.
Attn: Steve Campos
1965 Latham Street
Mountain View, CA 94040-2107

20 Largest Unsecured Creditors:
Hruska Productions Audio, Inc.
Attn: Jennifer Hruska
66 Rear Dudley Street
Arlington, MA 02476

20 Largest Unsecured Creditors:
FC Ganner
Attn: Robin Rowles
150 North Hill Drive
Brisbane, CA 94005

20 Largest Unsecured Creditors:
Orrick, Herrington & Sutcliffe
Attn: Terrence P. McMahon
1020 March Road
Menlo Park, CA 94025

Request For Special Notice: ★
Orrick, Herrington & Sutcliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-3143

EXHIBIT C



Power Struggle Forced Aural Walkout

March 6, 2003

By [Mark Hachman](#)

The mysterious last days of Aural Semiconductor were marred by a power struggle that culminated in a management walkout, according to the ex-chief executive of the company.

Kenneth "Kip" Kokinakis, who led Aural—the company that popularized the concept of virtualized HRTF sound on the PC—joined similarly named startup Aura Communications in January, in yet another bid to turn a struggling company around.



ADVERTISEMENT

Kokinakis joked about the similarity between his two companies' monikers. "Yeah, I thought Aura — Aural—here we go again," Kokinakis said in an interview. "At least this time, maybe we won't get sued."

Aural was founded on the principle that the experience of interacting with devices like a PC or a television set could be made more interactive through the use of "virtual" sound, which uses audio coding algorithms to fool the ear into thinking sounds were actually coming from behind, over, or under the listener. Aura Communications, meanwhile, has designed a personal-area-networking technology that rivals Bluetooth.

Aural's work prompted a number of competing technologies, the most recent being Dolby's [Virtual Speaker](#) algorithm.

But in late March 2000, Aural issued a statement claiming that the company needed an immediate infusion of cash to remain in business and that it was considering selling off its assets.

It ultimately sold out to Creative Labs; ironically, Aural had defended itself against Creative Labs in a bitter legal fight involving patents and claims of false advertising. Aural later estimated it spent \$6.4 million in 1999 solely on legal fees, while pulling in just slightly more in product revenue each quarter.

The day after Aural issued its plea for cash, management walked out en masse. All of the eight corporate officers listed in Aural's annual report, including the chief executive, chief financial officer,

chief technical officer, general counsel and sales executives, left the company. Four of the five members of the board of directors also left, save for D. Richard Masson, principal at Oaktree Capital Management LLC, Los Angeles, a venture-capital firm that held a majority stake in Aureal.

Kokinakis essentially vanished from the public eye for several years, quietly working as a consultant. Toni Schneider, Aureal's vice president of advanced audio products, now runs [Oddpost](#), a Webmail service paid for by customers, not ads. General counsel Brendan O'Flaherty joined broadband chip company [Massana](#).

Kokinakis said the walkout, which was never explained publicly, simply came down to a fight between shareholders and management. "We had exhausted our funds," he said. "Management hoped to sell to avoid bankruptcy, while the shareholders thought we should hold out for a better deal. So we left."

According to Kokinakis, he's applying some lessons from the Aureal ordeal to his new position at Aura Communications.

Aura now uses a fables model, while Aureal contracted with foundries to build and sell its audio components to companies such as the now-defunct Diamond Multimedia. That got Aureal into trouble, Kokinakis admitted, when Aureal began building its own add-on cards and shipping them to Diamond to resell. Aureal later took the plunge and started building and selling its cards under its own name.

In retrospect, Kokinakis said that strategy was a mistake.

"Had Diamond not folded, we could have done it," Kokinakis said. "But I think we were too greedy in that transaction. We were trying to build a brand, but I think we might have been better off in revenue sharing."

Still, Kokinakis said, the management team faced an uphill battle from the beginning. Aureal was formed from the ashes of Media Vision, an add-on card manufacturer that underwent a complete management and technology overhaul after its executives were indicted for fraud in 1998. Steven Allan, the ex-CFO of Media Vision, was found guilty of five counts of wire, mail and securities fraud last year following an eight-year investigation.

"It was almost impossible right from the beginning," Kokinakis said. "We just ran out of gas."

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EXHIBIT D

HENNIGAN & BENNETT

LAWYERS
601 SOUTH FIGUEROA STREET
SUITE 3300
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 694-1200
FACSIMILE (213) 694-1234

April 4, 2000

**VIA FACSIMILE
AND FEDERAL EXPRESS**

Aureal, Inc.
45757 Northport Loop West
Fremont, CA 94538
[facsimile no. 510-252-4554]

**Re: Retainer Agreement between Hennigan & Bennett and Aureal, Inc.,
And Its Subsidiaries, Crystal River Engineering, Inc., and Aureal
Limited Regarding Bankruptcy Representation**

Gentlemen:

This letter sets forth the terms and conditions upon which Hennigan & Bennett ("H&B") will represent Aureal, Inc., and its wholly-owned subsidiaries Crystal River Engineering, Inc., and Aureal Limited (collectively, "Aureal"), in connection with the filing and prosecution of chapter 11 bankruptcy cases for one or more of them in the United States Bankruptcy Court for the Northern District of California, Oakland Division.

H&B will act as Aureal's special reorganization counsel to render such ordinary and necessary legal services as may be required in connection with the contemplated chapter 11 cases, including:

1. Assisting Aureal in the preparation of its bankruptcy petition(s), schedule(s) of assets and liabilities, statement(s) of financial affairs, and such other documents as are required to be filed with the Bankruptcy Court and the Office of the United States Trustee to commence and proceed with the chapter 11 case(s);
2. Advising Aureal with respect to the sale of some or all of its assets and with respect to the negotiation, preparation, and confirmation of a plan or plans of reorganization;

HENNIGAN & BENNETT
Aureal, Inc.
Chapter 11 Retainer Agreement
April 4, 2000
Page 2

3. Assisting Aureal in preparing and obtaining approval of a disclosure statement or statements;
4. Appearing at meetings of creditors;
5. Representing Aureal in litigation in the Bankruptcy Court where such litigation involves substantial and material issues of bankruptcy law; and
6. Advising Aureal regarding its legal rights and responsibilities as a debtor in possession under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the United States Trustee Guidelines and Requirements.

Please be advised that H&B's employment as Aureal's special reorganization counsel does not include any of the following: (a) appearances before any court or agency other than the Bankruptcy Court and the Office of the United States Trustee; (b) litigation in the Bankruptcy Court with respect to matters which are, in the main, disputes involving issues of nonbankruptcy law; and (c) the provision of advice outside the insolvency area, including advise with respect to matters such as patent, trademark, corporations, taxation, securities, torts, environmental, labor, criminal, and real estate law. Further, the limited scope of our employment as Aureal's special reorganization counsel does not include giving attention to, forming professional opinions as to, or advising you with respect to, disclosure obligations under federal securities or other nonbankruptcy laws or agreements.

As you are aware, H&B also has agreed to serve as counsel to Aureal with respect to certain nonbankruptcy litigation to be commenced on behalf of Aureal. The terms and conditions of that engagement are set forth in a separate engagement letter, which letter is to be read and interpreted consistently and concurrently with the terms and conditions set forth herein.

With respect to H&B's services as special reorganization counsel pursuant to this engagement letter, Aureal has agreed to pay H&B a reasonable fee for services rendered and to be rendered and to pay H&B for all costs and expenses charged to its account. We have requested and Aureal agreed to pay the sum of \$300,000 as a retainer for the professional services that H&B will render and for the expenses that H&B will incur as special reorganization counsel, as well as additional security for Aureal's obligations to H&B. H&B's engagement is contingent on its receipt of that sum prior to the commencement of any bankruptcy proceedings with respect to Aureal. The retainer amount may be allocated by H&B among the entities comprising Aureal in any manner in which H&B deems appropriate.

HENNIGAN & BENNETT

Aureal, Inc.

Chapter 11 Retainer Agreement

April 4, 2000

Page 3

Following exhaustion of the retainer, H&B will seek additional compensation for services rendered during the course of the chapter 11 cases ("interim compensation") based in part upon our guideline hourly rates. These rates range from \$200 to \$460 per hour for attorneys, from \$90 to \$340 per hour for financial consultants, and from \$50 to \$155 for paralegals and clerks. Our guideline hourly rates are adjusted periodically, typically on January 1 of each year, to reflect the advancing experience, capabilities and seniority of our professionals as well as general economic factors.

Our requests for interim compensation also will include charges for reasonable costs and expenses incurred in connection with the engagement. Such costs and expenses typically include, among others, charges for messenger services, air couriers, word processing services, secretarial overtime, photocopying, postage, long distance telephone service, computerized legal research facilities, process service, investigative searches, and other charges customarily invoiced by law firms in addition to fees for legal services, including court fees and travel expenses. In the event that we incur expenses that we deem to be extraordinary or significant, such as transcript costs or sizable outsourced photocopying expenses, you agree that Aureal will pay those expenses directly.

It is H&B's practice to charge our clients for services rendered based upon not only the total number of hours of services rendered charged at guideline hourly rates, but also upon such other factors as the complexity of the problems presented to us, the amount at issue, the nature, quality and extent of the opposition encountered, the results accomplished, the skill we exercised in accomplishing those results, the extent to which our services were rendered outside the Los Angeles area, after normal business hours or on other than normal business days, delay in our receipt of compensation, and the extent to which we were at risk in being paid. When our representation is ended, the firm will determine the amount of the total fees and will send Aureal a final statement, which may reflect a fee that exceeds the interim compensation previously sought or invoiced by H&B. To the extent that H&B's final fee exceeds the total number of hours of services rendered charged at guideline hourly rates, H&B will consult with Aureal before setting that final fee.

Because of the specialized nature of our practice, from time to time H&B may concurrently represent one client in a particular case and the adversary of that client in an unrelated case. Thus, for example, while representing Aureal, H&B also may represent a creditor of Aureal in that creditor's capacity as a debtor or as a creditor of an entity which is not related to Aureal. In addition, while representing Aureal, H&B may represent an account debtor of Aureal as a debtor in a reorganization case or in connection with out-of-court negotiations with such entity's creditors concerning the

HENNIGAN & BENNETT
Aureal, Inc.
Chapter 11 Retainer Agreement
April 4, 2000
Page 4

entity's ability to pay its debts generally. Please be assured that, despite any such concurrent representation, we strictly preserve all client confidences and zealously pursue the interests of each of our clients, including in those circumstances in which we represent the adversary of an existing client in an unrelated case. Aureal agrees that it does not consider such concurrent representation, in unrelated matters, of Aureal and any adversary to be inappropriate and therefore waives any objections to any such present or future concurrent representation.

Also, several attorneys at H&B have spouses, parents, children, siblings, fiances or fiancées who are attorneys at other law firms and companies. H&B has strict policies against disclosing confidential information to anyone outside the firm, including spouses, parents, children, siblings, fiances and fiancées. You agree that you do not consider our representation of Aureal to be inappropriate in light of any such relationships, and H&B agrees to advise Aureal in the event that it determines that any of the relationships likely would lead to a conflict situation.

H&B maintains a policy that it does not provide opinion letters to its clients or to others who might wish to rely on such letters. We do not alter this policy except under very unusual circumstances and then only upon further written agreement, which provides for compensation to us for the special risks attendant to the furnishing of such opinions. H&B maintains errors and omissions insurance coverage applicable to the services to be rendered hereunder which complies with the requirements imposed by California Business and Professions Code sections 6147(a)(6) and 6148(a)(4).

By this agreement, HMB is being engaged only by Aureal and its subsidiaries, which are corporate entities. Our employment does not include the representation of any individual officer, director, shareholder, employee or any affiliate of Aureal.

Aureal may discharge H&B at any time. H&B may withdraw at any time with Aureal's consent or for good cause without Aureal's consent. Good cause for H&B's withdrawal includes Aureal's breach of this agreement (including Aureal's failure to pay any statement or invoice when due), Aureal's refusal or failure to cooperate with us, or any fact or circumstance that would render our continuing representation unlawful or unethical.

By executing this agreement you acknowledge that you have read carefully and understand all its terms. This letter constitutes the entire understanding between Aureal and H&B regarding our employment as special reorganization counsel, and this agreement cannot be modified except by further written agreement signed by each party. As noted above, the terms and conditions of H&B's engagement by

HENNIGAN & BENNETT

Aureal, Inc.

Chapter 11 Retainer Agreement

April 4, 2000

Page 5

Aureal with respect to certain nonbankruptcy litigation matters are set forth in a separate engagement letter.

If you have any questions about the foregoing, please call Josh Mester, or me. Moreover, please feel free to obtain independent legal advice regarding this agreement. If you are in agreement with the foregoing, and it accurately represents your understanding of Aureal's retainer agreement with H&B with respect to services as special reorganization counsel, please execute the enclosed copy of this letter and return it to me. If not, please contact us immediately. We look forward to working with you on these cases.

Very truly yours,

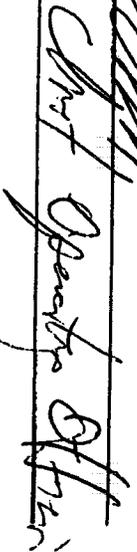
HENNIGAN & BENNETT

By 
James O. Johnston

THE FOREGOING IS APPROVED AND AGREED TO:

DATED: April 4, 2000

AUREAL, INC

By: 
Its: 

Aureal, Inc.'s Taxpayer I.D. Number: 94-3117385

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EXHIBIT E

COPY
RUCC BENNETT 105430
JAMES O. JOHNSTON (SBN 167330)
JOSHUA M. MESTER (SBN 194783)
HENNIGAN & BENNETT
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Proposed Reorganization Counsel for Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

Case No. **00 42104**
(Chapter 11)

In re
AUREAL, INC., d/b/a SILO.COM,
f/k/a AUREAL
SEMICONDUCTOR, INC., f/k/a
MEDIA VISION TECHNOLOGY,
INC., a Delaware corporation;

DECLARATION OF JAMES O. JOHNSTON IN
SUPPORT OF APPLICATION OF DEBTOR
AND DEBTOR IN POSSESSION TO EMPLOY
HENNIGAN & BENNETT AS
REORGANIZATION COUNSEL

Debtor.

[No Hearing Required]

22 I, James O. Johnston, declare:
23 1. I am a member in good standing of the Bar of the State of California. I am
24 admitted to practice before, among other courts, the United States District Court for the
25 Northern District of California. I am a partner in Hennigan & Bennett ("H&B"),
26 proposed reorganization counsel for Aureal, Inc., the debtor and debtor in possession
27 (the "Debtor") in the above-captioned bankruptcy case. I make this Declaration in
28 support of the "Application Of Debtor And Debtor In Possession For Authority To

HENNIGAN & BENNETT

DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF DEBTOR AND DEBTOR IN POSSESSION APPLICATION
TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

1 Employ Hennigan & Bennett As Reorganization Counsel (the "Application"). I have
2 personal knowledge of the matters set forth below and, if called to testify, I would and
3 could competently testify thereto.

4 2. This Declaration is made pursuant to 11 U.S.C. §§ 327, and 329(a) and Rule
5 2016(b) of the Federal Rules of Bankruptcy Procedure.

6 3. By the Application, the Debtor has applied to the Court for authority to
7 engage H&B as its reorganization counsel on substantially the terms and conditions set
8 forth in the retention agreement attached as Exhibit B to the Application (the "Retention
9 Agreement").

10 4. To the best of my knowledge, information, and belief, all attorneys
11 comprising or employed by H&B who will render services in this case are or will be duly
12 admitted to practice law in the courts of the State of California and in the United States
13 District Court for the Northern District of California and are familiar with the
14 Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy
15 Rules for this District.

16 5. H&B has received a retainer of \$300,000 for services to be rendered to the
17 Debtor in connection with this chapter 11 case. H&B has deposited the unearned
18 portion of the retainer in a trust account in the name of the Debtor, as a trust
19 fund/security retainer, to secure the payment of H&B's allowed fees and expenses in
20 this case. During the one year period prior to the filing date of the chapter 11 petition,
21 H&B did not receive from the Debtor any other payments for services rendered to the
22 Debtor in connection with this case and the reorganization of its business. H&B does not
23 have a prepetition claim against the Debtor's estate.
24 6. H&B has agreed to accept as compensation for its services its retainer and
25 such additional reasonable sums as may be allowed by this Court in accordance with
26 law, based upon the time spent and services rendered, the results achieved, the
27 difficulties encountered, the complexities involved, and other appropriate factors. As set
28 forth in the Retention Agreement, the Debtor has agreed to pay H&B a reasonable fee.

HENNIGAN & BENNETT

-2-

DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF DEBTOR AND DEBTOR IN POSSESSION APPLICATION
TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

1 Such fee may exceed ~~the~~ fee calculated by reference to H&B's standard guideline hourly
2 rates.

3 7. I understand that the provisions of Sections 328, 329 and 330 of the
4 Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2016 require, among other
5 things, Court approval of employment of professionals and Court authorization of any
6 fees and costs that H&B shall receive from the Debtor after appropriate notice and a
7 hearing.

8 8. H&B has not shared or agreed to share any compensation for its
9 representation of the Debtor with any other person, except as among the members of
10 H&B.

11 9. H&B represents Oaktree Capital Management, LLC, an affiliate of the
12 Debtor's largest secured creditor and largest equity holder, in an unrelated litigation
13 matter entitled Farallon Capital Partners, L.P., et. al. v. Gleacher & Co. Inc. et. al, which
14 is pending in the California Superior Court in Los Angeles, as case number BC 215260.
15 Despite that concurrent representation which is within the scope of and permitted by
16 retention agreement, I believe that H&B is "disinterested" within the meaning of section
17 101(14) of the Bankruptcy Code, and does not hold or represent an interest materially
18 adverse to the estates within the meaning of section 327 of the Bankruptcy Code.

19 10. Except as set forth above, to the best of my knowledge, information, and
20 belief, neither H&B nor any of the attorneys comprising as employed by it has any prior
21 connection to the Debtor or is an insider of the Debtor or any other related entities in
22 which the Debtor may have an interest, its creditors, or any other party in interest in this
23 case or its respective attorneys or accountants. If at any subsequent time during the
24 course of this proceeding, H&B learns of any representation that may give rise to a
25 conflict, an amended Declaration identifying and specifying such potential conflict will
26 be filed promptly with the Court and the Office of the United States Trustee.
27
28

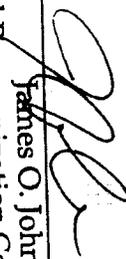
HENNIGAN & BENNETT

1 11. In the following supplemental disclosures, references to H&B include all
2 members thereof who are expected to render services in this case. To the best of my
3 knowledge, information and belief:
4 a. H&B is not and has not been a creditor, an equity security holder or
5 an insider of the Debtor.
6 b. H&B is not and has not been an investment banker for any
7 outstanding security of the Debtor.
8 c. H&B is not and has not been an investment banker for a security of
9 the Debtor, or an attorney for such an investment banker in connection with the offer,
10 sale or issuance of any security of the Debtor.
11 d. H&B is not and has not been a director, officer or employee of the
12 Debtor or of any investment banker for any security of the Debtor.
13 e. H&B has no interest materially adverse to the interest of the estate
14 or of any class of creditors or equity security holders, by reason of any direct or indirect
15 relationship to, connection with, or interest in, the Debtor or an investment banker for
16 any security of the Debtor, or for any other reason.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of April, 2000, at Los Angeles, California.

By: _____


James O. Johnston

Proposed Reorganization Counsel for Debtor
And Debtor in Possession

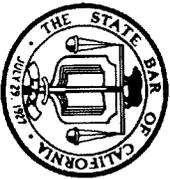
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HENNINGAN & BENNETT

- 4 -

DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF DEBTOR AND DEBTOR IN POSSESSION APPLICATION
TO EMPLOY HENNINGAN & BENNETT AS REORGANIZATION COUNSEL

EXHIBIT S



THE STATE BAR
OF CALIFORNIA

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE

TELEPHONE: (213) 765-1000
TDD: (213) 765-1566
FAX: (213) 765-1168
<http://www.calbar.ca.gov>

March 6, 2006

DAVID P O'DONNELL
72 VAN REIPPEN AVE # 37
JERSEY CITY NJ 07306

Inquiry No.:
Respondent:

05-20211
JOSHUA MESTER, SIDNEY LEVINSON, STEVE MITCHELL, JAMES
JOHNSTON, LINDA KONTOS, JOSHUA MORSE, KAREN KUPETZ,
MICHAEL MORRIS

Dear Mr. O'Donnelli:

Your complaint received on December 29, 2005, and January 25, 2006, have been reviewed by an attorney to determine whether the above-referenced attorneys violated the State Bar Act and/or the Rules of Professional Conduct, and whether there are basis for investigation or prosecution of their alleged conduct. In your complaint, among other issues, you state that the associate of Hennigan & Bennett Lawyers failed to obtain waiver of conflicts in a bankruptcy court.

After careful review and after taking into consideration all relevant factors, we have determined that the matter does not warrant disciplinary action. The circumstances of which you complained appears to be about the conduct of the opposing counsels, and your complaint does not provide sufficient evidence for disciplinary action to take place against them. If the client was to make this complaint, the client would be waiving the confidentiality of attorney-client communications, and the State Bar could require a full response from the attorneys to the allegations. In this situation, the court in which the case is located has jurisdiction to determine if misconduct were committed by the attorneys. Should there be a finding of misconduct on the attorneys' part, you may re-file your complaint, along with a copy of the court's order for further consideration.

If you do not agree with the decision to close your complaint, you may request a review, in writing within **three (3) months**, of the date of this letter. Telephonic requests cannot be accepted. Include with your request any additional or new evidence and **copies** of documentation which you believe should be considered. You may make your written request to: Audit and Review, Office of the Chief Trial Counsel, State Bar of California, 1149 South Hill Street, Los Angeles, California 90015.

Very truly yours,

Manya B. Lewis
Complaint Analyst

MBL/ec

EXHIBIT T

FILED

SEP 09 2002

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
AUREAL, INC., etc.,
Debtor.

No. 00-42104 T
Chapter 11

MEMORANDUM RE MOTION FOR RECONSIDERATION

On July 23, 2002, the Court issued a Memorandum of Decision (the "Decision", concluding that PricewaterhouseCooper LLC's ("PWC") final fee application should be denied, the order approving its employment should be revoked, and it should be required to disgorge the retainer received pre-petition. An order pursuant to the Decision was issued on August 7, 2002.

On August 19, 2002, PWC filed a motion for reconsideration of the Court's decision. The Court conducted a telephone conference to determine how to proceed with respect to the motion. Appearances at that conference included counsel for the Official Creditors' Committee (the "Committee"), whose objection to the final fee application precipitated the Decision.

The Committee indicated that it did not intend to file a response to the motion. Therefore, the Court advised the parties that it would consider the motion without hearing unless, after reviewing the motion, it concluded that a hearing would be helpful. Having reviewed and thoroughly considered the motion and supporting

85

1 declarations, and concluding that no hearing would be helpful, the
2 Court issues this decision, stating its reasons for denying the
3 motion.
4

DISCUSSION

5 As acknowledged by the motion, the grounds for a motion for
6 reconsideration are limited. A decision may be reconsidered to
7 correct a clear error of fact or law or a manifest injustice. A
8 decision may also be reconsidered upon the presentation of newly
9 discovered evidence. Finally, a decision may be reconsidered to
10 permit the Court to supplement or amplify its findings. None of
11 these grounds has been established by the moving party. For the most
12 part, PWC simply reiterates the arguments made in connection with the
13 final fee application. The only additional evidence consists of
14 declarations by the various professionals, attesting to their good
15 faith.
16

17 As stated in the Decision, the Court found that, one day prior
18 to the commencement of this case, PWC and the debtor discovered that
19 PWC was already representing an adverse party in litigation against
20 the debtor. Nevertheless, the debtor waited approximately one month
21 before filing an application to employ PWC. The Court found that,
22 based on the events that occurred thereafter, it appeared likely that
23 the debtor had purposely delayed submitting the employment
24 application to the Court: i.e., so as to secure the benefits of PWC's
25 services regardless of whether the Court approved PWC's employment.

26 PWC contends that this finding is a clear error of fact. It
notes that any delay in requesting approval for its employment was to

1 its disadvantage since, if the Court had not approved its employment,
2 it would not have been entitled to be paid for its services. This
3 argument is unpersuasive. The Court did not find that PWC purposely
4 delayed. It found that the debtor purposely delayed. While PWC was
5 at risk as a result of the delay, the debtor gained an advantage.

6 The debtor's explanation for the delay in filing the employment
7 application--i.e., that: (1) it did not perceive PWC's employment on
8 both sides of the litigation in question as a conflict, (2) in any
9 event, was willing to waive the conflict, and (3) was attempting to
10 persuade the adverse party to withdraw its objection--was previously
11 advanced in support of the final fee application. The Court did not
12 find it persuasive then and does not do so now. It is not the
13 debtor's job to determine whether a proposed professional has an
14 actual conflict with the estate. The debtor is simply required to
15 disclose the professional's connections. Fed. R. Bankr. Proc.
16 2014(a). It is the Court's job to determine whether these
17 connections represent an adverse interest. 11 U.S.C. § 327(a).

18 Moreover, if the Court concludes that there is an actual
19 conflict, the conflict may not be waived by the debtor on behalf of
20 the estate. The professional is simply disqualified from employment
21 by the estate. 11 U.S.C. § 327(a). Where there is any question of
22 an adverse interest, the Court requires that notice and an
23 opportunity to be heard be given to the principal creditors and the
24 Office of the United States Trustee. The debtor's conduct in this
25 case deprived the Court and other interested parties of their role in
26 the employment process during the period of delay.

1 The delay would have been of no consequence had no services been
2 performed by PWC during the period of the delay. However, during
3 this one month period, PWC was performing substantial services for
4 the debtor. As PWC noted in connection with its final fee
5 application, the bulk of its services were performed during the first
6 two months of the case.

7 However, the Court did not base its denial of PWC's final fee
8 application on its finding that the debtor purposely delayed filing
9 the employment application. Rather, the Court based its denial on
10 its finding that PWC intentionally misled the Court, by failing to
11 disclose in a meaningful fashion that it did not accept the Court's
12 conditions for future employment by the debtor.

13 Clearly, the declaration of its general counsel, which purported
14 to respond to the requirements of the Decision, did not include this
15 information. PWC's sole attempt to "inform" the Court of its
16 decision was PWC's counsel's inclusion of a paragraph to that effect
17 on the second page of a two page transmittal letter (the "July 7
18 Letter"), enclosing courtesy copies of certain documents. The Court
19 found and continues to find that this did not represent a good faith
20 attempt to inform the Court of important information.

21 As noted in the Decision, there was no copy of the July 7 Letter
22 in the Court file nor did the Court recall having seen it. However,
23 the Court accepted as true counsel's representation that the July
24 Letter was actually sent. Transmittal letters are frequently not
25 placed in the file or even presented to the judge. The fact that
26 they are not shows the lack of importance generally ascribed to such

1 letters. The Court finds it implausible that the counsel in question
2 would believe that this was the best way to communicate the
3 information to the Court. The principal attorney representing PWC
4 and the author of the letter is one of the senior members of the
5 local bankruptcy bar. He is not naive or inexperienced. One of
6 PWC's other attorneys was a law clerk for the undersigned judge.

7 PWC advances three arguments as to why the Court's finding that
8 PWC intended to mislead the Court was in clear error. First, it
9 contends that, because the Courts had previously directed counsel to
10 submit letter briefs, PWC (or its counsel) concluded that PWC's
11 decision should be communicated in a letter rather than in the
12 declaration filed by PWC's general counsel. This argument makes no
13 sense.

14 Occasionally, the Court directs counsel to fax a document to
15 chambers. No reasonable attorney would understand this to constitute
16 a direction to fax all future documents to the Court. Similarly, no
17 reasonable attorney would have construed the Court's direction to
18 file letter briefs on a single occasion to constitute a direction to
19 submit all future communications to the Court by letter. Moreover,
20 this argument does not explain the absence of any reference to PWC's
21 intention in the declaration executed by PWC's general counsel filed
22 pursuant to the Decision.

23 Second, PWC contends that the letter was only two pages long.
24 Therefore, it was not unreasonable to expect the Court to read the
25 letter from start to finish. This contention assumes that the letter
26 ever reached the judge. As noted in the Decision, there was no copy

1 of the letter in the file and the undersigned judge has no
2 recollection of ever having seen it.

3 Moreover, the brevity of the letter made it less likely to have
4 been read as did the fact that copies of documents were enclosed. If
5 the letter had been lengthy, it might not have been "mistaken" for a
6 transmittal letter. Most likely, it would have been presented to the
7 judge and have been read from start to finish. If the letter had not
8 enclosed documents, it would certainly not have been "mistaken" for
9 a transmittal letter.¹ Again, most likely, it would have been
10 presented to the judge and read from start to finish. The fashion in
11 which the letter was transmitted could not have been more perfectly
12 designed to escape notice.

13 PWC's counsel notes that he practices regularly before the Court
14 and would not have attempted to mislead the Court, thereby
15 jeopardizing his reputation with the Court. The Court was mindful of
16 this consideration prior to issuing the Decision. The principal
17 attorney representing PWC, who authored the July 7 Letter, is a
18 prominent member of the San Francisco bankruptcy bar. To the Court's
19 knowledge, his integrity has never been called into question. Had
20 the July 7 Letter been an isolated incident, the Court might well
21 have given PWC and its counsel the benefit of the doubt. However,
22 the Court felt compelled to reach the decision it did by the sequence
23
24

25 ¹No purpose was served by sending the Court copies of the
26 enclosed documents. The original declaration had been filed. PWC
signature at that time.

1 of events reflected by the case file. These events are identified in
2 the Decision.

3 PWC's counsel was obviously on the horns of a dilemma. Its
4 client had substantial fees at stake. PWC and its counsel must have
5 anticipated that, if informed of PWC's decision not to accept the
6 Court's conditions for employment, the Court might not sign PWC's
7 retention order. If the Court declined to sign the order, PWC could
8 not be paid. On the other hand, if PWC's decision were not
9 communicated to the Court in some fashion, both PWC and its counsel
10 could be subject to sanctions. PWC's counsel may have concluded that
11 it could avoid both horns of this dilemma by providing the
12 information to the Court in such a way that there was a good chance
13 that it would go unnoticed by the Court.

14 PWC also attempts to explain away its description of its first
15 fee application as an interim fee application. It discloses that,
16 after it had completed its transition services, PWC decided that it
17 would be willing to perform some additional services for the debtor.
18 Thereafter, after negotiating with the Committee concerning the scope
19 of these services, PWC performed some additional services for which
20 it sought payment in the final fee application.

21 This additional information raises more problems than it
22 resolves. If the July 7 Letter was a meaningful attempt to inform
23 the Court that PWC would perform no further services for the debtor
24 (other than transition services) and if PWC assumed the Court had
25 received and read this communication, how could PWC legitimately
26 agree to perform further services without requiring the debtor to

1 file a new employment application with the Court? The Court can
2 conceive of three possible explanations for its failure to do so.

3 First, PWC may have believed that the information concerning its
4 decision had never been effectively communicated to the Court and
5 therefore that the Court believed that PWC had been authorized to
6 perform future services for the debtor. Second, PWC may not have
7 wished to have a new employment application filed because it did not
8 wish the adverse party to the litigation to know that it was
9 performing additional services for the debtor. Third, neither PWC
10 nor the debtor may have considered the Court's role in the employment
11 process significant. None of these explanations supports granting
12 the motion for reconsideration.

13 **CONCLUSION**

14 The motion for reconsideration will be denied. The moving party
15 has failed to establish any of the grounds for reconsideration of a
16 decision.

17 Dated: September 9, 2002

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19 Denise Talair-Banks
20 United States Bankruptcy Judge
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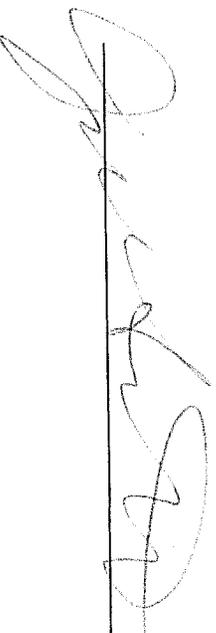
PROOF OF SERVICE

I, the undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Northern District of California at Oakland, hereby certify:

That I, in the performance of my duties as such clerk, served a copy of the foregoing document by depositing it in the regular United States mail at Oakland, California, on the date shown below, in a sealed envelope bearing the lawful frank of the Bankruptcy Court, addressed as listed below.

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

Dated: September 9, 2002



Office of the United States Trustee
Document placed in UST mailbox at
US Bankruptcy Court
1300 Clay Street, Third Floor
Oakland, CA 94612

Michael H. Ahrens
Sheppard, Mullin, Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

Sidney P. Levinson
Hennigan, Bennett & Dorman
601 S. Figueroa St., Ste. 3300
Los Angeles, CA 90017

Randy Michelson
McCutchen, Doyle, Brown & Enersen, LLP
Three Embarcadero Center
San Francisco, CA 94111-4067

EXHIBIT U

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIF.
OAKLAND, CA.

SIDNEY P. LEVINSON (SBN 139419)
HENNINGAN, BENNETT & DORMAN LLP
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Fax: (213) 694-1234

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

10 In re
11 AUREAL, INC., d/b/a SLO.COM,
12 f/k/a AUREAL SEMICONDUCTOR,
13 INC., f/k/a MEDIA VISION
14 TECHNOLOGY, INC., a Delaware
15 corporation,

Case No. 00-42104-TI
(Chapter 11)
**DECLARATION OF SIDNEY P.
LEVINSON**

Date: September 16, 2002
Time: 2:00 p.m.
Place: Courtroom 201
Hon. Leslie Tchaikovsky
U.S. Bankruptcy Court
1300 Clay Street, Oakland, CA

Debtor.

22
23
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28

I, SIDNEY P. LEVINSON, declare and state as follows:

1. This Declaration is submitted in connection with the motion for reconsideration (the "Motion") filed by PricewaterhouseCoopers LLP (hereinafter "PwC")

84

1 of the Order Denying Second and Final Fee Application of PricewaterhouseCoopers LLP,
2 *Directing Revocation of Retention and Ordering Disgorgement* (the "Order").

3 2. I am a partner at Hennigan, Bennett & Dorman LLP (hereinafter
4 "HB&D"), counsel to the Debtor.

5 3. I have read the Court's July 2002 Memorandum issued in connection
6 with the Order.

7 4. This case was filed on April 5, 2000. During the first week of the
8 bankruptcy case, PwC advised the Debtor and our firm that, in the course of performing its
9 conflicts check for employment as financial advisor, PwC had determined that it had been
10 retained by Creative Technology, Ltd. ("Creative") to provide litigation support activities
11 and potentially expert witness testimony in connection with litigation then pending
12 between Creative and the Debtor (the "Creative Litigation").

13 5. PwC advised the Debtor and our firm that, in order to obtain
14 Creative's consent to the Debtor's engagement of PwC as financial advisor, Creative
15 wanted assurance that the Debtor would not seek to disqualify or otherwise undermine the
16 testimony of any PwC personnel in the Creative Litigation. Believing that providing such
17 assurance would resolve any and all potential objections by Creative to the employment of
18 PwC as the Debtor's financial advisor, the Debtor, advised by our firm, and PwC began the
19 process of preparing a conflict waiver letter to be executed by the Debtor and PwC.

20 6. During the course of negotiating that letter, on April 19, 2000, PwC
21 provided our firm with a draft, prepared by PwC, of PwC's employment application, along
22 with a declaration of Glenn Hiraga in support of the application. In reviewing that draft
23 application, we learned that, in addition to PwC's retention by Creative in the Creative
24 Litigation, Creative had also requested PwC, in February 2000, to provide advisory
25 services to Creative in connection with the Debtor's sale of assets in the event of a
26 bankruptcy filing. In discussions that followed between the Debtor and PwC concerning
27 this issue, PwC requested that the Debtor agree to permit PwC to continue that engagement
28 if requested by Creative. The need for the Debtor and our firm to evaluate and understand

1 the implications of this request prevented the Debtor from filing PwC's application on or
2 before April 20, 2000, the end of the 15-day period following the commencement of the
3 bankruptcy case.

4 7. After a careful and deliberate evaluation of the potential issues,
5 implications and risks for the estate arising from this dual engagement, and based upon the
6 belief of the Debtor and this firm that acceding to this request would resolve any and all
7 potential objections of Creative to the retention of PwC, the Debtor agreed not to object to
8 this dual engagement, provided that PwC agree to maintain an "ethical wall" to ensure
9 that: (1) confidential information concerning the Debtor would not be accessible by PwC
10 employees retained by Creative; and (2) PwC personnel performing services for the Debtor
11 would not perform services for Creative, either directly or indirectly, with regard to
12 matters involving the Debtor. The terms of the waiver were negotiated and modified to
13 reflect these additional terms, and are set forth in a letter dated May 3, 2000 (the "May 3
14 Letter"), executed by the Debtor and PwC. The following day, on May 4, 2000, the
15 Debtor filed the application to employ PwC, attaching the May 3 Letter.

16 8. In the Court's July 2002 Memorandum, the Court seems to have
17 inferred that the Debtor waited to file the application to employ PwC in order to obtain for
18 the estate the benefit of PwC's services, whether or not PwC's retention was approved by
19 this Court. That was not the case. As set forth above, the delay was a result of efforts by
20 the Debtor, our firm on behalf of the Debtor, and PwC, to negotiate a resolution of the
21 issues concerning PwC's dual employment in a manner that would eliminate any objection
22 of Creative to PwC's retention while at the same time ensuring that the estate's interest in
23 preserving the confidentiality of its information was fully preserved.

24 9. On July 7, 2000 I received by facsimile Ms. Krane's declaration and a
25 form of order pursuant to the Court's Employment Memorandum along with the July 7
26 letter from PwC's counsel to the Court. Based upon that letter, it was and has always been
27 my understanding that the Court knew about PwC's decision to resign as the Debtor's
28 financial advisor. Thus, with respect to the Debtor's application to employ EYR, the

1 absence of any reference to the resignation of PwC as financial advisor in the application
2 to employ EYR was not a deliberate omission. Regarding the application to employ
3 Neilson Elgren, that firm provided tax and audit related services, services different from
4 those for which the Debtor sought to retain PwC and EYR.

5 10. In the interest of full disclosure, since the Effective Date in this
6 bankruptcy case, HB&D has been retained in two matters involving PwC, one on behalf of
7 PwC and the other against PwC. Both of those matters are entirely unrelated to this
8 bankruptcy case. First, PwC retained HB&D on April 29, 2002 to represent PwC in
9 connection with an appeal by PwC pending before the United States Court of Appeals for
10 the Ninth Circuit, PricewaterhouseCoopers LLP v. Thrifty Oil Co., D.C. No. CV-00-
11 00605-JTM. Later, on or about July 10, 2002, HB&D was retained by a former partner of
12 PwC in connection with potential claims of that former partner against PwC. Both matters
13 remain pending.

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct. Executed this 19th day of August, 2002 in Los Angeles,
16 California.

17
18 
19
20 _____
21 SIDNEY P. LEVINSON
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28

EXHIBIT V

FILED

00 MAY -4 PM 3: 01

KEENAN R. CASADY, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

1 BRUCE BENNETT (SBN 105430)
2 SIDNEY P. LEVINSON (SBN 139419)
3 JOSHUA M. MESTER (SBN 194783)
4 HENNIGAN, BENNETT & DORMAN
5 601 South Figueroa Street, Suite 3300
6 Los Angeles, California 90017
7 Telephone: (213) 694-1200
8 Facsimile: (213) 694-1234

9 Proposed Reorganization Counsel for
10 Debtor and Debtor in Possession

FILE BY
FAX

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

11 In re

Case No. 00-42104-T11

(Chapter 11)

12 AUREAL, INC., d/b/a SILO.COM,
13 f/k/a AUREAL SEMICONDUCTOR,
14 INC., f/k/a MEDIA VISION
15 TECHNOLOGY, INC., a Delaware
16 corporation.

Debtor.

NOTICE OF AND APPLICATION FOR
AUTHORITY TO EMPLOY
PRICEWATERHOUSECOOPERS LLP
NUNC PRO TUNC AS ACCOUNTANTS
AND FINANCIAL ADVISORS TO THE
DEBTOR AND DEBTOR IN
POSSESSION

[No Hearing Required]

21 PLEASE TAKE NOTICE that Bankruptcy Local Rule ("B.L.R.") 9014-1 of the

22 United States Bankruptcy Court for the Northern District of California prescribes the
23 procedures to be followed, and pursuant to that rule, any objection to the requested
24 relief, or a request for hearing on the matter below, must be filed and served upon
25 counsel for Aureal, Inc., debtor and debtor in possession in the above-captioned case
26 (the "Debtor," "Company," or "Applicant"), at the address listed above, within twenty
27 (20) days of mailing of this notice. A request for hearing or objection must be
28 accompanied by any declarations or memoranda of law the party objecting or requesting

HENRY BENNETT & DORMAN

NOTICE OF AND APPLICATION FOR AUTHORITY TO EMPLOY PRICEWATERHOUSECOOPERS LLP NUNC PRO TUNC AS
ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION - Case No. 00-42104-T11

1 wishes to present in support of its position. If there is not a timely objection to the
2 requested relief or a request for hearing, the Court may enter an order granting the relief
3 by default. Counsel for the Debtor will give at least 10 days written notice of hearing to
4 the objecting or requesting party, as well as to the U.S. Trustee and to the Committee of
5 Unsecured Creditors, in the event an objection or request for hearing is timely made.

6 **PLEASE TAKE FURTHER NOTICE** that pursuant to 11 U.S.C. § 327 and Fed. R.
7 Bankr. P. 2014 and 5002, the Debtor submits this Application for Authority to Employ
8 PricewaterhouseCoopers LLP (hereinafter "PricewaterhouseCoopers") Nunc Pro Tunc
9 as Accountants and Financial Advisors to the Debtor (the "Application"). A copy of a
10 proposed order granting the relief requested herein is attached as Exhibit A. In support
11 of this Application, the Applicant respectfully represents as follows:

12 **Background**

13 1. On April 5, 2000 (the "Petition Date"), the Debtor filed a voluntary petition
14 seeking an order for relief under chapter 11 of the United States Bankruptcy Code,
15 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code").

16 2. The Debtor has continued in the possession of its assets, and is operating
17 and managing its business as debtor in possession pursuant to sections 1107 and 1108 of
18 the Bankruptcy Code.

19 3. The Debtor's business is in the field of digital audio imaging, which is the
20 process of creating a highly realistic audio experience by closely simulating the real
21 world physics of audio. The Debtor has developed a series of audio products based
22 upon its proprietary A3D technologies, and as of the Petition date, the Debtor was
23 integrating its A3D technologies with internet based applications to increase its
24 customer base.

25 **Services To Be Provided By PricewaterhouseCoopers**

26 4. The Debtor respectfully submits that the services of
27 PricewaterhouseCoopers, located at 400 South Hope Street, Los Angeles, California
28

1 90071-2889, are necessary to enable it to evaluate the complex financial and economic
2 issues raised by the Debtor's current financial situation and chapter 11 filing.
3 5. The Debtor is of the opinion that PricewaterhouseCoopers is a firm with
4 considerable knowledge, expertise and experience in the area of corporate accounting
5 and financial services related to bankruptcy proceedings, and is well qualified to advise
6 the Debtor in this case. The Debtor also is informed and believes that
7 PricewaterhouseCoopers has the appropriate personnel needed to perform the services
8 required by the estate. PricewaterhouseCoopers has previously been employed as
9 accountants for debtors and bankruptcy trustees and, together with its staff, has extensive
10 experience and expertise in performing this type of service. Attached hereto as Exhibit B,
11 and incorporated herein by reference, is a selected list of clients that
12 PricewaterhouseCoopers has advised in a reorganization context. In addition, a copy of
13 the resume of Glenn Hiraga, the partner in charge of the proposed engagement with the
14 Debtor, is attached hereto as Exhibit C, and incorporated herein by reference.
15 6. Applicant desires to employ the accounting firm of
16 PricewaterhouseCoopers to perform general accounting, valuation, tax and other
17 consulting services for the Applicant in the above-entitled proceedings. The specific
18 description of services that the Applicant anticipates to be performed in connection with
19 these proceedings are as follows:
20 a. evaluate the condition of the Debtor's business, assets, liabilities,
21 operations, debt structure, cash collateral, financial reporting, internal accounting controls,
22 corporate structure, organization and financial condition;
23 b. assist in the sale of the business as a going concern or otherwise,
24 including, but not limited to, the sale of the Debtor's inventory, intellectual property, and
25 fixed assets;
26 c. provide advice regarding day-to-day business transactions performed
27 in the ordinary course;
28

HONORABLE BENNETT S. DONAHUE

- 3 -

NOTICE OF AND APPLICATION FOR AUTHORITY TO EMPLOY PRICEWATERHOUSECOOPERS LLP NUNC PRO TUNC AS
ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION - Case No. 00-42104-711

1 d. value the Debtor and its assets and any securities issued with respect
2 to the Debtor's chapter 11 case, excluding the valuation of any claim (or potential claim) for
3 or against the clients of PricewaterhouseCoopers, as identified herein in paragraph 8;
4 e. assist the Debtor in preparing and analyzing cash flow projections,
5 financial statements, business plans and other necessary special projects or reports, and
6 provide expert testimony with respect thereto;
7 f. participate in the evaluation of any plan of reorganization submitted
8 by the Debtor or any other person;
9 g. assist the Debtor, if requested, in developing a proposal for a plan of
10 reorganization and in the implementation thereof including, *inter alia*, assistance in the plan
11 negotiation and plan confirmation process, preparation of financial segments of documents
12 related to the plan, and preparation and presentation of expert testimony relating to
13 financial matters (including, the feasibility of any plan and the value of any reorganization
14 securities issued or to be issued in connection therewith), if required;
15 h. periodically report to the Bankruptcy Court and any appropriate
16 committee with respect to the foregoing; and
17 i. all other professional services that may be necessary during the
18 pendency of the Debtor's chapter 11 case.
19 Applicant believes that the employment of accountants and financial advisors is
20 essential to perform the services noted above.
21 7. PricewaterhouseCoopers has commenced providing the Debtor assistance
22 with the above services as of March 23, 2000.
23 8. Applicant is informed and believes that PricewaterhouseCoopers is a
24 disinterested party. Additionally, the Applicant has read the disclosures in the
25 Declaration of Glenn Hiraga in support of this Application, and is fully aware of the
26 following:
27 a. Oaktree Capital Management LLC, the Company's largest stockholder
28 and secured creditor, is an audit and tax client of PricewaterhouseCoopers.

1 b. PricewaterhouseCoopers performs audit and tax work for unsecured
2 creditors including, Ziff-Davis, Inc., Orrick Herrington & Sutcliffe LLP, and UMC Group
3 (USA).
4 c. Compaq Computer Corporation, Dell Computer Corporation,
5 Hewlett-Packard, IBM Personal Systems Group, Micron Electronics, and Sony Electronics
6 are all large customers of the Company and clients of PricewaterhouseCoopers.
7 PricewaterhouseCoopers performs audit, tax, and consulting work for these entities.
8 d. PricewaterhouseCoopers performs audit and tax work for Creative
9 Technology, Ltd, and its subsidiaries Creative Labs, Inc. and E-MU Systems Ltd.
10 (collectively "Creative"). PricewaterhouseCoopers also has been engaged as technical
11 consulting experts for Creative in Creative Labs, Inc. v. Aural Semi-Conductor, Inc., Case
12 No. C98-21006, currently pending in the United States District Court for the Northern
13 District of California, San Jose Division, and may provide similar services to Creative in
14 connection with other litigation cases that are adverse to Aural that currently are pending
15 in the United States District Court for the Northern District of California, San Francisco
16 Division (collectively, the "Creative Litigation"). In addition, PricewaterhouseCoopers
17 may assist Creative in making an offer for the purchase of all or a portion of the assets of
18 the Company. The Company also has agreed and consented that the employment of
19 PricewaterhouseCoopers as financial advisor to the Debtor may not be used to disqualify
20 PricewaterhouseCoopers in the Creative Litigation. Any other basis for disqualification is
21 still available to the Company. In addition, the Debtor is aware of
22 PricewaterhouseCoopers' potential engagement to assist Creative in formulating an offer
23 to purchase the Company. A copy of the letter setting forth this understanding is attached
24 hereto as Exhibit D (the "Conflicts Waiver Letter").
25 e. Moreover, pursuant to the Conflicts Waiver Letter, an ethical wall has
26 been created internally to ensure that PricewaterhouseCoopers' involvement with Creative
27 is separate and apart from its involvement with the Company. Specifically, the following
28 procedures will be adhered to:

HERWIGAN BENNETT & DOHAWY

- 5 -

NOTICE OF AND APPLICATION FOR AUTHORITY TO EMPLOY PRICEWATERHOUSECOOPERS LLP NUNCIATING AS
ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION - Case No. 00-42104-TJL

1 • No information pertinent to the engagement with the Debtor will be shared with
2 those working on any matter for Creative, any affiliate of Creative, or any other
3 matter related to the Creative Litigation (collectively, the "Creative Matters").
4 Similarly, no information from the Creative Matters will be shared with those
5 working on the Debtor's engagement.
6 • Neither Glenn Hiraga, nor any staff working with Glenn Hiraga (in the Aureal
7 bankruptcy matter or any other engagement) will work directly with or for any
8 partner involved in the Creative Matters.
9 • All files related to the Debtor's engagement will not be kept on
10 PricewaterhouseCoopers' network to ensure files are kept confidential. All files
11 related to the Debtor's engagement will be maintained on the Company's system (in
12 Fremont, California) or on laptop computers in possession of staff members
13 assigned to the Debtor's engagement. In addition, all appropriate precautions and
14 measures will be taken by PricewaterhouseCoopers to ensure that personal
15 involved in the Creative Matters will not have access to any hard copies of Aureal's
16 documents.
17 9. PricewaterhouseCoopers has agreed to perform the above-referenced
18 services and thereafter make application to this Court for compensation.
19 PricewaterhouseCoopers also has agreed to accept as its fees such amounts as determined
20 by this Court. Subject to the Court's approval, PricewaterhouseCoopers will charge the
21 Applicant for its services on an hourly basis in accordance with its ordinary and
22 customary rates in effect at the time such services are rendered. The current range of
23 hourly rates charged by PricewaterhouseCoopers for various levels of staff are attached
24 hereto as Exhibit E. In addition, PricewaterhouseCoopers will maintain detailed records
25 of, and charge the Applicant for, any actual and necessary costs and expenses incurred in
26 connection with the aforementioned services. The Applicant proposes to pay
27 PricewaterhouseCoopers for its services from funds of this estate with Court approval. A
28

1 copy of the retention agreement between the Debtor and PricewaterhouseCoopers is
2 attached hereto as Exhibit F.

3 10. To the best of the Applicant's knowledge and belief, the firm of
4 PricewaterhouseCoopers has no connection with the Debtor, the creditors of the Debtor,
5 or any other parties in interest (see above disclosures) and holds no interest adverse to this
6 estate.

7 11. PricewaterhouseCoopers has performed an internal search for any potential
8 conflicts of interest based upon the names of the parties involved in this proceeding.
9 PricewaterhouseCoopers is part of the PricewaterhouseCoopers LLP network of hundreds
10 of offices through the world and is engaged by new clients every day, and thus, cannot
11 assure that following its employment by the Applicant, a conflicting engagement will not
12 be accepted somewhere else in its firm. Should any potential conflict arise,
13 PricewaterhouseCoopers will notify the Debtor immediately.

14 12. On April 4, 2000, PricewaterhouseCoopers received a retainer of \$150,000.
15 Prior to the bankruptcy, \$49,707.50 in fees and approximately \$7,000 in expenses were
16 incurred on behalf of the Company. As of the Petition Date, the retainer balance was
17 approximately \$93,292.50.

18 13. Pursuant to Fed. R. Bankr. P. 2014, accompanying this motion is the
19 Declaration of Glenn Hiraga supporting, among other things, Applicant's conclusion that
20 PricewaterhouseCoopers is a disinterested person.

21 14. In light of the potential conflict issues with respect to
22 PricewaterhouseCoopers' retention in this bankruptcy matter, the Debtor and
23 PricewaterhouseCoopers have been negotiating the terms of the Conflicts Waiver
24 Agreement. A final agreement regarding this matter was eventually reached on May 3,
25 2000. Although the Debtor has failed to meet the fifteen day deadline set forth in the U.S.
26 Trustee Guidelines 2.1.5, the Debtor nonetheless believes that this Application is timely
27 filed given the critical importance of reaching a final resolution regarding the Conflicts
28 Waiver Agreement prior to filing this Application.

MARGARET BENNETT & DONMAN

- 7 -

NOTICE OF AND APPLICATION FOR AUTHORITY TO EMPLOY PRICEWATERHOUSECOOPERS LLP NUNC PRO TUNC AS
ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION - Case No. 00-42104-TJL

1 WHEREFORE, the Applicant prays that it be authorized to retain the services of
2 PricewaterhouseCoopers LLP, at the expense of the estate, for the purposes set forth
3 hereinabove, said employment to be effective April 5, 2000, and to continue until further
4 Order of this Court, and that the compensation for said accountants and financial
5 advisors be fixed by the Court after notice and hearing as provided for in the applicable
6 Bankruptcy Rules, and for any such additional and further relief as this Court deems
7 appropriate.

8
9 Dated: May 4, 2000

AUREAL, INC

Steve Mitchell,
Chief Operating Officer

10
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13
14 Submitted By:


17 Sidney P. Levinson
18 Hennigay, Bennett & Dornan
19 Reorganization Counsel for Debtor and
20 Debtor in Possession
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HENNINGAY, BENNETT & DORNAN

NOTICE OF AND APPLICATION FOR ATTORNEY'S FEES AND COSTS TO BE PAID BY DEBTOR TO CREDITORS AND OTHERS
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1 BRUCE BENNETT (SBN 105430)
 2 SIDNEY P. LEVINSON (SBN 139419)
 3 JOSHUA M. MESTER (SBN 194783)
 4 HENNIGAN, BENNETT & DORMAN
 5 601 South Figueroa Street, Suite 3300
 Los Angeles, California 90017
 Telephone: (213) 694-1200
 Facsimile: (213) 694-1234

6 Proposed Reorganization Counsel for
 7 Debtor and Debtor in Possession

8 FILE BY
 9 FAX UNITED STATES BANKRUPTCY COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11 OAKLAND DIVISION

12 Case No. 00-42104-T11
 13 (Chapter 11)

14 AUREAL, INC., d/b/a SILO.COM,
 15 f/k/a AUREAL SEMICONDUCTOR,
 16 INC., f/k/a MEDIA VISION
 17 TECHNOLOGY, INC., a Delaware
 18 corporation,
 19 Debtor.

20 [Proposed] ORDER APPROVING
 21 APPLICATION TO EMPLOY
 22 PRICEWATERHOUSECOOPERS NUNC
 23 PRO TUNC AS ACCOUNTANTS AND
 24 FINANCIAL ADVISORS TO THE
 25 DEBTOR AND DEBTOR IN
 26 POSSESSION

27 [No Hearing Required]

28 Upon the "Application for Authority to Employ PricewaterhouseCoopers LLP
 29 Nunc Pro Tunc as Accountants and Financial Advisors to the Debtor and Debtor in
 30 Possession" and the Declaration of Glenn A. Hiraga in support thereof (collectively, the
 31 "Application"), filed by Aureal, Inc (the "Debtor"), to employ the accounting firm of
 32 PricewaterhouseCoopers LLP ("PricewaterhouseCoopers") as its accountants and
 33 financial advisors; it appearing to the Court that PricewaterhouseCoopers and its
 34 members and employees are disinterested persons who do not hold or represent an
 35 interest in the Debtor or its assets;
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EXHIBIT A
 PAGE 9

[Proposed] ORDER APPROVING APPLICATION TO EMPLOY PRICEWATERHOUSECOOPERS NUNC PRO TUNC AS ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION - Case No. 00-42104-T11

1 interest adverse to the estate in the matters upon which they are to be engaged; that the
2 employment of PricewaterhouseCoopers by the Debtor is in the best interest of the estate;
3 that notice of the Application was appropriate; and good cause appearing therefor,

4 **IT IS HEREBY ORDERED THAT:**

5 1. The Application hereby is APPROVED;

6 2. The Debtor is hereby authorized to employ PricewaterhouseCoopers as its
7 accountants and financial advisors, on substantially the same terms and conditions set
8 forth in the Application and the retention agreement (a copy of which is attached hereto),
9 with compensation to be at the expense of the estate in such amount as the Court may
10 hereafter allow; and

11 3. In order to further ensure confidentiality, PricewaterhouseCoopers shall
12 internally create an ethical wall, including, without limitation, adhering to the following
13 procedures:

- 14 a. No information pertinent to the engagement with the Debtor will be
15 shared with those working on any matter for Creative Labs, Inc. or
16 any of its affiliates and/or subsidiaries, or any other matter related to
17 the Creative Litigation (as defined in the Application) (collectively,
18 the "Creative Matters"). Similarly, no information from Creative
19 Matters will be shared with those working on the Debtor's
20 engagement;
- 21 b. Neither Glenn Hiraga, nor any staff working with Glenn Hiraga (in
22 the Aureal bankruptcy matter or any other engagement) will work
23 directly with or for any partner involved in the Creative Matters; and
- 24 c. All files related to the Debtor's engagement will not be kept on
25 PricewaterhouseCoopers' network to ensure files are kept
26 confidential. All files related to the Debtor's engagement will be
27 maintained on the Debtor's system (in Fremont, California) or on
28 laptop computers in possession of staff members assigned to the

HENNINGSEN, BENNETT & DORRMAN

EXHIBIT A
PAGE 10

[Proposed] ORDER APPROVING APPLICATION TO EMPLOY PRICEWATERHOUSECOOPERS NUNC PRO TUNC AS
ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION - Case No. 00-42104-TJL

1 Debtor's engagement. In addition, all appropriate precautions and
 2 measures will be taken by PricewaterhouseCoopers to ensure that
 3 personnel involved in Creative Matters will not have access to any
 4 hard copies of Aural's documents.
 5

6 Dated: _____, 2000

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UNITED STATES BANKRUPTCY JUDGE

Submitted by:
 HENNIGAN, BENNETT & DORMAN

By _____
 Sidney P. Levinson
 Proposed Reorganization Counsel for
 Debtor and Debtor in Possession

HENNIGAN, BENNETT & DORMAN

EXHIBIT A
 PAGE 11

Exhibit B

Exhibit B
PRICEWATERHOUSECOOPERS LLP
SELECT REORGANIZATION ENGAGEMENTS

AEROSPACE

Murdock Inc. (Debtor)

COMMUNICATIONS

U.S. Fiberline Communications (Investigative Accounting Services)

ENTERTAINMENT

Arista Records (Creditor)

Casino Club Partnership (Unsecured Creditors' Committee)

Economic Resource Corporation (Bd of Directors) (Workout Advisor)

Walt Disney (Debtor)

Toei Braxton (Unsecured Creditor)

Visicom (Trustee)

Weintraub Entertainment (Unsecured Creditors' Committee)

FINANCIAL SERVICES

Advent Management Corporation (Trustee)

Cross Financial Services (Receiver)

Drexel Burnham Lambert (Unsecured Creditors' Committee)

Financial Capital Investment Co. (Debtor)

Financial Corporation of America (Trustee)

First Republic Bank Corp. (FDIC)

FOBAPROA-Mexico (Banks)

KRM (Creditors' Committee)

Loans Financial Corporation (Unsecured Creditors' Committee)

Mcorp (Unsecured Creditors' Committee)

Murray Financial Corporation (Trustee)

NCNB Texas (Purchaser)

Preferred Credit (Advisor to Monitor)

Texas Commerce Bancshares (Purchaser)

Trust Company of America (Receiver)

United Security Mortgage Company (Trustee)

Sallie Mae (Debtor)

Western Savings & Loan (Debtor)

WestFed Holdings, Inc. (Assignment for the Benefit of Creditors)

WS Clearing (Receiver)

FOOD

Americold Corp. (Debtor)

Borden, Inc. (Debtor)

Cal Fruit (Debtor)

Combi Grocers (Trustee)

Galletti Brothers Foods, Inc. (Debtor)

Hamburger Hamlet Restaurants, Inc. (Debtor)

Heileman Brewing (Unsecured Creditors' Committee)

Louise's Trattoria (Creditor)

Megafoods Stores, Inc. (Debtor)

Mrs. Fields (Debtor)

Reel Seafood (Debtor)

Royal Seafoods (Debtor)

Rusty Pelican Restaurants, Inc. (Unsecured Creditors' Committee)

Sizzler Restaurants (Bank Group)

Van De Kamps/Holland Dutch Bakers, Inc. (Trustee)

Van Kamp Seafood (Debtor)

Wilson Foods Corporation (Unsecured Creditors' Committee)

Wyatt's Cafeterias (Debtor)

HEALTHCARE

Maxicare Health Plans, Inc. (Debtor)

Meris Laboratories (Debtor)

Polymer Technology International (Trustee)

Wilcare Corporation (Unsecured Creditors' Committee)

South Bay Medical (Equity Holder)

Triad Healthcare (Trustee)

Vendell Healthcare (Bondholders)

Virginia Manor Convalescent Home, Inc. (Trustee)

Western Dental (Plan Monitor)

HIGH TECHNOLOGY

American Capital Investments, Inc. (Trustee)

Borland International, Inc. (Debtor)

Everex (Unsecured Creditors' Committee)

Memorex Telex (Debtor)

Media Vision (Debtor)

Micropolis (Debtor)

Exhibit B
PRICEMASTERHOUSCOOPERS LLP
SELECT REORGANIZATION ENGAGEMENTS

HIGH TECHNOLOGY (continued)
Microware Corp. (Debtor)
Pinnacle Micro (Creditor)
Plantronics (Debtor)
Rep-Sac Corp. (Debtor)
Reveal Computers (Trustee)
Siliconix (Unsecured Creditors' Committee)
System Integrators (Bank Group)
Trikon (Bank Group)
Virtual Vision, Inc. (Debtor)

HOSPITALITY
Anahaim Hilton (Secured Creditor)
Double Tree Hotel Marina Cabrillo (Debtor)
Basilic of Brian James Corbell (Trustee)
Hyatt Arlington Virginia (Debtor)
Hyatt Princess Allacake (Debtor)
Mirage Springs Hotel (Unsecured Creditor)
Orlando Twin Towers (Secured Lender)
Peninsula Hotel (Unsecured Creditor)
Registry Resorts - Scottsdale (Debtor)
Sinosphere Corporation (Secured Creditors' Committee)
Westwood Marquis Hotel (Secured Lender)

INSURANCE
Advent Management Corporation (Trustee)
First Executive Corporation (Debtor)

MANUFACTURING
ABC dba Micro Games of America (Unsecured Creditors' Committee)
All Fab/Certified Aerospace (Debtor)
Alistar Aerospace (Debtor)
Besteel Industries (Debtor)
Boyd Furniture (Debtor)
Bicomi Construction, Inc. (Debtor)
Delorean Motors (Examiner)
Dynasty (Debtor)
Eagle-Fischer Industries, Inc. (Debtor)

EXHIBIT B
PAGE 13

MANUFACTURING (continued)

Esmark Marine Sports, Inc. (Secured Creditor)
Everex Systems, Inc. (Unsecured Creditors' Committee)
Fairchild Aircraft Corporation (Trustee)
Generra Sportswear Co. (Unsecured Creditors' Committee)
Hecks, Inc. (Unsecured Creditors' Committee)
Hood Lumber Co. & Bugaboo Timber Co. (Secured Lender)
Kaiser Steel Corp. (Unsecured Creditors' Committee)
LTV Corporation (Equity Holders' Committee)
Lacey Plywood (Creditors' Committee)
McCall Patterns (Debtor)
Media Vision Technology, Inc. (Debtor)
Mintscribe (Unsecured Creditors' Committee)
Natural Cotton Colours (Debtor)
Orchids Paper Products (Debtor)
Ovation (Trustee)
Pacific Outlook Sportswear (Creditors' Committee)
Piper Aircraft Corporation (Unsecured Creditors' Committee)
Qualex Corporation (Debtor)
Stanton Industries, Inc. (Creditors' Committee)
System Integrators, Inc. (Bank Group)
Tropitone (Debtor)
Thermadyne Industries, Inc. (Bank Group)
Tracor, Inc. (Senior Lenders)
TSL Holdings-Tandon Computers (Creditors' Committee)

MUNICIPALITIES

City of Irvine
Orange County Investment Pool

OIL AND GAS/ENERGY

Annex Petroleum (Trustee)
Colorado Ute (Unsecured Creditors' Committee)
Damon Oil Company (Unsecured Creditors' Committee)
El Paso Electric & Power (Bank Creditors' Group)
KS Resources (Receiver)
Public Service Company of New Hampshire (Equity Holders)
The Western Company of North America (Debtor)

EXHIBIT B
PAGE 14

PRICEMATERHOUSECOOPERS LLP
SUBJECT REORGANIZATION ENGAGEMENTS

REAL ESTATE (continued)

- The Lusk Company (Debtor)
- UDC Homes, Inc. (Secured Creditor)
- Wells Fargo Bank (Secured Creditor)
- Western Federal Savings & Loan (Trustee)
- Windsor Capital (Debtor)
- Ronald Williams & County Village (Debtor)
- Zahler (Trustee)
- Zulu Properties Co. (Debtor)

RETAIL INDUSTRY

- Airport Industrial Park Associates (Debtor)
- Allied Stores Corporation (Debtor)
- Anna's Lenses (Debtor)
- Apple Tree Markets (Secured Lender)
- Barry's Jewelers (Secured Lenders)
- Businessland, Inc. (Debtor)
- California Target Buymasters/Lazar (Unsecured Creditors)
- Carter Hawley Hale Stores, Inc. (Debtor)
- Circle K Corporation (Unsecured Creditors' Committee)
- Cumberland Farms (Creditors' Committee)
- Smart Home Centers (Debtor)
- Federated Department Stores, Inc. (Debtor)
- Genera Sportswear Company, Inc. (Creditors' Committee)
- Great Western Publishing Company (Debtor)
- Han Mi (Crisis Management)
- Hooked on Phonics (Unsecured Creditors' Committee)
- House of Fabrics (Creditors' Committee)
- Jay Jacobs, Inc. (Debtor)
- Lamposters (Debtor)
- LA Gear (Debtor)
- Musicaland (Debtor)
- Pacific Laden (Debtor)
- Party America (Unsecured Creditors' Committee)
- Phil & Jim's (Debtor)
- Piece Goods Stores, Inc. (Debtor)
- Project Five & Diane (Debtor)
- Quorum International, Ltd. (Creditors' Committee)

OIL AND GAS/ENERGY (continued)

- Thiny Oil (Unsecured Creditors' Committee)
- Tucson Electric Power Co. (Bank Creditors' Committee)
- Westar Energy (Receiver)
- Westmoreland Coal Company (Creditors' Committee)

REAL ESTATE

- American Capital Investments (Receiver)
- Baldwin Builders (Unsecured Creditors' Committee)
- Baldwin Towne Center (Debtor)
- Bank of America (Borrower Analysts for Secured Creditor)
- Brambles (Secured Creditors' Committee)
- California Coastal Development (Debtor)
- Casino Club Partnership (Unsecured Creditors' Committee)
- Carpenter's Union Pension Trust (Secured Creditor)
- Centennial Homes (Debtor)
- Chase Manhattan Bank (Secured Creditor)
- Commerce Bank LP (Secured Creditor)
- Continental Bank (Secured Creditor Assistance)
- Credit Lyonnais (Secured Creditor)
- General Electric Pension Trust (Debtor)
- Glen Ivy Reports (Trustee)
- Hill Williams Income Funds (Trustee)
- Horizon Golf Club & Residential Community (Debtor)
- Hunters Ridge (Creditors)
- IDM Corp. (Unsecured Creditors' Committee)
- KBO Equities (Debtor)
- Martina Cabrillo Company (Debtor)
- Martech USA, Inc. (Debtor)
- Mortgage & Realty Trust (Equity Committee)
- Mueller Development Co. (Creditors' Committee)
- Olympia & York (Debtor & Secured Creditor)
- P. Hendley & Associates (Unsecured Creditors' Committee)
- Pacesetter Homes/American Facasiter (Debtor)
- Pier 57 (Bxamner)
- Playa Vista (Secured Creditor)
- Reservation Ranch (Debtor)

Sent by: HMB FAX #1

213 694 1234;

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PM; JafFax #101; Page 19/49

Exhibit C

Exhibit C

GLENN A. HIRAGA

Position
Partner, Financial Advisory Services Group,
PricewaterhouseCoopers LLP, Los Angeles office.

Education
JD (1983), cum laude, Loyola Law School at Los Angeles
B.S. (1974), Management, California State College at San Bernardino
B.A. (1970), Economics, University of California at Riverside

Range of Experience
Mr. Hiraga has significant experience in bankruptcy matters. He has served as financial advisor to creditors' committees, equity committees, trustees and debtors-in-possession. In the capacity of advisor to the trustee, Mr. Hiraga has, on many occasions, advised as to the value of the assets of a company, as well as offers to acquire a company.

Professional and Business History
PricewaterhouseCoopers LLP: 1978 to present
Partner, 1987; Senior Manager, 1985 - 1987; Manager, 1981 - 1985; Senior,
1980-1981; Audit Staff Accountant, 1978 - 1980.
Riverside County Assessor, 1972 - 1976, Real Estate Appraiser.

Examples of Professional and Business Experience
Selected bankruptcy or bankruptcy-related matters in which Mr. Hiraga has provided advice include:

- American Continental Corporation
- Advent Management/Coastal Insurance
- Circle K Corporation
- Financial Corporation of America
- IDM, Corp.
- Ovation, Inc.
- Baldwin Builders
- Brian J. Corbell
- Just for Feet
- Performance Capital Management
- Micropolis (USA) Inc.

GLENN A. HIRAGA

Page 2

**Professional
and Business**

Fraudulent Conveyance Action

**Experience
(continued)**

Mr. Hiraga is the consulting, coordinating partner with respect to defending against a \$300 million fraudulent conveyance action by a trustee in bankruptcy. Mr. Hiraga was responsible for directing a multi-disciplined team of experts in dealing with a very complex action covering several years of business activities.

Financial Advisor to \$180 Million Real Estate Reorganization

In the Baldwin Builders bankruptcy, Price Waterhouse was financial advisor to both the Chapter 11 Trustee and the Official Committee of Unsecured Creditors. Unsecured Creditors Committee. Price Waterhouse evaluated each of these purchase offers.

Advent Management Coastal Insurance

Mr. Hiraga was a declarant as to the solvency of the debtor for the one year period prior to the filing of bankruptcy. The Trustee was pursuing both preferential transfers and fraudulent conveyance theories of recovering.

Financial Corporation of America

Mr. Hiraga was the consulting, coordinating partner and declarant as to solvency of FCA. The actions on behalf of a trustee involved fraudulent conveyances and preferential transfers.

**Professional
and Business
Affiliations**

American Bar Association, Financial Institution Committee, ABA Tax Section,
California Society of CPAs, Depository Institution Statewide Committee,
American Institute of Certified Public Accountants, and
California Bar Association.

Sent by: HMB FAX #1

213 694 1234;

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Exhibit D

May-03-00 02:03pm From:AUREAL, INC

+810252400

T-120 P. 02/03 F-455

Aureal Inc
45757 Northport Loop West
Fremont, CA 94538
510 252 4245 phone
510 252 4400 fax
www.aureal.com

May 3, 2000

Mr. Glenn A. Hiraga
PricewaterhouseCoopers LLP
400 South Hope Street
Los Angeles, CA 90071-2889

Re: In re Aureal, Inc. Bankruptcy Case No. 00-42104-TJ

Dear Mr. Hiraga,

Pursuant to a letter agreement dated March 28, 2000, Aureal, Inc. ("Aureal") has retained PricewaterhouseCoopers LLP ("PwC") as its financial advisor. As of April 5, 2000, Aureal became the debtor and debtor in possession in the above-referenced bankruptcy case (the "Bankruptcy Case"). Currently, Aureal is seeking to have the Bankruptcy Court authorize the continued employment of PwC as financial advisor to Aureal, which services will include, among other things, providing advice concerning a potential sale of substantially all of Aureal's assets (the "Aureal Engagement").

This letter confirms that PwC has disclosed to Aureal that PwC provides services for Creative Labs, Inc. ("Creative"), an adversary to Aureal in certain pending litigation in the United States District Courts for the Northern District of California (the "Creative Litigation"). PwC's services in connection with the Creative Litigation include, among other litigation support activities, potential expert testimony on Creative's behalf. Further, PwC has disclosed that it may be requested to provide advisory services to Creative with respect to Creative's offer to purchase assets being sold by Aureal through the bankruptcy process.

In light of the foregoing disclosures by PwC, Aureal agrees, on the condition set forth below, that it will not seek to disqualify or otherwise undermine the testimony of any PwC partner in the Creative Litigation based upon the fact that PwC has been retained by Aureal in the Bankruptcy Case. This agreement, however, is conditioned on PwC's agreement that no information regarding PwC's work in the Aureal Engagement will be shared with anyone at PwC other than those individuals who are involved with, and provide assistance to Aureal in the Bankruptcy Case. In order to facilitate PwC's performance to this agreement, PwC further has agreed to maintain an "ethical wall," that includes, among other things, the adherence to the following procedures:

A
AUREAL

MAY-03-00 02:03am From:AUREAL INC

+5102524400

T-120 P.03/03 F-455

1. No information pertinent to the Aureal Engagement will be shared with those working on any matter for Creative, any affiliate of Creative, or any other matter related to the Creative Litigation (collectively, the "Creative Matters"). Similarly, no information from the Creative Matters will be shared with those working on the Aureal Engagement.
2. Neither Glenn Hiraaga, nor any staff working with Glenn Hiraaga (in the Aureal Engagement or any other engagement), will work directly with or for any partner involved in the Creative Matters.
3. To ensure that the files related to the Aureal Engagement are kept confidential and cannot be accessed by any PwC personnel providing services on any Creative Matters, all files related to the Aureal Engagement will not be kept on PwC's network files, but rather, will be maintained on Aureal's computer system (in Fremont, California), or on laptop computers in possession of PwC staff members assigned to the Aureal Engagement. In addition, all appropriate precautions and measures will be taken by PwC to ensure that personnel involved in the Creative Matters will not have access to any hard copies of Aureal's documents.

Please indicate your agreement to the aforementioned conditions by countersigning below.

Aureal looks forward to continuing to work with PwC in the pending bankruptcy case.

Very truly yours,

AUREAL, INC



Steve Mitchell
Chief Operating Officer

AGREED AND ACCEPTED BY:

PRICEWATERHOUSECOOPERS, LLP


Glenn A. Hiraaga, Partner



A U R E A L

EXHIBIT D
PAGE 19

Sent by: HMB FAX #1

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3PM; FAX #101; Page 25/49

Exhibit E

EXHIBIT E
STATEMENT OF PRICEWATERHOUSECOOPERS LLP
ON COMPENSATION

The following is the current individual hourly billing rates of the professionals from PricewaterhouseCoopers who have rendered or may render services in connection with the above-captioned matter:

<u>INDIVIDUAL</u>	<u>HOURLY RATES</u>
Glenn A. Hiraga	\$400
Shawn M. Kelly	\$225
Partners/Managing Directors	\$400-\$450
Manager/Director	\$300-\$380
Associate Consultants	\$150-\$225
Professional Assistants	\$80-\$85

In the event that PricewaterhouseCoopers increases its rates to all clients, the rates charged to the Debtor will be similarly increased. PricewaterhouseCoopers shall give the Debtor thirty (30) days notice in advance of such rate increases.

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14PM; JaxFax #107; Page 27/49

Exhibit F

PRICEWATERHOUSECOOPERS

PRIVATE & CONFIDENTIAL

Mr. Steve Mitchell
Aureal, Inc.
45757 North Port Loop West
Pleasant, California 94538

PriceWaterhouseCoopers LLP
400 South Hope Street
Los Angeles CA 90071-2649
Telephone (213) 234 3000

March 28, 2000

Dear Mr. Mitchell:

1. Introduction

This letter confirms that we, PriceWaterhouseCoopers LLP ("PriceWaterhouseCoopers"), have been retained by you, Aureal Semiconductor, Inc. (the "Company"), to provide the services ("the Services") set out below. We agree that this letter and the related Terms and Conditions constitute the arrangements pursuant to which such Services will be provided.

2. Scope of our Services

At your request, the Services to be performed by PriceWaterhouseCoopers shall include the following:

- Assist the Company in preparing financial information to support the decision making process.
- Help the Company assess the merits of various business alternatives.
- Act as liaison between the Company and potential buyers.
- Attend meetings with the Company, creditors, and customers to help encourage product flow and cash realization.
- Perform such other accounting and financial services for the Company as may be necessary.

Such Services, as outlined above, are subject to change as mutually agreed between us.

PriceWaterhouseCoopers is engaged by the Company to provide consulting services only. Accordingly, while we may from time to time suggest various options which may be available to you, and further give our professional evaluation of each of these options, the ultimate decision as to which, if any, of these options to implement rest with the Company, its management and board of directors. PriceWaterhouseCoopers and its individual partners and employees will not make any management decisions for the Company and will not be responsible for communicating information concerning the Company to the public or the Company's shareholders.

As part of our engagement, PriceWaterhouseCoopers may be requested to assist the Company (and its legal or other advisors) in negotiating with the Company's creditors and equity holders and with other interested parties. In the event that we participate in such negotiations, the representations made and the positions advanced will be those of the Company and its management, not PriceWaterhouseCoopers or its partners and employees.

PRICEWATERHOUSECOOPERS

Mr. Steve Mitchell
Aureal, Inc.
March 24, 2000
Page 2

5. Fees

Fees in connection with this engagement will be based upon the time necessarily spent in providing the Services, multiplied by our standard hourly rates, summarized as follows:

	Per Hour
Partner / Managing Director	\$400-\$450
Manager / Director	\$300-\$380
Associates / Sr. Associates	\$150-\$225
Administrative / Para-Professional	\$80-\$85
Olivia Hwang, Partner	\$400
Shawn Kelly	\$225
Other Staff (as needed)	\$150

Hourly rates are revised from time to time. We will notify you of any such changes in our rates. Note that we do not provide any assurance regarding the outcome of our work and our fees will not be contingent on the results of such work.

It is our typical practice to obtain a retainer of \$150,000 for an engagement of this nature. The retainer, which is payable upon the execution of this letter, will be held and applied to our final bill for the Services, with any excess amount refunded to you. The retainer is not intended to be an estimate for the total cost of the work to be performed.

In addition to the fees outlined above, PricewaterhouseCoopers will bill the Company for reasonable expenses which are likely to include airfare, meals and hotel accommodations, telephone, telephone, industry research, duplicating and printing, etc.

Invoices for fees and expenses incurred in connection with this engagement will be billed weekly, and are due upon receipt. If we do not receive payment of any invoice within 30 days of the invoice date, we shall be entitled, without prejudice to any other rights that we may have, to charge interest accruing on the sum due to us at the annual rate of 15 percent and to suspend provision of the Services until all sums due are paid in full.

4. Terms and Conditions

The attached terms and conditions set forth the duties of each party with respect to the Services. Further, this letter and the terms and conditions attached comprise the entire engagement (the "Engagement") for the provision of the Services to the extent of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations and shall supersede all previous letters of engagement, undertakings, agreements and correspondence regarding the Services.



Mr. Steve Mitchell
Ametel, Inc.
March 24, 2000
Page 3

5. Governing Law and Jurisdiction

The contract shall be governed by and interpreted in accordance with the laws of California. The Courts of California shall have exclusive jurisdiction in relation to any claim, dispute or differences concerning the Contract and any matter arising from it. The parties irrevocably waive any right they may have to object to any action being brought in these Courts, to claim that the action has been brought to an inconvenient forum or to claim that these Courts do not have jurisdiction.

6. Conflict of Interest

We are currently in the process of identifying any potential conflicts of interest or relationships that would preclude us from performing the above work for you. We have undertaken a limited review of our records to determine PricewaterhouseCoopers' professional relationships with the persons and entities you identified. As you know, we are a large firm with over 100 offices throughout the United States. We are engaged by our clients every day and cannot assure that following our employment by you, an engagement for other parties in this matter will not be accepted somewhere else in our firm. We will advise you as promptly as possible of the circumstances of any such engagements for other parties in this matter which create a potential conflict of interest, should the engagement team become aware of such an engagement.

PRICEMASTERHOUSE COOPERS

Mr. Steve Mitchell
Ayrault, Inc.
March 24, 2000
Page 4

7. Acknowledgment and Acceptance

Please acknowledge your acceptance of the terms of our engagement under the Contract by signing the confirmation below and returning a copy of this letter and a copy of the attached terms and conditions to us at the above address.

If you have any questions regarding this letter or the attached terms and conditions, please do not hesitate to contact us.

Yours Sincerely,

David Johnson
David Johnson
PricemasterhouseCoopers

Confirmation of Terms of Engagement

We agree to engage PricemasterhouseCoopers upon the terms set forth in the Letter of Engagement and the related Standard Terms and Conditions from PricemasterhouseCoopers.

Signed:  Mr. Steve Mitchell
Position: (CA)
On behalf of: Ayrault, Inc.

Date: Apr 15 2000



STANDARD TERMS AND CONDITIONS

Re: Aureal, Inc.

The following are the terms and conditions (the "Terms and Conditions") on which we will provide the Services to you set forth within the attached Letter of Engagement. The Letter of Engagement and the Terms and Conditions are together referred to as the "Engagement". The Engagement forms the entire agreement between us relating to the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral. The headings and titles in the Engagement are included to make it easier to read but do not form part of the Engagement.

1. Reports and Advice

1.1 **Reliance on drafts -** You acknowledge that no reliance shall be placed on draft reports, conclusions or advice, whether oral or written, issued by us as the same may be subject to further work, revision and other factors which may mean that such drafts are substantially different from any final report or advice issued.

1.2 **Our responsibility for final reports -** In the event we will be acting as independent experts, our reports or advice must be objective and impartial. While we will be prepared to discuss draft reports, which do not constitute our final opinion, the content of our final report is a matter for us alone.

1.3 **Use and purpose of advice and reports -** Any advice given or report issued by us is provided solely for your use and benefit and only in connection with the purpose in respect of which the Services are provided. Unless required by law, you shall not provide any advice given or report issued by us to any third party or refer to us or the Services without our prior written consent. In no event, regardless of whether consent has been provided, shall we assume any responsibility to any third party to which any advice or report is disclosed or otherwise made available.

2. Information and Assistance

2.1 **Provision of information and assistance -** Our performance of the Services is dependent upon you providing us with such information and assistance as we may reasonably require from time to time.

2.2 **Personal and sensitive information -** You shall use reasonable skill, care and attention to ensure that all information we may reasonably require is provided on a timely basis and is accurate and complete. You shall also notify us if you subsequently learn that the information provided is incorrect or inaccurate or otherwise should not be relied upon.

2.3 **Your responsibility for information provided -** Any reports issued or conclusions reached by us may be based upon information provided by and on your behalf.



STANDARD TERMS AND CONDITIONS

Re: Anron, Inc.

Page 2

- 2.4 No assurance on financial data - While our work may include an analysis of financial accounting data, this engagement will not include an audit, compilation or review of any kind of any financial statements. The Company management will be responsible for any and all financial information prepared during the course of this engagement, and we will not examine or compile any such financial information. Accordingly, as part of this engagement, we will not express any opinion or other form of assurance on the financial statements or financial components of the Company.
- 2.5 Prospective financial information - In the event the Services involve prospective financial information, our work will not constitute an examination, compilation or apply agreed-upon procedures in accordance with standards established by the American Institute of Certified Public Accountants, and we will express no assurance of any kind on such information. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We will take no responsibility for the achievability of the expressed results anticipated by the management of the Company.
- 3. Fees and Additional Services
- 3.1 Changes to Services - Either party may request changes to the Services. Any variation to the Engagement, including any variation to fees, services or time for performance of the Services, must be expressly agreed to in writing and, if agreed, shall form part of the Engagement and to which these Terms and Conditions shall apply.
- 3.2 Payment of fees - Time for payment of fees and expenses shall be of the essence. If you disagree with or question any amount due under an invoice submitted by us, you shall communicate such disagreement to us in writing, within 30 days of the invoice date. Any claim not made within that period shall be deemed to be waived.
- 3.3 Your responsibility for other parties - You shall be solely responsible for the work and fees of any other party engaged by you to participate in the Engagement regardless of whether such party was introduced to you by us. Except as provided in the Letter of Engagement, we shall not be responsible for providing or reviewing specialist advice or services including legal, regulatory, accounting or taxation matters.

(2)

PRICEMETERHOUSE COOPERS

STANDARD TERMS AND CONDITIONS

Re: Aerial, Inc.

Page 3

- 4. Confidentiality
 - 4.1 Breach(es) on confidential information - Both parties agree that any confidential information received from the other party shall only be used for the purposes of providing or receiving Services under this or any other contract between us. Except as provided below, neither party will disclose the other party's confidential information to any third party without the other party's consent. Confidential information shall not include information that:
 - 4.1.1 is or becomes generally available to the public other than as a result of a breach of an obligation under this clause;
 - 4.1.2 is acquired from a third party who, to our knowledge, owes no obligation of confidence in respect of the information; or
 - 4.1.3 is or has been independently developed by the recipient.
 - 4.2 Disclosing confidential information - Notwithstanding clause 4.1 above, either party will be entitled to disclose confidential information of the other to a third party to the extent that this is required by valid legal process provided that (and without breaching any legal or regulatory requirements) where reasonably practicable not less than 2 business days notice in writing is given to the other party.
 - 4.3 Character of engagement - Without prejudice to Clause 4.1 and Clause 4.2 above, we may also generally be performance of the Services to our clients and prospective clients by an indication of our experience, unless we both specifically agree otherwise in writing.
 - 4.4 Internal quality reviews - Notwithstanding the above we may disclose any information referred to in this Clause 4 to any other PricemeterhouseCoopers entity or use it for internal quality reviews.
 - 4.5 Misstatements of our reports - Notwithstanding the above, we may keep one archival set of our working papers from the Engagement, including working papers containing or reflecting confidential information, in accordance with our professional standards. It is the policy of PricemeterhouseCoopers not to retain copies of our working papers for more than two years after our work is completed.
- 5. Termination
 - 5.1 Termination of Engagement with notice - Either party may terminate the Engagement for whatever reason upon written notice to the other party. Upon receipt of such notice, we will stop all work immediately. You will be responsible for all fees and expenses incurred by PricemeterhouseCoopers through the date termination notice is received.
 - 5.2 Continuation of terms - The terms of the Engagement that expressly or by implication are intended to survive its termination or expiration will survive and continue to bind both parties.

(2)

PRICEWATERHOUSECOOPERS

STANDARD TERMS AND CONDITIONS PwC Audit, Inc. Page 4

6. Indemnification and Liability Limitation

6.1 **Indemnification** - You agree to indemnify and hold harmless PricewaterhouseCoopers and its personnel from any and all claims, liabilities, costs and expenses relating to services PricewaterhouseCoopers renders under this Letter of Engagement, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of PricewaterhouseCoopers relating to such services.

6.2 **Limitation of Liability** - In no event shall PricewaterhouseCoopers be liable to you, whether a claim be in tort, contract or otherwise:

- (A) for any amount in excess of the total professional fees paid by you under this Letter of Engagement less; or
- (B) for any consequential, indirect, lost profit or similar damages relating to PricewaterhouseCoopers's services provided under this Letter of Engagement less; except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of PricewaterhouseCoopers relating to such services.

6.3 **Commencement of legal proceedings** - You accept and acknowledge that any legal proceedings arising from or in connection with the Engagement (or any variation or addition thereto) must be commenced within one year from the date when you become aware of or ought reasonably to have become aware of the facts which give rise to our alleged liability and in any event not later than two years after any alleged breach of contract or act of negligence or commission of any other tort.

6.4 **Waiver of jury trial** - In the unlikely event that differences concerning our services or fees should arise that are not resolved by mutual agreement, to facilitate judicial resolution and save time and expense, you and PricewaterhouseCoopers agree not to demand a trial by jury in any action, proceeding or communication arising out of or relating to our services and fees for this engagement.

7. Billing for Bankruptcy Proceedings

7.1 In the event that management of the Company or its Board of Directors considers filing for protection under Title 11 of the United States Code, the Company agrees to use its best efforts to have the Court enter an order appointing PricewaterhouseCoopers as its financial advisors on terms substantially equivalent to those outlined herein.

8. Details

8.1 You accept and acknowledge that we have not made any warranties or guarantees of any nature with respect to the results, outcome or final developments in this matter or with respect to the economic, financial or other results which you may experience as a result of the provision of the Services.

(4)



STANDARD TERMS AND CONDITIONS

Re: Aurreal Inc.

Page 5

9. Working for Other Clients

9.1

We will not be prevented or restricted by anything in the Engagement from providing services to other clients. We will take reasonable steps to ensure that confidential information communicated to us during the course of this Engagement will be maintained confidentially and will not be disclosed or made available to partners, principals and staff who do not have a need to know such information for purposes of performing the Engagement.

Rina Vankubana
Rina Vankubana
PrisewaterhouseCoopers LLP

Confirmation of Terms of Engagement

We agree to engage PrisewaterhouseCoopers upon the terms set forth in these Standard Terms and Conditions and the attached Letter of Engagement; from PrisewaterhouseCoopers.



Signature

Title: CEO

Mr. Steve Mitchell
On behalf of Aurreal, Inc.

Date: Jan 15 2000

(9)

DECLARATION OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On May 4, 2000, I served the following pleading:

NOTICE OF AND APPLICATION FOR AUTHORITY TO EMPLOY PRICEWATERHOUSECOOPERS LLP NUN PRO TUNC AS ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION

on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, with first-class postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows below.

I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

SEE ATTACHED SERVICE LIST

The above-described pleading also was transmitted to the indicated parties set forth above in the manner described below:

by air courier service, for next business-day delivery by

by messenger service, for same-day delivery by hand by

by telecopy, for immediate receipt.

I declare that I am employed in an office of a member of the bar of this Court, at whose direction the within service was made.

EXECUTED on May 4, 2000 at Los Angeles, California.

Joanne Stern
Joanne Stern, Declarant

HENNINGAN, BENNETT & DORMAN

PROOF OF SERVICE

Debtor:
AUREAL, INC.
Attn: Steve Mitchell
45757 Northport Loop West
Framont, CA 94538

Debtor's Counsel:
Sidney P. Levinson/Kelly Prazler
Henigson & Bennett
601 S Figueroa St., Suite 3300
Los Angeles, CA 90017

Office of the U.S. Trustee:
U.S. Trustee
Attn: Mark L. Pope, Esq.
1301 Clay Street Suite 690N
Oakland, CA 94612

Secured Creditor as Agent:
Oaktree Capital Management LLC
Attn: Richard Masson
333 S. Grand Avenue, 28th Floor
Los Angeles, CA 90071

Counsel to Oaktree Capital Management:
Eric Reimer, Esq.
McDermott, Will & Emory
2049 Century Park East, 34th Floor
Los Angeles, CA 90067

Creditors' Committee Member:
Ocean Data Products
5th Floor Kader Industrial Bldg.
22 Kai Cheung Road
Kowloon Bay
Kowloon, Hong Kong

Creditors' Committee Member:
UMC Group (USA)
Attn: Hazel-Jen Lo, Credit Manager
488 Deguigne Drive
Sunnyvale, CA 94086

Creditors' Committee Member:
Playand Online, Inc.
Attn: Terry Campbell
2325 Third Street, Suite 215
San Francisco, CA 94107

Creditors' Committee Member:
Juan Gonzalez
KPMG
3 Embarcadero Center, Suite 2000
San Francisco, CA 94111

Creditors' Committee Member:
Hightsov, Inc.
Attn: R. Scott Holmgren, Gen. Mgr.
1965 Latham Street
Mountain View, CA 94040-2107

Creditors' Committee Member:
Finova Technology Finance, Inc.
Attn: O'Neil Patrone, Collections Mgr.
115 West Century Road, 3rd Floor
Paramus, NJ 07652

Creditors' Committee Member:
Imagine Media Inc. d/b/a PC Gamer
Attn: John Lysdahl, Credit Manager
150 North Hill Drive
Brisbane, CA 94005

20 Largest Unsecured Creditors:
Ceasar International, Inc.
Attn: Jolo Estayillo
2860 Zanter Road, Suite 210
San Jose, CA 95134

20 Largest Unsecured Creditors:
Cadence Design Systems, Inc.
Attn: Steve Mith
555 River Oaks Parkway
San Jose, CA 95134

20 Largest Unsecured Creditors:
Houlihan Lobey Howard & Zalkin
Attn: Glenn Daniel, Managing Director
49 Stevenson Street, 14th Floor
San Francisco, CA 94105

20 Largest Unsecured Creditors:
PC World Communications
Attn: Kevin Greene
PO Box 3700-67
Boston, MA 02241-0767

20 Largest Unsecured Creditors:
VFA-Speak A/S
Stationsvej 5
6920 Videbaek
Denmark

20 Largest Unsecured Creditors:
GE Capital
Attn: Brian Haber
Dept. 3123
Pasadena, CA 91051-3123

20 Largest Unsecured Creditors:
Inegra-Dyne Corp.
Attn: Ken Condotta
145 King Street, West, Suite 1000
Toronto, ON M5H 1J8
Canada

20 Largest Unsecured Creditors:
3DSL
Attn: John Byrne
Blissworth Base Hill
Stoke Road, Busworth
Northants, UK NN73DB

20 Largest Unsecured Creditors:
Acdivison, Inc.
Attn: Andrea Tedeschi
3100 Ocean Park Boulevard
Santa Monica, CA 90405

20 Largest Unsecured Creditors:
Bruska Productions Audio, Inc.
Attn: Jennifer Bruska
66 Rear Dudley Street
Arlington, MA 02476

Request For Special Notice:
Orriek, Harrington & Sunliffe
Attn: Thomas C. Mitchell, Esq.
400 Sansome Street
San Francisco, CA 94111-3143

Creative Labs Reg For Spec Notice:
Mark Shinderman, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, Suite 3500
Los Angeles, CA 90071-1560

Creative Labs, et al Reg. Spec. Notice:
Erica Rotenberg, Esq.
Creative Labs, Inc.
1301 McCarthy Boulevard
Milpitas, CA 95035

Ceasar Intl Reg for Special Notice:
William C. Lewis, Esq.
Law Offices of William C. Lewis
510 Waverley Street
Palo Alto, CA 94031

Ocean Data Products Reg Spec. Not:
Patricia S. Mar, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

I/O Marie Reg. for Spec. Notice:
Horowitz & Beam
Attn: Lawrence M. Cron, Esq.
Two Ventura Plaza, Suite 350
Irvine, CA 92618

Request for Special Notice:
Ritter, Van Pelt & Yi, LLP
Attn: Jack Limper
4906 El Camino Real, Suite 205
Los Altos, CA 94022

20 Largest Unsecured Creditors:
Ziff Davis
Attn: Customer Service Dept.
One Park Avenue
New York, NY 10016

Finvera Reg. for Special Notice:
Sachoff & Weaver, Ltd.
Attn: Charles P. Schulman, Esq.
30 South Wacker Drive, Suite 2900
Chicago, IL 60606

Request for Special Notice:
Christopher Beard, Esq.
Beard & Beard
4601 North Park Avenue
Chevy Chase, MD 20815

Request for Special Notice:
Peter A. Chapman, Esq.
24 Perdicaris Place
Trenton, NJ 08618

Request For Special Notice:
Maggie Lewisadder
Makefield Securities Corporation
789 S. Federal Hwy., Suite 102
Suwanee, FL 34994

Financial Consultant to the Debtor:
Price Waterhouse Coopers LLP
Attn: Glenn Hiraga/Shaw Kelly
400 South Hope Street
Los Angeles, CA 90071-2889

EXHIBIT W

ORIGINAL

FILED

00 JUN 14 PM 4: 02

KEenan G. O'SaLey, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CAL.

MICHAEL H. AHRENS, CAL. BAR NO. 44766
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SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
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Facsimile: (415) 434-3947

Attorneys for PricewaterhouseCoopers LLP

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

AUREAL, INC., d/b/a SILO.COM,
f/k/a AUREAL SEMICONDUCTOR, INC.,
f/k/a MEDIA VISION TECHNOLOGY,
INC., a Delaware corporation,

Debtor.

Case No. 00-42104-TI

(Chapter 11)

DECLARATION OF HILARY KRANE
IN SUPPORT OF
PRICEWATERHOUSECOOPERS LLP'S
RESPONSE TO OBJECTIONS TO
APPLICATION FOR AUTHORITY TO
EMPLOY
PRICEWATERHOUSECOOPERS LLP
NUNC PRO TUNC AS ACCOUNTANTS
AND FINANCIAL ADVISORS TO THE
DEBTOR AND DEBTOR IN POSSESSION

DATE: June 19, 2000
TIME: 2:00 p.m.
PLACE: Courtroom 201
1300 Clay Street
Oakland, CA 94612

I, HILARY KRANE, declare and state as follows:

1. I am over eighteen (18) years of age and, if called upon, would competently testify to the matters set forth herein from my own personal knowledge, except as otherwise stated. Except as to those statements made upon information and belief, I have

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1 personal knowledge of the following facts and, if called and sworn as a witness, I would and
2 could competently testify thereto. As for those statements made upon information and
3 belief, I believe them to be true.

4 2. I am the Assistant General Counsel of PricewaterhouseCoopers LLP
5 (hereinafter "PwC").

6 3. This Declaration is submitted in support of PwC's response to the
7 objections filed by the U.S. Trustee and Creative Technology, Ltd. and its subsidiaries
8 Creative Labs, Inc. and E-MU Systems Ltd. to the "Application for Authority to Employ
9 PricewaterhouseCoopers LLP Nunc Pro Tunc as Accountants and Financial Advisors to the
10 Debtor and Debtor in Possession" (the "Application") filed by Aureal, Inc. as debtor and
11 debtor in possession in the above-captioned chapter 11 bankruptcy case (the "Debtor").

12 4. PwC performs tax and audit work for Creative Technology, Ltd. and its
13 subsidiaries Creative Labs, Inc. and E-MU Systems Ltd. (collectively, "Creative").

14 5. Prior to the Petition Date, Creative retained PwC to do due diligence
15 work in connection with a possible pre-petition acquisition of the Debtor's assets.

16 6. While client confidentiality prevents PwC from detailing what work
17 was actually performed, PwC can unequivocally state that it did not (1) serve as an agent for
18 Creative in connection with the possible purchase, (2) "represent" Creative in the
19 negotiations, i.e. negotiate on behalf of Creative with the Debtor or (3) take any other action
20 to affect the potential purchase price.

21 7. Not only did PwC not do these things as a factual matter, it is precluded
22 from performing any of these roles because of the necessity of PwC retaining its
23 independence from Creative given its role as external auditor.

24 8. Rules governing audit accountant conduct and related conflicts of
25 interest issues are promulgated by the American Institute of Certified Public Accountants
26 ("AICPA"), which apply to audits of both public and private companies, and the Securities
27 and Exchange Commission ("SEC"), which pertain to public companies. The AICPA rules
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1 are generally more permissive than those of the SEC. A copy of certain relevant AICPA
2 rules and interpretations thereof are attached hereto as Exhibits A and B.

3 9. Both the AICPA and the SEC have strict rules prohibiting an
4 independent accountant from performing any traditional management functions, which
5 includes acting as an agent for management or negotiating on behalf of an audit client. See,
6 e.g., Ex. B at 1. Thus, while PwC may collect and analyze information for Creative, it is
7 prohibited from making any decisions based on that information or taking any action on
8 Creative's behalf in connection with the potential purchase of any assets or businesses, be
9 they associated with the Debtor or any other entity.

10 10. In discussing with Creative PwC's intention to serve as advisor to the
11 Debtor in the Debtor's bankruptcy, PwC was notified that Creative expressed some concern
12 in connection with Creative's engagement of PwC as expert witness in certain litigation and
13 that Creative objected because it wanted to be free to retain PwC to provide additional
14 services in connection with its possible purchase of the Debtor's assets should it so choose.

15 11. Recognizing the limitations on the services it could supply Creative
16 under the independence rules, PwC indicated to Creative that it did not believe that its role
17 as advisor to the debtor would prevent it from accepting such future assignments for any
18 conflict reason.

19 12. While PwC never viewed the situation as creating an actual conflict it
20 did recognize that it had a business issue to address. Accordingly, in order to provide
21 additional comfort to Creative, PwC discussed the situation with the Debtor and its counsel,
22 who agreed that provided that an ethical wall was in place to ensure that Creative did not get
23 any greater access to information because of its relationship PwC, it would have no
24 objection to PwC accepting such an assignment from Creative in the future should Creative
25 ask it to (something that has not yet happened).

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13. PwC formalized this in the letter it received from the Debtor dated May 3, 2000 in order to put Creative's concerns to rest and to be able to provide the Trustee and the Court with a completely clear view of PwC's relationships.

14. PwC never requested a waiver from Creative as it never believed, and still does not believe, that it has put itself in the position of acting "adverse" to Creative's interests in any way.

15. Large accounting firm serve many clients in the same and competing industries as a regular part of their business operations; their ethical obligations to maintain the confidentiality of client information prevents clients from being harmed in these situations.

16. It has not ever been nor is it now the view of the profession, the AICPA or PwC specifically that accepting an engagement for a client who happens to be a fierce competitor or even a nemesis of another client creates a conflict of interest. Provided that the firm can effectively protect each clients' confidential information and that the firm will not be put in a position of negotiating against itself or potentially taking two disparate positions on the same set of facts, no conflict of interest arises to prevent the accountant from servicing both of its clients needs.

17. PwC's due diligence work was completed on March 6, 2000 and PwC has not been retained by Creative to perform any other services in connection with whatever plans it may have to attempt to purchase the Debtor's assets out of bankruptcy.

18. As it currently stands, PwC has absolutely no obligations to Creative with respect a potential bid for the Debtor or its assets and if Creative believes that PwC's advisory services for the debtor would compromise its ability to effectively provide them services in this regard, it can simply not seek to retain PwC to provide those services.

19. With respect to the issue of a accountant expert witness, the AICPA has produced a report setting standards for certified public accountants entitled "Conflicts of Interest in Litigation Services Engagement," ("Special Report") which confirms that an

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1 accountant plays a much different role, and as such is bound by much different rules. In
2 attorneys. A copy of the Special Report is attached hereto as Exhibit C.

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4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct. Executed this 14th day of June, 2000 in San Francisco,
6 California.


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ReferenSearch-Excerpts from InfoBase:

ET Section 100
INDEPENDENCE, INTEGRITY, AND OBJECTIVITY

ET Section 101
Independence

.01 **Rule 101—Independence.** A member in public practice shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council.
[As adopted January 12, 1988.]

Interpretations under Rule 101—Independence

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 **101-1—Interpretation of Rule 101.** Independence shall be considered to be impaired if, for example, a member had any of the following transactions, interests, or relationships:

- A. During the period of a professional engagement or at the time of expressing an opinion, a member or a member's firm
 - 1. Had or was committed to acquire any direct or material indirect financial interest in the enterprise.
 - 2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise.
 - 3. Had any joint, closely held business investment with the enterprise or with any officer, director, or principal stockholders thereof that was material in relation to the member's net worth or to the net worth of the member's firm.
 - 4. Had any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise except as specifically permitted in interpretation 101-5 [ET section 101.07].
- B. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, a member or a member's firm
 - 1. Was connected with the enterprise as a promoter, underwriter or voting trustee, as a director or officer, or in any capacity equivalent to that of a member of management or of an employee.
 - 2. Was a trustee for any pension or profit-sharing trust of the enterprise.

The above examples are not intended to be all-inclusive.

The period of a professional engagement starts when the member begins to perform any professional services requiring independence for an enterprise, lasts for the entire duration of the professional relationship, which

ReferenSearch-Excerpts from infobase:

could cover many periods, and ends with the formal or informal notification of the termination of the professional relationship either by the member, by the enterprise, or by the issuance of a report, whichever is later. Accordingly, the professional engagement does not end with the issuance of a report and recommence with the signing of the following year's engagement.

[Paragraph added by adoption of the Code of Professional Conduct on January 12, 1988, Revised, effective June 30, 1990, by the Professional Ethics Executive Committee, Revised, November 1991, effective January 1, 1992 with earlier application encouraged, by the Professional Ethics Executive Committee, Revised, effective February 28, 1998, by the Professional Ethics Executive Committee.]

[.03] [101-1] [Formerly paragraph .02 renumbered by adoption of the Code of Professional Conduct on January 12, 1988, Formerly interpretation 101-1, renumbered as 101-4 and moved to paragraph .06, April 1992.]

.04 101-2—Former practitioners and firm independence. For purposes of this interpretation, a former practitioner is defined as a proprietor, partner, shareholder, or equivalent who leaves by resignation, termination, retirement, or sale of all or part of the practice.

For purposes of determining a firm's compliance with Rule 101 [ET section 101.01] and its interpretations, a former practitioner is not included in the term "a member or a member's firm" (see ethics interpretation 101-9, ET section 101.11) provided that

1. Payment of the amounts due to the former practitioner for his or her interest in the firm and for unfunded, vested retirement benefits according to the payment schedule in effect should be such that they do not cause a substantial doubt about the firm's ability to continue as a going concern for a reasonable period of time. In addition, such amounts including all retirement benefits should be fixed, both as to the amount and payment dates. Such amounts due a former practitioner may be paid over a reasonable period of time, and a reasonable rate of interest may be paid on any unpaid balances. Retirement benefits may be adjusted only for inflation.

2. The former practitioner does not participate in the firm's business or professional activities whether or not compensated for such participation. This proscription does not apply to consultations on an advisory basis for a reasonable period of time during the transition period upon leaving the firm.

3. The former practitioner does not appear to participate in the activities of or be associated with his or her former firm. An appearance of participation or association results from such actions as inclusion of the former practitioner's name under the firm's name in an office building directory, inclusion of the former practitioner's name as a member of the firm in membership lists of business, professional or civic organizations, or inclusion of the former practitioner's name in the firm's internal directory without being designated as retired. The former practitioner will not be considered as participating or associating with his or her former firm solely because the former practitioner is provided an office, either in the firm's suite or in a separate location, and related office amenities such as secretarial and telephone services. (However, see 4. below for restrictions regarding office space and amenities for a former practitioner who accepts a position of significant influence with a client.)

4. A former practitioner in a position of significant influence with the client must no longer be provided with office space and related amenities by his or her former firm.
[Replaces previous interpretation 101-2, *Retired Partners and Firm Independence*, August, 1989, effective August 31, 1989.]

.05 101-3—Accounting services. Members in public practice may be asked to provide manual or automated bookkeeping or data processing services to clients. Computer systems design and programming assistance may also be rendered by members either in conjunction with data processing services or as a

ReferenSearch-Excerpts from infobase:

separate engagement. In addition, members may rent "block time" on their computers to their clients but are not involved in the processing of transactions or maintaining the client's accounting records.

A member providing such services to a client must meet the following requirements to be considered independent:

1. The client must accept the responsibility for the financial statements as his own. The client must be sufficiently informed of the enterprise's activities and financial condition and the applicable accounting principles so that the client can reasonably accept such responsibility, including, specifically, fairness of "valuation and presentation" and adequacy of disclosure. When necessary, the member must discuss accounting matters with the client to assist the client in understanding such matters.

2. The member must not assume the role of employee or of management. For example, the member shall not consummate transactions, have custody of assets, or exercise authority on behalf of the client. The client must prepare the source documents on transactions in sufficient detail to identify clearly the nature and amount of such transactions. The member should not make changes in such basic data without the concurrence of the client.

3. When financial statements are prepared from books and records which the member has maintained, the member must comply with applicable standards for audits, reviews, or compilations. [Formerly paragraph .04, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

.08 101-4—**Honorary directorships and trusteeships of not-for-profit organization.** Members may be asked to lend the prestige of their names to not-for-profit organizations that limit their activities to those of a charitable, religious, civic, or similar nature by being named as a director or a trustee. A member who permits his or her name to be used in this manner and who is associated with the financial statements of the organization would not be considered lacking in independence under Rule 101 [ET section 101.01] so long as his or her position is clearly honorary, and he or she cannot vote or otherwise participate in board or management functions. If the member is named in letterheads and externally circulated materials, the member must be identified as an honorary director or honorary trustee. [Formerly paragraph .05, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Formerly Interpretation 101-1. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Renumbered as Interpretation 101-4 and moved from paragraph .03, April, 1992.]

.07 101-5—**Loans from financial institution clients and related terminology.** Interpretation 101-1.A.4 [ET section 101.02] provides that, except as permitted in this interpretation, a member's independence shall be considered to be impaired if the member has any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise. This interpretation does not consider independence to be impaired for certain grandfathered loans and other permitted loans from financial institution clients for whom services are performed requiring independence as set forth below under "Grandfathered Loans" and "Other Permitted Loans," respectively.

Grandfathered Loans

This interpretation grandfather's the following loans obtained from a financial institution under that institution's normal lending procedures, terms, and requirements, and that meet the other specified conditions stated herein, and (a) that exist as of January 1, 1992; (b) that were obtained from a financial institution prior to its becoming a client requiring independence; (c) that were obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or (d) that were obtained from a financial institution client requiring independence, by a borrower prior to his or her

ReferenSearch-Excerpts from infobase:

becoming a member' with respect to such client. However, independence will be considered to be impaired if, after January 1, 1992, a member obtains a loan as described in this paragraph from an entity that, at the time of obtaining the loan, is a client requiring independence. For purposes of applying the grandfathered loans provision, the date a loan commitment or line of credit is granted must be used, rather than the date a transaction closes or funds are obtained. Grandfathered loans must, at all times, be current as to all terms.

1. Home mortgages.
2. Other secured loans. The value of the collateral securing such loans should equal or exceed the remaining balance of the grandfathered loans during the term of the loans. However, if the value of the collateral is less than the remaining balance of the grandfathered loans, the portion of the loans that exceeds the value of the collateral must not be material to the member's net worth.
3. Unsecured loans not material to the member's net worth.

A loan would no longer be considered grandfathered if, after the latest of the dates in (a) through (d) above, the terms of the loan change in any manner not provided for in the original loan agreement. Changes in the terms of the loan include, but are not limited to, a new or extended maturity date, a new interest rate or formula, revised collateral, or revised or waived covenants.

With respect to (1) limited partnerships (or similar type entities) in which member(s) have a combined interest exceeding 50 percent of the total limited partnership interest, and (2) general partnerships in which member(s) can control the partnership, the loan is ascribed to each partner on the basis of legal liability as a limited or general partner. Even if the amount ascribed to the member is zero, independence is considered to be impaired if the partnership renegotiates the loan or enters into a new loan after the latest of the dates in (a) through (d) above.

Other Permitted Loans

This interpretation permits only the following loans obtained from a financial institution client for which independence is required. These loans must be obtained under the institution's normal lending procedures, terms, and requirements and must, at all times, be kept current as to all terms.

1. Automobile loans and leases collateralized by the automobile.
2. Loans fully collateralized by the cash surrender value of an insurance policy.
3. Loans fully collateralized by cash deposits at the same financial institution (e.g., "passbook loans").
4. Credit cards and cash advances where the aggregate outstanding balance on the current statement is reduced to \$5,000 or less by the payment due date.

Terminology

For purposes of interpretations 101-1.A.4 [ET section 101.02] and 101-5 [ET section 101.07], the following terms are defined:

* For the definition of "member" see Interpretation 101-9 [ET section 101.11], "The meaning of certain independence terminology and the effect of family relationships on independence."

ReferenSearch-Excerpts from infobase:

Loan

A loan is considered to be a financial transaction, the characteristics of which generally include, but are not limited to, an agreement that provides for repayment terms and a rate of interest. A loan includes, but is not limited to, a guarantee of a loan, a letter of credit, a line of credit, or a loan commitment.

Financial Institution

A financial institution is considered to be an entity that, as part of its normal business operations, makes loans to the general public.

Normal Lending Procedures, Terms, and Requirements

"Normal lending procedures, terms, and requirements" relating to a member's loan from a financial institution are defined as lending procedures, terms, and requirements that are reasonably comparable with those relating to loans of a similar character committed to other borrowers during the period in which the loan to the member is committed. Accordingly, in making such comparison and in evaluating whether a loan was made under "normal lending procedures, terms, and requirements," the member should consider all the circumstances under which the loan was granted, including

1. The amount of the loan in relation to the value of the collateral pledged as security and the credit standing of the member or the member's firm.
2. Repayment terms.
3. Interest rate, including "points."
4. Closing costs.
5. General availability of such loans to the public.

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such financial institutions. Broker-dealers, for example, are subject to regulation by the Securities and Exchange Commission.

[Revised, November 30, 1987, by the Professional Ethics Executive Committee. Formerly paragraph .06, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. References revised to reflect issuance of AICPA Code of Professional Conduct on January 12, 1988. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, November 1991, effective January 1, 1992 February 28, 1998 by the Professional Ethics Executive Committee. Revised, effective

.08 101-6—The effect of actual or threatened litigation on independence. Rule 101 [ET section 101.01] provides that a member shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council. In some circumstances, independence may be considered to be impaired as a result of litigation or the expressed intention to commence litigation.

Litigation between client and member

In order for the member to fulfill his obligation to render an informed, objective opinion on the client company's financial statements, the relationship between the management of the client and the member must be characterized by complete candor and full disclosure regarding all aspects of the client's business operations. In addition, there must be an absence of bias on the part of the member so that he or she can

ReferenSearch-Excerpts from infobase:

independence if no such claims are asserted by the company or the present management

3. If any of the persons who file cross-claims against the member are also officers or directors of other clients of the member, the member's independence with respect to such other clients would not usually be impaired.

Other third-party litigation

Another type of third-party litigation against the member may be commenced by a lending institution, other creditor, security holder, or insurance company who alleges reliance on financial statements of the client with which the member is associated as a basis for extending credit or insurance coverage to the client. In some instances, an insurance company may commence litigation (under subrogation rights) against the member in the name of the client to recover losses reimbursed to the client. These types of litigation would not normally affect the member's independence with respect to a client who is either not the plaintiff or is only the nominal plaintiff, since the relationship between the member and client management would not be affected. They should be examined carefully, however, since the potential for adverse interests may exist if the member alleges, in his defense, fraud, or deceit by the present management.

If the real party in interest in the litigation (e.g., the insurance company) is also a client of the member ("the plaintiff client"), the member's independence with respect to the plaintiff client may be impaired if the litigation involves a significant risk of a settlement or judgment in an amount which would be material to the member's firm² or to the plaintiff client.

Effects of impairment of independence

If the member believes that the circumstances would lead a reasonable person having knowledge of the facts to conclude that the actual or intended litigation poses an unacceptable threat to the member's independence, the member should either (a) *disengage himself or herself*, or (b) *disclaim an opinion because of lack of independence. Such disengagement may take the form of resignation or cessation of any audit work then in progress pending resolution of the issue between the parties.*

Termination of impairment

The conditions giving rise to a lack of independence are usually eliminated when a final resolution is reached and the matters at issue no longer affect the relationship between the member and client. The member should carefully review the conditions of such resolution to determine that all impairments to the member's objectivity have been removed.

[Formerly paragraph .07, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Revised, effective June 30, 1990, by the Professional Ethics Executive Committee. Revised, effective September 30, 1995, by the Professional Ethics Executive Committee, by deletion of subhead and paragraph and reissuance as ethics ruling No. 100, *Actions Permitted When Independence is Impaired* [ET section 191.200-201], under Rule 101 [ET section 101.01.]

[.09] [101-7]—[Deleted] [Formerly paragraph .08, renumbered by adoption of the Code of Professional Conduct on January 12, 1988.]

.10 101-8—Effect on Independence of financial interests in nonclients having investor or investee relationships with a member's client.

2 See footnote 1.

ReferenSearch-Excerpts from infobase:

Introduction

Financial interests in nonclients that are related in various ways to a client may impair independence. Situations in which the nonclient investor is a partnership are covered in other rulings [ET section 191.138-.139, .158-.159, and .162-.163].

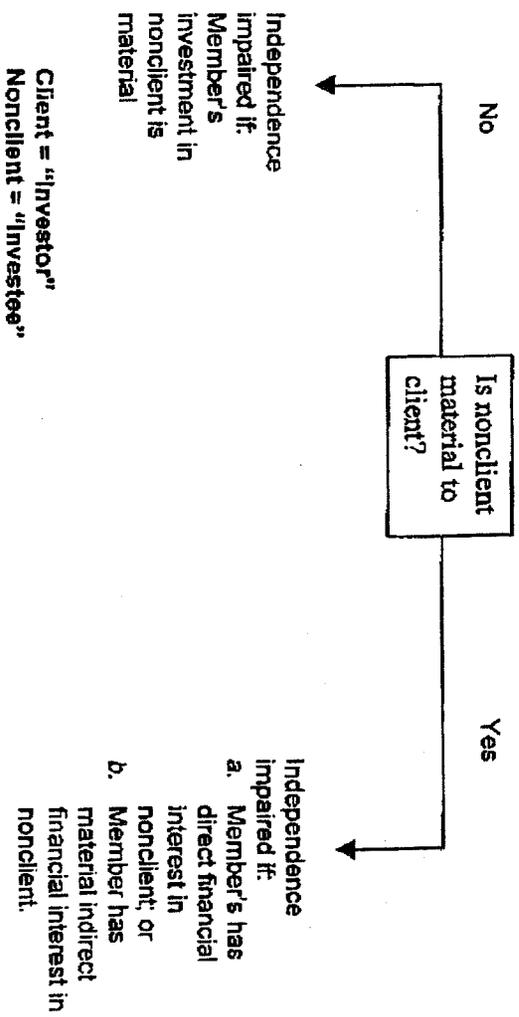
Terminology

The following specifically identified terms are used in this interpretation as indicated:

1. **Client.** The term client means the person or entity with whose financial statements the member or the member's firm is associated.
2. **Significant Influence.** The term significant influence is as defined in Accounting Principles Board (APB) Opinion 18 [AC 182].
3. **Investor.** The term investor means (a) a parent, (b) a general partner, or (c) a natural person or corporation that has the ability to exercise significant influence.
4. **Investee.** The term investee means (a) a subsidiary or (b) an entity over which an investor has the ability to exercise significant influence.

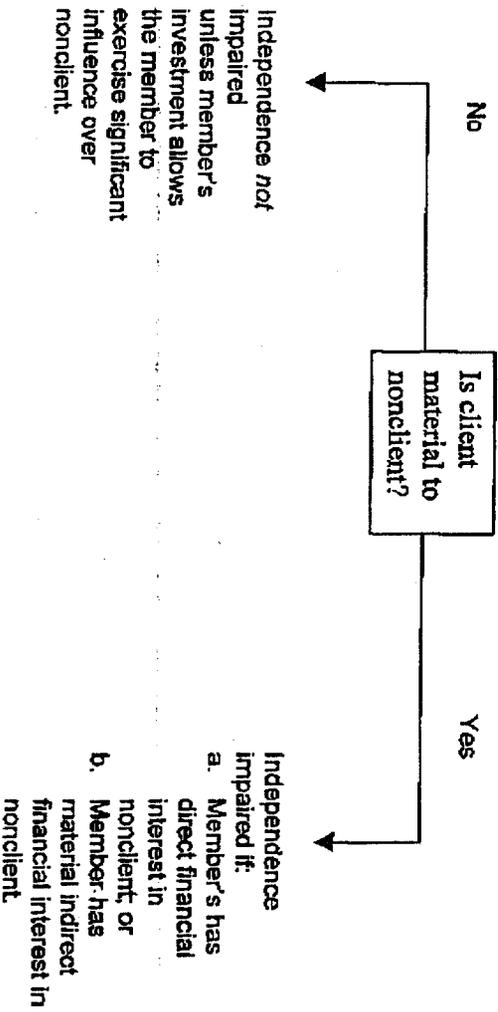
Interpretation

Where a nonclient investee is material to a client investor, any direct or material indirect financial interest of a member in the nonclient investee would be considered to impair the member's independence with respect to the client investor. If the nonclient investee is immaterial to the client investor, a member's material investment in the nonclient investee would cause an impairment of independence.



ReferenSearch-Excerpts from infobase:

Where a client investee is material to nonclient investor, any direct or material indirect financial interest of a member in the nonclient investor would be considered to impair the member's independence with respect to the client investee. If the client investee is immaterial to the nonclient investor, and if a member's financial interest in the nonclient investor allows the member to exercise significant influence over the actions of the nonclient investor, the member's independence would be considered impaired.



Nonclient = "Investor"
Client = "Investee"

Other relationships, such as those involving brother-sister common control or client-nonclient joint ventures, may affect the appearance of independence. The member should make a reasonable inquiry to determine whether such relationships exist, and if they do, careful consideration should be given to whether the financial interests in question would lead a reasonable observer to conclude that the specified relationships pose an unacceptable threat to the member's independence.

In general, in brother-sister common control situations, an immaterial financial interest of a member in the nonclient investee would not impair the independence of a member with respect to the client investee, provided the member could not exercise significant influence over the nonclient investor.

However, if a member's financial interest in a nonclient investee is material, the member could be influenced by the nonclient investor, thereby impairing the member's independence with respect to the client investee. In like manner, in a joint venture situation, an immaterial financial interest of a member in the nonclient investor would not impair the independence of the member with respect to the client investor, provided that the member could not exercise significant influence over the nonclient investor.

If a member does not and could not reasonably be expected to have knowledge of the financial interests or relationship described in this interpretation, the member's independence would not be considered to be impaired under this interpretation.

[Revised, December 31, 1983, by the Professional Ethics Executive Committee, Formerly paragraph .09 renumbered by adoption of the Code of Professional Conduct on January 12, 1988. References changed to reflect the issuance of the AICPA Code of Professional Conduct on January 12, 1988. Replaces previous

ReferenSearch-Excerpts from infobase:

interpretation 101-9, *Effect on Independence of Financial Interests in Nonclients Having Investor or Investee Relationships With a Member's Client*, April 1991, effective April 30, 1991. Revised, December 31, 1991, by the Professional Ethics Executive Committee.]

.11 101-9—The meaning of certain independence terminology and the effect of family relationships on independence.

This interpretation defines certain terms used in interpretation 101-1 [ET section 101.02] and, in doing so, also explains how independence may be impaired through certain family relationships.

Member or Member's Firm

A member (as used in Rule 101 [ET section 101.01]) and a member or a member's firm (as used in interpretation 101-1 [ET section 101.02]) include—

1. The member's firm and its proprietors, partners, or shareholders. A member's firm is defined as a form of organization permitted by state law or regulation whose characteristics conform to resolutions of Council that is engaged in the practice of public accounting, including the individual owners thereof.
2. All individuals³ participating in the engagement, except those who perform only routine clerical functions, such as typing and photocopying.
3. All individuals³ with a managerial position located in an office participating in a significant portion of the engagement.
4. Any entity (for example, a partnership, corporation, trust, joint venture, or pool) whose operating, financial, or accounting policies can be controlled (see definition of control for consolidation purposes in Financial Accounting Standards Board [FASB] Statement No. 94 [AC section C5.1]) by one or more of the persons described in (1) through (3) or by two or more such persons if they choose to act together.

A member or a member's firm does not include an individual³ solely because he or she was formerly associated with the client in any capacity described in interpretation 101-1-B [ET section 101.02], if such an individual³ has disassociated himself or herself from the client and does not participate in the engagement for the client covering any period of his or her association with the client.

A member or a member's firm includes individuals³ who provide services to clients and are associated with the client in any capacity described in interpretation 101-1-B [ET section 101.02], if the individuals³ are located in an office participating in a significant portion of the engagement.

Managerial Position

The organization of firms varies; therefore, whether an individual has a managerial position depends on his or her responsibilities and how he or she or the position itself is held out to clients and third parties. The following are some, but not necessarily all, of the responsibilities that suggest that an individual has a managerial position:

1. Continuing responsibility for the overall planning and supervision of engagements for

³ Refers to all employees of the member and all contractors retained by the member, except specialists as discussed in SAS No. 73 [AU section 336], irrespective of their functional classification (for example, audit, tax, or management consulting services).

ReferenSearch-Excerpts from infobase:

specified clients

2. Authority to determine that an engagement is complete subject to final partner approval if required
3. Responsibility for client relationships (for example, negotiating and collecting fees for engagements and marketing the firm's services)
4. Existence of profit sharing as a significant feature of total compensation
5. Responsibility for overall management of the firm, development, or establishment of firm policies on technical matters, and implementation of or compliance with the following five elements of quality control:
 - a. Independence, integrity and objectivity
 - b. Personnel management
 - c. Acceptance and continuation of clients and engagements
 - d. Engagement performance
 - e. Monitoring

Significant Influence

A person or entity can exercise significant influence over the operating, financial, or accounting policies of another entity if for example, the person or entity—

1. Is connected with the entity as a promoter, underwriter, voting trustee, general partner or director (other than an honorary director as defined in the AICPA Code of Professional Conduct).
2. Is connected with the entity in a policy-making position related to the entity's primary operating, financial, or accounting policies, such as chief executive officer, chief operating officer, chief financial officer, or chief accounting officer.
3. Meets the criteria established in Accounting Principles Board Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, [AC section 182], and its interpretations to determine the ability of an investor to exercise such influence with respect to an entity.

The foregoing examples are not necessarily all-inclusive.

Office Participating In a Significant Portion of the Engagement

An office would be considered to be participating in a significant portion of an engagement if the office had primary client responsibility for a multioffice engagement. In addition, professional judgment must be exercised in deciding whether any other office participates in a significant portion of a multioffice engagement. For example, an office would be considered to be participating in a significant portion of the engagement if the office's engagement hours or fees are material to total engagement hours or fees or if the office's responsibility for reporting, whether internally or externally, on a portion of the engagement relates to a material amount of assets or income (loss) before income taxes of the client.

ReferenSearch-Excerpts from infobase:

The foregoing examples are not necessarily inclusive of all the situations in which an office may be considered to be participating in a significant portion of the engagement.

Spouses and Dependent Persons

Except as stated in the following paragraph, the term *member* includes spouses (whether or not dependent) and dependent persons (whether or not related) for all purposes of complying with Rule 101 [ET section 101.01].

The exception is that the independence of the member and the member's firm will not normally be impaired solely as a result of the employment of a spouse or dependent person by a client subject to the following conditions:

1. Independence would be considered to be impaired if a spouse or dependent person of one of the following has a position with the client that allows significant influence over the client's operating, financial, or accounting policies:
 - a. An individual participating in the engagement
 - b. A proprietor, partner, or shareholder who—
 - i. is located in an office participating in a significant portion of the engagement
 - or
 - ii. has the ability to exercise influence over the engagement
 - iii. has any involvement with the engagement (for example, consultation on accounting or auditing issues)
2. Independence will be considered to be impaired if a spouse or dependent person of an individual participating in the engagement has a position with the client involving activities that are *audit-sensitive* (even though the position is not one that allows *significant influence*).

In general, a person's activities would be considered audit-sensitive if such activities are normally an element of or subject to significant internal accounting controls. For example, the following positions, which are not intended to be all-inclusive, would normally be considered audit-sensitive: cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.

Nondependent Close Relative

The term *member* or *members firm* excludes nondependent close relatives of the persons described in (1) through (3) of that definition. Nevertheless, in the circumstances discussed below the independence of a member or a firm can be impaired because of a nondependent close relative.

Close relatives are nondependent children, grandchildren stepchildren, brothers, sisters, grandparents, parents, parents-in-law and their respective spouses. Close relatives do not include the brothers and sisters of the member's spouse.

The independence of a member's firm would be considered to be impaired with respect to an enterprise if—

1. During the period of the professional engagement or at the time of expressing an opinion, an individual participating in the engagement has a close relative with a financial interest in the enterprise that was material to the close relative and of which the individual participating in the engagement has knowledge.

ReferensSearch-Excerpts from infobase:

2. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion—
 - a. An individual participating in the engagement has a close relative who could exercise significant influence over the operating, financial, or accounting policies of the enterprise or who is otherwise employed in a position in which the person's activities are audit-sensitive, or
 - b. A proprietor, partner, or shareholder any one of whom is located in an office participating in a significant portion of the engagement, has a close relative who could exercise significant influence over the operating, financial, or accounting policies of the enterprise.

Other Considerations

Members must be aware that it is impossible to enumerate all circumstances wherein the appearance of a member's independence might be questioned by third parties. For example, a member's relationship with a cohabitant may be equivalent to that of a spouse. In addition, in situations involving assessment of the association of any relative or dependent person with a client, members must consider whether the strength of personal and business relationships between the member and the relative or dependent person, in conjunction with the specified association with the client, would lead a reasonable person aware of all the facts, who took into consideration normal strength of character and normal behavior under such circumstances, to conclude that the situation poses an unacceptable threat to the member's objectivity and appearance of independence.

[Replaces previous interpretation 101-9, *The Meaning of Certain Independence Terminology and the Effect of Family Relationships on Independence*, November 1993, effective November 30, 1993.]

.12 101-10—The effect on independence of relationships with entities included in the governmental financial statements.⁴ For purposes of this interpretation, a financial reporting entity's general purpose financial statements issued in conformity with generally accepted accounting principles include the primary government, its fund types, funds, account groups, and blended component units, financial statements or disclosures of discretely presented component units that should be included in the general purpose financial statements, and notes to the general purpose financial statements. Entities that should be disclosed in the notes to the general purpose financial statements include, but are not limited to, related organizations, joint ventures, jointly governed organizations, and component units of another government with characteristics of a joint venture or jointly governed organization.

Auditor of Financial Reporting Entity

A member issuing a report on the general purpose financial statements of the financial reporting entity must be independent of the financial reporting entity, as defined in paragraph 1 of this interpretation. However, independence is not required with respect to a related organization if the financial reporting entity is not financially accountable for the organization and the required disclosure does not include financial information (for example, the ability to appoint or the appointment of governing board members).

Auditor of a Material Fund Type, Fund, Account Group, or Component Unit of the Financial Reporting Entity or Entity that Should Be Disclosed in the Notes to the General Purpose Financial Statements of the Financial Reporting Entity

⁴ Except for a financial reporting entity's general purpose financial statements, which is defined within the text of this interpretation, certain terminology used throughout the Interpretation is specifically defined by the Governmental Accounting Standards Board.

ReferenSearch-Excerpts from infobase:

A member who is auditing the financial statements of a material fund type, fund, account group, or component unit of the financial reporting entity or entity that should be disclosed in the notes to the general purpose financial statements of the financial reporting entity but is not auditing the primary government, should be independent with respect to those financial statements and those of the primary government. The member is not required to be independent of other fund types, funds, account groups, or component units of the financial reporting entity or entities that should be disclosed in the notes to the general purpose financial statements of the financial reporting entity provided they are not financially accountable for or to the auditee organization⁵ or cannot significantly influence the auditee organization through financial transactions or through common policy-making individuals⁶ or governing board membership.

Auditor of Immaterial Fund Type, Fund, Account Group, or Component Unit of the Financial Reporting Entity or Entity that Should Be Disclosed in the Notes to the General Purpose Financial Statements of the Financial Reporting Entity

A member who is not auditing the primary government but is auditing the financial statements of one or more fund type(s), fund(s), account group(s), or component unit(s) of the financial reporting entity or entity(ies) that should be disclosed in the notes to the general purpose financial statements of the financial reporting entity that alone or in the aggregate are immaterial to the general purpose financial statements, should be independent with respect to those financial statements and should not be associated with the primary government in any capacity described in Interpretation 101-1-B [ET section 101.02]. If the member is auditing immaterial fund types, funds, account groups or component units of the financial reporting entity or entities that should be disclosed in the notes to the general purpose financial statements of the financial reporting entity that, when aggregated, are material to the financial reporting entity, the member should be independent of those financial statements and the primary government.

[Formerly paragraph .11, renumbered by adoption of the Code of Professional Conduct on January 12, 1988. Reference changed to reflect the issuance of the AICPA Code of Professional Conduct on January 12, 1988. Replaces previous interpretation 101-10, *The Effect on Independence of Relationships Prescribed by Rule 101 and its Interpretations With Nonclient Entities Included With a Member's Client in the Financial Statements of a Governmental Reporting Entity, April 1991, effective April 30, 1991. Replaces previous interpretation 101-10, *The Effect on Independence of Relationships With Entities Included in the Governmental Financial Statements, January 1996, effective January 31, 1996.*]*

.13 101-11—Independence and the Performance of Professional Services under the Statements on Standards for Attestation Engagements and Statement on Auditing Standards No. 75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement

Introduction

Rule 101, *Independence* [ET section 101.01], provides that "a member in public practice shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council." The Statement on Standards for Attestation Engagements, *Attestation Standards* [AT section 100], and Statement on Auditing Standards No. 1, section 220, *Independence* [AU section 220], require independence in the performance of engagements covered by those standards. Rule 101 [ET section 101.01] and its interpretations and rulings provide guidance in determining whether or not a member is independent.

⁵ *Auditee organization refers to the entity with respect to which professional services are performed.*
⁶ *Policy-making individuals are individuals who occupy positions with the entity relating to its primary operating, financial, or accounting policies.*

ReferenSearch-Excerpts from infobase:

[Definitions]

Assertion. Any declaration, or a set of related declarations taken as a whole, by a party responsible for it.

Subject Matter of an Engagement. Any attribute or subset of attributes referred to or contained in an assertion that may in and of itself constitute an assertion.

Responsible Party. The person(s) or entity responsible for an assertion or the subject matter of an assertion; or a specified element, account, or item of a financial statement that is the specific subject matter of the engagement.

Engagement. An engagement in which a member or member's firm is engaged to or does issue a written communication that expresses a conclusion about the reliability of a written assertion; or an engagement in which a member is engaged to or does issue a report of findings based on specific procedures performed on the specific subject matter of specified elements, accounts, or items of a financial statement.

Engagement Team. Includes owners, partners, and shareholders of a firm who participate in the acceptance or performance of the engagement and full- or part-time professional employees who participate in the acceptance or the performance of the engagement, including individuals who provide consultation or supervisory services for the engagement.

Firm. Any organization permitted by state law or regulation to engage in the practice of public accounting whose characteristics conform to resolutions of [the AICPA] Council [ET appendix B] of which an individual on the engagement team is an owner, partner, shareholder, or employee; but does not include owners, partners, shareholders, or employees as individuals.

[Applicability]

This interpretation applies only to engagements performed under the Statements on Standards for Attestation Engagements and Statement on Auditing Standards No. 75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement [AU section 622], when the report issued states that its use is to be restricted to identified parties and the member reasonably expects that the report will be restricted to those parties.⁷

This interpretation does not apply to engagements covered by the Statements on Standards for Attestation Engagements or Statement on Auditing Standards No. 75, Engagements to Apply Agreed-Upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement [AU section 622], when the report issued does not state that its use is to be restricted to identified parties, nor does it apply to engagements requiring independence under other standards promulgated by bodies designated by Council. In all other circumstances, independence in accordance with Rule 101 [ET section 101.01] and its interpretations and rulings would apply.

Interpretation

Independence will be considered to be impaired if, during the period of the engagement or at the time the written communication is issued—

1. An individual on the engagement team or his or her spouse, dependent, or firm has a relationship with the responsible party that is proscribed by Interpretation 101-1 [ET section

⁷ Reports restricted in use in compliance with the applicability section of this interpretation continue to be restricted even when made a matter of public record.

ReferenSearch-Excerpts from infobase:

101.02] of Rule 101 [ET section 101.01].

2. An individual on the engagement team has a nondependent close relative⁸ who has either a position of significant influence with, or a financial interest material to the close relative in the responsible party.
3. An owner, partner, or shareholder of the firm who is located in an office participating in a significant portion of the engagement, or the spouse or dependent of such an owner, partner, or shareholder, has either a position of significant influence⁸ with, or a financial interest material to such person in the responsible party.
4. The firm, an individual on the engagement team (or his or her spouse or dependent), or an owner, partner, or shareholder in an office performing a significant portion of the engagement, contributed to the development of the subject matter of the engagement or stands to gain financially directly from the outcome of the engagement.
5. An individual on the engagement team knows or could reasonably be expected to know that any owner, partner, or shareholder located in other offices of the firm (a) *contributed to the development of the subject matter of the engagement or stands to gain financially directly from the outcome of the engagement or (b) has a position of significant influence⁸ with the responsible party.*

In determining whether a relationship with a responsible party is one that is proscribed under interpretation 101-1 [ET section 101.02], the following guidance is provided:

- Interpretation 101-6, "The Effect of Actual or Threatened Litigation on Independence" [ET section 101.08], is not applicable unless the litigation relates to the engagement or is material to the firm or to the financial statements of the responsible party.
- Interpretation 101-9, "The Meaning of Certain Independence Terminology and the Effect of Family Relationships on Independence" [ET section 101.11], is not applicable because the applicability of this Interpretation is stated herein.

[Replaces previous interpretation 101-11, *Independence and Attest Engagements*, January 1996, effective January 31, 1996.]

14 101-12—Independence and cooperative arrangements with clients. Independence will be considered to be impaired if, during the period of a professional engagement or at the time of expressing an opinion, a member's firm had any cooperative arrangement with the client that was material to the member's firm or to the client.

Definition of Terms

Firm—For purposes of this Interpretation only, a firm is a form of organization permitted by state law or regulation whose characteristics conform to resolutions of Council that is engaged in the practice of public accounting.

Cooperative Arrangement—A cooperative arrangement exists when a member's firm and a client jointly participate in a business activity. The following are examples, which are not all inclusive, of cooperative arrangements:

⁸ For purposes of this Interpretation, this term shall mean the same as in Interpretation 101-9, "The Meaning of Certain Independence Terminology and the Effect of Family Relationships on Independence" [ET section 101.11].

ReferenSearch-Excerpts from infobase:

1. Prime/subcontractor arrangements to provide services or products to a third party
2. Joint ventures to develop or market products or services
3. Arrangements to combine one or more services or products of the firm with one or more services or products of the client and market the package with references to both parties
4. Distribution or marketing arrangements under which the firm acts as a distributor or marketer of the client's products or services, or the client acts as the distributor or marketer of the products or services of the firm

Nevertheless, joint participation with a client in a business activity does not ordinarily constitute a cooperative arrangement when all the following conditions are present:

- a. The participation of the firm and the participation of the client are governed by separate agreements, arrangements, or understandings.
- b. The firm assumes no responsibility for the activities or results of the client, and vice versa.
- c. Neither party has the authority to act as the representative or agent of the other party.

In addition, the member's firm should consider the requirements of Rule 302 [ET section 302.01] and Rule 503 [ET section 503.01].

[Effective November 30, 1993.]

.15 101-13—Extended audit services. A member or a member's firm (the member) may be asked by a client for which the member performs a professional service requiring independence, to perform extended audit services. These services may include assistance in the performance of the client's internal audit activities and/or an extension of the member's audit service beyond the requirements of generally accepted auditing standards (hereinafter referred to as "extended audit services").

A member's performance of extended audit services would not be considered to impair independence with respect to a client for which the member also performs a service requiring independence, provided that the member or his or her firm does not act or does not appear to act in a capacity equivalent to a member of client management or as an employee.

The responsibilities of the client, including its board of directors, audit committee, and management, and the responsibilities of the member, as described below, should be understood by both the member and the client. It is preferable that this understanding be documented in an engagement letter that indicates that the member may not perform management functions, make management decisions, or act or appear to act in a capacity equivalent to that of an employee.

A member should be satisfied that the client understands its responsibility for establishing and maintaining internal control and directing the internal audit function, if any. As part of its responsibility to establish and maintain internal control, management monitors internal control to assess the quality of its performance over time. Monitoring can be accomplished through ongoing activities, separate evaluations or a combination of both.

Ongoing monitoring activities are the procedures designed to assess the quality of internal control

ReferenSearch-Excerpts from infobase:

performance over time and that are built into the normal recurring activities of an entity and include regular management and supervisory activities, comparisons, reconciliations and other routine actions. Separate evaluations focus on the continued effectiveness of a client's internal control. A member's independence would not be impaired by the performance of separate evaluations of the effectiveness of a client's internal control, including separate evaluations of the client's ongoing monitoring activities.

The member should understand that, with respect to the internal audit function, the client is responsible for—

- Designating a competent individual or individuals, preferably within senior management, to be responsible for the internal audit function
- Determining the scope, risk and frequency of internal audit activities, including those to be performed by the member providing extended audit services
- Evaluating the findings and results arising from the internal audit activities, including those performed by the member providing extended audit services
- Evaluating the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining reports from the member

The member should be satisfied that the board of directors and/or audit committee is informed of roles and responsibilities of both client management and the member with respect to the engagement to provide extended audit services as a basis for the board of directors and/or audit committee to establish guidelines for both management and the member to follow in carrying out these responsibilities and monitoring how well the respective responsibilities have been met.

The member should be responsible for performing the audit procedures in accordance with the terms of the engagement and reporting thereon. The day-to-day performance of the audit procedures should be directed, reviewed, and supervised by the member. The report should include information that allows the individual responsible for the internal audit function to evaluate the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures. This report may include recommendations for improvements in systems, processes, and procedures. The member may assist the individual responsible for the internal audit function in performing preliminary audit risk assessments, preparing audit plans, and recommending audit priorities. However, the member should not undertake any responsibilities that are required, as described above, to be performed by the individual responsible for the internal audit function.

Performing procedures that are generally of the type considered to be extensions of the member's audit scope applied in the audit of the client's financial statements, such as confirming of accounts receivable and analyzing fluctuations in account balances, would not impair the independence of the member or the member's firm even if the extent of such testing exceeds that required by generally accepted auditing standards.

The following are examples of activities that, if performed as part of an extended audit service, would be considered to impair a member's independence:

- Performing ongoing monitoring activities or control activities (for example, reviewing loan originations as part of the client's approval process or reviewing customer credit information as part of the customer's sales authorization process) that affect the execution of transactions or

ReferenSearch-Excerpts from infobase:

ensure that transactions are properly executed, accounted for, or both, and performing routine activities in connection with the client's operating or production processes that are equivalent to those of an ongoing compliance or quality control function

- Determining which, if any, recommendations for improving the internal control system should be implemented
- Reporting to the board of directors or audit committee on behalf of management or the individual responsible for the internal audit function
- Authorizing, executing, or consummating transactions or otherwise exercising authority on behalf of the client
- Preparing source documents on transactions
- Having custody of assets
- Approving or being responsible for the overall internal audit work plan including the determination of the internal audit risk and scope, project priorities and frequency of performance of audit procedures
- Being connected with the client in any capacity equivalent to a member of client management or as an employee (for example, being listed as an employee in client directories or other client publications, permitting himself or herself to be referred to by title or description as supervising or being in charge of the client's internal audit function, or using the client's letterhead or internal correspondence forms in communications)

The foregoing list is not intended to be all inclusive.

[Effective August 31, 1996.]

ET Section 102**Integrity and Objectivity**

.01 Rule 102—Integrity and objectivity. In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

[As adopted January 12, 1988.]

Interpretations under Rule 102—Integrity and Objectivity

Interpretations and Ethics Rulings which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

.02 102-1—Knowing misrepresentations in the preparation of financial statements or records. A member who knowingly makes, or permits or directs another to make, false and misleading

ReferenSearch-Excerpts from infobase:

entries in an entity's financial statements or records shall be considered to have knowingly misrepresented facts in violation of Rule 102 [ET section 102.01].

.03 102-2—Conflicts of interest. A conflict of interest may occur if a member performs a professional service for a client or employer and the member or his or her firm has a relationship with another person, entity, product, or service that could, in the member's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, the Rule shall not operate to prohibit the performance of the professional service. When making the disclosure, the member should consider Rule 301, *Confidential Client Information* [ET section 301.01].

Certain professional engagements, such as audits, reviews, and other attest services, require independence. Independence impairments under Rule 101 [ET section 101.01], its interpretations, and rulings cannot be eliminated by such disclosure and consent.

The following are examples, not all-inclusive, of situations that should cause a member to consider whether or not the client, employer, or other appropriate parties could view the relationship as impairing the member's objectivity:

- A member has been asked to perform litigation services for the plaintiff in connection with a lawsuit filed against a client of the member's firm.
- A member has provided tax or personal financial planning (PFP) services for a married couple who are undergoing a divorce, and the member has been asked to provide the services for both parties during the divorce proceedings.
- In connection with a PFP engagement, a member plans to suggest that the client invest in a business in which he or she has a financial interest
- A member provides tax or PFP services for several members of a family who may have opposing interests.
- A member has a significant financial interest, is a member of management, or is in a position of influence in a company that is a major competitor of a client for which the member performs management consulting services.
- A member serves on a city's board of tax appeals, which considers matters involving several of the member's tax clients.
- A member has been approached to provide services in connection with the purchase of real estate from a client of the member's firm.
- A member refers a PFP or tax client to an insurance broker or other service provider, which refers clients to the member under an exclusive arrangement to do so.
- A member recommends or refers a client to a service bureau in which the member or partner(s) in the member's firm hold material financial interest(s).

The above examples are not intended to be all-inclusive.

ReferenSearch-Excerpts from infobase:

[Replaces previous interpretation 102-2, *Conflicts of Interest*, August 1995, effective August 31, 1995.]

.04 102-3—Obligations of a member to his or her employer's external accountant. Under Rule 102 [ET section 102.01], a member must maintain objectivity and integrity in the performance of a professional service. In dealing with his or her employer's external accountant, a member must be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts. This would include, for example, responding to specific inquiries for which his or her employer's external accountant requests written representation.

[Effective November 30, 1993.]

.05 102-4—Subordination of judgment by a member. Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts or subordinating his or her judgment when performing professional services. Under this Rule, if a member and his or her supervisor have a disagreement or dispute relating to the preparation of financial statements or the recording of transactions, the member should take the following steps to ensure that the situation does not constitute a subordination of judgment:¹

1. The member should consider whether (a) the entry or the failure to record a transaction in the records, or (b) the financial statement presentation or the nature or omission of disclosure in the financial statements, as proposed by the supervisor, represents the use of an acceptable alternative and does not materially misrepresent the facts. If, after appropriate research or consultation, the member concludes that the matter has authoritative support and/or does not result in a material misrepresentation, the member need do nothing further.
2. If the member concludes that the financial statements or records could be materially misstated, the member should make his or her concerns known to the appropriate higher level(s) of management within the organization (for example, the supervisor's immediate superior, senior management, the audit committee or equivalent, the board of directors, the company's owners). The member should consider documenting his or her understanding of the facts, the accounting principles involved, the application of those principles to the facts, and the parties with whom these matters were discussed.
3. If, after discussing his or her concerns with the appropriate person(s) in the organization, the member concludes that appropriate action was not taken, he or she should consider his or her continuing relationship with the employer. The member also should consider any responsibility that may exist to communicate to third parties, such as regulatory authorities or the employer's (former employer's) external accountant. In this connection, the member may wish to consult with his or her legal counsel.
4. The member should at all times be cognizant of his or her obligations under interpretation 102-3 [ET section 102.04].

[Effective November 30, 1993.]

.06 102-5—Applicability of Rule 102 to members performing educational services. Educational services (for example, teaching full- or part-time at a university, teaching a continuing professional education course, or engaging in research and scholarship) are professional services as defined in ET section 62.10, and are therefore subject to Rule 102 [ET section 102.01]. Rule 102 [ET section 102.01] provides that the member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.
[Effective March 31, 1995.]

ReferenSearch-Excerpts from infobase:

.07 102-6—Professional services Involving client advocacy. A member or a member's firm may be requested by a client—

1. To perform tax or consulting services engagements that involve acting as an advocate for the client.
2. To act as an advocate in support of the client's position on accounting or financial reporting issues, either within the firm or outside the firm with standard setters, regulators, or others.

Services provided or actions taken pursuant to such types of client requests are professional services [ET section 92.10] governed by the Code of Professional Conduct and shall be performed in compliance with Rule 201, *General Standards* [ET section 201.01], Rule 202, *Compliance With Standards* [ET section 202.01], and Rule 203, *Accounting Principles* [ET section 203.01], and interpretations thereof, as applicable. Furthermore, in the performance of any professional service, a member shall comply with Rule 102 [ET section 102.01], which requires maintaining objectivity and integrity and prohibits subordination of judgment to others. When performing professional services requiring independence, a member shall also comply with Rule 101 [ET section 101.01] of the Code of Professional Conduct.

Moreover, there is a possibility that some requested professional services involving client advocacy may appear to stretch the bounds of performance standards, may go beyond sound and reasonable professional practice, or may compromise credibility, and thereby pose an unacceptable risk of impairing the reputation of the member and his or her firm with respect to independence, integrity, and objectivity. In such circumstances, the member and the member's firm should consider whether it is appropriate to perform the service.

[Effective August 31, 1995.]

ET Section 191

Ethics Rulings on Independence, Integrity, and Objectivity

Ethics Rulings and Interpretations which existed before the adoption of the Code of Professional Conduct on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior technical committee.

1. **Acceptance of a Gift**
 - .001 *Question*—Would the independence of a member's firm be considered to be impaired if an employee or partner accepts a gift or other unusual consideration from a client?

- .002 *Answer*—If an employee or partner accepts more than a token gift from a client, even with the knowledge of the member's firm, the appearance of independence may be lacking.

2. **Association Membership**
 - .003 *Question*—If a member joined a trade association which is a client, would the independence of the member be considered to be impaired with respect to the association?

- .004 *Answer*—Independence of the member would not be considered to be impaired provided the member did not serve as an officer, director, or in any capacity equivalent to that of a member of management.

ReferensSearch-Excerpts from infobase:

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

3. **Member as Signer or Cosigner of Checks**

.005 *Question*—A member has been requested to accept the responsibility in emergency situations of signing or co-signing checks with a designated employee of a client. Would the independence of the member be considered to be impaired under these circumstances?

.006 *Answer*—Independence of the member would be considered to be impaired since such activities are management functions.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

4. **Payroll Preparation Services**

.007 *Question*—A member performs payroll preparation services for clients. A single bank account in the member's name is used to clear all checks. Individual employee checks are co-signed by the member as well as by an officer of each of the respective clients. The clients reimburse the member for the net amount of the payrolls. Would the independence of the member be considered to be impaired with respect to clients who avail themselves of this service?

.008 *Answer*—Independence of the member would be considered to be impaired.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

[5.] **Member as Bookkeeper**

[.009-.010] [Deleted June 1991]

6. **Member's Spouse as Accountant of Client**

.011 *Question*—The spouse of a member is employed as an accountant by a client. Would the independence of the member or member's firm be considered to be impaired under these circumstances?

.012 *Answer*—Independence of the member or member's firm would not necessarily be considered to be impaired. The performance of accounting services by the member would not impair independence if performed in accordance with the requirements of interpretation 101-3 [ET section 101.05]. Therefore, the spouse of a member could perform the same functions as the member without impairing the independence of the member or member's firm. If, however, the spouse's functions were not in compliance with interpretation 101-3 [ET section 101.05], independence may be impaired and should be considered under interpretation 101-9, "Spouses and Dependent Persons" [ET section 101.11].

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

7. **Member Providing Contract Services**

.013 *Question*—A member proposes to enter into contract with a client to supervise office personnel or approve disbursements. Would the independence of the member be considered to be impaired with respect to the client?

.014 *Answer*—Independence of the member would be considered to be impaired since management functions are being performed.

ReferenSearch-Excerpts from Infobase:

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

8. Member Providing Advisory Services

.015 Question—A member has provided extensive advisory services for a client. In that connection, the member has attended board meetings, interpreted financial statements, forecasts and other analyses, counseled on potential expansion plans, and counseled on banking relationships. Would the independence of the member be considered to be impaired under these circumstances?

.016 Answer—Independence of the member would not be considered to be impaired because the member's role is advisory in nature.

9. Member as Representative of Creditor's Committee

.017 Question—A member performs the following functions for a creditors' committee in control of a debtor corporation which will continue to operate under its existing management subject to extension agreements:

- a. Sign or co-sign checks issued by the debtor corporation.
- b. Sign or co-sign purchase orders in excess of established minimum amounts.
- c. Exercise general supervision to insure compliance with budgetary controls and pricing formulas established by management, with the consent of the creditors, as part of an overall program aimed at the liquidation of deferred indebtedness.

Would the independence of the member be considered to be impaired with respect to the debtor corporation?

.018 Answer—Independence of the member would be considered to be impaired under each situation described since these are management functions.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

10. Member as Legislator

.019 Question—A member is an elected legislator in a local government. The city manager, who is responsible for all administrative functions, is also an elected official. Would the independence of the member be considered to be impaired with respect to the governmental entity?

.020 Answer—Independence of the member would be considered to be impaired if the member served as an elected legislator in a municipal body at the same time the member is engaged to perform a service requiring independence for the body even though the city manager is an elected official rather than an appointee of the legislature.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

11. Member as Executor or Trustee

.021 Question—A member has been designated to serve as an executor or trustee of the estate of an individual who owns the majority of the stock of a corporation. Would the independence of the member be considered to be impaired with respect to the corporation?

.022 Answer—The mere designation of a member to become executor or trustee would not be

ReferenSearch-Excerpts from infobase:

considered to impair the independence of the member. Actual service would be considered to impair the member's independence.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

12. Member as Trustee

.023 *Question*—A charitable foundation is the sole beneficiary of the estate of the foundation's deceased organizer. If a member becomes a trustee of the foundation, would the independence of the member be considered to be impaired with respect to (1) the foundation or (2) the estate?

.024 *Answer*—If a member served as trustee of the foundation, independence of the member would be considered to be impaired with respect to both the foundation and the estate.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

[13.] Member as Bank Stockholder

[.025-.026] [Deleted November 1993]

14. Member on Board of Federated Fund-Raising Organization

.027 *Question*—A member serves as a director or officer of a local United Way or similar organization that operates as a federated fund-raising organization from which certain local charities receive funds. Would the independence of the member be considered to be impaired with respect to such charities?

.028 *Answer*—Independence of the member's firm would not normally be considered to be impaired unless the United Way or similar organization that operates as a federated fund-raising organization exercises managerial control over the local charities participating in the fund-raising organization. (See ethics ruling No. 93 [ET section 191.186-.187] under Rule 101 [ET section 101.01] for additional guidance.)

[Replaces previous ruling No. 14, *Member on Board of Directors of United Fund*, April 1991.]

[15.] Retired Partner as Director

[.029-.030] [Deleted June 1991]

16. Member on Board of Directors of Nonprofit Social Club

.031 *Question*—A member serves on the board of directors of a nonprofit social club. Would the independence of the member be considered to be impaired with respect to the club?

.032 *Answer*—Independence of the member would be considered to be impaired since the board of directors has the ultimate responsibility for the affairs of the club.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

ReferenSearch-Excerpts from infobase:

17. Member of Social Club

.033 Question—A member belongs to a social club (for example, country club, tennis club) in which membership requirements involve the acquisition of a pro rata share of equity or debt securities. Would the independence of the member's firm be considered to be impaired with respect to the social club?

.034 Answer—As long as membership in a club is essentially a social matter, independence of the member's firm would not be considered to be impaired because such equity or debt ownership is not considered to be a direct financial interest within the meaning of Rule 101 [ET section 101.01]. However, the member should not serve on the club's governing board or take part in its management.

[Replaces previous ruling No. 17, *Member as Stockholder in Country Club, February 1991.*]

[18.] Member as City Council Chairman

[.035-.036] [Deleted June 1991]

19. Member on Deferred Compensation Committee

.037 Question—A member serves on a committee which administers the client's deferred compensation program. Would the independence of the member be considered to be impaired under these circumstances?

.038 Answer—Independence of the member would be considered to be impaired since service on a committee of this type would be participation in management functions. The member could render consulting assistance without joining the committee.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

20. Member Serving on Governmental Advisory Unit

.039 Question—A member serves on a citizens' committee which is studying possible changes in the form of a county government, the member audits. The member also serves on a committee appointed to make a study of the financial status of a state. Would the independence of the member be considered to be impaired with respect to a county which is in that state?

.040 Answer—Independence of the member would not be considered to be impaired with respect to the county through the member's service on either committee.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

21. Member as Director and Auditor of the Entity's Profit Sharing Trust

.041 Question—A member serves in the dual capacity of director of an enterprise and auditor of the financial statements of that enterprise's profit sharing and retirement trust. Would the independence of the member be considered to be impaired with respect to the trust?

.042 Answer—Independence of the member would be considered to be impaired with respect to the enterprise's profit sharing and retirement trust since as director of the enterprise, the member would be involved in management functions that affect the plan.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

ReferenSearch-Excerpts from infobase:

- [22.] Family Relationship, Brother
[.043-.044] [Deleted June 1991]
- [23.] Family Relationship, Uncle by Marriage
[.045-.046] [Deleted June 1991]
- [24.] Family Relationship, Father
[.047-.048] [Deleted June 1991]
- [25.] Family Relationship, Son
[.049-.050] [Deleted June 1991]
- [26.] Family Relationship, Son
[.051-.052] [Deleted June 1991]
- [27.] Family Relationship, Spouse as Trustee
[.053-.054] [Deleted June 1991]
- [28.] Cash Account With Brokerage Client
[.055-.056] [Superseded by ethics ruling No. 59.]
- 29. Member as Bondholder

.057 *Question*—A member has been asked to perform a service requiring independence for a municipal authority that has outstanding bonds of which the member owns an immaterial amount. Would the independence of the member be considered to be impaired with respect to the authority?

.058 *Answer*—Independence of the member would be considered to be impaired since the member has a loan to a client.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

- [30.] Financial Interest by Employee
[.059-.060] [Deleted July 1979]

31. Performance of Services for Common Interest Realty Associations (CIRAs), Including Cooperatives, Condominium Associations, Planned Unit Developments, Homeowners Associations, and Timeshare Developments

.061 *Question*—A member or member's firm is associated with, or is a member of, a common interest realty association (CIRA) as the result of the ownership or lease of real estate. Would the independence of the member or member's firm be considered to be impaired with respect to the CIRA?

.062 *Answer*—Yes, except independence would not be considered to be impaired with respect to the CIRA if all of the following conditions are met:

ReferensSearch-Excerpts from infobase:

- a. The CIRA performs functions similar to local governments, such as public safety, road maintenance, and utilities.
- b. The member or member's firm's annual assessment is not material to either the member or member's firm or the CIRA's operating budgeted assessments.
- c. The liquidation of the CIRA or the sale of common assets would not result in a distribution to the member or member's firm.
- d. Creditors of the CIRA would not have recourse to the member or member's firm if the CIRA became insolvent.
- e. The member or member's firm does not act or appear to act in any capacity equivalent to a member of management or employee for the CIRA, including membership on the board of directors or committees (excluding advisory committees as defined in ethics ruling No. 72 [ET section 191.144-.145]).

If the member or member's firm has a relationship with a real estate developer or management company that is associated with the CIRA, see interpretation 102-2 [ET section 102.03] for guidance.

[Revised, effective May 31, 1998, by the Professional Ethics Executive Committee.]

[32.] **Mortgage Loan to Member's Corporation**

[.063-.064] [Deleted December 1991]

[33.] **Member as Participant in Employee Benefit Plan**

[.065-.066] [Deleted May 1998]

[34.] **Member as Auditor of Common Trust Funds**

[.067-.068] [Deleted February 1991]

35. **Stockholder in Mutual Funds**

.069 *Question*—A member owns shares in a regulated mutual investment fund which holds shares of stock in the member's clients. Would the independence of the member be considered to be impaired with respect to the client enterprises whose stock is held by the fund?

.070 *Answer*—Securities of the member's clients held by the regulated mutual investment fund in question represent indirect financial interests of the member in securities of his or her clients. If the indirect financial interest becomes material to the member, the member's independence would be considered to be impaired. In addition, if the member has significant influence over the regulated mutual fund, the member's independence would be considered to be impaired.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

36. **Participant in Investment Club**

.071 *Question*—A member owns an investment club. Would the independence of the member be considered to be impaired with respect to a client in which the investment club holds shares?

ReferenSearch-Excerpts from infobase:

.072 Answer—Independence of the member would be considered to be impaired since the ownership of stock in a client through an investment club is considered a direct financial interest. Under these circumstances materiality is not an issue.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

[37.] **Retired Partners as Co-Trustee**

[.073-.074] [Deleted November 1980]

38. Member as Co-Fiduciary With Client Bank

.075 Question—A member serves with a client bank in a co-fiduciary capacity with respect to an estate or trust. Would the independence of the member be considered to be impaired with respect to the bank or its trust department?

.076 Answer—Independence of the member would not be considered to be impaired provided the assets in the estate or trust were not material in relation to the total assets of the bank and/or trust department.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

39. Member as Officially Appointed Stock Transfer Agent or Registrar

.077 Question—Would the independence of a member be considered to be impaired with respect to a client for whom the member serves as an officially appointed stock transfer agent or registrar?

.078 Answer—Independence of the member would be considered to be impaired since the functions performed by the member as an officially appointed transfer agent or registrar would be considered equivalent to that of a member of management or of an employee. Functions such as distribution of dividends and warrants and the legal transfer of the shares of outstanding capital stock would cause the independence of the member to be considered to be impaired. However, if the member is not officially appointed, this is not intended to preclude the member from assisting the client in performing functions in accordance with interpretation 101-3 [ET section 101.05].

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

[40.] **Controller Entering Public Practice**

[.079-.080] [Deleted June 1979]

41. Member as Auditor of Insurance Company

.081 Question—Contributions made by a member for a retirement plan for the member and the member's employees are invested and managed by an insurance company in a pooled separate account, not part of the general assets of the insurance company, for this and similar contracts. Would the independence of the member be considered to be impaired?

.082 Answer—Independence of the member would not be considered to be impaired as a result of the member's investment in the pooled separate account.

[Replaces previous ruling No. 41, *Member as Auditor of Mutual Insurance Company*, November, 1990.]

ReferenSearch-Excerpts from infobase:

- [42.] Member as Life Insurance Policy Holder
[.083-.084] [Deleted April 1991]
- [43.] Member's Employee as Treasurer of a Client
[.085-.086] [Deleted June 1991]
- [44.] Past Due Billings
[.087-.088] [Superseded by ethics ruling No. 52.]
- [45.] Past Due Fees: Client in Bankruptcy
[.089-.090] [Deleted November 1990]
- [46.] Member as General Counsel
[.091-.092] [Superseded by ethics ruling No. 51.]
- [47.] Member as Auditor of Mutual Fund and Shareholder of Investment Advisor/Manager
[.093-.094] [Deleted February 1991]
48. Faculty Member as Auditor of a Student Fund
.095 Question—A member employed full or part-time on the faculty of a university is asked to audit the financial statements of the Student Senate Fund. The university:
1. Acts as a collection agent for student fees and remits them to the Student Senate.
 2. Requires that a university administrator approve and sign Student Senate checks.
- Would the independence of the member be considered to be impaired under these circumstances?
.096 Answer—Independence of the member would be considered to be impaired with respect to the Student Senate Fund since the member would be auditing several of the management functions performed by the university, the member's employer.
- [Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]
- [49.] Investor and Investee Companies
[.097-.098] [Superseded by interpretation 101-8.]
- [50.] Family Relationship, Brother-in-Law
[.099-.100] [Deleted June 1983]
51. Member Providing Legal Services
- .101 Question—A member who is an attorney serves as general counsel or its equivalent for a client. Would the independence of the member be considered to be impaired with respect to the client?

ReferenSearch-Excerpts from infobase:

.102 Answer—The member would not be considered to be independent with respect to the client because serving as general counsel or its equivalent would be acting in a management capacity.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

52. Unpaid Fees

.103 Question—A member's client has not paid fees for previously rendered professional services. Would the independence of the member's firm be considered to be impaired with respect to the client for the current year?

.104 Answer—Independence of the member's firm is considered to be impaired if, when the report on the client's current year is issued, billed or unbilled fees, or a note receivable arising from such fees, remain unpaid for any professional services provided more than one year prior to the date of the report.

This ruling does not apply to fees outstanding from a client in bankruptcy.

[Replaces previous ruling No. 52, *Past Due Fees*, November 1990. Revised, effective November 30, 1997, by the Professional Ethics Executive Committee.]

[53.] Member as Auditor of Employee Benefit Plan and Sponsoring Company
[1.105-.106] [Deleted June 1991]

54. Member Providing Appraisal, Valuation, or Actuarial Services

.107 Question—Would the performance by a member of appraisal, valuation, or actuarial services for a client impair the independence of that member?

.108 Answer—Performance by a member of appraisal, valuation, or actuarial services, the results of which may be incorporated in the client's financial statements, would not impair a member's independence if all of the significant matters of judgment involved are determined or approved by the client and the client is in a position to have an informed judgment on the results of those services.

[Replaces previous ruling No. 54, *Member Providing Actuarial Services*, November 1990.]

55. Independence During Systems Implementation

.109 Question—A member has been requested by a client to perform an engagement involving the implementation of an information and control system. As part of this implementation, the member will arrange interviews for clients hiring of new personnel, and instruct and oversee the training of current client personnel. Would the independence of the member be considered to be impaired with respect to the client if the member performs this engagement?

.110 Answer—Independence of the member would not be considered impaired under these circumstances provided the client makes all significant management decisions related to the hiring of new personnel and the implementation of the system. The member also must limit his or her supervisory activities to initial instruction and training of personnel and should avoid direct supervision of the actual operation of the system or any related activities that would constitute undue involvement in or identification with management functions.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

ReferenSearch-Excerpts from infobase:

56. Executive Search

.111 Question—A member's client is establishing a new operation in another locality. The client has asked the member to recruit and hire for the company a controller and a cost accountant for its new operation. Would the independence of the member be considered to be impaired with respect to the client if the member performed this engagement?

.112 Answer—Independence of the member would be considered to be impaired since decisions as to employment of personnel are considered a management function. However, a member may perform services consisting of recommending a position description and candidate specifications, searching for and initially screening candidates, and recommending qualified candidates to the client. Such consulting assistance would not impair independence provided client management is responsible for any ultimate hiring decision.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

[57.] MAS Engagement to Evaluate Service Bureaus

[.113-.114] [Deleted August 1995]

[58.] Member as Lessor

[.115-.116] [Deleted May 1998]

[59.] Account With Brokerage Client

[.117-.118] [Deleted November 1987]

60. Employee Benefit Plans—Member's Relationships With Participating Employer(s)

.119 Question—A member has been asked to audit the financial statements of an employee benefit plan that may have one or more participating employer(s). Must the member maintain independence with respect to the participating employer(s) in order to be considered independent of the plan?

.120 Answer—Independence would not be considered to be impaired with respect to the plan unless the member has a financial interest in the participating employer(s) or other relationships with the participating employer(s) that would give the member significant influence over such employer(s). When auditing plans subject to the Employee Retirement Income Security Act (ERISA), Department of Labor (DOL) regulations must be followed.*

[Replaces previous ruling No. 60, *Employee Benefit Plans—Member's Relationships With Participating Employer(s)*, November 1993.]

[61.] Participation of Member's Spouse in Client's Stock Ownership Plans (Including an ESOP)

[.121-.122] [Deleted May 1998]

[62.] Member and Client Are Limited Partners In a Limited Partnership

[.123-.124] [Deleted April 1991]

Note: Currently, DOL regulations are more restrictive than the position stated in this ruling.

ReferenSearch-Excerpts from infobase:

[63.] Review of Prospective Financial Information—Member's Independence of Promotors

[.125-.127] [Deleted August 1992]

64. Member on Board of Organization for which Client Raises Funds

.128 Question—Is a member independent of an entity that functions solely to raise funds for an organization if the member serves on the board of directors of the organization?

.129 Answer—A member's independence would be considered to be impaired with respect to a fund-raising foundation if the member serves on the board of directors of the organization. However, if the directorship is clearly honorary, the member's independence would not be considered to be impaired.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

65. Use of the CPA Designation by Member Not in Public Practice

.130 Question—A member who is not in public practice wishes to use his or her CPA designation in connection with financial statements and correspondence of the member's employer. The member also wants to use the CPA designation along with employment title on business cards. Is it permissible for the member to use the CPA designation in these manners?

.131 Answer—Yes. However, if the member uses the CPA designation in a manner to imply that he or she is independent of the employer, the member would be knowingly misrepresenting facts in violation of Rule 102 [ET section 102.01]. Therefore, it is advisable that in any transmittal within which the member uses his or her CPA designation, he or she clearly indicate the employment title. In addition, if the member states affirmatively in any transmittal that a financial statement is presented in conformity with generally accepted accounting principles, the member is subject to Rule 203 [ET section 203.01].

[Replaces previous ruling No. 65, *Use of the CPA Designation by Member Not in Public Practice*, February 1996, effective February 29, 1996.]

66. Member's Retirement or Savings Plan Has Financial Interest in Client

.132 Question—A member has been engaged to perform a service requiring independence for a client company. The member has established a retirement or savings plan through which the member has a financial interest in the client company. Would the member's independence be considered impaired because of this financial interest?

.133 Answer—Any direct or material indirect financial interest owned by a member's retirement or savings plan in a client company would be considered to be a direct or material indirect financial interest of the member in that client and would, therefore, impair the member's independence with respect to that client

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

67. Servicing of Loan

.134 Question—Would the mere servicing of a member's loan by a client financial institution impair the member's independence with respect to the client?

.135 Answer—No.

ReferenSearch-Excerpts from infobase:

[Replaces previous ruling No. 67, *Servicing of Loan*, November 1993.]

68. Blind Trust

.136 Question—A member has a direct financial interest in an enterprise for which the member has been engaged to perform a service requiring independence. Would the independence of the member be considered to be impaired if the member transfers the direct financial interest into a blind trust?

.137 Answer—The independence of the member would be considered impaired whether or not the financial interest is placed in a blind trust. Further, a member should ensure that a blind trust does not hold a direct or material indirect financial interest in clients for which the member provides services requiring independence.

[Revised, effective June 30, 1990, by the Professional Ethics Executive Committee.]

69. Investment With a General Partner

.138 Question—A private, closely held entity is the general partner and controls limited partnership A as defined in FASB Statement No. 94. The member has a material (to his or her net worth) limited partnership interest in limited partnership A. The member has been asked to provide a service requiring independence for a new limited partnership B with the same general partner. Would the member be independent for purposes of providing services to limited partnership B?

.139 Answer—Because the general partner has control over limited partnership A, the member is considered to have a joint closely held business investment with the general partner, who has significant influence over limited partnership B, the proposed client. Since the member has a material investment in limited partnership A, independence would be considered to be impaired with respect to limited partnership B.

[Replaces previous ruling No. 69, *Joint Investment With a Promoter and/or General Partner*, April 1991, Effective April 30, 1991.]

70. Member's Depository Relationship With Client Financial Institution

.140 Question—A member maintains checking accounts or has savings accounts, certificates of deposit or money market accounts at a financial institution for which the member provides a service requiring independence. Would the member's checking accounts or savings accounts, certificates of deposit or money market accounts impair the member's and his firm's independence with respect to the financial institution under Rule 101 [ET section 101.01] and its interpretations?

.141 Answer—The member's and his firm's independence would not be considered to be impaired with respect to the financial institution provided that the checking accounts, savings accounts, certificates of deposit or money market accounts were fully insured by the appropriate state or federal government deposit insurance agencies. Checking accounts, savings accounts, certificates of deposit and money market accounts not fully insured by state or federal government deposit insurance agencies would not impair independence provided that the uninsured amounts are not material to the member or the member's firm.

71. Use of Nonindependent CPA Firm on an Engagement

.142 Question—Firm A is not independent with respect to an entity. Partners, shareholders, or professional employees of Firm A are participating on Firm B's engagement team for that entity. Would Firm B's independence be considered to be impaired?

ReferenSearch-Excerpts from infobase:

.143 Answer—Yes. The use by Firm B of partners, shareholders, or professional employees from Firm A as part of the engagement team will impair Firm B's independence with respect to that engagement.

However, use of the work of such individuals in a manner similar to internal auditors is permissible provided that there is compliance with the Statements on Auditing Standards. Applicable literature contained in the Statements on Auditing Standards should be consulted.

72. Member on Advisory Board of Client

.144 Question—A member has agreed to serve on the advisory board of a client. Would service on the advisory board impair the member's or the member's firm's independence with respect to the client?

.145 Answer—The member's services on the advisory board would impair the member's and the member's firm's independence unless all the following criteria are met: (1) the responsibilities of the advisory board are in fact advisory in nature; (2) the advisory board has no authority to make nor does it appear to make management decisions on behalf of the client; and (3) the advisory board and those having authority to make management decisions (including the board of directors or its equivalent) are distinct groups with minimal, if any, common membership.

[73.] Meaning of the Period of a Professional Engagement

[146-.147] [Deleted February 1998]

74. Audits, Reviews, or Compilations and a Lack of Independence

.148 Question—If a member in public practice is not independent with respect to a client, is it permissible under Rule 101 [ET section 101.01] for the member to issue an audit, review, or compilation report for the client?

.149 Answer—A member may not issue an audit opinion or review report if the member is not independent with respect to the client. A member may issue a compilation report for a client with respect to which the member is not independent. However, the member must specifically disclose his or her lack of independence without giving reasons for the impairment.

75. Member Joining Client Credit Union

.150 Question—A member's partners and employees are members of a credit union that requests the member's firm to provide professional services requiring independence. Does membership in the credit union impair the independence of the member and the member's firm with respect to the credit union?

.151 Answer—Membership in the credit union would not impair the member's independence with respect to the credit union as long as all of the following criteria are met:

1. A member and/or his or her partners or employees must individually qualify to join the credit union other than by virtue of the professional services provided to the credit union.
2. The exercise of the member's vote or other activities must not have significant influence over the operating, financial, or accounting policies of the credit union.
3. Any loans from the credit union must meet the conditions specified in Interpretation 101-1.A.4 [ET section 101.02] and be made under normal lending procedures, terms, and requirements (see interpretation 101-5 [ET section 101.07]).

ReferenSearch-Excerpts from infobase:

4. Any deposits with the credit union must meet the conditions specified in ruling No. 70 [ET section 191.140-.141] under Rule 101 [ET section 101.01].

[Effective February 28, 1992, earlier application is encouraged.]

[76.] Guarantee of Loan

[152-.153] [Deleted December 1991]

77. Individual Considering or Accepting Employment With the Client

.154 *Question*—During the performance of an engagement, an individual participating in the engagement may be offered employment by the client or may seek employment with the client. What are the implications of these actions with respect to the AICPA Code of Professional Conduct?

.155 *Answer*—An individual participating in an engagement who is offered employment by, or seeks employment with, that client during the conduct of the engagement must consider whether or not his or her ability to act with integrity and objectivity has been impaired. When the engagement is one requiring independence, the individual must remove himself or herself from the engagement until the employment offer is rejected or employment is no longer being sought, in order to prevent any appearance that integrity or objectivity has been impaired.

A member may become aware that an individual participated in the engagement while employment with the client was being considered or after it had been accepted. In these circumstances the member should consider what, if any, additional procedures may be necessary to ensure that all work had been performed with objectivity and integrity as required under Rule 102 [ET section 102.01]. Any additional procedures will depend on the nature of the engagement and may require reperformance of the work or other appropriate procedures.

[78.] Service on Governmental Board

[156-.157] [Deleted August 1995]

79. Member's Investment In a Partnership That Invests in Member's Client

.158 *Question*—A member has a direct financial interest in a partnership that invests in a client of the member's firm. Would the member's independence be considered to be impaired with respect to the client?

.159 *Answer*—If the member is a general partner, or functions in a capacity similar to that of a general partner, in a partnership that invests in a client of the member's firm, the member is deemed to have a direct financial interest in the client. Independence is considered to be impaired.

If the member is a limited partner in a partnership that invests in a client of the member's firm, the member is considered to have an indirect financial interest in the client. Independence would be considered to be impaired if the indirect financial interest is material to the member's net worth.

80. The Meaning of a Joint Closely Held Business Investment

.160 *Question*—Under Rule 101 [ET section 101.01] and interpretation 101-1 [ET section 101.02], a member's independence is considered to be impaired if, during the period of the professional engagement or at the time of expressing an opinion, the member or the member's firm had any joint closely held business

ReferenSearch-Excerpts from infobase:

investment with the client or any officer, director, or principal stockholder thereof that was material in relation to the member's net worth or to the net worth of the member's firm. What is a joint closely held business investment?

.161 Answer—For purposes of Rule 101 [ET section 101.01], its interpretations, and rulings, a joint closely held business investment is a business investment that is subject to control, as defined in FASB Statement No. 94 [AC section C51], by the member, the client, its officers, directors, or principal stockholders, individually or in any combination.

81. Member's Investment in a Limited Partnership

.162 Question—A member is a limited partner in a limited partnership (LP), including a master limited partnership. A client is a general partner in the same LP. Is the member's independence considered to be impaired with respect to (1) the LP, (2) the client, and (3) any subsidiaries of the LP?

.163 Answer— 1. The member's limited partnership interest in the LP is a direct financial interest in the LP that would impair independence under interpretation 101-1.A.1 [ET section 101.02].

2. The LP is an investee of the client because the client is a general partner in the LP. Therefore, under interpretation 101-8 [ET section 101.10], if the investment in the LP is material to the client, the member's financial interest in the LP would impair the member's independence with respect to the client. However, if the client's financial interest in the LP is not material to the client, an immaterial financial interest of the member in the LP would not impair independence with respect to the client.

3. Since the member is a limited partner in the LP, the member is considered to have an indirect financial interest in all subsidiaries of the LP. If the indirect financial interest in the subsidiaries is material to the member, the member's independence would be considered to be impaired with respect to the subsidiaries under interpretation 101-1.A.1 [ET section 101.02].

If the member or client general partner, individually or together can control the LP, the LP would be considered a joint closely held business investment under interpretation 101-1.A.3 [ET section 101.02] [see ruling No. 80 [ET section 191.160-.161]].

82. Campaign Treasurer

.164 Question—A member has been asked to serve as the campaign treasurer of the campaign organization of a candidate for the office of mayor. If the member serves in this capacity, would the member's independence be impaired with respect to (1) the political party with which the candidate is associated, (2) the municipality of which the candidate may become mayor, and (3) the campaign organization?

.165 Answer—Independence would not be considered to be impaired with respect to the political party or municipality. However, due to his or her role as treasurer, the member would not be considered to be independent with respect to the campaign organization itself.

[63.] Member on Board of Component Unit and Auditor of Oversight Entity

[.166-.167] [Deleted January 1996]

[94.] Member on Board of Material Component Unit and Auditor of Another Material Component Unit

[.168-.169] [Deleted January 1996]

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85. Bank Director

.170 Question—May a member in public practice serve as a director of a bank?

.171 Answer—Yes; however, before accepting a bank directorship, the member should carefully consider the implications of such service if the member has clients that are customers of the bank.

These implications fall into two categories:

- a. **Confidential Client Information**—Rule 301 [ET section 301.01] provides that a member in public practice shall not disclose any confidential client information without the specific consent of the client. This ethical requirement applies even though failure to disclose information may constitute a breach of the member's fiduciary responsibility as a director.
- b. **Conflicts of Interest**—Interpretation 102-2 [ET section 102.03] provides that a conflict of interest may occur if a member performs a professional service (including service as a director) and the member or his or her firm has a relationship with another entity that could, in the member's professional judgment, be viewed by appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity and the relationship is disclosed to and consent is obtained from all appropriate parties, performance of the service shall not be prohibited.

In view of the above factors, it is generally not desirable for a member in public practice to accept a position as bank director where the member's clients are likely to engage in significant transactions with the bank. If a member is engaged in public practice, the member should avoid the high probability of a conflict of interest and the appearance that the member's fiduciary obligations and responsibilities to the bank may conflict with or interfere with the member's ability to serve the client's interest objectively and in complete confidence.

The general knowledge and experience of CPAs in public practice may be very helpful to a bank in formulating policy matters and making business decision; however, in most instances, it would be more appropriate for the member as part of the member's public practice to serve as a consultant to the bank's board. Under such an arrangement, the member could limit activities to those which did not involve conflicts of interest or confidentiality problems.

[86.] Partially Secured Loans

[.172-.173] [Deleted February 1998]

[87.] Loan Commitment or Line of Credit

[.174-.175] [Deleted February 1998]

[88.] Loans to Partnership in Which Members are Limited Partners

[.176-.177] [Deleted February 1998]

[89.] Loan to Partnership in Which Members are General Partners

[.178-.179] [Deleted February 1998]

[90.] Credit Card Balances and Cash Advances

ReferenSearch-Excerpts from infobase:

[.180-.181] [Deleted February 1998]

91. Member Leasing Property to or From a Client

.182 Question—A member or member's firm (member) is leasing property to or from a client. Would the independence of the member be impaired with respect to the client?

.183 Answer—Independence would not be considered to be impaired if the lease meets the criteria of an operating lease (as defined in [FASB Statement] No. 13, paragraph 6.a.ii [AC section L10.102]), the terms and conditions set forth in the lease agreement are comparable with other leases of a similar nature, and all amounts are paid in accordance with the terms of the lease.

Independence would be considered to be impaired if the lease meets the criteria of a capital lease (as defined in FASB Statement No. 13, paragraph 6.a.i [AC section L10.102]) unless the lease is in compliance with interpretations 101-1.A.4 [ET section 101.02] and 101-5 [ET section 101.07], because the lease would be considered to be a loan to or from the client.

[Revised, effective May 31, 1998, by the Professional Ethics Executive Committee.]

92. Joint Interest in Vacation Home

.184 Question—A member holds a joint interest in a vacation home along with an officer, director, or principal stockholder of an entity for which the member performs services requiring independence. Would the vacation home constitute a "joint closely held business investment" for the purposes of interpretation 101-1.A.3 [ET section 101.02]?

.185 Answer—Yes. The vacation home, even if solely intended for the personal use of the owners, would be considered a joint closely held business investment as defined in ethics ruling No. 80 [ET section 191.160-.161]. Accordingly, the materiality provisions of interpretation 101-1.A.3 [ET section 101.02] must be considered in assessing independence.

93. Service on Board of Directors of Federated Fund-Raising Organization

.186 Question—A member serves as a director or officer of a local United Way or similar organization that operates as a federated fund-raising organization from which local charities that are clients of the member receive funds. Does the member have a conflict of interest under Rule 102 [ET section 102.01]?

.187 Answer—Interpretation 102-2 [ET section 102.03] provides that a conflict of interest may occur if a member performs a professional service for a client and the member or his or her firm has a relationship with another entity that could, in the member's professional judgment, be viewed by the client or other appropriate parties as impairing the member's objectivity. If the member believes that the professional service can be performed with objectivity and the relationship is disclosed to and consent is obtained from the appropriate parties, performance of the service shall not be prohibited. (If the service is one requiring independence, consult ethics ruling No. 14 [ET section 191.027-.028] under Rule 101 [ET section 101.01].)

94. Indemnification Clause in Engagement Letters

.188 Question—A member proposes to include in engagement letters a clause that provides that the client would release, indemnify, defend, and hold the member (and his or her partners, heirs, executors, personal representatives, successors, and assigns) harmless from any liability and costs resulting from knowing misrepresentations by management. Would the inclusion of such an indemnification clause in engagement letters impair the member's independence with respect to the client?

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.189 Answer—No.

95. Agreement With Attest Client to Use ADR Techniques

.190 *Question*—Alternative dispute resolution (ADR) techniques are used to resolve disputes (in lieu of litigation) relating to past services, but are not used as a substitute for the exercise of professional judgment for current services. Would a pradispute agreement to use ADR techniques between a member and a client cause the member's independence to be impaired?

.191 *Answer*—No. Such an agreement would not cause an impairment of independence since the member and the client are not in threatened or actual positions of material adverse interests by reason of threatened or actual litigation.

96. Commencement of ADR Proceeding

.192 *Question*—Would the commencement of an alternative dispute resolution (ADR) proceeding impair independence?

.193 *Answer*—Except as stated in the next sentence, independence would not be considered to be impaired because many of the ADR techniques designed to facilitate negotiation and the actual conduct of those negotiations do not place the member and the client in threatened or actual positions of material adverse interests. Nevertheless, if the member and client are in a position of material adverse interests because the ADR proceedings are sufficiently similar to litigation, ethics interpretation 101-8 [ET section 101.08] should be applied. Such a position would exist if binding arbitration were used.

[97.] Performance of Certain Extended Audit Services

[.194-.195] [Deleted August 1995]

98. Member's Loan From a Nonclient Subsidiary or Parent of an Attest Client

.196 *Question*—A member has obtained a loan from a nonclient. The parent or a subsidiary of the nonclient is a client of the member requiring independence. Does the member's loan from the nonclient subsidiary or parent impair the member's independence with respect to the client?

.197 *Answer*—A member's loan, that is not a "grandfathered" or "permitted" loan under interpretation 101-5 [ET section 101.07], from a nonclient subsidiary would impair the member's independence with respect to the client. However, a loan from a nonclient parent would not impair the member's independence with respect to the client subsidiary as long as the subsidiary is not material to its parent.

99. Member Providing Services for Company Executives

.198 *Question*—A member has been approached by a company, for which he or she may or may not perform other professional services, to provide personal financial planning or tax services for its executives. The executives are aware of the company's relationship with the member, if any, and have also consented to the arrangement. The performance of the services could result in the member recommending to the executives actions that may be adverse to the company. What rules of conduct should the member consider before accepting and during the performance of the engagement?

.199 *Answer*—Before accepting and during the performance of the engagement, the member should consider the applicability of Rule 102, Integrity and Objectivity [ET section 102.01]. If the member believes that he or she can perform the personal financial planning or tax services with objectivity, the member

ReferenSearch-Excerpts from infobase:

would not be prohibited from accepting the engagement. The member should also consider informing the company and the executives of possible results of the engagement. During the performance of the services, the member should consider his or her professional responsibility to the clients (that is, the company and the executives) under Rule 301, Confidential Client Information [ET section 301.01].

100. Actions Permitted When Independence Is Impaired

.200 *Question*—If a member was independent when his or her report was initially issued, may the member re-sign the report or consent to its use at a later date when his or her independence is impaired?

.201 *Answer*—Yes. A member may re-sign the report or consent to its use at a later date when his or her independence is impaired, provided that no "post-audit work" is performed by the member during the period of impairment. The term "post-audit work," in this context, does not include inquiries of successor auditors, reading of subsequent financial statements, or such procedures as may be necessary to assess the effect of subsequently discovered facts on the financial statements covered by the member's previously issued report.

101. Client Advocacy and Expert Witness Services

.202 *Question*—Would the performance of expert witness services be considered as acting as an advocate for a client as discussed in Interpretation 102-6 [ET section 102.07]?

.203 *Answer*—No. A member serving as an expert witness does not serve as an advocate but as someone with specialized knowledge, training, and experience in a particular area who should arrive at and present positions objectively.

102. Member's Indemnification of a Client

.204 *Question*—As a condition to retaining a member or member's firm for the performance of a professional service requiring independence, client or prospective client requests that the member or member's firm enter into an agreement providing, among other things, that the member or member's firm indemnify the client for damages, losses, or costs arising from lawsuits, claims, or settlements that relate, directly or indirectly, to client acts. Would the member or member's firm entering into such an agreement be independent of the client?

.205 *Answer*—No. Such an agreement would impair independence under interpretation 101-1.A [ET section 101.02] and interpretation 101-1.B [ET section 101.02].

103. Member Providing Attest Report on Internal Controls

.206 *Question*—If a member or a member's firm (member) provides extended audit services for a client in compliance with interpretation 101-13 [ET section 101.15], would the member be considered independent in the performance of an attestation engagement to report on the client's assertion regarding the effectiveness of its internal control over financial reporting?

.207 *Answer*—Independence would not be impaired with respect to the issuance of such a report if all of the following conditions are met:

1. The member's activities have been limited in a manner consistent with interpretation 101-13 [ET section 101.15].
2. Management has assumed responsibility to establish and maintain internal control.

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3. Management does not rely on the member's work as the primary basis for its assertion and accordingly has (a) evaluated the results of its ongoing monitoring procedures built into the normal recurring activities of the entity (including regular management and supervisory activities) and (b) evaluated the findings and results of the member's work and other separate evaluations of controls, if any.

104. Member Providing Operational Auditing Services

.208 *Question*—As part of an extended audit engagement, a member or member's firm (member) may be asked to review certain of the client's business processes, as selected by the client, for how well they function, their efficiency, or their effectiveness. For example, a member may be asked to assess whether performance is in compliance with management's policies and procedures, to identify opportunities for improvement, and to develop recommendations for improvement or further action for management consideration and decision making. Would the member's independence be considered to be impaired in performing such a service?

.209 *Answer*—The member's independence would not be considered to be impaired provided that during the course of the review the member does not act or appear to act in a capacity equivalent to that of a member of client management or of an employee. The decision as to whether any of the member's recommendations will be implemented must rest entirely with management.

105. Frequency of Performance of Extended Audit Procedures

.210 *Question*—In providing extended audit services, would the frequency with which a member performs an audit procedure impair the member's independence?

.211 *Answer*—The independence of the member or member's firm would not be considered to be impaired provided that the member's activities have been limited in a manner consistent with interpretation 101-13 [ET section 101.15] and the procedures performed constituted separate evaluations of the effectiveness of the ongoing control and monitoring activities/procedures that are built into the client's normal recurring activities.

106. Member Has Significant Influence Over an Entity That Has Significant Influence Over a Client

.212 *Question*—A member or member's firm (member) has significant influence, as defined in interpretation 101-9 [ET section 101.11], over an entity that has significant influence over a client. Would independence be considered to be impaired with respect to the client?

.213 *Answer*—Yes. Because the member has significant influence over an entity that has significant influence over a client, the member also is considered to have significant influence over the client.
See interpretation 101-8 [ET section 101.10] for further guidance.

107. Participation in Health and Welfare Plan of Client

.214 *Question*—A member participates in or receives benefits from a health and welfare plan (the "Plan") sponsored by a client. Would the independence of the member or member's firm be considered to be impaired with respect to the client sponsor and the Plan?

.215 *Answer*—Participation of the member in a Plan sponsored by a client would impair the independence of the member or member's firm with respect to the client sponsor and the Plan. However, if the member's participation in the Plan, or benefits received thereunder, arises as the result of the permitted employment of the member's spouse or cohabitant in accordance with interpretation 101-9 [ET section

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101.11], independence would not be impaired provided that the Plan is normally offered to all employees in equivalent employment positions.

108. Participation of Member or Spouse In Retirement, Savings, or Similar Plan Sponsored by, or That Invests in, Client

.216 Question—A member participates in a retirement, savings, or similar plan ("Benefit Plan") that is either sponsored by a client ("Sponsor Client") or invests in the Sponsor Client or in another client of the member ("Other Client"). Would the independence of the member or member's firm be considered to be impaired with respect to the Sponsor Client, the Other Client, or the Benefit Plan?

.217 Answer—Participation of the member in a Benefit Plan that is sponsored by a client or that invests in a client would impair independence with respect to the Sponsor Client, the Other Client, and the Benefit Plan. However, if the member's participation in the Benefit Plan arises as the result of the permitted employment of the member's spouse or cohabitant in accordance with interpretation 101-9 [ET section 101.11], independence would not be impaired if all of the following conditions are met:

- a. The Benefit Plan is normally offered to all employees in equivalent employment positions.
- b. If the Benefit Plan provides for an investment option by the spouse, the investment option selected by the spouse is not in the Sponsor Client or the Other Client.
- c. If no other investment option is available (also see ruling No. 35 [ET section 191.069-.070]), and the right of possession exists, the investment is promptly withdrawn and disposed. The right of possession is not considered to exist if a penalty significant to the investment is imposed upon withdrawal.
- d. If the right of possession does not exist, the spouse's investment through the Benefit Plan in the Sponsor Client or the Other Client is considered an indirect financial interest and is not material to the member's net worth.

109. Member's Investment in Financial Services Products That Invest in Clients

.218 Question—Amounts contributed by a member or a member's firm (member) for investment purposes, including retirement plans, are invested or managed by a non-client financial services company that offers financial services products, for example, insurance contracts and other investment arrangements, which allow the member to direct his or her investment into debt or equity securities. Under what circumstances would the independence of the member be considered to be impaired?

.219 Answer—If the member has the ability to direct and does direct his or her investment through a financial services product into a client, the independence of the member would be considered to be impaired with respect to that client because such an investment is considered to be a direct financial interest in the client as defined under Interpretation 101-1 [ET section 101.02]. If the member does not exercise his or her ability to direct the investment but the financial services product were to invest in a client, such investment would be a direct financial interest in the client and independence would be considered to be impaired.

If the member does not have the ability to direct the investment and the financial services product invests in a client, the member is considered to have an indirect financial interest in the client. If the indirect financial interest becomes material to the member, the member's independence would be considered to be impaired. (See ethics ruling no. 35 under rule 101 [ET section 191.069-.070] for additional guidance with respect to investments in mutual funds).

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Further, an investment in a financial services product that invests only in clients of the member is considered to be a direct financial interest in such client, and independence would be considered to be impaired.

Ethics Interpretation and Rulings

Ethics interpretations and rulings are promulgated by the Executive Committee of the Professional Ethics Division to provide guidelines as to the scope and application of the rules but are not intended to limit such scope or application. Publication of an interpretation or ethics ruling in the Journal of Accountancy constitutes notice to members. A member who departs from interpretations or rulings shall have the burden of justifying such departure in any disciplinary hearing.

INTERPRETATION 101.3 UNDER RULE OF CONDUCT 101:

Performance of Other Services

A member in public practice or his or her firm ("member") who performs for a client services requiring independence ("attest services") may also perform other nonattest services ("other services") for that client. Before a member performs other services for an attest client, he or she must evaluate the effect of such services on his or her independence. In particular, care should be taken not to perform management functions or make management decisions for the attest client, the responsibility for which remains with the client's board of directors and management.

Before performing other services, the member should establish an understanding with the client regarding the objectives of the engagement, the services to be performed, management's responsibilities, the member's responsibilities, and the limitations of the engagement. It is preferable that this understanding be documented in an engagement letter that indicates the member will not perform management functions or make management decisions. In addition, the member should be satisfied that the client is in a position to have an informed judgment on the results of the other services and that the client understands its responsibility to:

1. Designate a management-level individual or individuals to be responsible for overseeing the services being provided.
2. Evaluate the adequacy of the services performed and any findings that result.
3. Make management decisions, including accepting responsibility for the results of the other services.
4. Establish and maintain internal controls, including monitoring ongoing activities.

General Activities

The following are some general activities that would be considered to impair a member's independence:

- Authorizing, executing or consummating a transaction, or otherwise exercising authority on behalf of a client (for example, negotiating a transaction), or having the authority to do so
- Preparing source documents¹ or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders)
- Having custody of client assets
- Supervising client employees in the performance of their normal recurring activities
- Determining which recommendations of the member should be implemented
- Reporting to the board of directors on behalf of management
- Serving as a client's stock transfer or escrow agent, registrar, general counsel or its equivalent

¹ The documents upon which evidence of an accounting transaction are initially recorded. Source documents are often followed by the creation of many additional records and reports, which do not, however, qualify as initial recordings. Examples of source documents are purchase orders, payroll timecards, and customer orders.

The examples in the following table identify the effect that performance of other services for an attest client can have on a member's independence. These examples are not intended to be all-inclusive of the types of other services performed by members.

Type of Other Service	Independence Would Not Be Impaired	Independence Would Be Impaired
Bookkeeping	<ul style="list-style-type: none"> Record transactions for which management has determined or approved the appropriate account classification, or post coded transactions to a client's general ledger. Prepare financial statements based on information in the trial balance. Post client-approved entries to a client's trial balance. Propose standard, adjusting, or correcting journal entries or other changes affecting the financial statements to the client. Provide data-processing services. 	<ul style="list-style-type: none"> Determine or change journal entries, account codings or classification for transactions, or other accounting records without obtaining client approval. Authorize or approve transactions. Prepare source documents or originate data. Make changes to source documents without client approval.
Payroll and other disbursement	<ul style="list-style-type: none"> Using payroll time records provided and approved by the client, generate unsigned checks, or process client's payroll. Transmit client-approved payroll or other disbursement information to a financial institution provided the client has authorized the member to make the transmission and has made arrangements for the financial institution to limit the corresponding individual payments as to amount and payee. In addition, once transmitted, the client must authorize the financial institution to process the information. Make electronic payroll tax payments in accordance with U.S. Treasury Department guidelines provided the client has made arrangements for its financial institution to limit such payments to a named payee.² 	<ul style="list-style-type: none"> Accept responsibility to authorize payment of client funds, electronically or otherwise, except as specifically provided for with respect to electronic payroll tax payments. Accept responsibility to sign or cosign client checks, even if only in emergency situations. Maintain a client's bank account or otherwise have custody of a client's funds or make credit or banking decisions for the client. Sign payroll tax return on behalf of client management. Approve vendor invoices for payment.

² Although this type of transaction may be considered by some to be similar to signing checks or disbursing funds, the professional Ethics Executive Committee concluded that making electronic payroll tax payments under the specified criteria would not impair a member's independence.

<i>Type of Other Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Benefit plan administration ³	<ul style="list-style-type: none"> • Communicate summary plan data to plan trustee. • Advise client management regarding the application or impact of provisions of the plan document. • Process transactions (e.g., investment/benefit elections or increase/decrease contributions to the plan; data entry; participant confirmations; and processing of distributions and loans) initiated by plan participants through the member's electronic medium, such as an interactive voice response system or Internet connection or other media. • Prepare account valuations for plan participants using data collected through the member's electronic or other media. • Prepare and transmit participant statements to plan participants based on data collected through the member's electronic or other medium. 	<ul style="list-style-type: none"> • Make policy decisions on behalf of client management. • When dealing with plan participants, interpret the plan document on behalf of management without first obtaining management's concurrence. • Make disbursements on behalf of the plan. • Have custody of assets of a plan. • Serve a plan as a fiduciary as defined by ERISA.
Investment — advisory or management	<ul style="list-style-type: none"> • Recommend the allocation of funds that a client should invest in various asset classes, depending upon the client's desired rate of return, risk tolerance, etc. • Perform recordkeeping and reporting of client's portfolio balances including providing a comparative analysis of the client's investments to third-party benchmarks. • Review the manner in which a client's portfolio is being managed by investment account managers, including determining whether the managers are (1) following the guidelines of the client's investment policy statement; (2) meeting the client's investment objectives; and (3) conforming to the client's stated investment styles. Transmit a client's investment selection to a broker-dealer or equivalent provided the client has authorized the broker-dealer or equivalent to execute the transaction. 	<ul style="list-style-type: none"> • Make investment decisions on behalf of client management or otherwise have discretionary authority over a client's investments. • Execute a transaction to buy or sell a client's investment. • Have custody of client's assets, such as taking temporary possession of securities purchased by a client

³ When auditing plans subject to the Employee Retirement Income Security Act (ERISA), Department of Labor (DOL) regulations, which may be more restrictive, must be followed.

<i>Type of Other Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Corporate finance – consulting or advisory	<ul style="list-style-type: none"> • Assist in developing corporate strategies. • Assist in identifying or introducing the client to possible sources of capital that meet the client's specifications or criteria. • Assist in analyzing the effects of proposed transactions including providing advice to a client during negotiations with potential buyers, sellers, or capital sources. • Assist in drafting an offering document or memorandum. • Participate in transaction negotiations in an advisory capacity. 	<ul style="list-style-type: none"> • Negotiate on behalf of the client or its owners with potential investors and capital sources. • Distribute private placement memoranda or offering documents to potential investors. • Act as an underwriter, broker, agent, distributor, or guarantor with respect to client securities. • Solicit investors or promote client securities. • Maintain custody of client securities.
Appraisal, valuation or actuarial	<ul style="list-style-type: none"> • Test the reasonableness of the value placed on an asset or liability included in a client's financial statements by preparing a separate valuation of that asset or liability. • Perform a valuation of a client's business when all significant matters of judgment are derelicted or approved by the client and the client is in a position to have an informed judgment on the results of the valuation. 	<ul style="list-style-type: none"> • Prepare a valuation of an employer's securities contained in an employee stock ownership plan (ESOP) to support transactions with participants, plan contributions, and allocations within the ESOP, when the client is not in a position to have an informed judgment on the results of this valuation. • Prepare an appraisal, valuation, or actuarial report using assumptions determined by the member and not approved by the client.
Executive or employee search	<ul style="list-style-type: none"> • Recommend a position description or candidate specifications. • Solicit and perform screening of candidates to a client based on the client-approved criteria (e.g., required skills and experience). • Participate in employee hiring or compensation discussions in an advisory capacity. 	<ul style="list-style-type: none"> • Negotiate employee compensation or benefits. • Hire or terminate client employees.
Business risk consulting	<ul style="list-style-type: none"> • Provide assistance in assessing the client's business risks and control processes. • Recommend a plan for making improvements to a client's control processes and assist in implementing these improvements. 	<ul style="list-style-type: none"> • Make or approve business risk decisions. • Present business risk considerations to the board or others on behalf of management.

<i>Type of Other Service</i>	<i>Independence Would Not Be Impaired</i>	<i>Independence Would Be Impaired</i>
Information systems -- design, installation or integration	<ul style="list-style-type: none">• Design, install or integrate a client's information system, provided the client makes all management decisions.• Customize a prepackaged accounting or information system, provided the client makes all management decisions.• Provide the initial training and instruction to client employees on a newly implemented information and control system.	<ul style="list-style-type: none">• Supervise client personnel in the daily operation of a client's information system.• Manage a client's local area network system.

**Conflicts of Interest
in Litigation
Services Engagements**

Management Consulting Services Division

AICPA

EXHIBIT C

*Conflicts of Interest
in Litigation
Services Engagements*

**CONSULTING SERVICES
SPECIAL REPORT 93-2**

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PUBLIC

ACCOUNTANTS

Management Consulting Services Division

72/100
CONFLICTS OF INTEREST IN LITIGATION
SERVICES ENGAGEMENTS

72/105 PROFESSIONAL ISSUES IN LITIGATION
SERVICES

.01 Litigation services are rendered by a CPA using accounting and consulting skills to assist a client in a matter that involves potential or pending litigation or dispute resolution proceedings with a trier of fact. The services rendered may include fact-finding (including assistance in the discovery and analysis of data), damage calculations, document management, expert testimony, and other professional services. Bankruptcy, reorganization, and insolvency services as provided by CPAs generally are considered litigation services. A CPA providing litigation services will have responsibilities as an objective professional that range from rendering a judgment about accounting principles or facts at issue to providing analyses of and opinions regarding one or several acceptable alternative calculations or determinations (even under generally accepted accounting principles). The CPA's interpretation of conflicts of interest that could result from accepting a litigation services engagement may differ significantly from that of the attorney who owes nearly total allegiance to and is an advocate for the client.

The Need to Maintain Integrity
and Objectivity

.02 In a litigation services engagement, a conflict of interest exists when a CPA's ability to objectively evaluate and present an issue for a client will be impaired by current, prior, or possible future relationships with parties to the litigation. As a professional, the CPA should avoid engagements that involve conflicts of interest. Rule 102 of the AICPA Code of Professional Conduct requires that members shall, in the performance of any professional service, maintain objectivity and integrity shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate their judgment to others.

.03 The criteria for evaluating whether a conflict of interest is involved in a litigation services engagement is the ability of the CPA to maintain integrity and objectivity as described in the Statement of Standards for Consulting Services (SSCS). A conflict of interest is based in fact, rather than appearance. However, the CPA should be mindful of and deal with appearances of conflict before accepting the engagement.

.04 Interpretation 102-2 of the SSCS states that a conflict of interest may occur in a consulting engagement if the CPA or the firm has a significant relationship with a client or party, either a provider of services that could be viewed as impairing their objectivity. The rule provides, however, that if this significant relationship is disclosed

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to the client and other appropriate parties, and they consent to the CPA's acceptance of the engagement, the rule shall not prohibit the performance of the professional service.

.05 In addition to the rule and related interpretation concerning conflicts of interest, the CPA who provides litigation services must also consider the impact of rule 301, "Confidential Client Information." Rule 301 prohibits a member in public practice from disclosing any confidential client information without the consent of the client. The CPA therefore may be unable to disclose to or obtain consent from all of the appropriate parties. Indeed, the legal process may operate to prevent the CPA from disclosing any information to other parties, particularly in the case of expected or threatened litigation. Rule 301 may restrict the CPA's attempts to resolve apparent conflicts of interest or business relationships. Problems arising under rule 102, its interpretation, and Rule 301 are commonly referred to as conflicts of interest, perceived or otherwise, in the provision of litigation services.

The Concept of Independence

.06 Independence is not a criterion in the determination of whether a conflict of interest exists in a litigation services engagement. Independence as an ethical issue is limited to attestation engagements¹ as required by the attestation standards, which also address the question of the appearance of independence. The independence concept was developed to ensure the CPA's objectivity and credibility in examining and reporting upon financial statements that will be relied upon by people who cannot investigate the assertions. The reliability of the CPA's professional opinion of the financial statements gives them more credibility and usefulness. The independence concept forms an important part of the comprehensive and well-documented set of standards applied to attestation services. However, in generally accepted auditing standards, little guidance is provided on the relationship of the independence concept to litigation services.

Conflict Issues for CPAs

.07 Unlike the legal profession, the accounting profession has developed little formal guidance on conflicts of interest. Most guidance relating to the CPA's professional relationships concerns the concept of independence. Focusing primarily on the relationship between the CPA and the client in an attestation engagement. This guidance, however, is not directly concerned with relationships that the CPA may have in other types of engagements.

.08 The increasing use of CPAs as consultants and expert witnesses in litigation has required them to consider their professional relationships in new ways. When an attorney seeks to engage a CPA to litigation services, both professionals are concerned with whether the CPA has a conflict of interest with any of the parties to the litigation. Unfortunately, there is a great

¹ See the AICPA MAS System report *Comparing and Managing an Attorney's Services to a Client for the First Time* (New York: AICPA, 1993).

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confusion as to precisely what this means. An attorney has a well-defined and documented concept of what constitutes such a conflict in the legal profession. Consequently, this concept may be applied inappropriately to the CPA, who may be confused as well because of the lack of guidance in professional accounting literature. However, the standards of the legal profession concerning conflicts of interest should not be applied to the accounting profession because the roles of the attorney and the CPA in litigation are entirely different.

.09 A conflict of interest may arise from the CPA's ethical obligation to preserve client confidences or from the existence of relationships that may undermine objectivity in presenting an issue concerning a client. In judging conflicts of interest, the CPA should differentiate between those based on fact and those that could arise as a result of perceptions or business considerations. The CPA may come to different conclusions based on the category into which the issue falls. The CPA may base a decision to decline an engagement on the existence of the perception that a conflict exists, on business considerations, or on other reasons such as lack of expertise or time. Conversely, absent a conflict of interest or possession of confidential information, the CPA may accept an engagement even if business relationship issues exist.

.10 The CPA must decide whether a conflict of interest exists on a case by case basis. If none exists, the CPA must then decide whether a business relationship or a perception of a conflict exists that may warrant declining the request for professional services. For example, the CPA may decline to perform services because the position required by the prospective client conflicts with the business interests of an existing client. Thus, while a conflict of interest may not exist as defined by the professional standards, conflicting business relationships may indeed exist. This determination is based on the CPA's judgment. If a perception of conflict exists, the CPA may be unable to obtain permission to accept the engagement from all of the appropriate parties because of confidentiality of information. In this instance, the CPA may have to evaluate whether a conflict of interest actually exists.

.11 Clearly, multi-office CPA firms face a difficult problem in monitoring conflicts of interest. Opportunities for conflicts arise not only because of the number of offices and clients but also because of the variety of services offered by these firms. Multi-office firms may therefore need a formal system to identify relationships that pose potential conflicts of interest.

.12 Before accepting a litigation services engagement, CPAs carefully evaluate their relationships. If and, with all parties to the action to identify potential conflicts. These parties include named and potential adverse parties including counsel to the opposing parties. During the course of an engagement, there is always the potential for a non-opposing party to become an opposing party. Therefore, continuing sensitivity to newly arising conflicts is necessary, particularly in engagements that are long or involve several parties.

.13 In evaluating certain situations, the CPA may conclude there is no conflict but that the attorney could perceive a conflict. Before accepting such an engagement, the CPA should disclose to the retaining attorney any prior or existing relationships with all parties to the litigation, if disclosure is permitted by the parties with whom the CPA has a confidential relationship. What possible disclosure of such relationships is good practice, even if a conflict may not exist. Great care, however, should be taken to avoid disclosing client confidences, including names, which in themselves may be confidential. Indeed, there may be circumstances

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in which the very fact of a prior relationship is confidential. In rejecting an engagement, the CPA may not disclose confidential information gained from another client.

Differences Between CPAs' and Lawyers'
Professional Responsibilities

.14 The litigation services practitioner should understand the difference between the responsibilities of accountants and those of attorneys under each profession's conflict of interest rules. An attorney in litigation is an advocate for the client. Indeed, the attorney has an ethical obligation to represent a client "zealously within the bounds of the law." By design, the American litigation process is an adversarial proceeding in which the best case for each litigant is put before the trier of fact. The attorney who is neutral, independent, and objective could not do the job well. As law professors Aronson and Weckstein have put it:

Once a lawyer agrees to serve as an advocate, he must loyally safeguard his client's interest, urge any permissible construction of the law favorable to the client—without regard to his personal opinion as to what construction will ultimately prevail—and, in general, must resolve any doubts as to the law and facts in the client's favor.²

.15 This duty of advocacy is not just a characteristic of the legal profession but is part of its very fabric:

Of equal importance in our adversary system is that counsel be loyal to his client. "The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law..." [EC7-1] Note that this partisanship does not arise merely from any retainer paid by the client to the lawyer, but is imposed upon the lawyer by the legal system, regardless of the presence or absence of financial remuneration. There is no basic conflict between the duty of lawyer to his client and to the court. In the adversary system, loyalty and zealousness in representation of the client is the primary duty of the lawyer as an officer of court.³

.16 The litigation process demands that the attorney take every available advantage for the client, put the client's case in the best possible light, not offer evidence that is harmful to the client (with some exceptions), and challenge everything possible in the opponent's case. The

² Aronson, R.H. and D.T. Weckstein, *Professional Responsibility* (West Publishing Co., 1980), p. 13.

³ *Ibid.*, p. 272.

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opposing attorney, of course, has the same job. In a very real sense, a litigating attorney becomes the client's champion.

.17 It is thus not only appropriate, but also absolutely necessary, that lawyers have a strict conflict of interest policy. It generally is not possible to represent one client while also representing another with actual or potentially opposing interests. To attempt to do so, however carefully, would be intrinsically unfair to both clients. For this reason, before accepting an engagement, lawyers go to great lengths to ascertain whether they represent or have represented other clients whose interests do or could oppose those of a prospective client.

.18 The American Bar Association Rules of Professional Conduct contain several rules concerning conflicts of interest. According to the general rule, an attorney shall not represent a client if doing so would be directly adverse to the interests of another client or if the representation of that client may be limited materially by the attorney's responsibility to another client or third person or by the attorney's own interest. In both cases, however, the attorney who reasonably believes that representation will not adversely affect the relationship with the other client, may represent the client if both clients consent after a full disclosure of the circumstances and consultation (with certain stated exceptions). The general rule also provides that the attorney who represents several clients in a single matter must explain to each the implications of the common representation and the advantages and risks involved.

.19 The general rule does not alter the arguments of case law and ethics opinions that, in certain cases involving actual or apparent conflicts, consent to continued representation is immaterial, and in certain cases or situations in which the conflict is apparent rather than real, multiple representation is not permissible. In addition, the rule provides that a lawyer who has represented a client in a matter shall not represent another client in the same or a substantially related matter whose interests are materially adverse to the interests of the former client, unless the attorney fully discloses the circumstances in consultation with the former client.

.20 The legal profession's *Canons of Ethics* provides that loyalty is an essential element in the attorney's relationship with a client. Maintaining the required independence of professional judgment precludes accepting or continuing employment that will adversely affect the attorney's judgment on behalf of or dilute loyalty to a client. The problem often arises when an attorney is asked to represent two or more clients who may have interests that are conflicting, inconsistent, diverse, or otherwise discordant. An attorney is an advocate who owes complete loyalty to the client.

.21 The CPA as an expert witness has a role that differs from that of an attorney. The CPA does not serve as an advocate but rather is presented to the trier of fact as someone with specialized knowledge, training, and experience in a particular area and presents positions with objectivity. The function of the CPA as an expert witness is to assist the trier of fact in understanding complex or unfamiliar concepts. The CPA expert is not expected to single-mindedly and necessarily offer only evidence and opinions that help the client. The CPA is expected to offer an objective opinion, based on knowledge and experience, of how the issues at hand should be interpreted by the trier of fact. A CPA is required by professional standards to maintain objectivity and integrity in providing any professional service. Rule 102 of the *Code of Professional Ethics* of the AICPA states:

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In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

22 The essential qualities of objectivity in a CPA expert are perhaps obscured by the fact that the role is executed in an adversarial process. The CPA is offered to the court and paid by one side. Nevertheless, the CPA's opinions should be based on the facts in a given case, regardless of who the client is. Indeed, several elements of the litigation process strongly encourage objectivity. First, the CPA expert presents the work and opinions under oath. Secondly, the bases for the CPA expert's opinions usually are subject to comprehensive discovery by opposing attorneys as well as cross-examination at trial. The work may also be subject to rebuttal by similarly qualified experts hired by the opposing side. Furthermore, the CPA expert's long-term credibility is at risk, since testimony might be used in certain circumstances to impeach testimony in subsequent cases.

23 In effect, the requirement for objectivity and integrity for a CPA cannot readily be equated with the undivided loyalty to a client required of a lawyer. Accordingly, many relationships that would result in a conflict of interest for a lawyer may not result in a conflict for the CPA expert.

24 The role of the CPA working directly for an attorney may be further complicated because of the privileged nature of communication that may extend to the accountant's work product. The CPA must decide whether there is a conflict of interest or business relationship considering the context of the work requested and the nature of the advice sought. The CPA judges whether the expected role is to function as an objective expert or to support a position taken by counsel. The CPA must maintain objectivity and integrity as well as avoid conflicts of interest and must be careful to avoid a position of advocacy that would lack integrity (for example, supporting a position the CPA knows to be false).

72/110 ILLUSTRATIVE CASE STUDIES

01 The following case studies illustrate the potential conflicts of interest or business relationships that a CPA may encounter when asked to provide litigation services.

Simultaneous Conflicts

02 Barbara Smith, a CPA, has worked with clients in the travel industry for several years. Her current engagements include attestation and consulting services for Airline A, a national carrier. The consulting services engagement involves assisting management to evaluate marketing strategies for dealing with competition. Recently, Commuter B, a start-up commuter airline, filed suit against Airline A for causing it economic losses by operating below cost in the market area. Because of Smith's expertise in the airline industry, Commuter B asks her assistance in preparing its claim for damages. Should Smith accept this engagement?

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.03 Rule 301 of the AICPA Code of Professional Conduct states: "A member in public practice shall not disclose any confidential client information without the specific consent of the client." Smith therefore should consider whether she has obtained confidential client information in providing Airline A with attestation and consulting services. Since these services probably involved reviewing information relevant to Commuter B's lawsuit, Smith should question whether to accept this engagement because it would appear to compromise Airline A's confidences.

.04 Rule 301 suggests that with Airline A's consent, Smith could pursue the engagement. However, it may be difficult to obtain such consent. Furthermore, as a matter of business practice, most CPAs would not accept an engagement directly adverse to the interests of a continuing attestation client. Such an engagement might cause difficulties for Smith in assessing valuation and disclosure requirements for the financial statements of the attestation client and in maintaining confidentiality for the two clients. Airline A likely would have to be advised adequately of the nature of the Smith's prospective engagement with B in order to make an informed decision. To advise A of this, Smith would require the approval of B's lawyers, who would be concerned about the confidentiality of their trial preparation plans if she were to describe the nature of the engagement adequately.

.05 In a different situation, Alan Mason, a tax CPA, provides Company A with only tax advice and tax compliance reporting. Company B approaches George Carpenter, a partner in the litigation services division of Mason's firm, for assistance in developing its damages case against Company A. The damages case involves matters totally separate from the tax engagement. Should Carpenter decline this engagement because of a potential conflict of interest?

.06 If Carpenter has had no access to confidential information about the matter in litigation and would establish procedures to ensure there will be no such access during the pendency of the case, he could conclude that no conflict exists. However, the existence of the tax engagement should be disclosed to the attorney for Company B and, if possible, Company A also should be informed. Early disclosure gives Company B's attorney an opportunity to consider this issue before retaining Carpenter and gives Company A an opportunity to object if it views the appearance of conflict differently from Carpenter.

.07 Carpenter may also wish to consider the impact of the engagement on his tax partner's relationship with Company A. Although Carpenter may not have a conflict of interest, he may decide to decline the engagement for business considerations. Business interests may cause the CPA to refuse an engagement, but his limited knowledge gained by others in the firm in any specialized area may not create a conflict of interest.

.08 In performing an audit or an attest function for a client, CPAs generally have broad access to confidential information. Therefore, they should be much more sensitive to actual conflicts of interest when they are providing attestation services to one of the litigants involved.

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Subsequent Conflicts

.09 CPA Smith's consulting services to Airline A involved only a completed engagement to assist in developing a marketing plan. There is no ongoing relationship. Subsequently, Computer B approaches Smith for assistance with damages in its lawsuit. Does the lack of an ongoing relationship permit Smith to accept the engagement with B?

.10 Rule 301 on confidential client information is not limited to current clients. A practitioner must be able to have the full confidence of a client in order to provide assistance adequately. To ensure this relationship, the profession assures clients that information gained in an engagement will never be disclosed to others without their consent. Thus, Smith must consider carefully whether the litigation services engagement would create a conflict by appearing to require use of information obtained in the consulting engagement.

Preliminary Interviews With Prospective Clients

.11 When a CPA is approached by a prospective client about a litigation engagement, the client or its attorney typically will give the CPA sufficient information about the case to assist in identifying the opposing parties, the key issues in dispute, and the role intended for the CPA. In describing this matter at hand, the prospective client may communicate confidential information to the CPA. If the CPA is not retained by this prospective client and subsequently is approached by the client's opposition, must the CPA decline the opposition's offer of an engagement to protect the confidential information received previously?

.12 This question has not been specifically addressed by the accounting profession. However, rule 301 prohibits revealing any confidential client information. State bar associations generally have concluded that a prospective client from whom an attorney obtains confidential information during an initial interview is a client nonetheless, against whom the attorney cannot use this information. This conclusion may guide the CPA even though the rules of conflict of interest for attorneys differ from those for accountants. To avoid this problem, the CPA should attempt to limit the confidential or strategic information received before deciding on the prospective engagement.

Joint Representation

.13 Joint representations occur when a CPA is engaged by both opposing parties for assistance in resolving the issues in their dispute. A request for joint representation could arise in a variety of circumstances. Given the adversarial nature of a litigation services engagement, before accepting one, the CPA should carefully consider the nature of the relationship with each of the parties and the role to be played. The concern is usually greater in marital dissolutions as is illustrated in the following case:

.14 Joan Evans, a CPA, has provided a full range of services to a married couple for several years. The husband is a principal in a closely held business for which Evans has provided consulting and accounting services. In addition, the couple has acquired ownership

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interest in several pieces of income property for which Evans has provided tax advice as well as accounting services. In a marital dissolution action, the couple requests Evans's help with the accounting and valuation aspects of the property settlement. Can Evans accept this engagement?

.15 A lawyer's ability to represent both parties in a dispute has been restricted by case law and legal ethics because of the lawyer's role as advocate. An accountant, however, brings objectivity to a dispute. Even so, it may be difficult for Evans to advise adequately both parties to a divorce, given their prior relationships. In deciding whether to accept the engagement, Evans needs to consider two issues. First, during her prior engagement with the couple, she may have received confidential information from one of the parties. By accepting the joint engagement, Evans might compromise the confidential nature of these communications. The second issue concerns objectivity. Evans may have a more significant economic relationship with one spouse through work performed for the business. This relationship could lead to an inability to provide objective advice for both spouses.

.16 The nature of the prior relationship must govern the decision. If there was no prior relationship with the couple, or the relationship was limited in scope, Evans could consider accepting the engagement. Nevertheless, in joint representations the adversarial nature of the dispute is an inherent risk. A CPA might be best advised to act as a court-appointed accountant to be insulated from the adversarial nature of the assignment. In any event, there should be complete disclosure to both parties, and the CPA should obtain informed consent to the joint representation with a clear identification of the engagement's scope.

.17 The CPA should consider the same factors before accepting engagements in which two clients with potentially differing interests ask for common assistance. Borrowers and lenders and buyers and sellers may also request joint representation. In general, the CPA would have no conflict and could accept engagements to resolve business disputes between two parties objectively.

Simultaneous Consultations

.18 The issue of a conflict also arises when a CPA is engaged to work simultaneously for and against clients of the same law firm in different cases. For example, Expert A may be retained by Counsel A to assist Plaintiff A by providing a valuation of an apartment building. Counsel B is the attorney for Defendant B in this matter. Before the case goes to trial, Counsel B approaches Expert A about an unrelated case. Counsel B, however, is unaware that Expert A is a consultant for Counsel A in Counsel B's other case. Does Expert A have a conflict in this situation?

.19 Since no confidential client communications are involved, and Expert A can maintain objectivity and integrity, there is no conflict of interest. Nevertheless, the situation is ticklish because Expert A may wish to notify Counsel B of the relationship with Counsel A. However, such notification ethically cannot be given until Counsel A chooses to disclose that Expert A has been retained. Expert A may seek permission from Counsel A to disclose the relationship;

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however, lacking approval, Expert A may wish to refuse the engagement offer of Counsel B without disclosing the reason.

20 This conflict question raises a problem for counsel rather than an ethical question for the expert witness. An attorney may feel that the engagement of the CPA implies approval of the opponent's expert. The CPA should be aware of the potential for problems in such circumstances and should fully disclose such relationships to counsel, if possible, before accepting an engagement.

21 This situation presents a conflict of business relationships, not a conflict of interest, and thus is a matter for the individual CPA to decide.

Other Potential Conflicts

22 Several other situations give rise to considerations of conflicts of interest or business relationships. If a CPA may be asked to testify on one side of an issue after testifying on the other side in a previous case. This situation can be complicated further in a multi-partner firm, if one partner testifies on one side of an issue and another partner is later asked to testify for the other side. In both cases, conflict of business relationships clearly exist and indeed the appearance of a conflict of interest may exist in the public's perception of the CPA's or the firm's views. Under generally accepted accounting principles, however, alternative views may be possible and indeed permissible. For example, under differing fact patterns, different conclusions may be drawn. A consistent position, however, would benefit the credibility and posture of the CPA. In these situations, the CPA's public image may be a more significant concern than the applicability of any conflict of interest rule.

23 The expert opinion rendered in a court of law is that of the individual not the firm. Thus, differences of opinion among a firm's partners should not automatically discredit the testimony of an expert witness. However, disclosure of the situation to client or counsel is recommended.

24 Another potential conflict may exist when the CPA is involved in a multi-party case. For example, the CPA's existing client may be a named member of a class or group or may be providing services to large governmental entities. A definition of conflicts associated with large groups would be far too broad a guideline to be effective. For example, a CPA who assists a client in opposing an Internal Revenue Service ruling while performing services for another government agency at the same time is unlikely to be considered to have a conflict of interest. However, it is conceivable that certain situations involving government agencies may give rise to conflicting business relationships that would, in the CPA's own judgment, preclude helping to oppose one agency while working for another agency.

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72/115 SUMMARY

.01 This special report is not intended to cover all situations that may give rise to conflicts of interest or of business relationships. Its purpose is to illustrate the diversity of situations that could give rise to such problems. The nature and complexity of litigation service engagements make it imperative that potential conflicts be identified early, preferably before the CPA accepts the engagement. The CPA should discuss situations that give rise to any questions of conflicts with the client's lawyer to permit evaluation before litigation services are provided.

CONSULTING SERVICES PUBLICATIONS

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Product Number

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To obtain any of these publications, call the AICPA Order Department at 800-862-4272, or order via fax at 800-362-5066.

NOTICE TO READERS

This special report is designed as educational and reference material for Institute members and others who provide *consulting services* as defined in the Statement on Standards for Consulting Services (SSCS) issued by the AICPA. It does not establish standards or preferred practices.

Various members of the 1991-1992 AICPA Litigation Services Subcommittee provided information for this special report and advised the authors and staff. The subcommittee members are listed below.

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EXHIBIT X

Exhibit X - Delays Advised or Engaged by CA Attorneys

Feb 2000

Creative retained PWC to provide advisory services to Creative in connection with Aureal's sale of assets in the event of a bankruptcy filing. Exhibit U at 2:22.

< Apr 5, 2000

Oaktree Capitol Management LLC, subject of earlier 3-310 complaint and "Lender Issues", Exhibit R at 7, is an audit and tax client of PWC. Exhibit V at 4:27.

Apr 5, 2000

Aureal bankruptcy case filed, Aureal files application to employ HBD. Exhibit A.

Apr 4, 2000

CA Attorneys for Aureal, Aureal, and PWC begin negotiating a conflict waiver letter. Exhibit U at 2:13.

Apr 4, 2000

CA Attorneys and Aureal are informed that PWC was representing an adverse party in litigation against the debtor Aureal. Exhibit T at 2:16-24.

Apr 19, 2000

PWC provides CA Attorneys with draft employment application in support of the application. Exhibit U at 2:20.

Feb 1, 2000

Feb 2, 2000

Apr 4, 2000

Apr 5, 2000

Apr 19, 2000

Exhibit X - Delays Advised or Engaged by CA Attorneys

May 3, 2000

Terms of the conflict waiver letter sent by debtor/H&B to PWC. Exhibit W at 4:1.

May 4, 2000

Aureal files application to employ PWC. Exhibit V.

Jun 7, 2001

239 days after H&B's First Conflicted Representation, Sidney Levinson files declaration disclosing same. Exhibit D, p. 1.

Apr 20, 2000

May 3, 2000

May 4, 2000

Jun 7, 2001

Jun 8, 2001

Exhibit X - Delays Advised or Engaged by CA Attorneys

Oct 24, 2001

78+ days after Second Conflicted Representation, Sidney Levinson files declaration disclosing same. Exhibit E, par 6.

Jul 2002

The court found a mere **29 day** delay from the day PWC commenced work and the subsequent filing of their employment application & conflict disclosure was found to be purposeful.

The Court found the delay was intended to obtain the benefit of employment of PWC, regardless whether the Court would approve of such employment. Exhibit U at 3:16.

Aureal was advised by CA Attorneys on this matter. Exhibit U at 2:18.

Apr 29, 2002

CA Attorneys retained by PWC. Exhibit U at 4:8.

Oct 24, 2001

Oct 25, 2001

Apr 29, 2002

Apr 30, 2002

Jul 1, 2002

Exhibit X - Delays Advised or Engaged by CA Attorneys

Sep 9, 2002

Court upholds its finding that a **29 day** delay in filing the PWC employment application & conflict disclosure was purposeful.

The Court found the debtor Aureal sought an advantage in the delay and **all arguments to the contrary by CA Attorneys in Motion for Reconsideration are found to be unpersuasive.** Exhibit T at 3:6-12.

Aug 19, 2002

CA Attorney Sidney P. Levinson files declaration in connection with the motion for reconsideration filed by PWC. Exhibit U.

Jul 2, 2002

Aug 19, 2002

Aug 20, 2002

Sep 9, 2002

EXHIBIT Y

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 (OAKLAND DIVISION) CLERK
4 U.S. BANKRUPTCY COURT
5 NORTHERN DIST. OF CA.
6 OAKLAND, CA

ORIGINAL

5 In re:

6 Case 00-42104 T

7 AUREAL, INC. dba SILO.COM
8 Fka AUREAL SEMICONDUCTOR,
9 INC. Fka MEDIA VISION
10 TECHNOLOGY, INC.,

11 Chapter 11

12 Oakland, California
13 June 19, 2000
14 2:30 p.m.

15 Debtor.

16 TRANSCRIPT OF PROCEEDINGS
17 (1) STATUS CONFERENCE
18 (2) APPLICATION TO APPOINT ACCOUNTANT, PRICE-WATERHOUSE

19 BEFORE THE HONORABLE LESLIE TCHAIKOVSKY
20 UNITED STATES BANKRUPTCY JUDGE

21 APPEARANCES:

22 For the Debtor:
23 HENNIGAN & BENNETT
24 BY: SIDNEY P. LEVINSON, ESQ.
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10 Proposed Counsel for
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17 For the U.S. Trustee:

18 UNITED STATES DEPARTMENT OF
19 JUSTICE
20 OFFICE OF THE UNITED STATES
21 TRUSTEE
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26 For secured creditor,
27 Copelco Capital:

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34 For Creative Labs:

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P R O C E E D I N G S

1 June 19, 2000

2 2:30 p.m.

3 ----000----

4 THE COURT: I think we are left with Aureal.

5 THE CLERK: Yes. Line Item 8, Aureal, Inc.

6 MR. LEVINSON: Good afternoon, Your Honor, Sid
7 Levinson, Hennigan, Bennett & Dorman for the Debtor, Aureal,
8 Inc.

9 MR. POPE: Your Honor, Mark Pope for the U.S.
10 Trustee.

11 MS. MICHELSON: Good afternoon, Your Honor, Randy
12 Michelson, McCutchen, Doyle, Brown & Enersen, proposed
13 counsel for the Creditors' Committee -- as of 1:00 o'clock
14 this afternoon.

15 MR. LAU: Good afternoon, Your Honor, Kenneth Lau
16 of Hemar & Rousso on behalf of secured creditor, Copelco
17 Capital.

18 MR. REIMER: Good afternoon, Your Honor, Eric R.
19 Reimer of McDermott, Will & Emery on behalf of Oak Tree
20 Capital Management as collateral agent for the secured
21 lenders.

22 MR. LOPES: Good afternoon, Your Honor, James Lopes
23 of the Howard Rice firm on behalf of Creative Labs.

24 MR. MITCHELL: Good afternoon, Your Honor, Thomas
25 Mitchell of Orrick, Herrington & Sutcliffe appearing on

1 behalf of Orrick, Herrington & Sutcliffe as a creditor.

2 MR. AHRENS: Your Honor, Michael Ahrens and Jeffrey
3 Rehfield of Sheppard, Mullin on behalf of Price-Waterhouse
4 Coopers.

5 MS. MAR: Patricia Mar, Morrison & Foerster, on
6 behalf of Ocean Data Products.

7 THE COURT: Well, I'm glad to see we have balance
8 here. I have a former Law Clerk on one side and a former
9 employer on the other.

10 (Laughter.)

11 THE CLERK: I have three people that did not check
12 in, so we don't know their names --

13 THE COURT: Which three are those?

14 THE CLERK: Mr. Lopes, Ms. Mar and -- I'm not

15 sure --

16 THE COURT: Could we have your cards.

17 THE CLERK: Reimer or --

18 MR. REIMER: I'm embarrassed to say I don't have
19 a card with me, Your Honor.

20 THE COURT: You can fill out a little slip.

21 MR. REIMER: I hope I don't have a -- run into a
22 car wreck on the way out.

23 (Laughter.)

24 THE COURT: Okay.

25 MR. LEVINSON: Thank you, Your Honor. Sid Levinson

1 for the Debtor. Your Honor, we're here today for a status
2 conference that's been scheduled in the Aureal case. I can
3 briefly bring the Court up to date on where things stand in
4 the case.

5 The primary focus at this point has been the sale
6 of the assets, and we've been working since April in terms
7 of marketing, allowing parties to do their diligence. We
8 filed a motion a couple of weeks ago seeking approval of sale
9 procedures. There's a hearing scheduled for this Thursday.
10 We're continuing to talk to a number of different parties
11 which have continued to express interest in purchasing these
12 assets, and we'll continue that process up through Thursday
13 and beyond so that we can get as many interested parties
14 involved as possible.

15 The sale is probably going to dictate what happens
16 with respect to the plan and disclosure statement process.
17 Once we know exactly what it is that's going to be purchased
18 and how much is going to be paid and what the claims are
19 going to be, we'll be in a better position I think to talk
20 with the Creditors' Committee, with their counsel who was
21 just selected today, and to move forward with that process.

22 We had intended to file a motion next week to seek
23 an extension of the exclusivity period which would currently
24 expire in early August, and I expect we'll probably ask for
25 a 120-day extension of that period in that motion. And we

1 will, as I say, move forward with the sale process as quickly
2 as we can to maximize the value. That's really our objective
3 at this point is to create an as open and fair a process as
4 we can to have the maximum number of parties participating.

5 We've also -- today is the deadline to file
6 objections to the sale procedures, except the Committee was
7 granted an extension until Wednesday in anticipation of the
8 fact that their counsel was going to be selected today, and
9 we'll be obviously dealing with the parties who have filed
10 objections, to review those objections and evaluate them
11 prior to Thursday.

12 THE COURT: Okay.

13 MR. LEVINSON: With respect to business operations,
14 our main objective at this point has been to preserve value
15 of the assets. We're continuing to engage in discussions
16 with certain vendors, particularly those who have possession
17 of inventory that would be a part of the sale, to attempt to
18 negotiate accommodations with them, and continuing to seek
19 to, where we can, create cash and liquidate assets.

20 We've had some loss of employees over the 60 to 75
21 days that this case has been ongoing. One of the things that
22 we're looking at right now is putting into place a modest
23 employee retention plan. We're going to talk about that with
24 counsel for the Creditors' Committee, and we've had some
25 discussions with the Office of the U.S. Trustee last week,

1 again something modest to -- mainly focused on preservation
2 of value, pending the sale process.

3 One asset that we've been taking a look at over the
4 last 30 days is a leasehold interest of the primary lease
5 which is located in Fremont. It's a very large space. It's
6 approximately 100,000 feet. We're fortunate to have a lease
7 at below market value -- we view it as below market value,
8 and we are in the process of retaining a broker with an eye
9 towards assigning the lease interest to generate additional
10 value.

11 It so happens that this particular lease is not
12 subject to the security interest of the primary secured
13 lender, and so as I say, we are hopeful that we can generate
14 some somewhat -- not insubstantial value from that particular
15 leasehold, and notably that leasehold is not subject to the
16 sale procedures that are currently pending. It's a separate
17 asset.

18 THE COURT: M-hm. You've already extended time to
19 assume or reject?

20 MR. LEVINSON: We had -- there was a bridge order
21 entered and there's a hearing scheduled for Thursday --

22 THE COURT: Okay.

23 MR. LEVINSON: -- seeking a 120-day extension,
24 which --

25 THE COURT: I recalled seeing something.

1 MR. LEVINSON: Yes.

2 THE COURT: Okay.

3 MR. LEVINSON: Yes. And at that time, we'll be
4 seeking -- it will be 120 days from -- I believe from when
5 the 60 days would have expired --

6 THE COURT: Okay.

7 MR. LEVINSON: -- prior to the bridge order, so
8 some time in early October, which will give us an opportunity
9 to conduct some marketing --

10 THE COURT: M-hm.

11 MR. LEVINSON: -- with respect to that asset. One
12 of the other developments, as Your Honor knows from past
13 hearings, there's -- at the time that the bankruptcy case was
14 filed, there was significant litigation pending with
15 Creative, three separate cases. Last week the Debtor filed
16 an application to expand the scope of our firm's employment
17 to serve as litigation counsel with respect to those pending
18 matters, and that was -- that was filed on a 20-day negative
19 notice.

20 THE COURT: M-hm.

21 MR. LEVINSON: The period for that has not yet
22 expired. So that probably summarizes the most material
23 happenings in the case.

24 THE COURT: Okay.

25 MR. LEVINSON: One other thing, Your Honor, if I

1 may, I'm not sure that the order authorizing our firm's
2 employment as reorganization counsel has been entered. We
3 hadn't see it on the docket. We had filed back in April a
4 stipulated proposed order that had provided the supplemental
5 disclosure and addressed the concerns of one of the creditors
6 in the case, and I had brought some extra copies of that,
7 only because we've received questions as to why are you still
8 proposed counsel. And so --

9 THE COURT: Right. Mr. Pope, this comes as a
10 surprise to me. It's not something I checked on. I just
11 assumed it had been signed. But are you -- have you seen a
12 final order, signed order, approving their employment?

13 MR. POPE: Approving Mr. Levinson's firm's
14 employment? I'm not sure if I've seen that order or not,
15 Your Honor. I've been dealing with them as if they've been
16 approved counsel, and I didn't really have any reason -- no
17 one has approached me questioning their qualifications.

18 THE COURT: Well, you said you brought extra copies
19 of the proposed form of order. Why don't you leave them and
20 we'll check the docket and the file, and if one hasn't been
21 signed, it will be signed.

22 MR. LEVINSON: Thank you, Your Honor. May I
23 approach?

24 THE COURT: Yes, you may.
25 Okay. Anybody have any other comments to make,

1 just in terms of general status of the case, before we
2 address the application?

3 MS. MICHELSON: Yes, Your Honor. Coming in, in the
4 middle of the movie, is never easy. I have asked Mr.
5 Levinson if we could delay Thursday's hearing by a few days
6 so I'd have an opportunity to get up to speed. He wasn't
7 willing to commit to that, pending further discussions.

8 THE COURT: That would be the hearing on the
9 application to extend the time to assume or reject that
10 lease?

11 MS. MICHELSON: Any application, to approve
12 proposed bidding and overbidding procedures.

13 THE COURT: Okay.

14 MS. MICHELSON: Could we get some available dates
15 from the Court if we are able to reach a stipulation on
16 extending it for two or three days?

17 THE COURT: Sure.

18 MS. MICHELSON: That's probably all I would need.

19 THE COURT: Sure. So you're hoping that you can
20 reach a stipulation to continue it to the next week; is that
21 basically what you're asking?

22 MS. MICHELSON: That's basically it.

23 THE COURT: What's our schedule like next week?

24 THE CLERK: Next week is trial week, but we do have
25 time. How long do you think it would take? Half day

1 on --

2 THE COURT: Probably no more than an hour.

3 MS. MICHELSON: An hour, I would think.

4 THE CLERK: We have Tuesday morning.

5 THE COURT: Okay.

6 THE CLERK: Monday afternoon or Thursday.

7 THE COURT: So you just want to keep those in mind
8 because -- of course, we may fill in those time blocks
9 between now and then --

10 MS. MICHELSON: I understand.

11 THE COURT: -- but based on our schedule right now,
12 those are available.

13 MS. MICHELSON: Okay. Thank you.

14 MR. LOPES: Your Honor, could I make sure I get on
15 the notice list if the hearing is continued, telephonically?

16 THE COURT: Could you please keep him informed?

17 MS. MICHELSON: Yes.

18 THE COURT: Okay. Then the only other matter I
19 have on calendar is the application to employ Price-
20 Waterhouse. Let me -- before you start, let me just tell you
21 that the way this matter was briefed, when things happen of
22 this sort and they're difficult issues, it's awkward because
23 the heart of the brief was in the reply. So what I feel
24 missing is a substantive response on the other side, because
25 the real heart of what you gave me was in the reply.

1 MR. AHRENS: And I appreciate that, Your Honor.
2 And since things have been moving so quickly, I would expect
3 that there would be a lot of reply today to the points we
4 made. It's -- really, I agree with the Court that since the
5 objection was made, we really have become the moving party,
6 I would imagine, once the issues are identified, and the two
7 objecting parties really haven't had a lot of time to reply
8 to that, but I imagine they would have plenty of thoughts
9 here today.

10 Your Honor, with respect to the papers, I know we
11 only filed it last Wednesday because the objections were just
12 filed the prior week, but in these type of matters you always
13 want to get the matter before the Court as soon as possible
14 because there always is the problem of not being employed and
15 compensation.

16 I'd like to just go through a few points and then
17 open it up to questions or to any reply because we said
18 mostly everything in our brief. I think the first thing we
19 said was really telling, and that me as a lawyer and you
20 probably as a judge seeing this, if you use the standards of
21 the attorneys, you'd see a problem with this; you'd see a
22 problem because it looks like there's an absolute conflict.
23 But what I've been learning lately from all of the
24 discussions I'm going to with respect to the combination of
25 the legal and the accounting profession, I'm learning that

1 that's not the case; that's really not the case.

2 And that's why we have a big five as opposed to a
3 big five thousand. I even went to the ABI in December and
4 on the Ethics Committee, they're talking about changing the
5 legal rules to be more like the accounting rules. And if
6 Price-Waterhouse in this case, just because of the fact that
7 they audited Creative, a competitor, somebody who's drained
8 millions of dollars, you know, out of this estate through
9 litigation, but the litigation isn't involved in this
10 application -- if this were the case, that would mean that
11 in every case Price-Waterhouse or Arthur Anderson could not
12 really have a reorganization consulting practice, because
13 there's got to be a bidder out there that they audit that's
14 interested in buying the assets.

15 But I start off really with the premise, Your
16 Honor, that I realize that no matter how much Price-
17 Waterhouse will benefit the estate -- and I'm going to
18 address that at the end -- we have to follow the rules. I've
19 heard the U.S. Trustee say that; I've heard counsel for the
20 U.S. Trustee say that in many cases, and I agree with that.
21 Even if it means a loss to the estate, if there is a problem
22 of being disinterested, if there is a problem with
23 being -- if there's a conflict that's not appropriately
24 waived, or if there's a material adverse interest against the
25 estate, you cannot approve them. So I'll start off with that

1 concession, no matter how much they benefit, because we have
2 to stand by the rules of bankruptcy. There has to be an
3 integrity in the estate.

4 But we have gone through that and come to the
5 conclusion as has the general counsel for PWC -- and that's
6 important, and I'll discuss that in a minute -- that there's
7 absolutely no conflict. The general counsel of PWC performs
8 a function, not of representing any one interest, but of
9 making a determination as to whether there's a conflict. And
10 as she has said in her declaration filed in this court, the
11 rules of any conflict with respect to accountants really rely
12 upon independence.

13 If I'm an auditor, I have to be independent. I do
14 not represent my client; I do not -- I'm not adverse; I am
15 independent. And that's totally different than my firm. The
16 reason there's a couple thousand law firms nationally, big
17 law firms, is because of our rules of either appearance of
18 a conflict or an actual conflict because you have to be
19 aggressive; you have to be an advocate; you have to represent
20 your client. And that's totally different.

21 THE COURT: You know, I followed that point and
22 therefore I was a little confused when you said there's talk
23 about changing the attorney rules so they're more like the
24 accountant's rules. I don't know how you do that, given
25 those two different roles.

1 MR. AHRENS: Your Honor, I don't know that it will
2 ever happen, because it's so ingrained after 30 years in
3 practice, but I was at an ABI conference at which they are
4 talking right now about how the laws may be changed to allow
5 this combination of law firms and accounting firms. But it
6 hasn't been changed yet. It's just a committee, and you
7 know, they meet twice, three times a year and they talk about
8 these things. And so there's a lot of discussion about that,
9 and quite candidly until those discussions, I was -- I
10 thought that the accounting firms had similar rules as we do,
11 but they simply don't.

12 So therefore, Your Honor, we have to look at -- and
13 the law is clear -- whether or not you're disinterested, all
14 the cases seem to talk in terms, the same terms, as whether
15 or not there's a conflict. That's 327(a). 327(a) also talks
16 in terms of material -- represent or hold an interest that
17 is materially adverse. And so if you --

18 THE COURT: There's not really any -- I mean, some
19 of the papers talked about holding an interest, and there's
20 not really any argument that Price-Waterhouse holds an
21 interest adverse; is there?

22 MR. AHRENS: No, Your Honor.

23 THE COURT: It's really a question of representing
24 an interest.

25 MR. AHRENS: Right. That's right, Your Honor.

1 THE COURT: And I think there's also no dispute
2 that Creative is an adverse interest, so to me, it boils down
3 to does Price-Waterhouse represent Creative.

4 MR. AHRENS: I agree with that. And all I've heard
5 from my client -- and we have this in the declaration -- is
6 they do not represent Creative, period.

7 THE COURT: I think that's the heart of the
8 argument, and I'm curious to hear the argument on the other
9 side, if there is one.

10 MR. AHRENS: And now I will simply go through why
11 they do not represent. They have to be independent. So
12 every time the general counsel's office gets a call, can we
13 do this or can't we do this -- and by the way my client is
14 present in court, Hillary Kane (Phonetic), and she could
15 answer any questions, if you would like, that the Court may
16 have -- and she makes a decision whether or not it's
17 consistent with that general premise of independence.

18 Now, being an expert witness, you're a friend of
19 the court; you're representing to the court. I've had many
20 times -- and by the way we met with the U.S. Trustee's Office
21 and went over all these thoughts last week; Mr. Pope had just
22 come back from vacation and he was kind enough to listen to
23 all of our thoughts -- I've represented many a client where
24 they want an appraisal to come in at a certain price, and
25 what I do is I generally hire the appraisers; there's no

1 trick to this, as work product, and then when I find out what
2 the testimony will be, you either do or don't hire them. But
3 I've had many a fight with an independent appraiser. I've
4 been in a fight with an accounting firm that I hired as an
5 expert witness, and they simply don't represent an interest.
6 So that doesn't do it.

7 The same thing with doing a review on any potential
8 purchase of assets. They did a little work apparently that's
9 public knowledge, but they did the same thing. They checked.
10 Is this okay? Yes, you're independent because all you're
11 doing is seeing if the numbers fairly represent general --
12 GAP, generally accepted accounting principles. They're not
13 in the room negotiating on behalf of Creative. And so, Your
14 Honor, I think we've analyzed it --

15 THE COURT: What about giving turnaround advice?
16 Wouldn't that be representing? I'm not sure that was done
17 here. I'm just trying to --

18 MR. AHRENS: That wasn't done here.

19 THE COURT: -- trying to figure out when
20 accountants are representing and when they aren't.

21 MR. AHRENS: Yes. I think --

22 THE COURT: Negotiating clearly, but what else?

23 MR. AHRENS: When they are giving advice and trying
24 to maximize the recovery for the estate and they're actually
25 at the table saying you should pay more, talking to bidders

1 and saying we want more for the estate, I think that's
2 representing an interest in the estate.

3 THE COURT: I had some problem with some of the
4 comments in papers that well, they aren't making decisions.
5 They're different from attorneys because they're not making
6 decisions for the client. Well, attorneys, if they're
7 behaving properly, don't make decisions for clients either;
8 they advise and the client makes the decision.

9 MR. AHRENS: That's correct, but if they're at the
10 table actually negotiating and trying to get -- maximize the
11 return, on Mr. Harraga's (Phonetic) side, I think you would
12 have an argument if that's -- on both sides representing each
13 other, I mean, that to me would present a materially adverse
14 interest. But that isn't the facts.

15 Now, let's go through one other thing, Your Honor.
16 Creative has always been adverse to Aureal. I represented
17 the Debtor in 1994, the Media Vision One. Mr. Lopes
18 represented the Creditors' Committee. We know how adverse
19 they were. At that stage, Price-Waterhouse -- and we have
20 this in the documents -- fully disclosed, and there was no
21 objection by the U.S. Trustee; there was no objection from
22 Creative. Now I'm not saying that they're estopped. I never
23 said that in the papers. But what I am saying that in 1994
24 Price-Waterhouse was very important. They spent over two
25 thousand hours between '94 and the filing helping Media

1 Vision do what it couldn't do, and that is, continue to
2 reorganize. They're now in Chapter 22.

3 But the bottom line is that they are extremely
4 important in this case, especially in light of the
5 resignation of all of the -- basically all of the management
6 of this estate. Counsel for the Debtor, the Debtor, does
7 want Price-Waterhouse employed. They will tremendously
8 benefit this estate. They've been talking to bidders since
9 they've been employed in this estate. They have no
10 alternative. I do the same as proposed reorganization
11 counsel; I try to maximize the recovery for the estate until
12 actually approved.

13 It is very unfortunate that we have this situation,
14 but we know Creative is objecting, and we know that Creative
15 does not want them employed. But the bottom line is,
16 Creative has not even asked to hire them, post-petition, as,
17 quote, "their advisor to advise on numbers." And pre-
18 petition -- I mean, post-petition, they haven't even asked
19 them. They say we may want to hire them in their objection.
20 But the bottom line is they haven't asked.

21 THE COURT: Well, could Price-Waterhouse even do
22 that and audit?

23 MR. AHRENS: I think -- yes, Your Honor, of course.

24 THE COURT: They can advise -- they could advise
25 Creative?

1 MR. AHRENS: Yes. Let's talk about pre-petition
2 and post-petition. First, pre-petition, absolutely, because
3 the general counsel of Price-Waterhouse Coopers always has
4 to make a determination when somebody comes to them, does
5 this compromise my independence. And as long as you're only
6 reviewing numbers and saying we don't think they meet GAP,
7 as long as you're only saying we don't think that's okay,
8 they're still independent. Can I be an expert witness? Yes,
9 you can be an expert witness because you're an independent
10 expert witness. And so they only allow them basically to do
11 that type of function for Creative.

12 Now, post-petition, we haven't even been asked.
13 Post-petition, we think we can still do it. We would like
14 the Court to so order. But so much is involved for this
15 estate, so much time has been spent getting this bidding
16 process that you're going to hear more about on Thursday,
17 general counsel's office has made the decision that if this
18 Court has a problem with that, post-petition, that they feel
19 that Aural came to them first. Basically, they're looking
20 to do two clients because they also represent other people,
21 Creative, but they will not accept the request in the future,
22 which hasn't been made yet, to post-petition being employed
23 by Creative.

24 We think that's okay. We think that as long as
25 they still are independent, they can still -- this is their

1 ticket. I mean, if they violate this rule, they're going to
2 be in trouble with the SEC, with a lot of other people, and
3 they know these conflict rules better than I do. And so
4 therefore, Your Honor, I submit --

5 THE COURT: Now, you said one thing that made me
6 nervous. If I heard you correctly, you said Price-Waterhouse
7 is out there talking to potential buyers. Isn't that
8 representing --

9 MR. AHRENS: No, no, no, no.

10 THE COURT: No. Did I mishear you?

11 MR. AHRENS: No, Price-Waterhouse, as Aureal is,
12 is getting contacts from potential bidders saying, what's the
13 bidding process, things like that. They have to give advice
14 to the management as to what to do in connection with that.
15 But surely, you know, a general reorganization counsel is one
16 that prepares analyses, and it's given to management, and
17 they are needed for the bidding process. I mean, how much
18 is the company worth; what are the assets worth --

19 THE COURT: But when Price-Waterhouse starts
20 talking to outsiders about what's going on with the client,
21 isn't that representing?

22 MR. AHRENS: Your Honor, that's the Aureal side.
23 That's what I've already said. If you're general
24 reorganization counsel --

25 THE COURT: Okay. So you're conceding that Price-

1 Waterhouse represents and would like to be approved as
2 representing the Debtor. They're just saying they don't
3 represent Creative.

4 MR. AHRENS: Right.

5 THE COURT: Okay.

6 MR. AHRENS: Right. I'm not sure how far they want
7 to go. I could talk to my client and see how far the
8 management wants them to go.

9 As Mr. Rehfield just reminded me, the reason
10 for -- the other side of the point, of the independence, is
11 because of their audit functions over at Creative. They do
12 not audit --

13 THE COURT: I see.

14 MR. AHRENS: -- they do not audit. Arthur Anderson
15 & Company audits Aurreal, so they don't have that situation
16 here.

17 THE COURT: Okay.

18 MR. AHRENS: But when testing the conflict rules,
19 the materially adverse interest rules, and the rules of
20 whether or not you're disinterested, in every case, you're
21 not adverse because of whichever you did for Creative, and
22 you simply are not adverse. There's no interest that you're
23 representing, because the Code reads that you cannot
24 represent an interest adverse to the estate.

25 THE COURT: Right.

1 MR. AHRENS: So it's not on the estate side; it's
2 on the representation --

3 THE COURT: I get it.

4 MR. AHRENS: Okay.

5 THE COURT: I was missing that for a minute.

6 MR. AHRENS: And so in closing, Your Honor, I think
7 there's no real argument that they have a learning curve that
8 would be almost impossible to overcome knowing this company
9 and to give advice to management in this company as to what
10 to do in the bidding process. So I wouldn't suggest that
11 just because of the tremendous decline in the value of the
12 estate that you step on the Bankruptcy Rules, but I don't
13 think you have to.

14 THE COURT: Okay. I assume Mr. Lopes is going to
15 argue, but I'd like to hear first from Mr. Pope.

16 MR. POPE: Thank you, Your Honor. Your Honor,
17 first, there's the technical issue of Price-Waterhouse
18 Coopers' standing to be responding to an objection by the
19 U.S. Trustee to an employment application by the Debtor,
20 Aureal. I'm sure the Court values what they've had to say,
21 but there is the issue of their standing --

22 THE COURT: I view them as a friend of the Court.

23 MR. POPE: Thank you, Your Honor. On the merits
24 of the issue, our objection and their reply, the
25 fundamental -- the fact here is that Aureal and Creative do

1 have adverse interests to each other by virtue of being
2 competitors, but more importantly, by virtue of being in
3 litigation in Federal District Court, by virtue of Creative's
4 attempt pre-petition to purchase the assets of the Debtor and
5 apparent interest in pursuing that post-petition, in
6 purchasing the assets of the Debtor. That is clear.

7 THE COURT: I think we all are in agreement with
8 that.

9 MR. POPE: Okay. So the Court properly asked the
10 right question. Does Price-Waterhouse Coopers represent
11 Creative in its adverse interest? Well, Price-Waterhouse
12 Coopers has done, is doing, or proposes to do work for both
13 the Debtor and for Creative in these adversarial
14 circumstances in which the parties find themselves. Mr.
15 Ahrens is correct. I have read his papers, of course, and
16 we did have the benefit of meeting and conferring, and that
17 was valuable to us in understanding their argument.

18 I've since had a chance to look at some of the case
19 law. I don't believe the case law has quite so narrow a
20 definition of representation of an adverse interest as Mr.
21 Ahrens. We certainly do not. The U.S. Trustee does not
22 share that narrow interpretation of representation. We have
23 a broader understanding of what it means to represent an
24 adverse interest. And I'd like just to --

25 THE COURT: Can you give me which cases you think

1 are primarily helpful in this issue?

2 MR. POPE: I would like to do that, Your Honor.
3 Thank you. I would ask the Court to look at the case of In
4 re Thrifty Oil Company, 205 Bankruptcy Reporter, 1009 out of
5 the Central District of California Bankruptcy Court (1997),
6 where the court held that in an accounting case, a Chapter
7 11 case, an interest adverse to the debtor can arise from the
8 representation of another party in connection with the
9 bankruptcy case, or it can arise from representing those in
10 litigation with the debtor as well. And this again is an
11 accountant we're talking about.

12 Another case is In re Micro Time Management
13 Systems, Inc. at 102 Bankruptcy Reporter, 602, a bankruptcy
14 decision out of the Eastern District of Michigan. There an
15 accountant was working as a consultant to a creditor of the
16 debtor involved in litigation that didn't even involve the
17 debtor. It was a creditor against another party, but the
18 accountant was attempting to serve as a consultant for that
19 creditor in that case and also as accountant for the debtor
20 in possession, and the court ruled that this particular
21 accountant who was also attempting to service the Chapter 11
22 trustee, he could not serve as Chapter 11 trustee and his
23 accounting firm could not serve as accountant for the debtor
24 because he was not disinterested, given that consulting role.
25 We have a consulting role here between PWC and Creative.

1 Another case, Your Honor, is the case of In re CVC,
2 Inc. at 120 Bankruptcy Reporter, 874 (1990) case out of the
3 Northern District of Ohio.

4 MR. AHRENS: Pardon me. Could you give me that
5 cite again?

6 MR. POPE: Yes. It's 120 BR 874, Bankruptcy Court
7 of the Northern District of Ohio, a 1990 case, where the
8 court held that there is -- there was an actual conflict of
9 interest which existed with respect to an accountant's
10 employment by the debtor when that accountant also was
11 employed by a third party who was interested in purchasing
12 the assets of the debtor. Again, it's the factual scenario
13 or one of the scenarios that we have in this case, one of the
14 dynamics.

15 So we don't believe the case law embraces this idea
16 that accountants are so objective and independent that they
17 are not subjected to the same kind of disinterestedness
18 requirements that apply to all professionals under 327(a).
19 We believe that the Bankruptcy Code's requirements of
20 disinterestedness and not representing adverse interests
21 include accountants, even though their role might be slightly
22 or even significantly different than attorneys. So we're not
23 trying to mix and match attorneys and accountants; we just
24 think they all have to be disinterested and --

25 THE COURT: Okay. Let me ask you a question, a

1 hypothetical. If the only function Price-Waterhouse
2 performed for Creative was the audit function, would you feel
3 differently about this?

4 MR. POPE: Your Honor, because -- I would have to
5 go back and look at that issue. Just as a conceptual matter,
6 I didn't look at that. I might be more sympathetic to that
7 as being not representing an adverse interest, but that
8 is -- that's not what we have here because their role is
9 involved in the litigation; it's involved in due diligence
10 of the Debtor so that Creative can formulate an offer to
11 purchase the assets of the Debtor. It may --

12 THE COURT: Because frankly the audit and the
13 expert witness seem to me to be the easy ones. The due
14 diligence seems to be the area where it gets closer to
15 representing, in my mind. I haven't reached any conclusion
16 on this yet, so -- it should be obvious --

17 MR. POPE: I understand.

18 THE COURT: -- but I was just wondering if you had
19 the same kind of -- it seems like you don't want to commit
20 yourself but it seems like you have somewhat of the same
21 reaction.

22 MR. POPE: I would, in response to that question,
23 say that -- Mr. Ahrens mentioned the 1994 case, Media Vision,
24 when even then Creative and Aural were competitors and he
25 was retained in some capacity and there was no objection.

1 Well that's because there was no litigation at the time.
2 That changes things. It makes it more crystal clear that
3 there's an adverse relationship here. It's more emphatic.
4 So that's one distinction I would make.

5 But we're not -- we're not totally sold, even that
6 standing alone, the auditor function doesn't still raise
7 problems. But again, we go beyond that here. We have the
8 consulting and the due diligence and the efforts to purchase
9 the assets of the Debtor.

10 The important issue here, Your Honor, is the --
11 whether Price-Waterhouse Coopers is qualified to represent
12 the Debtor, given its relationships with Creative. We
13 respectfully submit that they're not and are prepared, if it
14 would assist the Court, to put some of this in writing, and
15 we would do that in a couple of days, if the Court would wish
16 that to happen.

17 As far as the nunc pro tunc nature of it, I don't
18 want to take too much time on that. Aureal and Price-
19 Waterhouse Coopers are very familiar with the bankruptcy
20 system, and they know the importance of timely filing their
21 employment application, so it appears that they could have
22 had it on file within 15 days, which is what the U.S. Trustee
23 guidelines call for, and did not. So -- but the thrust of
24 our concern is the relationship between PWC and Creative, and
25 we submit that they're not qualified under 327(a).

1 THE COURT: Okay. We're going to have to take a
2 short break right now to change Recorders, and I'll take a
3 short break too and then I'll come back.

4 MR. POPE: Thank you.

5 (A recess is taken at approximately 3:00 p.m.)

6 THE CLERK: You may remain as you are.

7 THE COURT: Mr. Lopes?

8 MR. LOPES: Your Honor, I will be relatively brief.
9 Creative is generally in agreement with the position of the
10 U.S. Trustee. A couple of comments: Contrary to the papers
11 that were filed on behalf of Price-Waterhouse, they did seek
12 a waiver from Creative, which waiver was refused, and if
13 that's an important issue to the Court, we can provide --
14 THE COURT: You say, "contrary to the papers,"
15 because I thought that was discussed in the papers.

16 MR. LOPES: The papers say no waiver was sought.
17 In fact, a waiver was sought, and it was refused.

18 THE COURT: Maybe the term "waiver" wasn't used,
19 but I thought I saw reference to -- although we didn't think
20 we needed to, we just did ask for them to approve it.

21 MR. LOPES: That isn't what the papers say.

22 THE COURT: Hmm. Okay.

23 MR. LOPES: The papers say they did not seek a
24 waiver.
25

THE COURT: Okay.

1 MR. LOPES: They did seek a waiver, and it was
2 refused. The other comment I would have is that the papers
3 filed by Price-Waterhouse indicate that there's all this
4 continuity, and it's in the best interest of the estate.
5 Nothing in the Debtor's application indicated that was the
6 basis upon which Price-Waterhouse was hired. Having been
7 involved in the prior case, I know that Paul Webber was the
8 primary point person from Price-Waterhouse, and he's not
9 involved in this representation. So I would suggest that the
10 Court discount that argument. There's no evidence or support
11 for that argument either in the Price-Waterhouse papers or
12 in the Debtor's original application.

13 THE COURT: In any event, either the representation
14 is proper or it isn't proper.

15 MR. LOPES: That's correct, Your Honor.

16 THE COURT: It's really the fact that it --

17 MR. LOPES: And the best interest of the estate is
18 a straw argument. It doesn't hold any weight.

19 THE COURT: And I should not be influenced by that.

20 MR. LOPES: You should ignore it, in my view.

21 The Court asked whether or not there was a conflict
22 in 1994. Circumstances were quite different in 1994. Price-
23 Waterhouse was --

24 THE COURT: I don't think that was exactly -- what
25 was 1994? Why --

1 MR. LOPES: That was the previous bankruptcy.

2 THE COURT: Okay. I think what I asked is if the
3 only function performed had been the auditing function, would
4 Mr. Pope have --

5 MR. LOPES: I was going to point out in 1994, that
6 was the only function.

7 THE COURT: Okay.

8 MR. LOPES: Price-Waterhouse were auditors for
9 Creative, and that was their only role.

10 THE COURT: And was that why Creative did not --

11 MR. LOPES: I can't comment on that. I didn't
12 represent Creative back then.

13 THE COURT: Right.

14 MR. LOPES: But I can comment now that the
15 situation is very different. Price-Waterhouse is not only
16 the auditors for Creative, Creative's position has changed.
17 Creative has been involved in very difficult and extensive
18 litigation with this Debtor. So I think that, in and of
19 itself, changes the role of Price-Waterhouse, even if they
20 were only the auditors.

21 But it goes well beyond that. They were expert
22 witnesses in this highly contentious litigation, which the
23 Debtor is blaming for its downfall, and most importantly,
24 they represented us as advisors in making a purchase proposal
25 just prior to the bankruptcy filing and have assured us on

1 a continuing basis that they will continue to represent us
2 in that regard, which representation we are looking for. We
3 intend to make a bid for the Debtor's assets in this case,
4 and we intend to rely upon Price-Waterhouse to advise us in
5 that regard.

6 It seems to me that if this is not a conflict, then
7 you should write "Accountants" out of §327, because there's
8 never going to be a conflict. The papers filed on behalf of
9 Price-Waterhouse are very good, but they don't address the
10 big picture, and the big picture is that there's a conflict
11 here. And they're saying, 327 really doesn't apply to
12 accountants. Accountants are different than attorneys.
13 Yeah, accountants are different than attorneys, but if this
14 isn't a conflict, there's never going to be a conflict for
15 accountants. You couldn't have a clearer case.

16 It seems to me that what they're arguing is kind
17 of the law of large firms and the law of ethical walls
18 precludes any conflicts for accounting firms. If this were
19 Sugarman & Company coming in and saying, well, Randy Sugarman
20 is going to work for the Debtor and Judy Bratton is going to
21 work for Creative in the bidding process and the sale process
22 and advising the Debtor about the sale and advising Creative
23 about their purchase. But that's not a conflict, because
24 they're not going to talk to each other. Well, clearly, the
25 Court wouldn't accept that argument. And I don't think the

1 Court should accept that argument simply because it's Price-
2 Waterhouse. They have a conflict.

3 THE COURT: Do you see the issue as different from
4 whether they could perform any services and also would be
5 viewed as still being independent enough to perform an audit?

6 MR. LOPES: I don't -- I think that's --

7 THE COURT: Because that seems to be the primary
8 thrust of their argument.

9 MR. LOPES: Well, I don't -- frankly, I don't quite
10 understand it. I mean, they're saying that because they're
11 our auditors, all they can do is report numbers to us. They
12 can't advise us. The letter that -- the engagement letter,
13 talks about advisory services that Price-Waterhouse Coopers
14 has provided and may provide to Creative. They are our
15 advisors, and in that capacity, you're looking for their
16 judgment and for their wisdom and for their experience.
17 They're simply not bringing us numbers and saying here are
18 the numbers and be happy with them.

19 We're paying them a lot of money, and we have paid
20 them a lot of money to provide advisory services. And they
21 are our advisors, and I think by being our advisors they have
22 created a conflict to advise the Debtor in this case on
23 precisely the same issues, which is, you know, what do we
24 sell; how do we sell it; how much do we sell it for; what's
25 its value; what's the strategy? That's what they're

1 attempting to advise both sides on, and I don't think they
2 can do it. And if they can --

3 THE COURT: Let's get away from the -- both sides.
4 I'm just still trying to understand how this works for
5 accountants. Just one client, as I understand their
6 argument, they could not maintain the ability to audit your
7 client and do the type of service that you're describing.
8 Do you agree with that or not?

9 MR. LOPES: I don't agree with it because they
10 have. I mean --

11 THE COURT: Well, one thing is whether they've done
12 it; the other thing is whether it's proper. Let's assume
13 there's no other client involved. It's just a question of
14 whether they are your auditor, your client's auditor, and
15 your client says, and plus, we want you to do this other job
16 for us which is advising us in connection with the purchase.
17 Is it your view that they can properly do both of those
18 things. It's not inconsistent --

19 MR. LOPES: I am certainly not an expert on
20 accounting conflicts.

21 THE COURT: You don't have a view on that. You
22 don't have a view on that.

23 MR. LOPES: But I -- in my experience, they
24 certainly do. I think -- and correct me if I'm wrong --

25 THE COURT: No, they do, but accountants do that

1 in general?

2 MR. LOPES: I think -- I think their turnaround
3 people advise debtors who are audit clients. I believe that
4 to be the case. I don't think they refer out that turnaround
5 business just because they have an audit --

6 THE COURT: I don't know. I think some of them
7 form separate little entities to do that, for just that
8 reason, but I'm not -- like most attorneys, we're not as
9 familiar with the standards for accountants as we are for
10 attorneys.

11 MR. LOPES: I have certainly seen a number of
12 instances where the turnaround group in a big five firm have
13 advised an audit client, and whether or not they aren't
14 supposed to do that, I don't know. But it certainly happens.
15 And, you know, I don't see -- I don't see a different quality
16 here in terms of the type of advisory services that are being
17 provided, and I don't think the fact that they're a large
18 firm and I don't think the fact that they've built this
19 ethical wall solves the problem.

20 By the way, we have requested -- prior counsel
21 requested, you know, the written procedures that were in
22 place for this ethical wall. We haven't received them, and
23 I have to question how well the ethical wall is working if
24 pleadings in the Aureal bankruptcy case indicate what's going
25 on with the Creative representation. It seems to me that

1 some ethical wall has been breached there, because, you know,
2 that doesn't seem quite appropriate to me either.

3 So I think it creates a lot of problems. I think
4 the big five accounting firms do have -- require some amount
5 of leniency in the bankruptcy context because of how big they
6 are, how many creditors, have many parties they're involved
7 with. But this is a case where there is clearly a conflict
8 and where they should have stepped aside. I mean clearly
9 they were aware of the problem. Clearly, they sought
10 waivers. Clearly, they negotiated this extensive agreement
11 with the Debtor. They recognized the problem. They just
12 didn't solve it. And I don't think they've solved it to the
13 satisfaction of the Bankruptcy Code. They're not
14 disinterested. And I don't think their employment should be
15 allowed.

16 THE COURT: Okay. Any cases you want me to look
17 at other than those three that Mr. Pope cited?

18 MR. LOPES: No, Your Honor.

19 THE COURT: Okay. Before -- I just want to see if
20 Ms. Michelson has anything she wants to say.

21 MS. MICHELSON: Your Honor, I haven't had the
22 benefit of reading the papers or looking at the law, or most
23 importantly, consulting with my client on the issues, so I
24 will not take a position at this point.

25 THE COURT: Okay. Do you want a little time to do

1 that or do you have too many other things to do at the start
2 of the case?

3 MS. MICHELSON: I think the matter is being ably
4 argued on both sides, and I would defer to them.

5 THE COURT: Okay.

6 MR. POPE: Your Honor, I have a fourth case that
7 I failed --

8 THE COURT: I don't know that we can hear you
9 because you're too far away from the microphone.

10 MR. POPE: I was going to ask permission to inform
11 the Court of a fourth case that I failed --

12 THE COURT: Please do.

13 MR. POPE: -- to mention that might be relevant and
14 helpful to the Court and to the parties. It's the case of
15 Trust America Service Corp., 175 BR 413, bankruptcy, Middle
16 District of Florida, (1991) Tampa Division. It deals with
17 the issue of ethical walls and accounting firms and Chapter
18 11, and the court held that an ethical wall is generally not
19 an acceptable means of conflict avoidance where the same
20 professional organization actively represents two adverse
21 interests. So it is relevant.

22 THE COURT: Okay.

23 MR. POPE: Thank you, Your Honor.

24 THE COURT: I'm sorry, Mr. Mitchell. Did you want
25 to say something first? Remind me whom you represent.

1 MR. MITCHELL: Your Honor, I represent Orrick,
2 Herrington & Sutcliffe, which is the second largest unsecured
3 creditor in this case, according to the Debtor's schedules.

4 THE COURT: Okay.

5 MR. MITCHELL: I'm not going to address the U.S.
6 Trustee's argument, because I think they're focused on, you
7 know, the technical point of law that the courts have said
8 about disinterestedness.

9 I think, though, that it is important to note the
10 issues that are at stake here, other than the issues the U.S.
11 Trustee has raised. Creative has been locked in very
12 difficult litigation with Aureal for some time now, and at
13 least as I heard the arguments that were being presented on
14 behalf of Creative, they were saying that there's a conflict
15 because they want to be able to hire Price-Waterhouse in the
16 future to represent them in connection with the possible
17 purchase of Aureal's assets.

18 And I'm very concerned about kind of the
19 conflicting interests that Creative is facing here as on one
20 hand a potential creditor of the case, on the other hand
21 somebody who is in what might be described as almost "bet the
22 company" litigation with Aureal -- at least from Aureal's
23 perspective.

24 And I also don't, you know, even on traditional,
25 you know, legal rules of conflict of interest, which may or

1 may not apply here -- I don't understand how somebody's
2 desire to hire somebody to do work in the future can create
3 a conflict now. And so I really think we are left with the
4 issues that the U.S. Trustee raises as to whether or not
5 Price-Waterhouse Coopers is disinterested under 327.

6 But I think the fact that Creative wants to hire
7 them in the future to do work should not be a relevant
8 factor, and I haven't heard any allegations from Creative of
9 the kind of harm that you normally see where one side is
10 trying to actually disqualify the other side's professional,
11 because that's in effect what Creative is trying to do here.
12 They're trying to take away Aural's right to choose its
13 accountant on the grounds that they also represent Creative.
14 And I'm not hearing that there's some risk of disclosure of
15 information that, you know, that might be confidential to
16 Creative that they don't want being disclosed, anything like
17 that.

18 And so I think for that reason the objections that
19 Creative is raising really aren't on point here. The issues
20 I think that the U.S. Trustee is raising are ones that the
21 Court does have to decide, but I think Creative, because of
22 its multiple roles here -- and we do have to bear that in
23 mind -- I think it would not be altogether helpful for this
24 estate to lose Price-Waterhouse Coopers at this point.

25 Now, if that's what 327 requires and that's the

1 interest the U.S. Trustee has to enforce, I mean, that's
2 where we are and we all agree we have to follow the law.
3 But I think that's what we need to be focusing on, is that
4 issue, and not the kinds of issues that Creative has been
5 raising.

6 Thank you, Your Honor.

7 MR. LOPES: Your Honor, may I simply clarify in
8 response to that? I mean, we have hired Price-Waterhouse,
9 and we're working with them on a continuing basis. It's not
10 a question of we may hire them in the future. And I think
11 it's clear that we do -- we have shared information and will
12 share information with them that we don't want disclosed.
13 I mean, I thought that went without saying. I mean, that is
14 the conflict. I mean, we're sharing confidential information
15 with their advisors.

16 MR. AHRENS: Your Honor, just a brief reply. I
17 understand --

18 THE COURT: Before you do, on that point, I had a
19 brief discussion with Judge Jellen about this because I
20 think it's a difficult issue, one that I'm not familiar
21 enough with the legal stance. I wish I were more. We're all
22 familiar with the attorney standards, but not as much with
23 accountant.

24 And I said, well, -- the whole issue of
25 confidentiality, and the point he raised with me was, well,

1 I'm not aware of an accountant privilege, so if you've shared
2 confidential information with the accountant, that would be
3 subject to discovery. Now is that right or not?

4 I think it's only fair to let you know that that
5 idea has been planted in my mind, and if that's erroneous,
6 you can correct me. So it may be that you don't have any
7 right of confidentiality. Whether or not Price-Waterhouse
8 represents the Debtor, that information may be subject to
9 disclosure, if he's correct about this that it's not
10 privileged.

11 MR. LOPES: That would surprise me very much. I
12 mean, does that mean that Price-Waterhouse, if they do end
13 up representing both sides, don't need an ethical wall, that
14 they can share any information they've received from either
15 party. I don't think that's correct.

16 THE COURT: I think the one thing perhaps missing
17 from his comment was, if it's part of litigation, perhaps
18 it's part of the general litigation privilege, but I don't
19 think there is a special accountant-client privilege; is
20 there?

21 MR. LOPES: Well, there's work product that's
22 created with the attorney involved.

23 THE COURT: Work product is a whole different kind
24 of issue. I think I've answered my own question, that there
25 is litigation ongoing and probably to the extent the

1 accounting service is performed in the context of the
2 litigation, it probably would be covered by the attorney-
3 client privilege.

4 MR. LOPES: Okay.

5 MR. AHRENS: Of course, Your Honor, on that point,
6 then I'll get to my brief reply, as I said earlier, once you
7 decide to use that expert as a witness, there is no
8 privilege. Every discussion you've ever had with that lawyer
9 is no longer work product. We all know that.

10 THE COURT: Of course, this accountant wears
11 several hats and so when wearing the different hat, it's not
12 clear that that --

13 MR. AHRENS: Well, that's what I want to address
14 with Your Honor, and that is, in reply -- just a very few
15 points, and I understand a few of the other creditors want
16 to address this and then that will be it -- this all comes
17 back to the audit function. What is consistent with the
18 audit function? Nothing that compromises your lack of
19 independence.

20 There's about four cases that were cited by the
21 U.S. Trustee's office. We have read them. They weren't in
22 the brief, but I appreciate, as I said, he hasn't had a lot
23 of time to look at it so that's fine, but I would be
24 surprised if it is a well-reasoned decision if they were
25 performing the audit function in that case.

1 And as I said to you before, performing the audit
2 function is what brings us to the conclusion that there is
3 no conflict. And where you're the auditor, you cannot take
4 any engagement that would compromise the independence. As
5 the Court noted, being an independent witness, no compromise;
6 you're an independent witness. So to when you perform any
7 analysis of numbers for any other purpose, you've got to
8 maintain your independence. So --

9 THE COURT: You know, how you describe this third
10 category and how Mr. Lopes describes it, is a little
11 different. You say due diligence, looking at figures to see
12 if they're kept in accordance with GAP; he says advice. I
13 haven't been party to these discussions. How do I know which
14 it is. Is --

15 MR. AHRENS: Your Honor, if --

16 THE COURT: There seems to be a different quality
17 about those two types of services.

18 MR. AHRENS: Right. The problem is, we are trying
19 to be professional and not disclose --

20 THE COURT: I know it --

21 MR. AHRENS: -- what we've done from Creative.

22 There is somebody in court who knows who would be happy to
23 talk to the Court or to do a confidential -- but again, we
24 probably would want to talk to Creative, and they're our
25 competitors, so we could address that if we have to, but you

1 could just start off with the premise that the counsel for
2 Price-Waterhouse Coopers has determined that these actions
3 are not representation; they are not representation that
4 compromises their independence. It's something that would
5 be the same as the audit function which does not disqualify
6 them.

7 And that's the key and that's how I bet --
8 although none of these cases are Ninth Circuit decisions;
9 none of them are binding on this court -- I would bet if they
10 are well-reasoned decisions, you're going to find that in one
11 case I hear already that that person was the Chapter 11
12 trustee and an accountant. I mean, that's a lot different.
13 When you're an accountant and you are an auditor and you have
14 to maintain your independence, there is no conflict, Your
15 Honor.

16 Now, on the other issue that Creative's counsel
17 stated, that we asked for their waiver. The Court was
18 correct as to what we said. We didn't feel -- but we had
19 business reasons, and this goes to nunc pro tunc also. Why
20 did we take 15 more days than is normal? Counsel for the
21 Debtor is a very competent firm. They know exactly what you
22 have to do. The problem was, at Creative's -- because of
23 Creative's situation, Price-Waterhouse went out of their way
24 to make sure that Creative wasn't hurt.

25 They knew that they were doing some services that

1 we provided, including audit functions, the three functions,
2 audit, doing the work with respect to expert witness and also
3 they did a little work for the -- reviewing some records in
4 connection with pre-petition due diligence. And they came
5 to the conclusion that they better get Aureal's okay that
6 they won't try to disqualify them so they don't prejudice
7 their other client.

8 They're going the other way saying, because we will
9 be in a non-audit function with the Debtor, we want to make
10 sure that Creative is not hurt. And the general counsel is
11 looking at both of these sides and saying, I want to serve
12 all clients fairly and that's what they did.

13 So there wasn't a date when they said we think
14 there's a waiver of conflict; we want your consent. What
15 they said to Aureal is we want to make sure that we don't
16 prejudice our other client.

17 I think that's all of the points I had in response,
18 Your Honor. 327, Mr. Lopes, a very good advocate, argued
19 that we had said it doesn't apply. We admit it; it does
20 apply, and we think we meet that. His example of Sugarman,
21 not on point. Auditor, non-audited. That's the distinction
22 and that's why there is no conflict.

23 Thank you, Your Honor.

24 THE COURT: There's some other parties who wanted
25 to address the court?

1 MR. LEVINSON: Your Honor, Sid Levinson for the
2 Debtor. Your Honor, with respect to this particular issue,
3 Price-Waterhouse, because of their involvement beginning in
4 late March, particularly at the time that senior management
5 had resigned, we were facing a very difficult issue with
6 respect to -- or I should say difficult business
7 circumstances with respect to keeping the business afloat in
8 the midst of the ongoing litigation with Creative. And then
9 ultimately, we filed the bankruptcy case.

10 With respect to this issue with Creative, our main
11 focus was insuring that there were procedures and safeguards
12 to insure that there wouldn't be any breach of
13 confidentiality, because I think that's ultimately what the
14 issue becomes is whether or not our information, information
15 about our company, might inadvertently find its way to
16 Creative and vice-versa.

17 We were satisfied with the procedures that were put
18 into place, given the fact that the people who are working
19 on the matter for Aural are not involved with respect to
20 Creative, that they work out of -- that they're from a
21 separate office, that they're actually working out of the
22 Aural offices, that all of the information is on Aural's
23 separate computer system, and given those procedures and the
24 others that were put into place, we were satisfied that that
25 confidentiality issue would be satisfied.

1 It would be a hardship for the estate if we had to
2 replace the accountants at this time. The accountants have
3 been in there, as I say, working for nearly three months.
4 With respect to counsel, Mr. Ahrens' point as far as the nunc
5 pro tunc, he is correct that the reason that it wasn't filed
6 within the 15 days was the need to address these issues and
7 make sure that they were dealt with in a satisfactory manner
8 to all parties so that the estate was protected and so
9 that -- and for Price-Waterhouse's protection as well. And
10 ultimately there was a letter that was executed on May 3rd
11 that addressed these particular issues relating to Creative
12 and then ultimately the application was filed the following
13 day.

14 I would note that other than the United States
15 Trustee, the only party to object is Creative. No other
16 creditors in this case have objected to the employment of
17 Price-Waterhouse. And it's important to know, Creative is
18 not here for the benefit of the estate. They're not here as
19 a creditor of this estate. They are here on their own
20 behalf, one as a litigant against Aureal, a litigant that
21 brought two cases against Aureal and is also a defendant in
22 a third, all of which are --

23 MR. LOPES: Your Honor, I would object.

24 This --

25 THE COURT: Please don't interrupt. I'll listen

1 to you after if you wish to respond. And don't -- and
2 anything he's saying has obviously crossed my mind as a
3 possibility, so the problem is I can speculate what motivates
4 their objection, and I can appreciate the potential harm to
5 the estate if I don't employ them, but both of those really
6 are red herrings. The question is, can I approve the
7 employment.

8 MR. LEVINSON: You're correct, Your Honor. And
9 I'll leave it at that.

10 THE COURT: Okay. Anybody else wish to speak?

11 MR. REIMER: I was going to address one of the red
12 herrings on --

13 (Laughter.)

14 THE COURT: Why don't you let it pass, unless
15 you -- okay. Anything further? Okay. Is it submitted?

16 MR. AHRENS: Yes, Your Honor.

17 THE COURT: Okay. I'll take it under submission.
18 I have to give this more thought and read these cases.

19 MR. AHRENS: Your Honor, if you're going to read
20 those cases, would you like in two days -- I haven't read
21 those cases so could I just write a letter to the judge
22 or --

23 THE COURT: I can wait one week for any additional
24 submissions that people wish to submit.

25 MR. AHRENS: Thank you, Your Honor.

1 THE COURT: And it needs to be done by letter
2 brief.

3 MR. AHRENS: Thank you.

4 THE COURT: Okay. Thank you.

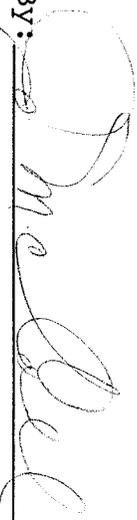
5 ALL COUNSEL: Thank you, Your Honor.

6 (Whereupon, the proceedings are concluded at 3:25 p.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

DATED: June 30, 2000

By: 
Jo McCall

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EXHIBIT Z

FILED
00 MAY 24 PM 4:
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND, CA.

1 MINNIE LOO, Assistant United States Trustee (SBN 106613)
2 MARK I. POPE, Attorney-Advisor (SBN 182769)
3 ANDREW D. VELEZ-RIVERA, Attorney-Advisor (SBN 143481)
4 MARGARET H. MCGEE, Attorney-Advisor (SBN 142722)
5 U.S. DEPARTMENT OF JUSTICE
6 Office of the United States Trustee
7 1301 Clay Street, Suite 690-N
8 Oakland, California 94612-5217
9 Telephone: (510) 637-3200

Attorneys for the Interim United States Trustee MAUREEN TIGHE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

10 In re: } Case No. 00-42104 T
11 AUREAL, INC., d/b/a SILO.COM, } Chapter 11
12 f/k/a AUREAL SEMICONDUCTOR, }
13 Inc., f/k/a MEDIA VISION } Hearing Requested
14 TECHNOLOGY, INC., a Delaware }
15 corporation, }
16 }
17 } Debtor. }

**OBJECTION BY UNITED STATES TRUSTEE TO
APPLICATION TO EMPLOY PRICEWATERHOUSECOOPERS LLP
NUNC PRO TUNC AS ACCOUNTANTS AND FINANCIAL ADVISORS
TO THE DEBTOR AND DEBTOR IN POSSESSION
AND REQUEST FOR HEARING**

18 The United States Trustee is responsible for, inter alia, supervising "the
19 administration of cases . . . under chapter . . . 11" of the Code and is given discretion to
20 file comments with the court with respect to applications for employment of professional
21 persons. 28 U.S.C. Section 586(a)(3).

22 The United States Trustee objects to the Application to Employ
23 PricewaterhouseCoopers LLP ("PWC") Nunc Pro Tunc as Accountants and Financial
24 Advisors to the Debtor and Debtor in Possession for the following reasons:

25 The Application seeks to employ PWC as the debtor's accountant and
26 financial advisor in this case. The services which PWC is to provide include valuing the
27 debtor's assets and securities, assisting the debtor with business plans, developing and
28

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1 negotiating a plan of reorganization and offering expert testimony relating to the
2 feasibility of any plan. Application at 4.

3 At the same time, PWC is engaged as technical consulting experts for creditor
4 Creative Labs, Inc., (“Creative”) in a lawsuit styled *Creative Labs, Inc. v. Aureal Semi-
5 Conductor, Inc.*, Case No. 98-21006, currently pending in the United States District
6 Court for the Northern District of California, San Jose Division and may provide similar
7 services to Creative in connection with other litigation adverse to the debtor that is
8 pending in the San Francisco division of that Court.^{1/} Application at 5. PWC also has or
9 intends to assist Creative in making an offer for the purchase of all or a portion of the
10 assets of the debtor. Application at 5.

11 In assisting Creative against the debtor in pending litigation and in its efforts to
12 purchase the debtor’s assets, PWC represents an interest adverse to the estate and is not
13 disinterested and is, therefore, not qualified to represent the debtor in this case. 11
14 U.S.C. §§101(14)(E) and 327(a);^{2/} *U.S. Trustee v. Price Waterhouse*, 19 F.3d 138 (3rd
15 Cir. 1994)(a debtor in possession cannot employ accountants or other professionals who
16 are not disinterested); *In re Envirodyne Industries, Inc.*, 150 B.R. 1008 (Bankr. N.D.
17
18

^{1/}Debtor’s Statement of Financial Affairs shows three lawsuits involving the debtor and Creative and
19 a related entity asserting patent infringement, false advertising, contributory infringement and
20 inducement of infringement. Statement of Financial Affairs at p.22.

^{2/} Under the pertinent language of 11 U.S.C. 327(a), a debtor in possession
21 may employ one or more attorneys, accountants, appraisers, auctioneers, or other
22 professional persons, that do not hold or represent an interest adverse to the estate, and that
23 are disinterested persons, to represent the [debtor in possession] in carrying out [its] duties.”
24 11 U.S.C. §327(a).
25

Under the pertinent language of 11 U.S.C. §101(14)(E) a disinterested person
26
27 means a person that . . . does not have an interest materially adverse to the interest of the
28 estate . . . for any . . . reason.
11 U.S.C. 101(14)(E).

1 III.1993)(to represent an adverse interest means to serve as an agent for an entity holding
2 an adverse interest).

3 A high degree of impartiality and detached judgment is expected of estate
4 professionals during the administration of the case. The services being rendered by
5 PWC to Creative would create a conflict of interest which would inevitably affect and
6 impair its performance of services to the bankruptcy estate. At a minimum, PWC seeks
7 to be integrally involved in valuing the assets of the estate on behalf of both the debtor
8 and Creative. PWC would have the duty to assist the debtor in maximizing the value but
9 its representation of the potential purchaser would require it to establish a value at the
10 lowest range.

11 Debtor appears to have asserted a waiver of the conflict created by PWC serving
12 Creative. Application at 7. However, the adverse interest and disinterested person
13 limitations set forth in 11 U.S.C. §327(a) can not be waived. *In re S.S. Retail Stores*, 211
14 B.R. 699 (Bankr. 9th Cir. 1997); *In re Envirodyne Industries, Inc.*, 150 B.R. at 1016.

15 The Application incorporates PWC's retention letter dated March 28, 2000
16 attached to the Application at Exhibit F. The United States Trustee objects to any
17 provision of the Retention letter which is inconsistent with this Court's Guidelines for
18 Compensation and Expense Reimbursement of Professionals and Trustees.

19 The Declaration of Glenn A. Hiraga in Support of Application to Employ
20 PricewaterhouseCoopers LLP ("PWC") Nunc Pro Tunc as Accountants and Financial
21 Advisors to the Debtor and Debtor in Possession does not appear to include a disclosure
22 of any connection of PWC with the debtor's attorneys in this case as required by Federal
23 Rule of Bankruptcy Procedure 2014(a).

24 The Application asserts that is was filed in a timely manner. Application at 7.
25 However, it seeks PWC's employment *nunc pro tunc* without having addressed the
26 standards for such employment set forth in *In re Atkins*, 69 F.3d 970 (9th Cir.1995).

27
28

1 WHEREFORE, based on the above, the United States Trustee respectfully
2 requests that the Application be denied and requests a hearing thereon.

3 Dated: May 24, 1999

Respectfully submitted,

4 Minnie Loo
5 Assistant United States Trustee

6
7 By: 
8 Mark L. Pope
9 Attorney-Advisor
10 Attorneys for United States Trustee
11 Maureen Tighe
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PROOF OF SERVICE

I, Avis J. Haynes, declare as follows:

I am a citizen of the United States and over the age of eighteen (18) years and not a party to the within action.

My business address is 1301 Clay Street, Suite 690N, Oakland, California 94612-5217.

On May 24, 2000 I served, by mail and fax, a copy of the following document(s) :

**OBJECTION BY UNITED STATES TRUSTEE TO APPLICATION TO EMPLOY
PRICEMATERHOUSECOOPERS LLP NUNC PRO TUNC AS ACCOUNTANTS AND
FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION
AND REQUEST FOR HEARING**

by enclosing a true and correct copy of said document(s) in an envelope with postage thereon fully paid, which envelope was then sealed and deposited in the United States mail at Oakland, California, addressed to each of the person(s) listed below:

Counsel for Debtor:

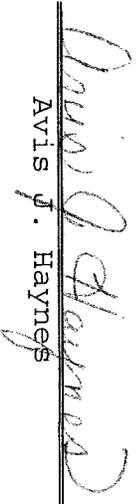
Sidney P. Levinson, Esq.
Hennigan, Bennett & Dorman
601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017

Counsel for Creditor Creative Labs, Inc.:

James Lopes, Esq.
Howard, Rice, Nemerovsky & Robertson
3 Embarcadero Center, 7th Floor
San Francisco, CA 94111

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

Executed on: May 24, 2000

By: 
Avis J. Haynes

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EXHIBIT AA

1 JAMES L. LOPES (No. 63678)
2 JANET A. NEXON (No. 104747)
3 HOWARD, RICE, NEMEROVSKI, CANADY,
4 FALK & RABKIN
5 A Professional Corporation
6 Three Embarcadero Center, 7th Floor
7 San Francisco, California 94111-4065
8 Telephone: 415/434-1600
9 Facsimile: 415/217-5910

10 Attorneys for CREATIVE TECHNOLOGY, LTD.,
11 CREATIVE LABS, INC., and E-MU SYSTEMS,
12 LTD.

13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 AUREAL, INC., d/b/a/ SILO.COM, f/k/a
16 AUREAL SEMICONDUCTOR, INC.,
17 F/K/A MEDIA VISION TECHNOLOGY,
18 INC., a Delaware corporation,

19 Debtor.

20 No. 00-42104-T11
21 ORIGINAL
22 REQUEST FOR HEARING ON AND
23 OBJECTION TO THE APPLICATION
24 FOR AUTHORITY TO EMPLOY
25 PRICEWATERHOUSECOOPERS AS
26 ACCOUNTANTS AND FINANCIAL
27 ADVISORS TO THE DEBTOR AND
28 DEBTOR IN POSSESSION

29 Creative Technology, Ltd. and its subsidiaries Creative Labs, Inc. and E-MU

30 Systems Ltd. (collectively "Creative"), a party in interest herein, hereby object to the
31 Application for Authority to Employ PricewaterhouseCoopers as Accountants and Financial
32 Advisors to the Debtor and Debtor in Possession ("Application") and request that the
33 Application be set for hearing on at least ten days written notice to interested parties.

34 As set forth in the Application, PricewaterhouseCoopers performs audit and tax
35 work for Creative, is employed as an expert witness for Creative in litigation with the Debtor
36 and, most importantly, assisted Creative in making an offer to purchase substantially all of th
37 assets of the Debtor which offer was made prior to the filing of this bankruptcy case.

38 Creative is informed that the Debtor intends to sell substantially all of its assets in

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

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FILED
00 MAY 24 PM 3:08
KEENA J. BROWN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CA.
OAKLAND, CA.

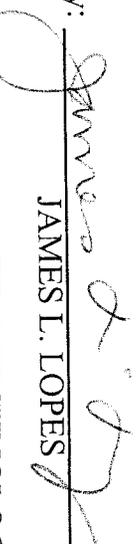
HOWARD
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RABKIN
A Professional Corporation

1 the chapter 11 case and that Glenn Hiraga, a PricewaterhouseCoopers partner, will be the
2 point person with respect to that sale. Creative still wishes to purchase substantially all of the
3 assets of the Debtor and intends to make all appropriate efforts to become the successful
4 purchaser in this chapter 11 case. It also intends to continue to retain
5 PricewaterhouseCoopers to assist it in these efforts. Creative refused the request of
6 PricewaterhouseCoopers to waive the conflict created by its dual representation of Creative
7 and the Debtor and does not believe that PricewaterhouseCoopers can proceed to represent
8 both entities without such a waiver. In essence, if PricewaterhouseCoopers proceeds as
9 requested, it will be sitting on both sides of the negotiations for the sale of the Debtor's
10 assets.

11 By reason of the foregoing, Creative requests that this matter be set for hearing
12 and that at such hearing this Court deny the Application.

13 DATED: May 21, 2000.

14 HOWARD, RICE, NEMEROVSKI, CANADY,
15 FALK & RABKIN
A Professional Corporation

16 By: 
17 JAMES L. LOPES
18 Attorneys for CREATIVE TECHNOLOGY, LTD.,
19 CREATIVE LABS, INC., and E-MU SYSTEMS,
20 LTD.
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HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

PROOF OF SERVICE BY MAIL

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is Three Embarcadero Center, 7th Floor, San Francisco, California 94111-4065.

I am readily familiar with the practice for collection and processing of documents for mailing with the United States Postal Service of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, A Professional Corporation, and that practice is that the documents are deposited with the United States Postal Service with postage fully prepaid the same day as the day of collection in the ordinary course of business.

On May 24, 2000, I served the foregoing document(s) described as REQUEST FOR HEARING ON AND OBJECTION TO THE APPLICATION FOR AUTHORITY TO EMPLOY PRICEWATERHOUSECOOPERS AS ACCOUNTANTS AND FINANCIAL ADVISORS TO THE DEBTOR AND DEBTOR IN POSSESSION on the persons listed below by placing the document(s) for deposit in the United States Postal Service through the regular mail collection process at the law offices of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, A Professional Corporation, located at Three Embarcadero Center, 7th Floor, San Francisco, California, to be served by mail addressed as follows:

Bruce Bennett, Esq.
Hennigan, Bennett & Dorman
601 South Figueroa Street
Suite 3300
Los Angeles, CA 90017

Mark Pope
Office of the U.S. Trustee
1301 Clay Street, Suite 690N
Oakland, CA 94612-5217

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on May 24, 2000.

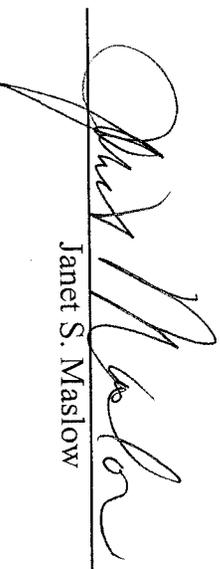

Janet S. Maslow

EXHIBIT BB

CONFORMED COPY

1 Glenn A. Hiraga
2 PricewaterhouseCoopers LLP
3 400 South Hope Street
4 Los Angeles, California 90017
5 Telephone: (213) 236-3000
6 Facsimile: (213) 622-9062

7 Accountants and Financial Advisors to
8 The Debtor and Debtor in Possession

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 U.S. BANKRUPTCY COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION
15 01 NOV -8 PM 2:23
16 COPY OF ORIGINAL FILED

17 In re
18 AUREAL, INC., d/b/a SILO.COM,
19 F/K/a AUREAL
20 SEMICONDUCTOR, INC., f/k/a
21 MEDIA VISION TECHNOLOGY,
22 INC., a Delaware corporation;

23) Case No. 00-42104-T11
24) (CHAPTER 11)
25) SECOND INTERIM AND FINAL FEE
26) APPLICATION OF
27) PRICEWATERHOUSECOOPERS LLP FOR
28) ALLOWANCE AND PAYMENT OF
29) COMPENSATION AND REIMBURSEMENT OF
30) EXPENSES (FOR THE PERIOD FROM
31) APRIL 5, 2000 UP TO AND INCLUDING
32) OCTOBER 15, 2001); DECLARATION OF
33) GLENN A. HIRAGA

34) No Hearing Required
35)
36) Date: No Hearing Set
37) Time:
38) Place: 1300 Clay Street
39) Oakland, CA 94612

40 TO THE HONORABLE LESLIE TCHAIKOVSKY, UNITED STATES BANKRUPTCY
41 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND THE DEBTOR AND
42 DEBTOR IN POSSESSION:
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Second Interim and Final Fee Application of PricewaterhouseCoopers for Allowance and Payment of Compensation and Reimbursement of Expenses (April 5, 2000 to October 15, 2001)

1 The Application of PricewaterhouseCoopers LLP ("PwC") respectfully
2 represents as follows:

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7	III. DESCRIPTION OF SERVICES RENDERED 7
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10	
11	Exhibits
12	A. Court Order Approving Employment of PricewaterhouseCoopers LLP
13	B. Summary of Professional Fees by Consultant
14	C. Summary of Professional Fees by Activity and Consultant
15	D. Fee Detail by Activity and Date
16	E. Summary of Expenses by Expense Type
17	F. Expense Detail by Type and Consultant
18	G. Experience and Qualifications of Professionals with Significant
19	Hours on the Case
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I.

INTRODUCTORY STATEMENT

1. This is the Second Interim and Final Fee Application (the "Application") of PWC for compensation for services rendered and reimbursement of expenses in connection with this matter. This application kindly requests that the Court (i) allow, as an expense of the administration in Aureal, Inc. ("Aureal", "The Estate"), PWC's fees in the amount of \$245,159.50 and expenses in the amount of \$48,702.67 for the period April 5, 2000, up to and including October 15, 2001 (the "Interim Application Period") and (ii) give final authorization to Aureal to pay PWC \$199,126.81, which represents the amount of fees and expenses attributable to the period April 5, 2000 through October 15, 2001 net of the \$94,735.36 retainer.

2. Aureal filed a voluntary petition under Chapter 11 on April 5, 2000 (the "Petition Date"). On May 4, 2000, the Debtor submitted the "Application To Employ PricewaterhouseCoopers LLP Nun Pro Tunc As Accountants and Financial Advisors To The Debtor and Debtor In Possession." On July 26, 2000, an order was issued approving PWC's employment as financial advisor for Aureal. A copy of the employment order is included as Exhibit "A".

3. PWC was selected by the Board of Directors and the counsel to the Debtor to specifically utilize the Los Angeles based team. It was their opinion that the professionals on this team were the most appropriate to be utilized on the engagement. PWC also believes that their selection was most appropriate for the engagement. Management and the Board of Directors were fully aware that out of town

1 expenses such as airfare, hotel, etc. would be incurred in utilizing
2 this team.

3 4. Extensive involvement of high level PwC professionals in
4 operations and liquidation was necessary due to the departure of the
5 Debtor's entire senior management, except for the Human Resources
6 executive. Furthur, a high level of experience was required to
7 assist the Controller in activities, due to the fact that he was a
8 contracted personnel and not a permanent employee of the company.

9 5. In order to avoid any additional expense likely to be
10 incurred by expanding on this description of the posture of the case
11 and the Debtors' affairs, PwC incorporates by reference, as permitted
12 by Local Rule 2016(1)(a)(i), the narrative history of the present
13 status of this case as set forth in the final fee application of the
14 Debtors' counsel Hennigan Bennett & Dorman.

15 6. In its role as financial advisor to Aurreal, PwC in the
16 Interim Application Period provided 942.1 hours of service accruing
17 \$253,312.00 in fees. PwC voluntarily reduced this amount by \$8,152.50,
18 resulting in net fees of \$245,159.50. In addition, PwC incurred
19 \$48,702.64 in expenses. Schedules summarizing fees and expenses for
20 each PwC professional who performed services during the Application
21 Period are attached hereto as Exhibits "B" through "F".

22 7. PwC submitted two (2) professional fee applications in this
23 Application Period. No hearing was held to review and approve the
24 first application. Certain expenses were claimed on the First Interim
25 Fee Application, which PwC is now voluntarily reducing by \$492.03.
26 This represents airfare upgrades of \$450.00 and miscellaneous expenses
27 of \$42.03. In addition, PwC voluntarily reduced it's fees incurred in

1 transitioning the new financial advisors by 50% or \$8,152.50. The
2 summary of PwC's applications are as follows:

3	Date Filed	Period Covered	Fees	Expenses	Total
4	08/25/00	04/05/00-07/31/00	\$237,657.50	\$48,345.75	\$286,003.25
5		Voluntary Reduction:		\$(492.03)	\$(492.03)
6		08/01/00-10/15/01	\$ 15,654.50	\$ 848.95	\$ 16,503.45
7		Total per Schedules:	\$253,312.00	\$48,702.67	\$302,014.67
8		Voluntary reduction:	\$(8,152.50)	0	\$(8,152.50)
9	11/09/01	Total:	\$245,159.50	\$48,702.67	\$293,862.17
10		Retainer Applied			\$(94,735.36)
11		Total Payment Requested:			\$199,126.81

12 8. This Application is PwC's second and final request to this
13 Court for allowance and payment of compensation and reimbursement of
14 expenses. On April 4, 2000, PwC received a retainer of \$150,000. PwC
15 applied outstanding fees of \$48,617.50 and outstanding expenses of
16 \$6,647.14 against the retainer. On the Petition Date the net
17 retainer was \$94,735.36. From the Petition Date to October 15, 2001,
18 PwC has accrued \$253,312.00 in fees and \$48,702.67 in expenses, less
19 the voluntary reduction in fees of \$8,152.50. Net fees and expenses
20 due after applying the \$94,735.36 retainer is \$199,126.81.

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II.

2 DESCRIPTION OF PRICEWATERHOUSECOOPERS LLP EXPERIENCE

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4 5. PwC, the world's largest professional services

5 organization, provides accounting, auditing, tax, litigation,

6 information technology, bankruptcy and business recovery consulting

7 services to clients of its 867 offices in 152 countries worldwide.

8 6. PwC has extensive experience in financial reorganizations,

9 bankruptcy and litigation consulting services. Our professionals

10 have provided services to a wide variety of industries, and as a

11 result, PwC has accumulated a wealth of knowledge concerning the

12 intricacies in these matters.

13 7. In bankruptcy and forensic accounting, PwC has accumulated

14 over a quarter of a century of experience servicing Debtors,

15 Creditors, and Trustees in bankruptcy matters. Current and former

16 Chapter 11 cases in which PwC - Western Region acted as financial

17 advisor and accountants to either the Debtor, the Creditors'

18 Committee, or the Trustee include: Circle K Corporation, Carter

19 Hawley Hale, America West Airlines, Maxicare Health Plans, Tucson

20 Electric Power Co., and First Executive Corporation.

21 8. In addition, PwC has assisted numerous Debtor and Debtor-

22 In-Possession entities involving liquidation of bankruptcy estates,

23 successful development of reorganization plans, numerous valuation

24 projects, extensive tax consulting, and other services related to

25 reorganization.

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III.

DESCRIPTION OF SERVICES RENDERED TO THE DEBTOR

9. During the Application Period, PwC assisted the Debtor in the following categories of service:

A. Financial Analysis/Business Operations

10. For the Application Period PwC performed numerous analysis to assess the financial position of Aureal and to determine an appropriate business strategy. A more detailed description of the various tasks PwC performed is as follows:

11. Cash/Cash Equivalent Analysis (Fees: \$11,095.00; Hours: \$53.5; Blended Hourly Rate: \$207.38): PwC provided weekly cash

management oversight which included the identification of cash received and disbursed, the review of invoices processed, and a weekly reconciliation of receipts and disbursements with bank records and Aureal's budget. Given the liquidity issues facing Aureal and the high employee attrition rate, cash management procedures employed by PwC were necessary to provide a foundation to manage the business.

12. Accounts Receivable Analysis (Fees: \$10,417.50; Hours: \$46.8; Blended Hourly Rate: \$222.60): PwC analyzed the outstanding

receivables to determine the timing and magnitude of future cash collections. PwC also monitored "key" customers to ensure that late outstanding customer balances were addressed by Aureal's management. When necessary, PwC informed legal counsel to facilitate legal action and encourage payment.

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13. Inventory/Sales Management (Fees: \$69,882.50; Hours:

205.7; Blended Hourly Rate: \$339.73): PWC invested a substantial

amount of time managing inventory and the sales of inventory to maximize value. This included, but not limited to, (i) assessing the value and availability of inventory locally in the Fremont warehouse and abroad at various vendor locations, (ii) regulating the sale of inventory to clients including Sony, Ocean, Caesar, Voyetra and I/O Magic, (iii) reviewing sales and license agreements to determine available distribution channels, and (iv) negotiating with customers and vendors to maintain the flow of product. In addition, PWC helped disseminate relevant information to customers to encourage their support.

This activity was necessary due to the fact that the Debtor's senior management had resigned. The absence of senior management to supervise these activities, necessitated assistance from highly experienced PWC staff.

14. Employee/Salary Analysis (Fees: \$11,917.50; Hours: 43.2;

Blended Hourly Rate: \$275.87): PWC helped balance the Debtor's

staffing needs and its liquidity "crunch" by actively managing payroll. To do this, PWC analyzed, on a weekly basis, payroll by employee by department for contract and non-contract employees - locally and abroad. In addition, PWC conducted interviews with management and potential buyers to determine "key" employees. PWC encouraged "key" employees to stay by way of active communication and monetary rewards where appropriate.

The ability to analyze and make decisions regarding "key" employees is gained through extensive experience in liquidation

1 situations. As a result, higher level professionals were very
2 involved in this process.

3 15. **Budget Analysis (Fees: \$5,020.00; Hours: 16.6; Blended**

4 **Hourly Rate: \$302.41)**: PwC created a rolling 13-week budget after
5 analyzing historical accounting records and interviewing employees.
6 This budget was useful in providing general oversight of Aureal's
7 cash position. Each week PwC compared actual results to the budget
8 to identify areas of concern. This information was passed on to
9 Aureal's management and the Board of Directors. The weekly budget
10 played an integral role in making key decisions. For example, the
11 timing and magnitude of headcount reductions and the timing of the
12 sales process were, in part, determined based on the available cash
13 forecasted by the budget.

14 The controller was a relatively newly hired contractual employee
15 and had no longevity with the Debtor. In addition, the entire senior
16 management team, except the human resources officer had resigned.
17 PwC's expertise in liquidating situations allowed it to provide
18 valuable guidance in managing the Debtor's cash flow in the absence
19 of experienced senior financial staff.

20 16. **Lease Analysis (Fees: \$3,292.50; Hours: 17.3; Blended**

21 **Hourly Rate: \$190.32)**: PwC reviewed Aureal's property and equipment
22 leases to access the value of the Estate. Based on the analysis of
23 the lease terms and current market data, PwC determined if it was
24 appropriate to assume or reject the various leases. For example, PwC
25 determined that the property lease for the Fremont location had
26 significant value. PwC worked with the real estate broker and
27 ///

1 management to determine and evaluate the best way to capture the
2 inherent value of the below-market lease.

3 17. Weekly Report Preparation/General (Fees: \$20,750.00;

4 Hours: 99.0; Blended Hourly Rate: \$209.60): Each week a general

5 update was provided to Areal's management and the Board of
6 Directors. This report generally included a summary of the budgeted
7 and actual cash receipts and disbursements, a recap of the employee
8 roster with anticipated payroll expenditures, a review of significant
9 outstanding receivables, and a write-up of significant events for the
10 week. This report facilitated communication and provided pertinent
11 information about the current and anticipated condition of the
12 Debtor.

13 After the departure of the senior management team, the Debtor
14 needed assistance in understanding the state of operations. PwC's
15 extensive financial experience enabled it to assist the management
16 and Board of Directors in managing operations and the liquidation.

17 **TOTAL FINANCIAL ANALYSIS/BUSINESS OPERATIONS (\$132,375.00; HOURS:**
18 **482.1; BLENDED HOURLY RATE: \$274.58).**

19 **B. Sale of Business and Liquidation Analysis**

20 18. PwC spent a considerable amount of time assessing the
21 options for the Debtor to determine an appropriate course of action.
22 To this end, PwC examined (i) selling Areal in its entirety (as a
23 going-concern); (ii) liquidating Areal; (iii) selling some of
24 Areal's operations and liquidating others.

25 19. Sale of Business (Fees: \$30,925.00; Hours: 86.4; Blended

26 Hourly Rate: \$357.93): PwC invested time facilitating the sale
27 process. This included, but is not limited to, (i) meeting with

1 prospective buyers (e.g., Conexant, Concordia Capital, Guillemot,
2 Intel, Cirrus Logic, and SRS Labs) to address their questions and/or
3 concerns; (ii) disseminating information at the request of
4 prospective buyers and collecting information for the due diligence
5 room; (iii) granting tours of the Fremont facility; (iv) coordinating
6 discussions with potential buyers, the Debtor, and the Debtor's
7 counsel (Hennigan, Bennett & Dorman).

8 The complex and technical nature of these meetings required the
9 participation of PwC professionals with a rich history in business
10 dispositions. Such experience was critical in assisting both the
11 Debtor and potential buyers in the sale process.

12 20. Furniture, Fixtures, and Equipment Inventory (Fees):

13 \$16,565.00; Hours: 79.1; Blended Hourly Rate: \$209.42): PwC took an
14 inventory of all furniture, fixtures, and equipment located at the
15 Fremont location to (i) determine the liquidation value, (ii) to
16 enhance security over the assets, and (iii) to aid potential buyers
17 in their assessment of the Debtor's assets. Given the Debtor's
18 inaccurate and piecemeal records, this was a necessary task. PwC
19 tagged and counted all equipment of significant value located at the
20 Fremont location. This included monitors, computers, telephones,
21 furniture, servers, printers, fax machines, kitchen appliances, and
22 lab equipment - over 1,500 items in all. In addition, individuals
23 with property off-site were contacted to return items such as laptops
24 and lab equipment. PwC's inventory was helpful in obtaining bids
25 from auctioneers, securing items of value, and informing potential
26 buyers about the physical assets owned by the Debtor.

27 ///

21. Auctioneer Evaluation (Fees: \$8,755.00; Hours: 33.6;

Blended Hourly Rate: \$260.57): To evaluate the Debtor's options, it was necessary to perform a liquidation analysis. To this end, PWC inventoried all of the furniture, fixtures, and equipment (see above) and solicited bids from a number of auctioneers. PWC supplied the auctioneers with an inventory listing and escorted them through the Fremont facility to obtain bids. PWC evaluated each proposal/bid and recommended an auctioneer to perform the liquidation when necessary.

TOTAL SALE OF BUSINESS (\$56,245.00; HOURS: 199.1; BLENDED

HOURLY RATE: \$282.50).

C. **FEE/EMPLOYMENT APPLICATION (\$27,742.00, HOURS: 144.9;**

BLENDED HOURLY RATE \$191.46).

22. PWC professionals spent time preparing the employment application, the fee application and timelogs in conformity with the guidelines of the United States Bankruptcy Code. As of October 15, 2001, the total amount spent in relation to the employment application is \$6,880.00 (2.7% of the total request). As of October 15, 2001, the total amount spent in relation to the fee applications is \$20,862.00 (8.2% of the total request).

D. **FEE/EMPLOYMENT OBJECTIONS (\$6,640.00, HOURS: 16.6; BLENDED**

HOURLY RATE: \$400.00).

23. PWC expended substantial effort in supporting our application for employment. The scope of our activities included the research and preparation of a written response to the opposition. PWC also attended the court hearing on this matter.

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1 The nature of responding to an objection necessitates the
2 presence of a high level professional at the court hearing and in
3 forming the support for PwC's application.

4 **E. TRANSITIONAL PROCEDURES (\$16,305.00, HOURS: 41.4; BLENDED**
5 **HOURLY RATE: \$393.84).**

6 24. PwC played a significant role searching for a suitable
7 replacement as financial advisor to Aurreal. PwC transitioned the new
8 financial advisors into their roles through updates on key issues
9 including inventory valuations and the sale of Company assets as well
10 as provide pertinent documents to facilitate their duties. This
11 process was necessary to ensure the replacement advisor had as much
12 information as possible to provide effective advisory services to the
13 Debtor.

14 PwC has voluntarily reduced the fees requested for this activity
15 by 50% of the total incurred. PwC spent 41.4 hours, incurring
16 \$16,305.00 in fees; however, we are requesting approval of only
17 \$8,152.50 in fees.

18 **F. CASE ADMINISTRATION (\$14,005.00, HOURS: 58.0; BLENDED**
19 **HOURLY RATE: \$241.47).**

20 25. PwC expended significant time and effort in performing
21 various administrative tasks as required by the United States
22 Bankruptcy Code. Such tasks typically involved the proper
23 documentation of work performed and filing all pertinent documents
24 including legal proceedings, correspondences, memorandums and weekly
25 reports. Additional document management was necessary to facilitate
26 the transition of the engagement to the new consultants of the Debtor.

27 ///

IV.

SUMMARY

1. PWC has compiled its fees and expenses and prepared this application in conformance with the Office of the United States Trustee Guidelines.

2. Exhibits "B" through "F" (attached hereto) detail the time and expenses of all PWC professionals during the Application Period.

Exhibit B - Summarizes the professionals who performed services, the number of hours spent , the respective professional's billing rate, and the total fees for such services;

Exhibit C - Summarizes fees by activity by consultant;

Exhibit D - Summarizes fees by activity by date. Each itemized record includes: (1) the date each service was rendered, (2) the professional(s) who performed the service, (3) a description of the services rendered, and (4) the time spent performing the service in increments of tenths of an hour;

Exhibit E - Recaps expenses by category (i.e., airfare, lodging, meals, mileage, parking, and other). It should be noted that any airfare charges were incurred as a result of travel in coach class. All meals expensed represent breakfasts and dinners while out of town and lunches at the work site with Debtor present. PWC has not requested reimbursement for certain out-of-pocket expenses when it would not be possible to assemble the billing details for reimbursement under the Local Rules of this Court. These unbilled out-of-pocket expenses typically include telephone charges for calls placed in its offices, postage costs including Federal Express charges and copying and facsimile charges incurred at PWC's

1 office in connection with the case. These unbilled out-of-pocket
2 expenses were real costs that have been incurred by PwC and have
3 benefited the Debtor;

4 • **Exhibit F** - Provides detail for each expense by expense category by
5 individual. All expenses for which reimbursements are sought, are
6 disclosed in detail by individual.

7 3. During the period covered by this application, our billing
8 rates were:

9 Glenn A. Hiraga	\$400 - \$425
10 Shawn Kelly	\$225 - \$325
11 Partners/Managing Directors	\$400 - \$475
12 Manager/Director	\$300 - \$380
13 Associate Consultants	\$150 - \$225
14 Professional Assistants	\$80 - \$90

15 4. In compliance with U.S. Trustee Guideline "B", attached as
16 Exhibit "H" are descriptions of the Qualifications of Professionals
17 with significant hours in this matter.

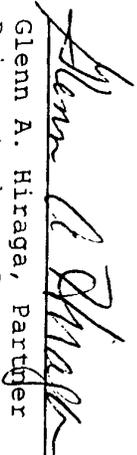
18 5. PwC's time records show a total of 942.1 hours rendered
19 from April 5, 2000 through October 15, 2001, with fees totaling
20 \$253,312.00. This represents an average rate of \$268.88 per hour.

21 6. Neither PwC nor any members of PwC has any agreement or
22 understanding of any kind to divide, pay over, or share with any other
23 person, except as among the members of PwC, any portion of the fees or
24 expenses to be awarded pursuant to this Second and Final Fee
25 Application.

26 **Wherefore**, PwC respectfully requests that the Court (i) allow,
27 as an expense of administration in Aureal's Chapter 11 case, PwC's

1 fees in the amount of \$245,159.50 and expenses in the amount of
2 \$48,702.67, and (ii) authorize Aurreal to pay PWC \$199,126.81 forthwith
3 upon the entry of an Order approving this Application.
4

5 DATED: November 7, 2001


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7 Glenn A. Hiraga, Partner
8 PricewaterhouseCoopers LLP
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DECLARATION OF GLENN A. HIRAGA

I, Glenn A. Hiraga, declare and state as follows:

1. I am a partner in the accounting and consulting firm of PricewaterhouseCoopers LLP; am personally familiar with all of the facts relating to the within proceedings, and am authorized to make this declaration in support of its Second Interim and Final Fee Application for Approval of Compensation for Services Rendered and Reimbursement of Expenses for the period April 5, 2000 through October 15, 2001.

2. No agreement or understanding was made or exists between Applicant and any other person for any compensation which may be awarded to Applicant herein.

3. The application submitted by PWC complies with the Guidelines of the United States Trustee.

4. I have read the foregoing Second and Final Fee Application of PricewaterhouseCoopers LLP for Approval of Compensation for Services Rendered and Reimbursement of Expenses and declare that statements contained therein are true to the best of my knowledge, information and belief.

5. The compensation and expenses reimbursement requested are billed at rates, in accordance with practices, no less favorable than those customarily employed by PWC and generally accepted by PWC's clients.

DATED: November 7, 2001


Glenn A. Hiraga, Partner
PricewaterhouseCoopers LLP

J. F. Kelly

ORIGINAL

1 MICHAEL H. AHRENS, CAL. BAR NO. 44766
2 JEFFREY K. REHFELD, CAL. BAR NO. 188128
3 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

FILED

4 A Limited Liability Partnership
5 Including Professional Corporations
6 Four Embarcadero Center, 17th Floor
7 San Francisco, California 94111
8 Telephone: (415) 434-9100
9 Facsimile: (415) 434-3947

JUL 26 2000

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

10 Attorneys for PricewaterhouseCoopers LLP

ORIGINAL FILED

JUL 26 2000

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND, CALIFORNIA

OAKLAND DIVISION

11 In re Case No. 00-42104-TI
12 (Chapter 11)

13 AUREAL, INC., d/b/a SILO.COM,
14 f/k/a AUREAL SEMICONDUCTOR, INC.,
15 f/k/a MEDIA VISION TECHNOLOGY,
16 INC., a Delaware corporation,

[Proposed] ORDER APPROVING
APPLICATION TO EMPLOY
PRICEWATERHOUSECOOPERS
NUNC PRO TUNC AS ACCOUNTANTS
AND FINANCIAL ADVISORS TO THE
DEBTOR AND DEBTOR IN
POSSESSION

Debtor.

DATE: June 19, 2000
TIME: 2:00 p.m.
PLACE: Courtroom 201
1300 Clay Street
Oakland, CA 94612

23 On June 19, 2000, a hearing was held on the "Application for Authority to Employ
24 PricewaterhouseCoopers LLP Nunc Pro Tunc as Accountants and Financial Advisors to the
25 Debtor and Debtor in Possession" ("Application") filed by Aureal, Inc. (the "Debtor").
26 Creative Technology, Ltd. and its subsidiaries Creative Labs, Inc. and E-MTU Systems Ltd.
27 (collectively, "Creative") and the Office of the United States Trustee ("U.S. Trustee") each
28

1 filed objections to the Application. PricewaterhouseCoopers LLP ("PwC") filed pleadings in
2 response to the objections.

3 Appearing at the hearing were Sidney Levinson of the law firm of Hennigan, Bennett
4 & Dornan on behalf of the Debtor; Michael Ahrens of the law firm of Sheppard, Mullin,
5 Richter & Hampton LLP on behalf of PwC; James Lopes of the law firm of Howard Rice
6 Nemerovski Canady Falk & Rabkin on behalf of Creative; Randy Michelson of the law firm
7 McCutchen, Doyle, Brown & Erersen, LLP on behalf of the Official Committee of
8 Unsecured Creditors; and Mark Pope on behalf of the U.S. Trustee.

9 Following the hearing the Court took the Application under submission. The U.S.
10 Trustee filed a supplemental opposition to the Application. PwC filed supplemental
11 materials in support of the Application.

12 Thereafter, the Court issued its "Memorandum of Decision Re Employment of
13 Accountants" dated June 28, 2000 (the "Decision"), which provided that the Debtor may
14 retain PwC subject to the satisfaction of certain conditions.

15 On July 7, 2000 PwC filed with the Court the "Declaration of Hilary Krane In
16 Support Of Application For Authority To Employ PricewaterhouseCoopers LLP Nunc Pro
17 Tunc As Accountants and Financial Advisors To The Debtor And Debtor In Possession"
18 ("Krane Declaration"), which complies with the conditions required for PwC's employment
19 set forth by the Court in its Decision.

20 Upon consideration of all of the pleadings filed with the Court relating to the
21 Application, the arguments made by counsel at the June 19, 2000 hearing, and the Krane
22 Declaration; it appearing to the Court that PwC and its members and employees are
23 disinterested persons who do not hold or represent an interest adverse to the estate in the
24 matters upon which they are to be engaged; that the employment of PwC by the Debtor is in
25 the best interest of the estate; that notice of the Application was appropriate; and good cause
26 appearing therefor.

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1 IT IS HEREBY ORDERED THAT:

2 1. The Application hereby is APPROVED;

3 2. The Debtor is hereby authorized to employ PwC as its accountants and
4 financial advisors, on substantially the same terms and conditions set forth in the Application
5 and the retention agreement (a copy of which is attached hereto as Exhibit 1), nunc pro tunc
6 to April 5, 2000, with compensation to be at the expense of the estate in such amount as the
7 Court may hereafter allow;

8 3. PwC is prohibited from providing Creative with any advice concerning the
9 purchase of the Debtor's assets during the pendency of this bankruptcy case;

10 4. PwC must resign as Creative's consulting expert in the "Creative Litigation"
11 (as defined in the Application) and is prohibited from providing Creative with any such
12 expert consulting services during the pendency of this bankruptcy case; and

13 5. In order to further ensure confidentiality, PwC shall internally create an ethical
14 wall, including, without limitation, adhering to the following procedure:

- 15 a. No information pertinent to the engagement with the Debtor will be
16 shared with those working on any matter for Creative, or any other
17 matter related to the Creative Litigation (collectively, the "Creative
18 Matters"). Similarly, no information from Creative Matters will be
19 shared with those working on the Debtor's engagement.

- 20 b. Neither Glenn Hiraga, nor any staff working with Glenn Hiraga (in the
21 Debtor's bankruptcy matter or any other engagement) will work directly
22 with or for any partner involved in the Creative Matters; and
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1 c. All files related to the Debtor's engagement will not be kept on PwC's
2 network to ensure files are kept confidential. All files related to the
3 Debtor's engagement will be maintained on the Debtor's system (in
4 Fremont, California) or on laptop computers in possession of staff
5 members assigned to the Debtor's engagement. The only exception to
6 the foregoing provisions is that information relating to the Debtor's
7 engagement has been and may continue to be forwarded by electronic
8 mail to those PwC members working on the Debtor's engagement (even
9 though such electronic mail messages are routed through a PwC
10 electronic mail server and, therefore, technically may be on the PwC
11 network), as long as such electronic mail messages are only accessible
12 by those PwC staff members assigned to the Debtor's engagement and
13 appropriate PwC management information systems personnel and
14 provided that all appropriate precautions and measures will be taken by
15 PwC to ensure that personnel involved in Creative Matters will not have
16 access to any such electronic mail messages. In addition, all
17 appropriate precautions and measures will be taken by PwC to ensure
18 that personnel involved in Creative Matters will not have access to any
19 hard copies of the Debtor's documents.

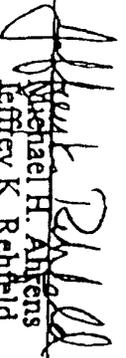
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21
22 Dated: July 26, 2008
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24 Leslie Tcharkovsky
25 HON. LESLIE TCHARKOVSKY
26 United States Bankruptcy Judge
27
28

1000 1000 1000 SHEPPARD MULLIN RICHTER & HAMPTON LLP 0040 0000

1 Submitted by:

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3 By

4 
5 Michael H. Ahrens
6 Jeffrey K. Rehfeld

7 Counsel for PricewaterhouseCoopers LLP

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EXHIBIT A

1 Approved as to form:

2 HENNIGAN, BENNETT & DORMAN

3
4 By Sidney P. Levinson

5
6 Counsel for the Debtor and Debtor in Possession

7
8 HOWARD RICE NEMEROVSKI CANADY FALK & RABIN

9
10 By James Lopes

11
12 Counsel for Creative Technology, Ltd. and its subsidiaries
13 Creative Labs, Inc. and E-MU Systems Ltd.

14 McCUTCHEEN, DOYLE, BROWN & ENERSEN, LLP

15
16 By Randy Michelson
17
18 Counsel for the Official Committee of Unsecured Creditors

19
20 OFFICE OF THE UNITED STATES TRUSTEE

21
22 By Mark Pope
23 Counsel for the Office of the United States Trustee

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-6- EXHIBIT A

1 Approved as to form:

2 HENNIGAN, BENNETT & DORMAN

3 By Sidney P. Levinson

4 Counsel for the Debtor and Debtor in Possession

5 HOWARD RICE NEMEROVSKI CANADY FALK & RABIN

6 By *James Lopez*
7 for James Lopez

8 Counsel for Creative Technology, Ltd. and its subsidiaries
9 Creative Labs, Inc. and E-MTU Systems Ltd.

10 McCUTCHEEN, DOYLE, BROWN & ENERSEN, LLP

11 By Randy Michelson

12 Counsel for the Official Committee of Unsecured Creditors

13 OFFICE OF THE UNITED STATES TRUSTEE

14 By Mark Pope

15 Counsel for the Office of the United States Trustee

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JUL 19, 2000 2:13PM SHEPARD MULLIN SF OFFICE

1 Approved as to form:
2 HENNINGAN, BENNETT & DORMAN

3
4 By *Sheil P. Levinson*
5 Sheil P. Levinson
6 Counsel for the Debtor and Debtor in Possession

7
8 HOWARD RICE NEMEROVSKI CANADY FALK & RABIN

9
10 By *James Lopes*
11 James Lopes
12 Counsel for Creative Technology, Ltd. and its subsidiaries
13 Creative Labs, Inc. and E-MU Systems Ltd.

14 McCUTCHEEN, DOYLE, BROWN & ENERSEN, LLP

15
16 By *Randy Michelson*
17 Randy Michelson
18 Counsel for the Official Committee of Unsecured Creditors

19 OFFICE OF THE UNITED STATES TRUSTEE

20
21
22 By *Mark Pope*
23 Mark Pope
24 Counsel for the Office of the United States Trustee

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EXHIBIT A

BY FAX DIVISION 6115311
PROCESSED, ORDER APPROVED APPLICATION TO DEPLOY AND
MIND THE TIME AS ACCOUNTANTS AND FINANCIAL ADVISORS

EXHIBIT CC



CA BAR #05-20211
EXHIBIT CC - PAGE 1

VLS 11/2/00 14:20
3:94-CV-00737 SEC V. CONTINENTAL WIRE
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P/A.

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FILED

NOV - 2 2000

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY
BY [Signature]

HENNIGAN, BENNETT & DORMAN
James O. Johnston (State Bar No. 167330)
601 South Figueroa Street, Suite 3300
Los Angeles, CA 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Counsel for **Argo Partners, Inc.**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

) Case No. 94cv0737E (CGA)
) Bk. Case No. 97cv0352E (CGA)

Plaintiff,

v.

CONTINENTAL WIRELESS CABLE
TELEVISION, INC.; ROBIN J. MCPHERSON;
JAY R. BISHOP; AND GENE R. CARDENAZ,

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION FOR ORDER COMPELLING
) DISTRIBUTION TO ARGO PARTNERS,
) INC.

Defendants.

In re

Hearing

NASHVILLE WIRELESS CABLE JOINT
VENTURE.

) Date: December 4, 2000
) Time: 10:30 a.m.
) Place: Courtroom 3

Debtor.
) 940 Front Street
) San Diego, CA

Argo Partners, Inc. ("Argo") submits this Memorandum of Points and Authorities in support of the accompanying "Motion For Order Compelling Distribution To Argo Partners, Inc." (the "Motion").

The statement of facts supporting this Memorandum is set forth in the Motion. In the interest of brevity, that statement is not repeated here and, instead, is incorporated by this reference. Capitalized terms not otherwise defined in this Memorandum have the meanings ascribed to them in the Motion.

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I. INTRODUCTION

Argo is in the business of purchasing claims against debtors in bankruptcy proceedings. Though that business, Argo seeks to make a reasonable profit by acquiring claims for an amount less than the amount that ultimately is distributed by the debtor with respect to those claims.

Argo is entitled to make that profit because, in purchasing claims, it assumes substantial risks. Among others, Argo assumes the risk that, as is frequently the case, distributions from the bankruptcy estate will be delayed by a matter of months or years after the date of assignment. Argo also assumes the risk that, if and when they ultimately are made, distributions from the estate will be less than the amount that it paid for the claims. Argo further assumes the risk that – as happened in this case – the claims that it acquires will be reduced or disallowed and that Argo will be unable to recover the amounts that it paid for those claims.

Through its business, Argo provides a valuable service to the often powerless holders of small unsecured claims. Namely, Argo provides such creditors with a way to remove the risks assumed by Argo, to “cash out,” to move on with their lives, and to receive an immediate, certain payment instead of waiting for some future distribution, in an uncertain amount and at an uncertain date, from the bankruptcy estate. These benefits are well recognized and respected in bankruptcy cases:

The existence of a market for claims, whether debt securities or trade claims, can provide substantial benefits to creditors, and to a debtor. The benefits to creditors are obvious. The automatic stay prevents creditors from pursuing payment remedies against the debtor with respect to their prepetition claims. Creditors, particularly unsecured creditors who generally have no right to obtain relief from the automatic stay, may be forced to wait years for payment from the debtor’s estate under a plan of reorganization. Access to a market for claims provides creditors with an opportunity to convert their claims into cash which may be needed to pay expenses. A claims market also permits a creditor to shift the risks inherent in chapter 11 cases – risks that the debtor’s business (and

1 recoveries in the chapter 11 estate) will continue to decline or that distributions
2 will be delayed substantially -- to a party more willing to accept that risk.

3 Herbert Minkel and Cynthia Baker, Claims and Control in Chapter 11 Cases: A Call for Neutrality,
4 13 Cardozo L. Rev. 35, 35-36 (1991) (citations omitted).

5 In fact, Bankruptcy Rule 3001(e) anticipates those benefits and provides a specific
6 mechanism for recognizing and implementing the transfer of claims in a bankruptcy case. See Fed.
7 R. Bankr. P. 3001(e). As explained in more detail below, when the requirements of Rule 3001(e)
8 have been followed, as they indisputably were by Argo in this case, and where an assigning
9 creditor does not object to the assignment of its claim, as none have in this case, the matter is
10 at an end. The presiding court simply has no authority to rescind, nullify, or otherwise modify the
11 transfer. E.g., Viking Associates, L.L.C. v. Drewes (In re Olson), 120 F.3d 98, 102 (8th Cir. 1997)
12 ("Since no unsecured creditor objected to the transfers in this case, the Bankruptcy Court had no
13 authority to disallow the transfers."); Official Unsecured Creditors' Committee v. Stern (In re SPM
14 Mfg. Corp.), 984 F.2d 1305, 1314 n.9 (1st Cir. 1993) (pursuant to Bankruptcy Rule 3001(e), "the
15 bankruptcy court cannot disapprove the transfer because of its terms, e.g., inadequate
16 consideration"); In re Lifestyles 80's, Inc., 187 B.R. 156, 157 (Bankr. D.N.J. 1995) (Bankruptcy
17 Rule 3001(e) "was designed to reduce litigation over the transfer of claims and to limit the court's
18 role to adjudication of disputes regarding transfers of claims. In the absence of a timely objection by
19 the alleged transferor, the clerk may note the transfer without the need for court approval").

20 Thus, had the Nashville chapter 11 case not been dismissed, there simply could be no
21 question whatsoever that Argo is entitled to receive the full amount of the distributions to be made
22 with respect to the Assigned Claims. As demonstrated below, the fact that the case was dismissed
23 and that the assets and liabilities (including liabilities with respect to the Assigned Claims) reverted
24 in the Continental receivership estate should not, and does not, change that result. At the time of
25 that revesting, ownership of the Assigned Claims conclusively resided with Argo, and the Assigned
26 Claims were undisputed liabilities of Nashville to Argo. The Continental receivership estate has
27 assumed those liabilities.

28
///

1 Moreover, Argo has found no authority for the proposition that, even if there had
2 been no Nashville bankruptcy case at all, the Receiver can deny or limit a distribution to a party –
3 like Argo – merely because that party received an assignment of claims from undisputed creditors of
4 Continental/Nashville. In fact, numerous cases hold that, **in determining the appropriate**
5 **distributions from a receivership estate, the Court should look to and apply principles of**
6 **bankruptcy law by analogy.** E.g., Securities and Exchange Commission v. First Securities Co.,
7 507 F.2d 417, 419-20 (7th Cir. 1974) (applying section 60(e) of the former Bankruptcy Act to a
8 receivership proceeding); Securities and Exchange Commission v. Elmas Trading Corp., 85 B.R.
9 116, 119 (D. Nev. 1987) (applying section 502(b)(6) of the Bankruptcy Code to a receivership
10 proceeding; noting that, “[w]here receivership distribution questions pose problems similar to those
11 which have been resolved by the Bankruptcy Code, therefore, it is proper to apply that law”);
12 Securities and Exchange Commission v. Investors Security Leasing Corp., 476 F. Supp. 837, 842-43
13 (W.D. Pa. 1979) (applying section 60(e) of the former Bankruptcy Act to a receivership proceeding).
14 Thus, the Court can and should apply the protections of Bankruptcy Rule 3001(e) to the receivership
15 proceeding.
16 Finally, even if the Court were authorized and inclined to assess the merits of the
17 transfers of the Assigned Claims to Argo, **those transfers withstand all possible scrutiny.** For
18 example, over and above the requirements of Bankruptcy Rule 3001(e), Argo provided the Receiver
19 with notice of the claim assignments, and the assignments also were recorded on the docket of the
20 bankruptcy case. As noted in the Motion, the correspondence and documents sent to the assigning
21 creditors were clear, unambiguous, and not misleading in any way – they expressly disclosed the
22 nature and effect of the proposed transfers, they provided for a clear disclaimer of any reliance on
23 Argo, and they provided creditors with an opportunity to rescind their assignments prior to cashing
24 the checks sent in payment by Argo. Moreover, prior to assigning their claims, the assigning
25 creditors had far more information at their disposal than do creditors in comparable cases.
26 Perhaps for that reason, not one of the assigning creditors (nor, to date, the Receiver
27 or the SEC) objected to the transfer of claims. In the words of the Eighth Circuit, the assigning
28 creditors “should be allowed to decide for themselves whether to seek redress for an alleged injury.”

1 Olson, 120 F.3d at 102 n.4. No creditor having done so in this case, the Receiver should not now be
2 permitted delay any longer a full distribution to Argo.

3
4 **II. BECAUSE NO ASSIGNING CREDITOR OBJECTED TO THE**
5 **TRANSFER OF ITS CLAIM, BANKRUPTCY RULE 3001(e) PROHIBITS**
6 **DISALLOWANCE OR LIMITATION OF THE ASSIGNED CLAIMS**

7 "Prior to 1991, some courts interpreted [Bankruptcy] Rule 3001 as authorization for
8 courts to monitor the manner in which claims are transferred or assigned and thereby prevent *inter*
9 *alia*, the improper proliferation of claims, wrongdoing and inequitable conduct." SPM Mfg., 984
10 F.2d at 1314 n.9 (quoting In re Ionosphere Clubs, Inc., 119 B.R. 440, 443 (Bankr. S.D.N.Y. 1990)).
11 Bankruptcy Rule 3001(e) was amended in 1991 expressly to overrule those cases and
12 to eliminate judicial oversight of the claims assignment process in the absence of objection by an
13 assigning creditor. The Advisory Committee's notes regarding the 1991 amendments make this
14 clear:

15 Subdivision (e) is amended to limit the court's role to the adjudication of
16 disputes regarding transfers of claims. . . . If a claim has been transferred other
17 than for security after a proof of claim has been filed, the transferee is substituted
18 for the transferor in the absence of a timely objection by the alleged transferor. In
19 that event, the clerk should note the transfer without the need for court approval.

20 Fed. R. Bankr. P. 3001(e) advisory committee's note to 1991 amendments (emphasis added).

21 Thus, in its current guise, Bankruptcy Rule 3001(e)(2) is crystal clear regarding the
22 effect of a transfer of claim in a bankruptcy proceeding:

23 Transfer of Claim Other Than for Security After Proof Filed. If a claim
24 . . . has been transferred other than for security after the proof of claim has been
25 filed, evidence of the transfer shall be filed by the transferee. The clerk shall
26 immediately notify the alleged transferor by mail of the filing of the evidence of
27 transfer and that objection thereto, if any, must be filed within 20 days of the
28 mailing of the notice or within any additional time allowed by the court. If the

1 alleged transferor files a timely objection and the court finds, after notice and
2 hearing, that the claim has been transferred other than for security, it shall enter an
3 order substituting the transferee for the transferor. If a timely objection is not
4 filed by the alleged transferor, the transferee shall be substituted for the
5 transferor.

6 Fed. R. Bankr. P. 3001(e)(2) (emphasis added).

7 Accordingly, as noted above, it is now clear that in the absence of an objection by
8 the assigning creditor, courts simply have no authority to disallow or limit an assignment of claim.
9 E.g., Olson, 120 F.3d at 102; SPM Mfg., 984 F.2d at 1314 & n.9; Lifestyles 80's, 187 B.R. at 157.
10 In fact, in Olson the Eighth Circuit expressly rejected the argument (similar to the argument that the
11 SEC apparently will make) that a bankruptcy court could use its "equitable powers" to enjoin or
12 limit the assignment of claims, noting that "these equitable powers are not a license for a court to
13 disregard the clear language and meaning of the bankruptcy statutes and rules." Olson, 120 F.3d at
14 102 (quoting Official Committee of Equity Security Holders v. Mahey, 832 F.2d 299, 302 (4th Cir.
15 1987)).

16 Put another way by the Ninth Circuit's Bankruptcy Appellate Panel, "[t]he assignee
17 of a claim takes the claim with all rights attendant." Turner v. California Department of Real Estate
18 (In re Turner), 199 B.R. 694, 697 (9th Cir. B.A.P. 1996) (quoting In re Florida, 164 B.R. 636, 640
19 (9th Cir. B.A.P. 1994)). Thus, as there could be no objection to the Assigned Claims (which have
20 now been allowed by Order of the Court) in the hands of the assigning creditors, there can be no
21 objection to the Assigned Claims in the hands of Argo pursuant to valid, unopposed, and binding
22 assignments of claim.
23

24 **III. DISMISSAL OF THE NASHVILLE BANKRUPTCY CASE DOES NOT**
25 **NULLIFY THE CONCLUSIVE AND BINDING NATURE OF TRANSFERS OF THE**
26 **ASSIGNED CLAIMS OR THE PROTECTIONS OF BANKRUPTCY RULE 3001(e)**

27 As noted above, when the Nashville chapter 11 case was dismissed, the assets and
28 liabilities of Nashville (including liabilities with respect to the Assigned Claims) reverted in the

1 Continental receivership estate. Accordingly, because ownership of the Assigned Claims
2 conclusively resided with Argo at the time of dismissal (with the exception of the five claims
3 assigned shortly after the date of dismissal), the undisputed liabilities represented by the Assigned
4 Claims became undisputed liabilities of the Continental receivership estate to Argo. There is no
5 basis whatsoever on which to deny or withhold from Argo a full ratable distribution with respect to
6 those claims.

7 Moreover, even if the protections of Bankruptcy Rule 3001(e) somehow did not
8 apply, nothing in the law of equity receiverships supports a limitation of the Assigned Claims. In
9 fact, numerous cases hold that, in determining the appropriate distributions from a receivership
10 estate, the Court should look to and apply principles of bankruptcy law by analogy. E.g., First
11 Securities Co., 507 F.2d at 419-20; Elmas Trading, 85 B.R. at 119; Investors Security Leasing, 476
12 F. Supp. at 842-43.

13 As noted above, sound policies support Bankruptcy Rule 3001(e) and its prohibition
14 on after-the-fact judicial oversight of claim transfers, and there are no countervailing policies or
15 principles at work here. Thus, even if it determines that it is not literally bound by Bankruptcy Rule
16 3001(e), the Court can and should apply the protections of the Rule by analogy, if nothing else.
17 Given that Argo acquired the Assigned Claims during the pendency of the Nashville chapter 11
18 case, this is the only fair and logical result.

19
20 **IV. EVEN IF PERMISSIBLE, LIMITATION OF THE ASSIGNED**

21 **CLAIMS WOULD NOT BE APPROPRIATE UNDER THE CIRCUMSTANCES**

22 Even if the Court were authorized and inclined to assess the merits of the transfers of
23 the Assigned Claims to Argo – in derogation of Bankruptcy Rule 3001(e) – those transfers withstand
24 all possible scrutiny. To start with, Argo went beyond the requirements of Bankruptcy Rule 3001(e)
25 by providing notice of the claim assignments directly to the Receiver (which notice was in addition
26 to the notice provided by the Clerk of the Court to the assigning creditors themselves). See, e.g.,
27 Troy Savings Bank v. Travelers Motor Inn, Inc., 215 B.R. 485, 491 (N.D.N.Y. 1997) (“the purpose
28 of Rule 3001(e)(2) . . . is not to give unrelated third parties notice of the transfer, but to give the

1 *transfer* notice of the filing of claim by the transferee") (emphasis in original); Jordan v. Colorado
2 Student Loan Program (In re Jordan), 146 B.R. 31, 32 (D. Colo. 1992) ("There is no requirement
3 that the debtor be notified of the transfer."). Notwithstanding that notice and the fact of docketing of
4 the claim assignments by the Clerk of Court, neither the Receiver, nor the SEC, nor the assigning
5 creditors, nor anyone else ever objected to any of the noticed and docketed assignments of claim.

6 *More fundamentally, prior to assigning their claims, the assigning creditors had far*
7 *more information at their disposal than do creditors in most comparable cases.* For example, in
8 addition to all of the other publicly available information in the docket of the Nashville bankruptcy
9 case (on which Argo relied in making its offers to purchase the Assigned Claims), the creditors had
10 a notice from the Receiver, in the form of the Distribution Notice, estimating with precision what the
11 amount of distributions would be in the case and when those distributions would be made. Such
12 projections are almost unheard of in the context of a bankruptcy case and, as explained in the
13 Motion, several creditors used that information to rescind their claim assignments.¹

14 The information sent by Argo to the assigning creditors also was crystal clear
15 regarding the import of the proposed assignments. By the Assignment Agreement and the
16 Confirmation Letter, the assigning creditors had full and fair notice that, by accepting payment from
17 Argo, they were relinquishing any and all rights to receive any further distributions with respect to
18 the Assigned Claims. Moreover, the creditors affirmatively acknowledged that Argo had made no
19 representations to them and that they had not relied on Argo in making an assessment of the
20 likelihood and amount of distributions in the bankruptcy case. Finally, through the Confirmation
21 Letter that accompanied Argo's payment to the creditors, Argo provided notice that the assignment
22 would end all future distributions to the creditors, and Argo provided the creditors with a last chance
23 _____
24
25 1 Unlike those creditors, Argo had no right to rescind the assignments after receiving the
26 *Distribution Notice. Consider Argo's predicament if, after making offers to purchase claims for*
27 *twenty-two and a half cents on the dollar, Argo had received a notice from the Receiver*
28 *indicating that distributions likely would approximate fifteen cents on the dollar and would not*
be made for another year. In that case, all of the creditors to whom offers had been made likely
would have accepted those offers, and Argo would have suffered the consequences of having
undertaken the risks inherent in its offer to acquire claims. This hypothetical illustrates the
unfairness of the SEC's apparent belief that Argo is not entitled to profit in any way from its
purchase of the Assigned Claims.

1 to rescind their assignments (an opportunity of which some creditors availed themselves). Simply
2 put, there can be no argument that any of the creditors failed to understand the nature of their
3 actions. See Lifestyle 80's, 187 B.R. at 158 (refusing to rescind a claim assignment based upon the
4 assignor's alleged unilateral mistake, where "[t]he language of the solicitation letter is clear [and the
5 assignor] does not make any argument that [the assignee] defrauded it or misrepresented the
6 transaction in any manner").

7 Perhaps for that reason, none of the assigning creditors (nor, to date, the Receiver or
8 the SEC) objected to the transfer of claims. In the words of the Eighth Circuit, the assigning
9 creditors "should be allowed to decide for themselves whether to seek redress for an alleged injury."
10 Olson, 120 F.3d at 102 n.4. No creditor having done so in this case, the Receiver should not now be
11 permitted delay a full distribution to Argo any longer.

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V. CONCLUSION

There is no legal or equitable basis for withholding a full distribution to Argo with
respect to the Assigned Claims. Accordingly, Argo respectfully requests that the Court grant the
Motion and enter an order compelling the Receiver to make to Argo a full, pro rata, twenty-five
percent (25%) distribution with respect to the Assigned Claims, plus all interest accrued from the
date on which the Receiver made distributions to other similarly-situated creditors in this case, and
thereafter to make distributions with respect to the Assigned Claims at the same time and in the
same manner as distributions that are made to other similarly-situated creditors.

DATED: November 1, 2000 **HENNIGAN, BENNETT & DORMAN**

By: 
James O. Johnston
Counsel for Argo Partners, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA,)
)
) SS,
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.

On November 1, 2000, I served the foregoing document described above as
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER
COMPELLING DISTRIBUTION TO ARGO PARTNERS, INC. on the interested parties in this
action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

David L. Osias, Esq. Karen Matteson, Esq.
Lorraine L. Pedowitz, Esq. Securities and Exchange Commission
Allen Markins Leck Gamble & Mallory LLP 5670 Wilshire Boulevard, 11th Floor
501 West Broadway, 9th Floor Los Angeles, CA 90036
San Diego, CA 92101

I caused such envelopes to be retrieved and sent by Federal Express for next day delivery to the addresses noted above.

I declare that I am employed in the office of a member of this bar of this court at whose direction the service was made.

Executed on November 1, 2000 at Los Angeles, California.



Donna Moore

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EXHIBIT DD

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 ---000---

5
6 In re:

CASE NO. 00-42104-T11

7 AUREAL, INC, d/b/a SILO.COM,
8 f/k/a AUREAL SEMICONDUCTOR, INC.,
9 f/k/a MEDIA VISION TECHNOLOGY,
10 INC., a Delaware corporation

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JAN - 7 2002

DEPOSITION OF RAMESH KANDUKURI
THURSDAY, DECEMBER 20, 2001

BEMA REPORTING
553 Laidley Street
San Francisco, California 94131
(415) 585-4009
FAX (415) 858-9282

REPORTED BY: SHAREN H. DAINS, CSR NO. 2040, CM

MR. FARRER: Item five.
MR. LEVINSON: Item five he has been designated.
MR. FARRER: I understand that. Let's ask

him.
Q. You have no knowledge of that area, do you?
A. I shall repeat the answer I made. You asked this question before. And what I said was I do not have any knowledge, but if there were such a transfer I would have been consulted while I was with Aureal, but I was not. A) I do not know; B) I was not asked.
Q. Were you aware you had been designated to testify on Aureal's behalf with regard to paragraphs one through five of this document before Mr. Levinson just said you were?
A. Yes, I was. They sent me a copy of this deposition notice.
Q. I just asked you a minute ago if you had ever seen it, and you said no.
A. Sorry, if it is this document, the answer is no.
Q. Let's get to my question. You've never seen this document, have you, you've never seen exhibit twelve, that was your testimony.

exhibit twelve?
A. I cannot answer, because you are using a legal term that doesn't mean much to me. They said we request you to make a deposition concerning this matter, and I said yes, I would.
Q. You're here today because I specifically asked for you, okay? I sent a deposition notice, exhibit one, asking for you to come here.
MR. LEVINSON: This is argumentative and a waste of time. He has been designated, we had a discussion --
MR. FARRER: It's a little hard, Counsel, for you to argue he has consented to be here to testify on these matters if you've never even discussed it with him.
Q. The truth of the matter is, isn't it, sir, that you had no knowledge that you were being designated by Aureal to testify on items one through five?
A. You mean verbatim one, two, three, four, five?
Q. Yes, sir.
A. The answer is no, I did not. But obviously they called me and talked to me and told me what I had to depose about. About the general content of the deposition, yes, I knew.

So my question is: Did you know that Aureal was designating you to testify on behalf of one through five at any time prior to Mr. Levinson just saying that they were?
A. I need a minute to review something.
MR. LEVINSON: I will represent for the record that I had a conversation with Mr. Kandukuri in advance of the deposition beginning where we discussed the matters --
MR. FARRER: I don't want you to answer the questions for the witness, Mr. Levinson. I want to hear his testimony, and I'd rather not have you couch him.
MR. LEVINSON: I'm not couching him. The issue here is what matter has he been designated for.
MR. FARRER: No, it's not. It's whether or not he had knowledge of it.
THE WITNESS: I knew that I was going to testify on matters relating to the SDA. As you said, I have not seen this document, but I was aware what I would be deposing about related to the SDA with Momentum, yes.
BY MR. FARRER:
Q. Were you aware that Aureal is designating you as a witness to testify on items one through five in

Q. And you have had no access to Aureal's books and records for purposes of producing the documents that we asked Aureal to produce, have you?
A. No, I have had no access.
Q. And you have no knowledge of the documents -- you have no knowledge of the search undertaken by Aureal to find documents responsive to the document request contained in exhibit twelve, do you?
A. I do not have the knowledge.
MR. FARRER: Well, I'm going to adjourn. Note for the record the time please, and then we'll take up the designation issue with the court.
MR. LEVINSON: I am going to have one question. I want a two-minute break. One follow up question or two maybe.
THE REPORTER: The time noted is 5:32. (Whereupon a short recess was taken.)
MR. FARRER: Let's note the time on the record that counsel has been out talking to the witness.
THE REPORTER: 5:39.
EXAMINATION
BY MR. LEVINSON:
Q. Mr. Kandukuri, counsel for Next Factor asked you a number of questions with respect to exhibit

1 product involves the software.
 2 Q. And the SQ3500 is an Aureal product?
 3 A. Uh-huh.
 4 Q. Was that product a product that Aureal
 5 manufactured?
 6 A. Yes.
 7 Q. Was that a product that Aureal released?
 8 A. Yes.
 9 Q. Did the SQ3500 include any part of the
 10 deliverables delivered by Momentum under the software
 11 development agreement?
 12 A. Excuse me, I need to back off for a minute
 13 here, because you mentioned this product number. The
 14 reason I need to back off is see Aureal had three --
 15 they had an SQ1500, they had 2500, they had 3500.
 16 And what I'm trying to recall is whether the
 17 3500 was released. So I'm going to change what I said
 18 a moment ago. I'm not sure, given the product number,
 19 whether that particular 3500 was released, because I am
 20 having some difficult distinguishing between those
 21 three products, fifteen, twenty-five and thirty-five.
 22 Q. Can you answer my question?
 23 A. So please repeat the question.
 24 Q. Did the SQ3500 include any of the deliverables
 25 delivered by Momentum under the software development

1 agreement?
 2 A. No.
 3 Q. You are absolutely sure of that?
 4 A. Uh-huh.
 5 Q. I need a yes or no answer, I mean audible
 6 answer?
 7 A. Yes, I'm sure, yes.
 8 Q. Was the SQ2500 is another Aureal product?
 9 A. Yes.
 10 Q. Was that product manufactured?
 11 A. Before I answer this, I do want to state that
 12 I'm not sure if the 3500 is manufactured. I'm having
 13 difficulty with these product numbers, and whether it
 14 was manufactured or not.
 15 Do you have any information that will help me
 16 jog my memory?
 17 Q. This is your company, not mine. I mean I know
 18 nothing about it. That's why I'm taking your
 19 deposition.
 20 A. What I'm trying to point out to you, you are
 21 talking about somebody one and a half years after of
 22 the fact with no information. If you have any, like a
 23 flyer or any information that would be germane, that
 24 will help my recall.
 25 Q. If I had a flyer that said the product was

1 released, would you accept that as establishing it was
 2 released?
 3 MR. LEVINSON: Objection, ambiguous, calls for
 4 legal conclusion.
 5 MR. FARRER: No.
 6 THE WITNESS: I would not. It would jog my
 7 memory.
 8 BY MR. FARRER:
 9 Q. How would it jog your memory if you just tell
 10 me you might not accept it as true?
 11 MR. LEVINSON: Lets do this, it's getting
 12 late again. We are going to take a one minute break.
 13 (Off the record discussion.)
 14 BY MR. FARRER:
 15 Q. Let's go back to my question. Was the SQ2500
 16 manufactured by Aureal?
 17 A. Before I answer that, I would like to change
 18 the answer I made regarding the 3500. You asked me a
 19 question was it manufactured, and I said yes. I'd like
 20 to change it to I do not remember, because I don't.
 21 Q. Who at Aureal would know the answer to that
 22 question?
 23 MR. LEVINSON: Objection, ambiguous.
 24 THE WITNESS: Steve Mitchell, he can look at
 25 the papers that he has, sales records.

1 product involves the software.
 2 Q. And the SQ3500 is an Aureal product?
 3 A. Uh-huh.
 4 Q. Was that product a product that Aureal
 5 manufactured?
 6 A. Yes.
 7 Q. Was that a product that Aureal released?
 8 A. Yes.
 9 Q. Did the SQ3500 include any part of the
 10 deliverables delivered by Momentum under the software
 11 development agreement?
 12 A. Excuse me, I need to back off for a minute
 13 here, because you mentioned this product number. The
 14 reason I need to back off is see Aureal had three --
 15 they had an SQ1500, they had 2500, they had 3500.
 16 And what I'm trying to recall is whether the
 17 3500 was released. So I'm going to change what I said
 18 a moment ago. I'm not sure, given the product number,
 19 whether that particular 3500 was released, because I am
 20 having some difficult distinguishing between those
 21 three products, fifteen, twenty-five and thirty-five.
 22 Q. Can you answer my question?
 23 A. So please repeat the question.
 24 Q. Did the SQ3500 include any of the deliverables
 25 delivered by Momentum under the software development

something, and key people would be in the loop then.
 2 That's what I did.
 3 Q. Did you give the Aureal -- excuse me. Did you
 4 give the Momentum invoice for the incentive bonus to
 5 accounting for payment?
 6 A. I don't have definitive recall, but I think I
 7 did.
 8 Q. Do you believe that Momentum is entitled to
 9 any royalties under the software development agreement?
 10 MR. LEVINSON: Objection, calls for legal
 11 conclusion.
 12 THE WITNESS: I cannot comment on it because
 13 I'm not familiar with the royalty provisions.
 14 BY MR. FARRER:
 15 Q. Who at Aureal would make the decision as to
 16 whether or not Momentum was entitled to royalties under
 17 that agreement?
 18 A. Brandon.
 19 Q. You had no role whatsoever in negotiating the
 20 terms and conditions of the royalty payments?
 21 A. No.
 22 MR. LEVINSON: I object to that last question,
 23 it's ambiguous.
 24 BY MR. FARRER:
 25 Q. Were you assigned any role whatsoever in

1 he does about the agreement.
 2 MR. FARRER: You showed it to him at you:
 3 meeting last night.
 4 MR. LEVINSON: You could show it to him
 5 now. If you just want him to continue to try to
 6 recall, I think you are just treating the witness
 7 unfairly in that respect.
 8 THE WITNESS: I would prefer you put it in
 9 front of me, because I saw this agreement last night
 10 you're right, but after how long, I don't know how
 11 long, at least thirteen months or something.
 12 So anyway, if you want to discuss any issues,
 13 please put it in front of me.
 14 BY MR. FARRER:
 15 Q. Do you know who at Aureal negotiated the
 16 royalties provisions in the SDA?
 17 A. No.
 18 Q. If I just the term SDA, you understood what I
 19 was talking about?
 20 A. I do.
 21 Q. That's the only thing that's important, that
 22 you understand it.
 23 Let's mark this as exhibit one.
 24 (Exhibit 1 was marked for identification.)
 25 BY MR. FARRER:

1 interpreting the loyalty provisions of the software
 2 development agreement for the company in terms of
 3 deciding whether or not Momentum was entitled to
 4 royalties thereunder?
 5 A. To the best of my recollection, we did not
 6 discuss royalties at all, because the product was not
 7 released. And so I don't recall any discussions with
 8 Brandon at all. It was not an issue.
 9 Q. Do you recall discussing -- well, if royalties
 10 had been due, would you have played any role in that
 11 decision as to how much in royalties were due and when
 12 they should be paid, or was that going to be handled by
 13 somebody else at Aureal?
 14 MR. LEVINSON: Objection, ambiguous.
 15 THE WITNESS: No, I would not have been
 16 involved.
 17 BY MR. FARRER:
 18 Q. You wouldn't have been involved?
 19 A. No. It's tied to the units sold, which I
 20 would not be able to --
 21 Q. Why do you say the royalties was tied to the
 22 units sold?
 23 MR. LEVINSON: Again, objection. I think
 24 having the agreement in front of this witness might be
 25 helpful, instead of having him just try to recall what

1 Q. Mr. Kandukuri, I've asked the court reporter
 2 to mark as exhibit one a document entitled "Second
 3 Amended Notice of Deposition and Request for Produc-
 4 of Documents" addressed to you. There's a title there.
 5 Have you ever seen this document before? And
 6 please take whatever time you need to review it in
 7 order to answer my question.
 8 A. I've read it.
 9 Q. Have you ever seen this document before?
 10 A. Yes.
 11 Q. When did you first see it?
 12 A. On the 17th of December.
 13 Q. Three days ago?
 14 A. (Witness nodding head up and down.)
 15 Q. Were you aware that my client has been trying
 16 to take your deposition since September?
 17 A. No.
 18 Q. Were you aware that you were being asked to
 19 bring documents here today to your deposition?
 20 A. When I read this, I saw that. But since I
 21 have nothing in my possession, I was not concerned.
 22 Q. So you did read all of the document requests
 23 that are specified in paragraphs one through eight on
 24 pages four and five of exhibit one?
 25 A. Yes.

(Whereupon the record was read by the Reporter.)
 THE WITNESS: Some parts of it, yes.
 BY MR. FARRER:
 4 Q. What parts of it were you involved in
 5 implementing?
 6 MR. LEVINSON: Same objection.
 7 THE WITNESS: The parts that pertain to
 8 product development.
 9 BY MR. FARRER:
 10 Q. What do you mean by that? What physically was
 11 your involvement in the software development agreement
 12 between Aureal and Momentum?
 13 MR. LEVINSON: Objection, compound, objection
 14 ambiguous.
 15 THE WITNESS: I was the program manager from
 16 Aureal side, so I would assign tasks to Momentum and
 17 monitor the progress of their work, and also coordinate
 18 development on our side, on Aureal's side.
 19 BY MR. FARRER:
 20 Q. Did you play any role in the quality assurance
 21 testing performed on the product under the software
 22 development agreement between Aureal and Momentum?
 23 A. We did not perform QA on that particular
 24 product. It did not reach that state. It was still in
 25

1 A. Steve Mitchell.
 2 Q. Who is Steve Mitchell?
 3 A. He was the chief operating officer of Aureal.
 4 Q. When is the last time you saw Mr. Mitchell?
 5 A. October of 2000.
 6 Q. When you left?
 7 A. Right.
 8 Q. Was he still there?
 9 A. Yes.
 10 Q. Do you know where he lived?
 11 A. I believe Pleasanton.
 12 Q. Did Aureal manufacture any of the stratoaster
 13 boards?
 14 A. No.
 15 Q. Did Aureal make any stratoaster boards?
 16 MR. LEVINSON: Objection, ambiguous.
 17 THE WITNESS: Only engineering prototypes, I
 18 believe four of them, that's it.
 19 BY MR. FARRER:
 20 Q. Did Aureal display a stratoaster board at a
 21 trade show, or shows to your knowledge?
 22 A. I do not know.
 23 Q. Have you ever seen any press releases
 24 announcing the release of the stratoaster board?
 25 A. No.

1 engineering developed.
 2 Q. What is that product that you are referring
 3 to?
 4 A. That was a term we used in-house to refer to
 5 it and that term is stratoaster.
 6 Q. Did Aureal use any other terms to refer to
 7 that product developed under the software development
 8 agreement between Aureal and Momentum other than
 9 stratoaster?
 10 A. No.
 11 Q. Did you play any role in the sale of Aureal's
 12 assets to Creative Technologies?
 13 A. No.
 14 Q. Do you know whether the intellectual property
 15 that was developed under the software development
 16 agreement between Aureal and Momentum was given to
 17 Creative?
 18 MR. LEVINSON: Objection, assumes --
 19 foundation.
 20 THE WITNESS: No.
 21 BY MR. FARRER:
 22 Q. You don't know, or it wasn't given?
 23 A. I do not know.
 24 Q. Who at Aureal would you believe would know the
 25 answer to that question?

1 Q. Did the stratoaster board perform in its
 2 intended environment?
 3 MR. LEVINSON: Objection, ambiguous.
 4 THE WITNESS: Since no acceptance testing was
 5 performed, I cannot give you a definitive answer to
 6 that question. We did not conduct acceptance testing.
 7 BY MR. FARRER:
 8 Q. Acceptance testing was the second stage, or
 9 requirement. The first requirement was did it perform
 10 in its intended environment, according to you, so
 11 that's the question?
 12 MR. LEVINSON: That's the question he
 13 answered.
 14 MR. FARRER: No, he's jumped to the second
 15 requirement.
 16 MR. LEVINSON: He answered the question. The
 17 fact that he happened to mention the second requirement
 18 in the answer doesn't mean he didn't answer the
 19 question.
 20 THE WITNESS: I would answer your question.
 21 The stratoaster board was plugged into a PC during its
 22 development, and it was partially operational.
 23 BY MR. FARRER:
 24 Q. What part didn't operate?
 25 A. The sound quality was unacceptable, and there

product announcement, it's not a release.
 BY MR. FARRER:
 Q. It's a product announcement?
 A. Yes.
 Q. So displaying a completed product at a trade show to the public and announcing that it will be available for purchase in a few months is called a public announcement, not a release?
 MR. LEVINSON: Objection, vague.
 THE WITNESS: Yes.
 BY MR. FARRER:
 Q. And you would still say, would you not, or is it your testimony that you would not have a product release even though that product worked in the intended environment, successfully completed the acceptance testing, and the public was generally aware of it?
 A. We need to add a fourth criterion.
 Q. Okay, what's that?
 A. It needs to be available to the public. So far we talked about announcing, but we talk about should be available to the public.
 Q. Should be, or has to be?
 A. Has to be to qualify as a release.
 Q. What do you mean by available?
 A. If a customer wants to place an order for the

MR. LEVINSON: You understand his question?
 THE WITNESS: Yes, I do, and I want to make a statement. The process we are using for defining what constitutes a release is a circuitous one.
 BY MR. FARRER:
 Q. Circuitous?
 A. Yes. This is not how you define a term properly through interrogation. It needs more brainstorming.
 So yes, we can go on, but because of the nature of the process we are using, I have to, when I think of a criterion that is missing, I have to add it because of the formality of the method we use.
 So I just want to point out when you said changing hands, yes, I said that changing hands was not a requirement. But when you think about it, if company X says: I'm releasing a product and nobody can get it, people do not construe that as a release.
 Q. But it doesn't have to change hands for it to be released, does it?
 MR. LEVINSON: Objection, asked and answered about eight times.
 MR. FARRER: He keeps changing his answer.
 MR. LEVINSON: No, he doesn't. He does not.
 BY MR. FARRER:

product, there should be a mechanism for doing so.
 Q. If the company says it will be available in a couple months, does that satisfy that requirement?
 A. No.
 Q. Why not?
 A. Because as far as the public is concerned, until they can get ahold of the product, it has not been released.
 Q. You told me changing hands is not required.
 MR. LEVINSON: Objection, mischaracterizes the witness' testimony.
 BY MR. FARRER:
 Q. So who cares whether or not they can buy it? MR. LEVINSON: Objection, the question is vague as to -- well, it's vague.
 Do you want to read back -- can you read back that last question, beginning with "who cares."
 MR. FARRER: It's real simple.
 Q. Who cares whether or not the public can buy it given your prior testimony that changing hands is not necessary?
 MR. LEVINSON: Objection, vague. Can you read back the very last question.
 (Whereupon the record was read by the Reporter.)

Q. You testified here before the break that you wanted to withdraw the term changing hands, that it was not a requirement. Now you seem to be telling me well, yes, it is.
 MR. LEVINSON: Objection, mischaracterizes the witness's testimony, which is on the record and speaks for itself.
 MR. FARRER: You've also told me that this is a common industry understanding.
 And since you've been in this industry for thirty plus years, I'm just trying to get at what the requirements are. And it seems to be not necessarily that straight forward.
 MR. LEVINSON: Objection, statement is argumentative and there's no question.
 THE WITNESS: Yes, it is not straight forward. So many companies use so many criteria, that there is no simple answer.
 BY MR. FARRER:
 Q. So companies have different definitions of release, is that correct?
 A. Absolutely.
 Q. So it's not a common industry standard, is it?
 MR. LEVINSON: Objection.
 THE WITNESS: I cannot agree. Just because

EXHIBIT EE

HENNIGAN, BENNETT & DORMAN

LAWYERS

601 SOUTH FIGUEROA STREET

SUITE 3900

LOS ANGELES, CALIFORNIA 90017

TELEPHONE (213) 694-1200

FACSIMILE (213) 694-1234

Direct: (213) 694-1053

KupetzK@HBDLawyers.com

RECEIVED

DEC 11 2001

LAW OFFICES OF
WILLIAM W. FARRER

December 11, 2001

VIA FACSIMILE AND FEDERAL EXPRESS

William Webb Farrer
Law Offices of William Webb Farrer
300 Montgomery St., #789
San Francisco, CA 94104

Re: In re Aureal Inc., Case No. 00-42104-T11 (Bankr. N.D. Cal.)

Dear Mr. Farrer:

In response to your "Second Amended Notice of Deposition & Request For Production of Documents To Ramesh Kandukuri" and your "Second Amended Notice of Deposition & Request For Production Of Documents To Aureal, Inc.'s Most Knowledgeable Person(s)," both dated November 30, 2001, enclosed are documents Bates Stamped AURE 00001-00036. We are in the process of determining whether there are additional non-privileged documents responsive to your requests, which we will produce if located. We are also preparing formal responses and objections to the requests which will be served shortly.

Finally, this confirms that the deposition of Mr. Kandukuri has been rescheduled for Thursday, December 20, 2001 at 10:00 at the Terra Law, 60 S. Market Street, Suite 200, San Jose, California.

Very truly yours,



Karen L. Kupetz

FROM :

FAX NO. : 2096350360

May. 14 2001 02:12PM P1



AUREAL

Aureal Inc.
7094 Cornerce Cr., Ste. H
Pleasanton, CA 94588

To: Joshua Morse	From: Gettle Sargent
Company: Hennigan & Bennett	Date: May 14, 2001
Fax No.: 213-694-1234	Total No. of Pages: 10
Phone No.	Sender's Phone No.: 209-632-1365 or 209-608-1191
Re: Momentum Data Systems	Sender's Fax No.:
<input type="checkbox"/> Urgent	<input type="checkbox"/> For Review
	<input type="checkbox"/> Please Comment
	<input type="checkbox"/> Please Reply
	<input type="checkbox"/> Please Recycle

Notes/Comments:

Notice: This facsimile contains confidential information that is being transmitted to and is intended only for the use of the recipient names above. Reading, distribution, discussion, dissemination, distribution or copying of this information by anyone other than the named recipient or his or her employees or agents is strictly prohibited. If you have received this facsimile in error, please immediately destroy it and notify us by calling the number listed above.

FROM :

FAX NO. : 2098350360

May. 14 2001 02:12PM P2

MOMENTUM DATA SYSTEMS, INC.
17360 BROOKHURST STREET, SUITE 140
FOUNTAIN VALLEY, CA 92708
(714) 578-5805

INVOICE

Date: 06/21/99 Inv. No.: 912949
Due Date: 07/06/99 Page No.: 1

Ship to/Remarks

Aureal Semiconductor
Attn: Gita Bhargava - Purch. Mgr.
4245 Technology Dr
Fremont CA 94538

SHIP VIA

FOB

TERMS

Net 15 days

YOUR #

MEM/UNDSIG

OUR #

SALES REP

DESCRIPTION	ORDERED	SHIPPED	UNIT PRICE	EXTENDED PRICE
ITEM NUMBER	UNIT MEASURE	QUANTITY	UNIT DISCOUNT	
Consulting Services/Cash -	1.0	1.0	25000.0000	25000.01
Item #: CONS				
Consulting Services/stock	1.0	1.0	5000.0000	5000.01
Item #: CONS				

VENDOR# MIM 001
REGISTERED ✓-881
POSTED 11-7-99 - 705D
GL CODE Adl 7113199
INITIALS 0

SUB TOTAL	30000.01
TAX	0.01
TOTAL	30000.01
NET TO PAY	30000.01

No. 911575

912/49	06/21/99	CONSULTING	25000.00	0.00	25000.00
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ORIGINAL DOCUMENT HAS ARTIFICIAL WATERMARK ON REVERSE SIDE.



AUREAL

Aureal Semiconductor Inc.
4245 Technology Drive
Fremont, CA 94538
(510) 252-4245
(510) 252-4491 Fax

Wells Fargo Bank
Pale Alto Office
450 Hamilton Avenue
Palo Alto, CA 94301

11-24
121000

VOID AFTER 90 DAYS

No. 911575

DATE	NO.	AMOUNT
07/13/99	911575	25000.00

U.S. DOLLARS

TWENTY-FIVE THOUSAND DOLLARS AND 00 CENTS

PAY TO THE ORDER OF

MOMENTUM DATA SYSTEMS, INC.
17530 BROCKHURST STREET
SUITE 140
FOUNTAIN VALLEY, CA

92708-

Max C. Hill
NOT NEGOTIABLE

Two signatures required for amounts over \$10,000.

⑈911575⑈ ⑆121000248⑆4277 152682⑈

sent by: HUB FAX #1

213 694 1234;

12/11/01

6:29PM; JEFFAX #83/; Page 5

FROM :

FAX NO. : 2098350360

May. 14 2001 02:13PM P3

AIRTEL

SENT BY: NUB FAX #1

213 694 1234;

12/11/01 6:29PM; JETFax #837; Page 6

FROM :

FAX NO. : 2098350360

May. 14 2001 02:13PM P4



MOMENTUM
DATA SYSTEMS INC.

JERRY PURCELL Ph.D.
PRESIDENT

17330 Brockhurst St., Suite 140
Fountain Valley, CA 92708
Phone (714) 878-9805
FAX (714) 578-9885
email: jerry@mds.com

FROM:

FRY: NO: 2098350586

HEX: 14 2001 02:14PM PS

June 17, 1999

Mr. Sandy Iyer Ph.D.
 Vice President
 Aural Semiconductor
 4245 Technology Drive
 Fremont, CA 94538

Dear Sandy,

SUBJECT: MEMORANDUM OF UNDERSTANDING FOR STRATOCASTER PROJECT

Based on our discussion, I believe the following summarizes our agreement:

Payment Terms:

\$30,000	\$25,000 cash \$5,000 stock	Invoice Date September 21
\$40,000	\$25,000 cash \$15,000 stock	Invoice Date July 30
\$40,000	\$25,000 cash \$15,000 stock	Invoice Date August 31
\$40,000	\$25,000 cash \$15,000 stock	Invoice Date September 30

All invoices - net 15 days. Amount of stock per invoice is the cash value of that invoice divided by the selling price of the stock on the day of the invoice.

Royalty Payments:

- \$1/board - first 75,000 boards \$75,000
- \$0.50/board - second 75,000 boards \$37,500
- \$0.25/board - remaining production run

Conditions:

1. If the royalty amount does not reach \$150,000 within 18 months of product release, Aural Semiconductor will pay the delta between the cumulative royalty payment and \$150,000 to Montanum Data Systems
2. Royalty payments shall be made quarterly, starting December 31, 1999. Royalty payments for each quarter will be paid to Montanum Data Systems within 30 days of quarter end.
3. Modifications to OS software on Motorola DSP56362 will remain the Intellectual Property of Montanum Data Systems. However, Montanum Data Systems will grant rights to use new TDM input/output drivers

FROM :

FAX NO. : 2098350360

May. 14 2001 02:14PM PG

subject to above royalty payments

-2-

June 22, 1999

4. Momentum Data Systems has the right to revise A3D code on it's products without royalty charge
Incentive Bonus

An incentive bonus of \$50,000 will be paid to Momentum Data Systems if the mutually agreed deliverables are delivered to Aural Semiconductor by September 1. If the September 1 date is not met but an October 1 date is met, an incentive bonus of \$25,000 will be paid to Momentum Data Systems. The bonus will be paid as stock subject to the same conditions as the awards listed under payment terms.

Deliverables

TBD Please see appendix 1

Acceptance Criteria

TBD Please see appendix 1

Remaining Issues

Momentum Data Systems is intending to develop its own reverse algorithm and needs to establish guidelines so that implementing your reverse algorithm on the Motorola board does not preclude us from developing our own reverse algorithm.

I am sure there are other issues that need to be covered, but this is my first attempt at putting them on paper. Please feel free to contact me if you have any questions or comments.

Sincerely,


Jerry E. Percall Ph.D.
President


6/23/99

lb

FROM :

FAX NO. : 2098350360

May. 14 2001 02:15PM P7

Appendix 1

Deliverables:

MDS will deliver source and binary code for the following 563xx modules:

1. Aureal "A3Dverb" revert algorithm
2. Aureal "A3DS" virtualization algorithm
3. 56362 operating system patches for required ESAI and SPI modifications
4. Diagnostic code for Aureal manufacturing test software

The code should be packaged in a mutually agreed format for download by the Aureal device driver.

Acceptance criteria:

Aureal requires that the "A3Dverb" and "A3DS" algorithms run concurrently with AC3 decode. Additionally, the final deliverables must pass a test plan provided by Aureal SOA.



 Jerry E. Purcell Ph.D.
 President
 Momentum Data Systems



 Sanggy Iyer Ph.D.
 Vice President, General Manager
 Technology Division
 Aureal Inc.

FROM :

FAX NO. : 2098350360

May. 14 2001 02:15PM PG

June 17, 1999

Mr Sanjay Iyer Ph.D,
Vice President
Aureal Semiconductor
4245 Technology Drive
Fremont, CA 94538

Dear Sanjay

SUBJECT: MEMORANDUM OF UNDERSTANDING FOR STRATOCASTER PROJECT

Based on our discussions, I believe the following summarizes our agreements.

Payment Terms:

\$30,000	\$25,000 cash \$5,000 stock	Invoice Date June 21
\$40,000	\$25,000 cash \$15,000 stock	Invoice Date July 30
\$40,000	\$25,000 cash \$15,000 stock	Invoice Date August 31
\$40,000	\$25,000 cash \$15,000 stock	Invoice Date September 30

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- \$0.50/board - second 75,000 boards \$37,500
- \$0.25/board - remaining production run

Conditions:

1. If the royalty amount does not reach \$150,000 within 18 months of product release, Aureal Semiconductor will pay the delta between the cumulative royalty payment and \$150,000 to Momentum Data Systems
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3. Modifications to OS software on Motorola DSP56362 will remain the Intellectual Property of Momentum Data Systems. However, Momentum Data Systems will grant rights to use new TDM

MOMENTUM DATA SYSTEMS
17330 BROOKHURST ST, SUITE 140
FOUNTAIN VALLEY, CA 92708

AURE 00008

FROM :

FAX NO. : 2098350360

May. 14 2001 02:16PM PG

input/output drivers subject to above royalty payments

-2-

July 9, 1999

4. Momentum Data Systems has the right to reuse AFD code on it's products without royalty charge
Incentive Bonus

An incentive bonus of \$50,000 will be paid to Momentum Data Systems if the mutually agreed deliverables are delivered to Aureal Semiconductor by September 1. If the September 1 date is not met but an October 1 date is met, an incentive bonus of \$25,000 will be paid to Momentum Data Systems. The bonus will be paid as stock subject to the same conditions as the invoices listed under payment terms.

Deliverables

TBD

Acceptance Criteria

TBD

Remaining Issues

Momentum Data Systems is intending to develop its own reverse algorithm and needs to establish guidelines so that implementing your reverse algorithm on the Motorola board does not preclude us from developing our own reverse algorithm.

I am sure there are other issues that need to be covered, but this is my first attempt at putting them on paper. Please feel free to contact me if you have any questions or comments.

Sincerely,

Jerry E. Purcell Ph.D.
President

lh

FROM : FAX NO. : 2098350360 May. 14 2001 02:16PM P10

Gladys Dinglasan

From: Sanjay Iyer
Sent: Monday, July 12, 1999 7:33 PM
To: Gladys Dinglasan
Subject: RE: Momentum Data Systems, Inc. inv#912949 dtd 08/21/99, \$30,000.00

Gladys,

The first invoice is OK to pay. We are past due, we value our relationship with these folks, please pay now.

Thanks.

sanjay

Original Message
From: Gladys Dinglasan
Sent: Monday, July 12, 1999 5:26 PM
To: Sanjay Iyer
Cc: David Dornier; Gita Bhargava
Subject: Momentum Data Systems, Inc. inv#912949 dtd 06/21/99, \$30,000.00
Importance: High

Hi Sanjay
Gita just handed me the first invoice received from Momentum Data Systems, Inc for Stratocaster project, please see details below.

Description/Item	Unit Price	Ext Price
Consulting Svcs-Cash/Item: CONS	\$25,000.00	\$25,000.00
Consulting Svcs-Stock/Item: CONS	5,000.00	5,000.00

Please let me know, if the above & the rest of the payments (please review payment terms below) are "okay to pay". Thanks. -Gladys

Dave - I need your help on the GL distribution of payments. Thanks. Gladys

Just an FYI. (to refresh memory)

Payment terms:
\$30,000.00 \$25,000.00 cash Invoice date: Now, past due 5,000.00 stock
June 21, 1999

Amount	Description	Invoice date
\$40,000.00	\$25,000.00 cash 15,000.00 stock	Invoice date July 30, 1999
\$40,000.00	\$25,000.00 cash 15,000.00 stock	Invoice date August 31, 1999
\$40,000.00	\$25,000.00 cash 15,000.00 stock	Invoice date September 30, 1999

All invoices - net 15 days. Amount of stock per invoice is the cash value of that invoice divided by the selling price of the stock on the day of the invoice.

F. J. P.



**MOMENTUM
DATA SYSTEMS
INC.**

17330 BROOKHURST STREET, SUITE 140, FOUNTAIN VALLEY, CA 92708
PHONE: (714) 378-5805, FAX: (714) 378-5985

SOFTWARE DEVELOPMENT AGREEMENT

Customer:					
Address :					
Street :	City :	State :	ZIP :		
Phone :	Fax :				
Contact :	Contact email :				
State of incorporation :					

This SOFTWARE DEVELOPMENT AGREEMENT ("Agreement") is made on the effective date listed below between Customer, whose name and address are listed above, and Momentum Data Systems, Inc., ("Developer" or "MDS"), a California corporation with its principal offices located at 17730 Brookhurst Street, Suite 140, Fountain Valley, CA and the company designated above as Customer ("Customer"), a corporation with its principal office at the address shown above.

TERMS AND CONDITIONS

1. SERVICES

1.1 This is a contract whereby the Developer will provide services to the Customer in the form of designing software for use by the Customer. Deliverables under this Agreement shall be composed of two types of software, which shall be called in the first instance, "Custom Software" and, in the second instance, "Other Deliverables." Exhibit A to this Agreement, incorporated by reference herein, shall furnish the descriptions of the Custom Software and the Other Deliverables for the purposes of this Agreement. The term "Deliverables," wherever used, shall refer to both the Custom Software and to the Other Deliverables. The services to be provided by Developer shall be governed by a written Project Assignment mutually agreed upon by Customer and Developer. The Project Assignment, attached as Exhibit A, shall set forth and constitute the complete and exclusive specification for designing the Custom Software, and for governing the development, installation and acceptance thereof.

*Exhibit A
Software
Deliverables*

1.2 The Project Assignment shall be based upon information provided by Customer who shall be entirely responsible for the accuracy and completeness of such information.
2. ACCEPTANCE.

*Product
of
delivered
if not
delivered
if best*

*Developer
Schedule*

*responsibility
time to unacceptable
5 days*

This agreement contemplates that the Developer shall tender the Deliverables to the Customer for review to determine if the Deliverables are acceptable. The time between tender of the Deliverables for acceptance and acceptance by the Customer shall be known as the "Acceptance Period."

*10 days
How many*

2.1 EFFECT OF ACCEPTANCE. Upon Acceptance, any of Customer's obligations that in this agreement are made conditional upon Acceptance shall become unconditional and fully due according to the schedule set out in Exhibit C, Terms of Payment. Except to the extent expressly provided for this Agreement, upon Acceptance, Developer shall be deemed released from any and all further obligations under this Agreement.

2.2 ACCEPTANCE. Acceptance shall occur when the Customer notifies Developer that the Deliverables have successfully performed in accordance with the Acceptance Criteria.

2.3 CONSEQUENCES OF FAILURE TO MEET ACCEPTANCE CRITERIA. Developer's sole liability if the Deliverables fail to meet the acceptance criteria shall be limited to correcting the same. If such corrections prove to be impossible to make, then Developer's liability shall be limited to that set forth in Paragraph 6 below. *time period.*

2.4 WARRANTY. The Deliverables are warranted to conform to the Acceptance Criteria. Developer's sole obligation under this warranty shall be to remedy any nonconformance of the Deliverables to the Acceptance Criteria, provided such nonconformance is reported to Developer during the ninety (90)-day period following acceptance in sufficient detail for Developer to duplicate the nonconformance and verify the correction. The above warranty is contingent upon proper use of the Deliverables and will not apply if the Deliverables has been modified by the Customer. EXCEPT FOR THE EXPRESS WARRANTY STATED IN THIS CLAUSE, DEVELOPER DISCLAIMS ALL WARRANTIES ON PRODUCTS AND SERVICES FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS; and the stated express warranties are in lieu of all obligations or liabilities on the part of Developer arising out of or in connection with the performance of the Deliverables.

2.5 SUPPORT. After the ninety (90)-day warranty period following acceptance, Customer may report instances of nonconformance of the Deliverables to the Acceptance Criteria to the Developer whereupon the Developer shall investigate the reported instances and provide cost estimates to the Customer for remedying the nonconformance instances. The cost estimates will be based on the Developer's then current time and material rates plus expenses, if any. The cost estimates will be provided within two business days of receipt of reported instances from the Customer. Developer will undertake remedial work within two business days of receipt of authorization from Customer. If Customer desires cost estimates and initiation of remedial work within four hours of informing Developer, Customer agrees to pay an additional twenty five percent (25%) over Developer's then current time and material rates. Developer will bill the Customer for actual hours expended and expenses incurred in remedying instances of nonconformance.

3. PAYMENT

3.1 Payment shall be according to the Terms of Payment set forth on Exhibit C, which are incorporated by reference into this Agreement. The price charged by the Developer is based upon: (i) receipt by Developer in a timely manner of all required materials as set forth in Paragraph 5 below, *Material reviewed* ****Required materials missing in Paragraph 5**** (ii) ~~no charges~~ to the Project Assignment, (iii) Developer is not required to perform any ancillary services and (iv) Customer does not cause a delay or interruption of services.

3.2 If Developer participates in or otherwise furnishes services or materials in connection with 3.1 (i) through (iv) above, such effort shall be paid for by the Customer at Developer's then current time and material rates plus expenses, if any, and this Agreement shall be adjusted accordingly. *provided that Aureal agrees to such adjustment.*

3.3 When commercial transportation or overnight living expenses are incurred by Developer, Customer shall be charged actual expenses.

3.4 Unless expressly stated otherwise on Exhibit C, Developer shall separately invoice Customer for each monthly installment and Customer shall pay all such invoices within fifteen (15) days of invoice date. All charges are exclusive of all customs, import duties, federal, state, municipal or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future (including any interest and penalties) which Developer may be required to collect or remit.

4. DATA RIGHTS AND CONFIDENTIALITY.

4.1 GRANT OF LICENSE. Developer grants to Customer, and its heirs and assigns, a exclusive, worldwide license during the term of this contract to reproduce, distribute, modify, publicly perform and display, with the right to sublicense and assign such rights in the Custom Software. Except to the extent as shall be stated on Exhibit C, Terms of Payment, this license shall be royalty-free.

No grant of a license under this agreement shall extend to software development tools, or any part thereof, used by Developer in connection with its business, even if such tools were developed or improved in connection with the Custom Software. In particular, by way of illustration and not by limitation, nothing in this agreement shall prevent, bar, or hinder Momentum from developing its own revert algorithm for use on the Motorola DSP 56362 or any other processor, nor shall any clause of this agreement create any property interest of any kind in favor of Aureal over any such revert algorithm developed by Momentum, nor shall anything in this agreement require Momentum to turn over anything other than the binary code for the 56362 operating system patches for required ESAI modifications and the diagnostic code for Aureal manufacturing test software, all of which software shall be deemed part of Momentum's software development tools for the purposes of this agreement.

4.2 NO GRANT BY ESTOPPEL. Except as otherwise expressly provided, no license

or other right is hereby transferred to Customer, including any license by implication, estoppel or otherwise, under any patent, patent application, trade secret, trademark or copyright.

SOFTWARE DEVELOPMENT AGREEMENT - 3

we want source code do

4.3 CONFIDENTIALITY.

4.3.1 Confidential Information. Both parties to this agreement shall during the term of this agreement and thereafter, take all steps reasonably necessary to hold in trust what each party knows or has reason to know is regarded as confidential by the other party. ("Confidential Information."). Confidential Information includes but is not limited to, technical and business information relating to a party's inventions or products, research and development, production, manufacturing and engineering processes, costs, profit or margin information, employee skills and salaries, finances, customers, marketing and production and future business plans. Each party's obligations with respect to the other party's Confidential Information also extend to any third party's proprietary or confidential information disclosed in the course of performing obligations under this Agreement.

4.3.2 Limitations on Use. Each party shall: (i) use the Confidential Information solely to perform the obligations arising under this Agreement; (ii) take reasonable measures to maintain the confidentiality of the Confidential Information, but not less than the measures it uses to protect confidential information of a similar type; (iii) give immediate notice to the other party of any unauthorized use or disclosure of the confidential information, and (iv) give reasonable assistance to the other party in remedying any such unauthorized use or disclosure of the Confidential Information. In addition, neither party shall (i) disclose the Confidential Information to any person except its employees, or consultants to whom it is necessary to disclose the Confidential Information for such use; (ii) disclose or make available the Confidential Information to any of its employees or consultants, except to the extent that such persons shall have agreed to receive it under terms at least as restrictive as those specified.

4.3.3 Exceptions. The obligations and restrictions of Paragraph 4.3.2 shall not apply to the extent that a party seeking to avoid the application of Paragraph 4.3.2 can demonstrate:

- (1) the disclosed information at the time of receipt by the party were part of the public domain;
- (2) after receipt by the party, the disclosed information became part of the public domain by publication or otherwise, except through breach of this Agreement;
- (3) the disclosed information can be established by documentary evidence to have already been in the hands of the party before receipt from the other party;
- (4) the disclosed information is received from a third party without similar restrictions and without breach of this Agreement; or
- (5) the disclosed information is required to be disclosed by a government agency to

further the objections of the agreement, or by a proper court of competent jurisdiction; provided however that the party seeking avoidance of the application of paragraph 4.3.2 pursuant to this exception shall use its best efforts to minimize the disclosure of such information and will assist the other party in obtaining a protective order before such disclosure.

SOFTWARE DEVELOPMENT AGREEMENT - 4

*Reviewed
Indemnity
From Developer?*

5. **INDEMNITY.** Customer hereby undertakes and agrees to indemnify and save harmless Developer, its officers, directors and employees, from any and all liability, loss, damage, suits, debts, claims, expenses, etc., whatsoever, arising directly or indirectly out of this Agreement or out of the use of said Deliverables including any patent, copyright, trade secret or trademark infringement claims.

6. **LIMITATION OF REMEDIES AND LIABILITY.** NEITHER DEVELOPER NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE DELIVERABLES AND ANY AND ALL RELATED SERVICES OR EQUIPMENT (INCLUDING COMPUTERS AND MACHINES), SHALL BE LIABLE TO CUSTOMER OR ANY PARTY CLAIMING THROUGH CUSTOMER FOR ANY DAMAGES OR EXPENSES OF ANY TYPE, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, DIRECT OR INDIRECT, SPECIAL OR GENERAL, ARISING OUT OF THE USE OR INABILITY TO USE SUCH DELIVERABLES, WHETHER ARISING OUT OF CONTRACT, NEGLIGENCE, TORT, OR UNDER ANY WARRANTY, OR OTHERWISE, AND WHETHER CAUSED BY DEFECT, NEGLIGENCE, BREACH OF WARRANTY, DELAY IN DELIVERY, OR OTHERWISE, EVEN IF DEVELOPER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY OTHER CLAIM BY ANY OTHER PARTY. NO OBLIGATION OR LIABILITY SHALL ARISE OR FLOW FROM DEVELOPER'S RENDERING TECHNICAL OR OTHER ADVICE IN CONNECTION WITH THE DELIVERABLES, OR ANY OTHER DEVELOPER PROGRAMS, OR DEVELOPER SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DEVELOPER INSTALLATION AND TRAINING SERVICES, AND ANY AND ALL ANNUAL SUPPORT AND MAINTENANCE SERVICES. DEVELOPER'S LIABILITY FOR DAMAGES IN NO EVENT SHALL EXCEED THE LICENSE FEE PAID FOR THE RIGHT TO USE THE DELIVERABLES, OR \$10,000, WHICHEVER SHALL BE THE LESSER.

7. **INDEPENDENT CONTRACTOR.** It is understood and agreed that each of the parties hereto is an independent contractor and that Customer is not, nor shall be considered to be, an agent, distributor, or representative of Developer for any purpose.

8. **GENERAL**

8.1. **ALLOCATION OF RISK.** This Agreement allocates the risk of product failure between Customer and Developer. Developer's program pricing reflects this allocation of risk in the limited warranty and the limitation of remedies and liability. Customer and Developer agree that the terms of this Agreement allocate the risks associated with the use of the Programs between Customer and Developer.

8.2. **OPERATING ENVIRONMENT.** Developer assumes no responsibility for the operating environment in which the Programs are to function.

8.3. **FORCE MAJEURE.** Developer shall not be in default by reason of any failure of

WRITTEN, RELATING TO THE SUBJECT MATTER HEREIN. NO COURSE OF CONDUCT BY A PARTY SHALL BE DEEMED A WAIVER OF ANY OTHER RIGHT OR REMEDY. A PARTY MAY NOT WAIVE, CHANGE, MODIFY, OR DISCHARGE THIS AGREEMENT EXCEPT BY WRITTEN AGREEMENT.

9. AUTHORITY. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY PROVISIONS RELATING TO WARRANTIES, PREVAIL OVER ANY LICENSES CONTAINED IN THE PROGRAM PACKAGE AND USER MANUALS DELIVERED TO CUSTOMER PURSUANT TO THIS AGREEMENT.

So agreed by Customer:	Accepted by Developer:
by : _____	by : _____
its : _____	its : _____
Date : _____	Date : _____

EXHIBIT "A"

PROJECT ASSIGNMENT

The following shall be deemed Custom Software for the purpose of this Agreement:

Source and binary code for the following 563xx modules:

1. Aureal "A3Dverb" revert algorithm
2. Aureal "A3DS" virtualization algorithm

The following shall be deemed Other Deliverables for the purposes of this agreement:

Binary code only for :

3. 56362 operating system patches for required ESAI modifications; and, 56362 Boot Program File with deployment instructions.
4. Test code for Aureal manufacturing.

Developer shall make reasonable efforts to support the Customer to make the Deliverables operational on Customer's target board which will not have the 68HC11 chip.

EXHIBIT "B"

ACCEPTANCE CRITERIA

The code shall be in a mutually agreed format for download by the Aureal device driver.

Aureal shall accept the Deliverables if the "A3Dverb" and "A3DS" algorithms run concurrently with AC3 decode and the final deliverables pass a test plan agreed upon by Aureal and Momentum.

Test Plan?

EXHIBIT "C"

TERMS OF PAYMENT

The fee for the deliverables shall be composed of three parts: a fixed fee component, a royalty fee, and, upon timely delivery (as stated below), an incentive fee.

Fixed Fee.

Aureal shall pay a total fixed fee of \$150,000.00. The fixed fee shall be paid in components of cash and of stock of Aureal Inc., according to the following schedule:

Amount Due	Composition of Payment	Invoice Date:
\$30,000	\$25,000 cash \$5,000 stock	June 21, 1999
\$40,000	\$25,000 cash \$15,000 stock	July 30, 1999
\$40,000	\$25,000 cash \$15,000 stock	September 30 September 21, 1999
\$40,000	\$25,000 cash \$15,000 stock	October 25 September 30, 1999

All invoices shall be net 15 days. Stock shall be in freely tradeable and unrestricted shares of Aureal, Inc., or if not, the shares shall be furnished with an agreement in form satisfactory to Momentum to register the shares in Aureal's next offering of stock to the public. Number of shares of stock due shall be the cash value of the stock due on the invoice date in question (\$5,000 or \$15,000, as the case may be), divided by the selling price of the stock on the close of trading on the day of the invoice. If the shares delivered are not publicly traded, the value to be placed on each share shall be set by agreement of the parties based on a reasonable evaluation of Aureal's net worth, earnings and other factors which generally affect the value of stock.

Royalty Payments.

In addition to the fixed fee, royalty payments shall be paid on all boards manufactured by or to the order of Aureal which incorporate all or any part of the Deliverables. Royalty payments shall be paid according to the following schedule:

\$1.00 per board for the first 75,000 boards



**MOMENTUM
DATA SYSTEMS, INC.**

17330 BROOKHURST STREET, SUITE 140, FOUNTAIN VALLEY, CA 92708
PHONE: (714) 378-5805, FAX: (714) 378-5985

SOFTWARE DEVELOPMENT AGREEMENT

Customer:			
Address:		City:	State:
Street:			ZIP:
Phone:		Fax:	
Contact:		Contact email:	
State of incorporation:			

This SOFTWARE DEVELOPMENT AGREEMENT ("Agreement") is made on the effective date listed below between Customer, whose name and address are listed above, and Momentum Data Systems, Inc., ("Developer" or "MDS"), a California corporation with its principal offices located at 17730 Brookhurst Street, Suite 140, Fountain Valley, CA and the company designated above as Customer ("Customer"), a corporation with its principal office at the address shown above.

TERMS AND CONDITIONS

1. SERVICES

1.1 This is a contract whereby the Developer will provide services to the Customer in the form of designing software for use by the Customer. Deliverables under this Agreement shall be composed of two types of software, which shall be called in the first instance, "Custom Software" and, in the second instance, "Other Deliverables." Exhibit A to this Agreement, incorporated by reference herein, shall furnish the descriptions of the Custom Software and the Other Deliverables for the purposes of this Agreement. The term "Deliverables," wherever used, shall refer to both the Custom Software and to the Other Deliverables. The services to be provided by Developer shall be governed by a written Project Assignment mutually agreed upon by Customer and Developer. The Project Assignment, attached as Exhibit A, shall set forth and constitute the complete and exclusive specification for designing the Custom Software, and for governing the development, installation and acceptance thereof.

- 1.2 The Project Assignment shall be based upon information provided by Customer who shall be entirely responsible for the accuracy and completeness of such information.
- 2. ACCEPTANCE.

This agreement contemplates that the Developer shall tender the Deliverables to the Customer for review to determine if the Deliverables are acceptable. The time between tender of the Deliverables for acceptance and acceptance by the Customer shall be known as the "Acceptance Period."

2.1 EFFECT OF ACCEPTANCE. Upon Acceptance, any of Customer's obligations that in this agreement are made conditional upon Acceptance shall become unconditional and fully due according to the schedule set out in Exhibit C, Terms of Payment. Except to the extent expressly provided for this Agreement, upon Acceptance, Developer shall be deemed released from any and all further obligations under this Agreement.

2.2 ACCEPTANCE. Acceptance shall occur when the Customer notifies Developer that the Deliverables have successfully performed in accordance with the Acceptance Criteria.

2.3 CONSEQUENCES OF FAILURE TO MEET ACCEPTANCE CRITERIA. Developer's sole liability if the Deliverables fail to meet the acceptance criteria shall be limited to correcting the same. If such corrections prove to be impossible to make, then Developer's liability shall be limited to that set forth in Paragraph 6 below.

2.4 WARRANTY. The Deliverables are warranted to conform to the Acceptance Criteria. Developer's sole obligation under this warranty shall be to remedy any nonconformance of the Deliverables to the Acceptance Criteria, provided such nonconformance is reported to Developer during the ninety (90)-day period following acceptance in sufficient detail for Developer to duplicate the nonconformance and verify the correction. The above warranty is contingent upon proper use of the Deliverables and will not apply if the Deliverables has been modified by the Customer. EXCEPT FOR THE EXPRESS WARRANTY STATED IN THIS CLAUSE, DEVELOPER DISCLAIMS ALL WARRANTIES ON PRODUCTS AND SERVICES FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS; and the stated express warranties are in lieu of all obligations or liabilities on the part of Developer arising out of or in connection with the performance of the Deliverables.

2.5 SUPPORT. After the ninety (90)-day warranty period following acceptance, Customer may report instances of nonconformance of the Deliverables to the Acceptance Criteria to the Developer whereupon the Developer shall investigate the reported instances and provide cost estimates to the Customer for remedying the nonconformance instances. The cost estimates will be based on the Developer's then current time and material rates plus expenses, if any. The cost estimates will be provided within two business days of receipt of reported instances from the Customer. Developer will undertake remedial work within two business days of receipt of authorization from Customer. If Customer desires cost estimates and initiation of remedial work within four hours of informing Developer, Customer agrees to pay an additional twenty five percent (25%) over Developer's then current time and material rates. Developer will bill the Customer for actual hours expended and expenses incurred in remedying instances of nonconformance.

3. PAYMENT

3.1 Payment shall be according to the Terms of Payment set forth on Exhibit C, which are incorporated by reference into this Agreement. The price charged by the Developer is based upon: (i) receipt by Developer in a timely manner of all required materials as set forth in Paragraph 5 below, **Required materials missing in Paragraph 5**(ii) no changes to the Project Assignment, (iii) Developer is not required to perform any ancillary services and (iv) Customer does not cause a delay or interruption of services.

3.2 If Developer participates in or otherwise furnishes services or materials in connection with 3.1 (i) through (iv) above, such effort shall be paid for by the Customer at Developer's then current time and material rates plus expenses, if any, and this Agreement shall be adjusted accordingly.

3.3 When commercial transportation or overnight living expenses are incurred by Developer, Customer shall be charged actual expenses.

3.4 Unless expressly stated otherwise on Exhibit C, Developer shall separately invoice Customer for each monthly installment and Customer shall pay all such invoices within fifteen (15) days of invoice date. All charges are exclusive of all customs, import duties, federal, state, municipal or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future (including any interest and penalties) which Developer may be required to collect or remit.

4. DATA RIGHTS AND CONFIDENTIALITY.

4.1 GRANT OF LICENSE. Developer grants to Customer, and its heirs and assigns, a exclusive, worldwide license during the term of this contract to reproduce, distribute, modify, publicly perform and display, with the right to sublicense and assign such rights in the Custom Software. Except to the extent as shall be stated on Exhibit C, Terms of Payment, this license shall be royalty-free.

No grant of a license under this agreement shall extend to software development tools, or any part thereof, used by Developer in connection with its business, even if such tools were developed or improved in connection with the Custom Software. In particular, by way of illustration and not by limitation, nothing in this agreement shall prevent, bar, or hinder Momentum from developing its own revert algorithm for use on the Motorola DSP 56362 or any other processor, nor shall any clause of this agreement create any property interest of any kind in favor of Aureal over any such revert algorithm developed by Momentum, nor shall anything in this agreement require Momentum to turn over anything other than the binary code for the 56362 operating system patches for required ESAI modifications and the diagnostic code for Aureal manufacturing test software, all of which software shall be deemed part of Momentum's software development tools for the purposes of this agreement.

4.2 NO GRANT BY ESTOPPEL. Except as otherwise expressly provided, no license or other right is hereby transferred to Customer, including any license by implication, estoppel or otherwise, under any patent, patent application, trade secret, trademark or copyright.

SOFTWARE DEVELOPMENT AGREEMENT - 3

4.3 CONFIDENTIALITY.

4.3.1 Confidential Information. Both parties to this agreement shall during the term of this agreement and thereafter, take all steps reasonably necessary to hold in trust what each party knows or has reason to know is regarded as confidential by the other party. ("Confidential Information"). Confidential Information includes but is not limited to, technical and business information relating to a party's inventions or products, research and development, production, manufacturing and engineering processes, costs, profit or margin information, employee skills and salaries, finances, customers, marketing and production and future business plans. Each party's obligations with respect to the other party's Confidential Information also extend to any third party's proprietary or confidential information disclosed in the course of performing obligations under this Agreement.

4.3.2 Limitations on Use. Each party shall: (i) use the Confidential Information solely to perform the obligations arising under this Agreement; (ii) take reasonable measures to maintain the confidentiality of the Confidential Information, but not less than the measures it uses to protect confidential information of a similar type; (iii) give immediate notice to the other party of any unauthorized use or disclosure of the confidential information, and (iv) give reasonable assistance to the other party in remedying any such unauthorized use or disclosure of the Confidential Information. In addition, neither party shall (i) disclose the Confidential Information to any person except its employees, or consultants to whom it is necessary to disclose the Confidential Information for such use; (ii) disclose or make available the Confidential Information to any of its employees or consultants, except to the extent that such persons shall have agreed to receive it under terms at least as restrictive as those specified.

4.3.3 Exceptions. The obligations and restrictions of Paragraph 4.3.2 shall not apply to the extent that a party seeking to avoid the application of Paragraph 4.3.2 can demonstrate:

- (1) the disclosed information at the time of receipt by the party were part of the public domain;
- (2) after receipt by the party, the disclosed information became part of the public domain by publication or otherwise, except through breach of this Agreement;
- (3) the disclosed information can be established by documentary evidence to have already been in the hands of the party before receipt from the other party;

(4) the disclosed information is received from a third party without similar restrictions and without breach of this Agreement; or

(5) the disclosed information is required to be disclosed by a government agency to further the objections of the agreement, or by a proper court of competent jurisdiction; provided however that the party seeking avoidance of the application of paragraph 4.3.2 pursuant to this exception shall use its best efforts to minimize the disclosure of such information and will assist the other party in obtaining a protective order before such disclosure.

5. **INDEMNITY.** Customer hereby undertakes and agrees to indemnify and save harmless Developer, its officers, directors and employees, from any and all liability, loss, damage, suits, debts, claims, expenses, etc., whatsoever, arising directly or indirectly out of this Agreement or out of the use of said Deliverables including any patent, copyright, trade secret or trademark infringement claims.

6. **LIMITATION OF REMEDIES AND LIABILITY.** NEITHER DEVELOPER NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE DELIVERABLES AND ANY AND ALL RELATED SERVICES OR EQUIPMENT (INCLUDING COMPUTERS AND MACHINES), SHALL BE LIABLE TO CUSTOMER OR ANY PARTY CLAIMING THROUGH CUSTOMER FOR ANY DAMAGES OR EXPENSES OF ANY TYPE, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, DIRECT OR INDIRECT, SPECIAL OR GENERAL, ARISING OUT OF THE USE OR INABILITY TO USE SUCH DELIVERABLES, WHETHER ARISING OUT OF CONTRACT, NEGLIGENCE, TORT, OR UNDER ANY WARRANTY, OR OTHERWISE, AND WHETHER CAUSED BY DEFECT, NEGLIGENCE, BREACH OF WARRANTY, DELAY IN DELIVERY, OR OTHERWISE, EVEN IF DEVELOPER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY OTHER CLAIM BY ANY OTHER PARTY. NO OBLIGATION OR LIABILITY SHALL ARISE OR FLOW FROM DEVELOPER'S RENDERING TECHNICAL OR OTHER ADVICE IN CONNECTION WITH THE DELIVERABLES, OR ANY OTHER DEVELOPER PROGRAMS, OR DEVELOPER SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DEVELOPER INSTALLATION AND TRAINING SERVICES, AND ANY AND ALL ANNUAL SUPPORT AND MAINTENANCE SERVICES. DEVELOPER'S LIABILITY FOR DAMAGES IN NO EVENT SHALL EXCEED THE LICENSE FEE PAID FOR THE RIGHT TO USE THE DELIVERABLES, OR \$10,000, WHICHEVER SHALL BE THE LESSER.

7. **INDEPENDENT CONTRACTOR.** It is understood and agreed that each of the parties hereto is an independent contractor and that Customer is not, nor shall be considered to be, an agent, distributor, or representative of Developer for any purpose.

8. **GENERAL**

8.1. **ALLOCATION OF RISK.** This Agreement allocates the risk of product failure between Customer and Developer. Developer's program pricing reflects this allocation of risk in the limited warranty and the limitation of remedies and liability. Customer and Developer agree that the terms of this Agreement allocate the risks associated with the use of the Programs between Customer and Developer.

8.2. **OPERATING ENVIRONMENT.** Developer assumes no responsibility for the operating environment in which the Programs are to function.

8.3. **FORCE MAJEURE.** Developer shall not be in default by reason of any failure of

SOFTWARE DEVELOPMENT AGREEMENT - 5

its performance under this Agreement if such failure results, directly or indirectly, from, but not limited to, fire, explosion, strike, freight embargo, act of God, or the public enemy, war, civil disturbance, act of any government, de jure or de facto, or any agency or official thereof, labor shortage, transportation contingencies, unusually severe weather, default of manufacturer or supplier as a subcontractor, quarantine or restriction, epidemic, or catastrophe, or other similar event beyond the control of Developer

8.4 SEVERABILITY. If any provisions or portions thereof of this Agreement are invalid or unenforceable under any applicable statute or rule or law, they are to that extent to be deemed omitted.

8.5 WAIVER IN PART. Any waiver, in whole or in part, of any right or remedy provided for in this Agreement shall not constitute a waiver of any other right or remedy. A party may not waive, change, modify, or discharge this Agreement except by written agreement.

8.6 ASSIGNMENT; BINDING EFFECT. This License may not be assigned or otherwise transferred by Customer without the prior written consent of Developer. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

8.7 ATTORNEY FEES. If either party incurs attorney fees and costs in interpreting or enforcing the terms of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney fees, regardless of whether a suit or action is filed, and if suit or action is filed, on any appeal therefrom.

8.8 HEADINGS. The headings used herein are for convenience only, aren't a part of this Agreement, and shall not be deemed to limit or affect any of the provisions herein.

8.9 DUPLICATE ORIGINALS. The parties agree that this Agreement may be executed in duplicate originals with the effective date of this Agreement being the date listed below.

8.10 ARBITRATION. Except to the extent that a dispute may involve the determination of rights to intellectual property, including but not limited to patents, trade secrets, trademarks, and copyrights, all disputes arising out of this Agreement shall be fully, finally and conclusively resolved by the referral to the American Arbitration Association, under the rules then applying. Judgment upon any award by an arbitrator may be entered in any court of appropriate jurisdiction.

8.11 GOVERNING LAW; VENUE. This Agreement is governed by California law without reference to the place of execution or performance. All actions, suits, or proceedings not subject to mandatory and binding arbitration under this Agreement, which seek to enforce or interpret the terms of this Agreement shall be brought and prosecuted in the courts located in the State of California. This provision shall survive the termination of this Agreement and no action, regardless of form, arising hereunder, may be instituted by either party more than one

SOFTWARE DEVELOPMENT AGREEMENT - 6

DRAFT CONTRACT MDS\Staff\...
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year after the cause of action arose, or, in the case of nonpayment, more than two years from the date of the last payment, except that the above limitations shall not apply to the enforcement of any of Developer's intellectual property rights.

8.12 TERMS AND TERMINATION

8.12.1 Effective Date. This Agreement is effective on the date last signed below.

8.12.2 Term. This Agreement is effective until terminated. . Developer may terminate this Agreement by providing Customer with 30 days' prior written notice upon Customer's failure to comply with any term or condition in this Agreement, including, but not limited to, Customer's failure to make any payment due hereunder within 10 days of the due date, Customer's insolvency or bankruptcy, cessation or termination of Customer's business, or the appointment of a receiver to operate the business of Customer.

8.12.3 Acceleration. If Customer fails to pay any sums due under this Agreement within 10 days of the due date, Developer may declare all unpaid sums immediately due and payable without demand or notice.

8.12.4 Legal Remedies Unaffected. Upon termination of this Agreement, Developer may seek any legal or equitable remedy available against Customer for any violation of the terms of this Agreement including, without limitation, injunctive relief and specific performance. Termination of this Agreement shall not relieve Customer of any payment obligations due under it and that upon termination all sums due shall become immediately due and payable.

8.12.5 Survival of Obligations. The following obligations shall survive the termination of this agreement: (i) all obligations of the parties accrued at termination to remit fees, ship, pay for, warrant, and, to the extent provided in this agreement, replace or service the Deliverables; and (ii) all confidentiality obligations of the parties, and all dispute resolution provisions.

8.11. NOTICES. Any notice required under this Agreement shall be in writing and shall be deemed given on the date personally delivered to the recipient, or, if deposited in the mail, as of the date of mailing, if sent by first class mail, registered or certified, postage prepaid, return receipt requested, to the address stated in this Agreement or such other addresses as either party may designate by written notice to such other party.

8.12. INTEGRATION. CUSTOMER REPRESENTS: CUSTOMER HAS READ THIS ENTIRE DOCUMENT, WHICH COMPRISES THE TERMS AND CONDITIONS IN THIS AGREEMENT, UNDERSTANDS EACH AND EVERY TERM AND CONDITION IN IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN DEVELOPER AND CUSTOMER AND THAT THIS AGREEMENT SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS, PROPOSALS, NEGOTIATIONS, OR DISCUSSIONS, ORAL OR

SOFTWARE DEVELOPMENT AGREEMENT - 7

WRITTEN, RELATING TO THE SUBJECT MATTER HEREIN. NO COURSE OF CONDUCT BY A PARTY SHALL BE DEEMED A WAIVER OF ANY OTHER RIGHT OR REMEDY. A PARTY MAY NOT WAIVE, CHANGE, MODIFY, OR DISCHARGE THIS AGREEMENT EXCEPT BY WRITTEN AGREEMENT.

9. AUTHORITY. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY PROVISIONS RELATING TO WARRANTIES, PREVAIL OVER ANY LICENSES CONTAINED IN THE PROGRAM PACKAGE AND USER MANUALS DELIVERED TO CUSTOMER PURSUANT TO THIS AGREEMENT.

So agreed by Customer:	Accepted by Developer:
by : _____	by : _____
its : _____	its : _____
Date : _____	Date : _____

EXHIBIT "A"

PROJECT ASSIGNMENT

The following shall be deemed Custom Software for the purpose of this Agreement:

Source and binary code for the following 563xx modules:

1. Aureal "A3Dverb" revert algorithm
2. Aureal "A3DS" virtualization algorithm

The following shall be deemed Other Deliverables for the purposes of this agreement:

Binary code only for :

3. 56362 operating system patches for required ESAI modifications; and, 56362 Boot Program File with deployment instructions.

4. Test code for Aureal manufacturing.

Developer shall make reasonable efforts to support the Customer to make the Deliverables operational on Customer's target board which will not have the 68HC11 chip.

EXHIBIT "B"

ACCEPTANCE CRITERIA

The code shall be in a mutually agreed format for download by the Aureal device driver.

Aureal shall accept the Deliverables if the "A3Dverb" and "A3DS" algorithms run concurrently with AC3 decode and the final deliverables pass a test plan agreed upon by Aureal and Momentum.

EXHIBIT "C"

TERMS OF PAYMENT

The fee for the deliverables shall be composed of three parts: a fixed fee component, a royalty fee, and, upon timely delivery (as stated below), an incentive fee.

Fixed Fee.

Aureal shall pay a total fixed fee of \$150,000.00. The fixed fee shall be paid in components of cash and of stock of Aureal Inc., according to the following schedule:

Amount Due	Composition of Payment	Invoice Date:
\$30,000	\$25,000 cash \$5,000 stock	June 21, 1999
\$40,000	\$25,000 cash \$15,000 stock	July 30, 1999
\$40,000	\$25,000 cash \$15,000 stock	30 <u>September</u> August 31, 1999
\$40,000	\$25,000 cash \$15,000 stock	25 <u>October</u> September 30, 1999

All invoices shall be net 15 days. Stock shall be in freely tradeable and unrestricted shares of Aureal, Inc., or if not, the shares shall be furnished with an agreement in form satisfactory to Momentum to register the shares in Aureal's next offering of stock to the public. Number of shares of stock due shall be the cash value of the stock due on the invoice date in question (\$5,000 or \$15,000, as the case may be), divided by the selling price of the stock on the close of trading on the day of the invoice. If the shares delivered are not publicly traded, the value to be placed on each share shall be set by agreement of the parties based on a reasonable evaluation of Aureal's net worth, earnings and other factors which generally affect the value of stock.

Royalty Payments.

In addition to the fixed fee, royalty payments shall be paid on all boards manufactured by or to the order of Aureal which incorporate all or any part of the Deliverables. Royalty payments shall be paid according to the following schedule:

\$1.00 per board for the first 75,000 boards
--

\$0.50 per board for second 75,000 boards
\$0.25 per board for remaining production run

Conditions on Royalties:

1. If the royalty amount due to Momentum does not reach \$150,000 within 18 months of product release, Aureal shall pay the difference between the cumulative royalty payment and \$150,000 to Momentum.
2. Royalty payments shall be made quarterly, starting December 31, 1999. Royalty payments for each quarter shall be paid to Momentum within thirty (30) days of quarter end.
3. Nothing in this agreement to the contrary, modifications to OS software on Motorola DSP56362 will remain the complete property of Momentum. However, Momentum will grant rights to use new TDM input/output drivers subject to the above royalty agreement.
4. Nothing in this agreement to the contrary, Momentum shall have an irrevocable license from Aureal to reuse A3DS code in Momentum's own products without royalty charge.
5. Aureal shall make available for inspection at any reasonable time all records relating to sales of boards to the extent reasonably necessary for Momentum to verify that the royalties paid are correct.

Incentive Bonus.

In addition to the fixed fee and the royalties, Aureal shall pay Momentum an incentive bonus of \$50,000 if Items One and Three of the Deliverables are furnished to Aureal no later than September 2447, 1999 and the Deliverables conform to Acceptance Criteria. If the Deliverables are delivered after September 2447, 1999, but are delivered on or before October 1 September 24, 1999, then Aureal shall pay Momentum the sum of \$25,000 if the Deliverables conform to Acceptance Criteria. Payment is due when a) Tests for Acceptance Criteria Conformance of the Deliverables are complete, no later than three business days after date of delivery, and b) Deliverables conform to Acceptance Criteria~~at the date of delivery~~; net 15 days. Payment shall be made in stock according to the rules established above for payment of stock as a component of the fixed fee.

subject to above royalty payments

- 4. Momentum Data Systems has the right to reuse A3D code on it's products without royalty charge
- Incentive Bonus

An incentive bonus of \$50,000 will be paid to Momentum Data Systems if the mutually agreed deliverables are delivered to Aural Semiconductor by September 1. If the September 1 date is not met but an October 1 date is met, an incentive bonus of \$25,000 will be paid to Momentum Data Systems. The bonus will be paid as stock subject to the same conditions as the invoices listed under payments terms.

Deliverables

TBD Please see appendix 1

Acceptance Criteria

TBD Please see appendix 1

Remaining Issues

Momentum Data Systems is intending to develop its own search algorithm and needs to establish guidelines so that implementing your search algorithm on the Motorola board does not preclude us from developing our own search algorithm.

I am sure there are other issues that need to be covered, but this is my first attempt at putting them on paper. Please feel free to contact me if you have any questions or comments.

Sincerely,


Jerry E. Parcell Ph.D.
President


6/23/99

lh

Appendix 1

Deliverables:

MDS will deliver source and binary code for the following 563xx modules:

1. Aural "A3Dverb" reverb algorithm
 2. Aural "A3DS" virtualization algorithm
 3. 56362 operating system patches for required ESAI and SPL modifications
 4. Diagnostic code for Aural manufacturing test software
- The code should be packaged in a mutually agreed format for download by the Aural device driver.

Acceptance criteria:

Aural requires that the 'A3Dverb' and 'A3DS' algorithms run concurrently with AC3 decode. Additionally, the final deliverables must pass a test plan provided by Aural SOA.


Kerry E. Purcell Ph.D.
President
Momentum Data Systems


Sanyas Tyer Ph.D.
Vice President, General Manager
Technology Division
Aural Inc.

12 03 03

June 17, 1999

Mr Sanjay Iyer Ph.D.
Vice President
Aureal Semiconductor
4245 Technology Drive
Fremont, CA 94538

Dear Sanjay,

SUBJECT: MEMORANDUM OF UNDERSTANDING FOR STRATOCASTER PROJECT

Based on our discussions, I believe the following summarizes our agreements.

Payment Terms:

\$30,000	Invoice Date	June 21
\$40,000	Invoice Date	July 30
\$40,000	Invoice Date	August 31
\$40,000	Invoice Date	September 30

June 21st payment - due on receipt of invoice

All remaining invoices - net 15 days

Royalty Payments:

\$1/board - first 75,000 boards \$75,000
\$0.50/board - second 75,000 boards \$37,500
\$0.25/board - remaining production run

Conditions:

1. If the royalty amount does not reach \$150,000 within 12 months of product release, Aureal will pay the delta between the cumulative royalty payment and \$150,000 to Momentum Data Systems
2. Royalty payments shall be made quarterly, starting December 31, 1999. Royalty payments for each quarter will be paid to Momentum Data Systems within 30 days of quarter end.
3. Modifications to OS software on Motorola DSP5632001 will remain the IP of MDS. However, MDS will grant rights to use new TDM input/output drivers.

- 2 -

June 18, 1999

Remaining Issues

Momentum Data Systems is intending to develop its own reverb algorithm and needs to establish guidelines so that implementing your reverb algorithm on the Motorola board does not preclude us from developing our own reverb algorithm.

I am sure there are other issues that need to be covered, but this is my first attempt at putting them on paper. Please feel free to contact me if you have any questions or comments.

Sincerely,

Jerry E. Purcell Ph.D.
President

lh

June 17, 1999

Mr Sanjay Iyer Ph.D.
Vice President
Aureal Semiconductor
4245 Technology Drive
Fremont, CA 94538

Dear Sanjay,

SUBJECT: MEMORANDUM OF UNDERSTANDING FOR STRATOCASTER PROJECT

Based on our discussions, I believe the following summarizes our agreements.

Payment Terms:

\$30,000	Invoice Date	June 21
\$40,000	Invoice Date	July 30
\$40,000	Invoice Date	August 31
\$40,000	Invoice Date	September 30

June 21st payment – due on receipt of invoice

All remaining invoices – net 15 days

Royalty Payments:

- \$1/board – first 75,000 boards \$75,000
- \$0.50/board – second 75,000 boards \$37,500
- \$0.25/board – remaining production run

Conditions:

1. If the royalty amount does not reach \$150,000 within 12 months of product release, Aureal will pay the delta between the cumulative royalty payment and \$150,000 to Momentum Data Systems
2. Royalty payments shall be made quarterly, starting December 31, 1999. Royalty payments for each quarter will be paid to Momentum Data Systems within 30 days of quarter end.
3. Modifications to OS software on Motorola DSP5632001 will remain the IP of MDS. However, MDS will grant rights to use new TDM input/output drivers.

- 2 -

June 18, 1999

Remaining Issues

Momentum Data Systems is intending to develop its own revert algorithm and needs to establish guidelines so that implementing your revert algorithm on the Motorola board does not preclude us from developing our own revert algorithm.

I am sure there are other issues that need to be covered, but this is my first attempt at putting them on paper. Please feel free to contact me if you have any questions or comments.

Sincerely,

Jerry E. Purcell Ph.D.
President

lh

HENNIGAN, BENNETT & DORMAN

601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Tel: (213) 694-1200 Fax: (213) 694-1234

FACSIMILE COVER SHEET

RECEIVED
DEC 12 2001
LAW OFFICES OF
WILLIAM W. FARRER

Date: December 11, 2001

File Name:

Aural

From: Karen Kuperiz

Direct Line:

(213) 694-1063

To:

Company

Fax number

William Webb Farrer

Law Offices of William Webb Farrer

(415) 765-9109

Number of pages, including cover:

38

For Your Information

Reply ASAP

For Your Review

Supplemental Message:

ORIGINAL WILL:

BE SENT BY MAIL

BE SENT BY FEDEX/OVERNIGHT COURIER

BE SENT BY MESSENGER

NOT BE SENT

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

If there are any questions or problems with the transmission of this facsimile, please call (213)-694-1200.

MARKETING MEETING MINUTES
FEBRUARY 15, 2000

Box #45
A2 . 20

Expected Participants:

Brendan O'Flaherty [] Patti Norris []
Chet Dayal [] Suneil Mishra []
Eldy Nodal [] Roger Goh []
Alan Yee [] David Gasior []

I. ADMINISTRATIVE
A. Eldy to host next meeting on Monday, February 22nd.

II. OVERVIEW OF PROJECTS, NEW AND ONGOING
A. SQ 3500 Status — Status Quo.

1. Schedule for SQ3500 Launch — April 2000.
 - a) We currently have a Dolby bug, where sounds that should play out of front speakers only are playing out of all our four in quad mode. Currently at MDS to be worked on — engineer is on vacation this week so nothing will be done until next.
 - b) Dolby certification submission is on hold until above bug is fixed. Alan Yee has system ready. : ~1 wk after submission
 - c) Expected Dolby Certification: : Available, but not distributed
 - d) Samples to key OEM accounts customers (4 pcs) : TBD
 - e) Samples to Reviewers (20 pcs) : 3/3/00
 - f) GDC Show units (6 pcs) : d) + 5 days
 - g) Quick Turn CD duplications:
2. Game Bundle (Bat. Zone II, Messiah)
 - a) Messiah Retail date is "March", OEM version = Retail date + 15 days
 - b) Rage folks have sent some titles {Wild Metal Country, Rally Championship 99, Off Road Racer} that have A3D for possible bundling — no AC-3 tracks currently.
3. App Bundle
 - a) Magic Music Maker (OK)
 - b) Cyberlink Power DVD (OK)
 - c) Future Beat — in SQA
 - d) Silo Player 2.0 (GM 2/11)
 - e) Flatland Rover (OK) — NEW BUILD EXPECTED, TO BE ROLLED IN.
 - f) Investigate getting MP3 ripper — Roger
 - (1) Magic MM with encoder from Qdesign = \$0
 - (2) Allows 25 rips for 30 days
 - (3) \$10 to upgrade to full version
4. Packaging
 - a) Final Mockup in for review, final changes this week.
 - b) No manual or manual resource
 - c) Game sticker cannot be created until bundle is certain.
- B. A3D 3.0 SDK Release (Suneil)
 1. Released to developers en masse, 2/11
 2. 2048 drivers have been released, 2/17
 3. 25 Samples required for GDC (Developer distribution — does not require final driver)
 4. Currently bug fixing issues (A3D 3.0 broken on 204x drivers, MP3 can't be positioned)
 5. CDs to dup 2/15, expected back by 2/25
 6. Does not include S/W Dolby Decoder (will use one user already has)
- C. Linux Drivers for Vortex Cards
 1. Have publicly released a 1.05 driver for 8810, 8820, and 8830.

**MARKETING MEETING MINUTES
FEBRUARY 15TH, 2000**

- a) Next steps are open source, then A3D.
 - 2. Mike Minnick rolling in WDM and open source core, though little was done in the week Mike had to work on it due to other constraints.
 - 3. Open source likely to be delayed until GDC timeframe
 - 4. RESOURCES ARE STILL A BIG ISSUE!!!
 - 5. Prepare a Press Release for GDC timeframe – only if OpenSource is released. (Suneil/Eldy)
 - 6. Could be delayed till April for beta Linux driver with A3D supt.
 - 7. Will not be included in retail products unless OpenSource is available; only available for download from web site.
- D. QUAKE III / A3D Press Release
- 1. Eldy to write press release and clear with Activision
 - 2. David to get developer quote
- E. Mac OS support
- 1. Newer Tech engineer willing to contract to do all work. Engineer to have further meeting with Jibran. (No status)
- F. A3D Integration with Third Parties (Chet)
- 1. AMD:
 - a) Presentation was made to AMD on 2/9. Info package is being shopped around to different groups. They are particularly interested in NMI gate integration, with some interest in ADIF. Their 2000 product line is already set. Integration would not come until 2001 products.
 - b) AMD is urging us to join the Audio Communications Riser (ACR) SIG, to come up with an industry spec for a new riser standard.
 - c) We can't enter into any agreements at this time due to ongoing negotiations.
 - 2. Chet to create 1) Proposal Template and 2) NDA (if not in place)
 - a) Presentation, ADIF 2.0 spec and NMI paper complete
 - b) Chet to send package to Brendan
- G. SW Priority meeting (Chet)
- 1. Priority list was distributed at marketing meeting and discussed so as to go into the Tuesday morning meeting with a coherent marketing strategy.
- H. New Product MRD—No major progress
- 1. Product Idea needs MRD: FM transmitter on Sound Card with SW that helps you set up correct frequency on your FM Stereo. Roger to revise
 - 2. Demonstratable prototypes in house this week.
 - 3. PL crystal for better transmission stability. Expected to be a \$2 cost adder.
 - 4. Discussion on how to get Antenna out of the chassis. Currently the idea is to have an antenna wire out a hole on the backplate.
 - 5. Need to work the control of the transmitter into Vortex control panel. To investigate tying the transmission frequency to a slider switch. Need to get working sample ASAP.
 - 6. Volumes expected to be 20K pcs per month, replace SQ2500 as mainstream product.
 - 7. "Daughtercard" solution is out; single card solution is now from the get-go.
 - 8. Need brainstorming on naming the product. Try to get it out of the Soundcard category. David suggests "Voyager". =)
 - 9. Campaign and Positioning (\$99 retail) needs to be worked out.
- I. MISC
- 1. Other Product / Solution Ideas

MARKETING MEETING MINUTES
FEBRUARY 15TH, 2000

2. Voice over IP. We need to evaluate :
 - a) www.Net2phone.com
 - b) www.visitalk.com - Roger needs to get proposal.
 - c) www.Dialpad.com - Alan Yee working on this.
 - d) www.freephone.com
 - e) www.rogerwilco.com - Sunell working on integration with A3D, possibly for GDC timeframe?
 - f) www.phonefree.com
 3. Need to plan how VoIP fits into product line - Roger needs to decide how it fits into business plans
 4. MWM Digital Microphones - Samples arriving soon; Roger will follow up.
- J. SILO.COM
1. Rick Allen has handed off Silo marketing to the Marcom group
 2. Eldy and Cameron are performing background research
 3. Silo 2.0 software has been handed off to Aural engineering
 4. No original Silo team members remain
- K. Speaker Program
1. Hardware problems that can be solved are almost finished
 2. No software resources.
 3. Attempting to get a waiver from the PC2001 USB audio spec.
- L. Au 8838
1. A.k.a. Marmot, Sunell & Roger to take at the latest engineering spec being circulated.
(Pending receipt of latest specs from Engineering)
 2. 3.3V compatibility doesn't meet spec and will fail PC2001 spec.
 3. Use pins to help reduce EMI interface (power and ground?)
- M. Tradeshow
1. GDC - Work in progress with \$0 budget.
 2. Roger to get monitors from ArtMedia for show.
 3. Need 2 x 4.1, and 3 x 2.1 sets of speakers for show.
- N. Nintendo
1. Alan Yee is setting up a meeting with their R&D group at GDC.
 2. This would be a software license opportunity only, for their Dolphin and GameBoy follow-on platforms.

MARKETING MEETING MINUTES
FEBRUARY 15, 2000

<i>Expected Participants:</i>	Brendan O'Flaherty []	Rick Allen []
	Chet Dayal []	Suneil Mishra []
	Eldy Nodal []	Roger Goh []
	Marc Stimak []	David Gasior []
	Alan Yee []	Patti Norris []

I. ADMINISTRATIVE
A. David to host next meeting on Monday, February 22nd.

II. OVERVIEW OF PROJECTS, NEW AND ONGOING

A. SQ 3500 Status—No significant progress. Will hold shipment until Messiah is available.

1. Schedule for SQ3500 Launch – March 2000 (80%).
 - a) Pro-logic implemented, but has bug. : waiting for software bug fix, Alan Yee has PC ready.
 - b) Dolby certification submission: : TBD

- c) Expected Dolby Certification: : ~1 wk after submission
- d) Samples to key OEM accounts customers (4 pcs) : Available, but not distributed
- e) Samples to Reviewers (20 pcs) : TBD
- f) GDC Show units (5 pcs) : 3/3/00
- g) Quick Turn CD duplications: : d) + 5 days

2. Game Bundle (Bat. Zone II, Messiah)
 - a) Messiah Retail date is "March"; OEM version = Retail date + 15 days
 - b) Rage folks have sent some titles {Wild Metal Country, Rally Championship 99, Off Road Racer} that supposedly have AC-3 tracks for possible bundling, but do not have A3D support currently. *Soldier of Fortune*

3. App Bundle
 - a) Magic Music Maker (OK)
 - b) Cyberlink Power DVD (OK)
 - c) Future Beat – in SQA
 - d) Silo Player 2.0 (GM 2/11)
 - e) Flatland Rover (OK) – NEW BUILD EXPECTED, TO BE ROLLED IN.
 - f) Investigate getting MP3 ripper – Roger
 - (1) Magic MM with encoder from Qdesign = \$0
 - (2) Allows 25 rips for 30 days
 - (3) \$10 to upgrade to full version

4. Packaging
 - a) Final Mockup in for review, final changes this week.
 - b) No manual or manual resource
 - c) Game sticker cannot be created until bundle is certain.

B. A3D 3.0 SDK Release (Suneil)

1. Released to developers en masse, 2/11
2. Working with selected developers on game projects
3. Need 2048 for reverb
4. 25 Samples required for GDC
5. Final DLL completed.
6. CDs to dup 2/15, expected back by 3/1
7. Datasheets received 2/15
8. Does not include S/W Dolby Decoder (will use one user already has)

MARKETING MEETING MINUTES
FEBRUARY 15TH, 2000

- C. Linux Drivers for Vortex Cards
1. Have publicly released a 1.0~~4~~ driver for 8810, 8820, and 8830.
 - a) Next steps are open source, then A3D.
 2. Mike Minnick rolling in WDM and open source core.
 3. Open source likely to be delayed until GDC timeframe
 4. RESOURCES ARE STILL A BIG ISSUE!!!
 5. Prepare a Press Release for GDC timeframe (Sunell/Eldy)
 6. Could be delayed till April for beta Linux driver with A3D supt.
 7. Will not be included in retail products, only available for download from web site.
 8. ~~AT&T 6.5H Linux drivers and WDM drivers - quote from Intel graphics - 12 weeks work~~
- X
- D. QUAKE III Supports A3D Press Release
1. Activation is Ok with the wording. need to time it for GDC (Sunell / Eldy)
- Eldy To prepare
- E. Mac OS support
1. Newer Tech engineer willing to contract to do all work. Engineer to have further meeting with Jibran. GO/NO-GO?
- F. A3D Integration with Third Parties (Chet)
1. AMD:
 - a) Presentation was made to AMD on 2/9. Info package is being shopped around to different groups. They are particularly interested in NMI gate integration, with some interest in ADIF. Their 2000 product line is already set. Integration would not come until 2001 products.
 - b) AMD is urging us to join the Audio Communications Riser (ACR) SIG, to come up with an industry spec for a new riser standard.
 - c) We can't enter into any agreements at this time due to ongoing negotiations.
 2. ~~8810~~
~~8810~~
 3. Chet to create 1) Proposal Template and 2) NDA (if not in place)
 - a) Presentation, ADIF 2.0 spec and NMI paper complete
- G. SW Priority meeting (Chet)
1. Priority list was distributed at marketing meeting and discussed so as to go into the Tuesday morning meeting with a coherent marketing strategy. NT lists for version
- H. New Product MRD—No major progress
1. Product Idea needs MRD: FM transmitter on Sound Card with SW that helps you set up correct frequency on your FM Stereo. DONE (?)
 2. Demonstratable prototypes in house this week.
 3. PLL crystal for better transmission stability. Expected to be a \$2 cost adder.
 4. Discussion on how to get Antenna out of the chassis. a) Hole on back bracket rolled into baseboard design; b) for upgrade (if feasible), strip with a drilled backboard. ~~NT lists for version~~
 5. Need to work the control of the transmitter into Vortex control panel. To investigate tying the transmission frequency to a slider switch. Need to get working sample ASAP.
 6. Volumes expected to be 20K pos per month, replace SQ2500 as mainstream product.
 7. ~~Doughnut card solutions may be worked into a single card solution for cost savings~~
 8. Need brainstorming on naming the product. Try to get it out of the Soundcard category.
 9. Campaign and Positioning (\$99 retail) needs to be worked out.

MARKETING MEETING MINUTES
FEBRUARY 15TH, 2000

I. MISC

- 1. Other Product / Solution Ideas
- 2. Voice over IP. We need to evaluate:

- a) ~~www.~~
- b) ~~www.~~
- c) ~~www.~~
- d) ~~www.~~
- e) ~~www.~~
- f) ~~www.~~
- g) ~~www.~~

→ web

Partnership with them at GDC

- 3. Need to plan how VoIP fits into product line - ~~...~~

~~Meeting has been scheduled for ... with a transcript ...~~
 MWM Digital Microphones - Roger to call
 a. Steve Seltzer - Dager

J. SILO.COM

- 1. Rick Allen has handed off Silo marketing to the Marcom group
- 2. Eldy and Cameron are performing background research
- 3. Silo 2.0 software has been handed off to Aureal engineering—Engineering should do a build this week before final Silo resource is gone.

K. Speaker Program

- 1. Hardware problems that can be solved are almost finished
- 2. No software resources.
- 3. Attempting to get a waiver from the PC2001 USB audio spec.

copy of answers

L. Au 8838

- 1. A.k.a. Marnot, Sunell & Roger to take at the latest engineering spec being circulated.
- 2. Pending receipt of latest specs from Engineering)
- 3. 3V compatibility doesn't meet spec—need to make an executive decision on whether or not this is acceptable

33 Volt → Non compliance
 → PET Spec
 33 Volt

M. Tradeshows

- 1. GDC - Work in progress with \$0 budget
- 2. Need 2 x 4.1, and 3 x 2.1 sets of speakers for show.

N. Nintendo

- 1. Alan Yee is setting up a meeting with their R&D group at GDC.
- 2. This would be a software license opportunity only, for their Dolphin and GameBoy-follow-on platforms.

PC2001

8838

↳ EXTRA PMS

↳ Powers y grounds for

**MARKETING MEETING MINUTES
FEBRUARY 15, 2000**

Expected Participants:

<i>Brendan O'Flaherty []</i>	<i>Rick Allen []</i>
<i>Chet Dayal []</i>	<i>Suneil Mishra []</i>
<i>Eldy Nodal []</i>	<i>Roger Goh []</i>
<i>Marc Stimak []</i>	<i>David Gasior []</i>
<i>Alan Yee []</i>	<i>Patti Norris []</i>

I. ADMINISTRATIVE

A. _____ to host next meeting on Monday, February 22nd.

II. OVERVIEW OF PROJECTS, NEW AND ONGOING

A. SQ 3500 Status (Roger)

1. Schedule for SQ3500 Launch – March 2000 (80%).
 - a) ESD/EMI fixed for baseboard, Gerber released.
 - b) Pro-logic implemented, but has bug. MDS Fixes have been incorporated. : 2/4/00 (?)
 - c) Dolby certification submission: : TBD
 - d) Expected Dolby Certification: : 2/7/00
 - e) Samples to key OEM accounts customers (4 pcs) : TBD
 - f) Samples to Reviewers (20 pcs) : 3/3/00
 - g) GDC Show units (5 pcs) : d) + 5 days
 - h) Quick Turn CD duplications:
2. Upgrade Program for SQ2500—on hold
3. Game Bundle (Bat. Zone II, Messiah)
 - a) Messiah Retail date is "March", OEM version = Retail date + 15 days
 - b) Rage folks have sent some titles {Wild Metal Country, Rally Championship 99, Off Road Racer} that supposedly have AC-3 tracks for possible bundling.
4. App Bundle
 - a) Magic Music Maker (OK)
 - b) Cyberlink Power DVD (OK)
 - c) Future Beat - in SQA
 - d) Silo Player 2.0 (GM 2/11)
 - e) Flatland Rover (OK) – NEW BUILD EXPECTED, TO BE ROLLED IN.
 - f) Investigate getting MP3 ripper – Roger
 - (1) Magic MM with encoder from Qdesign = \$0
 - (2) Allows 25 rips for 30 days
 - (3) \$10 to upgrade to full version
5. Packaging
 - a) Mockup in 1/19 for review, changes submitted
 - b) Put "MP3" on the box, Roger to provide text
 - c) Should have final mockup by 2/7

MARKETING MEETING MINUTES
FEBRUARY 15TH, 2000

B. A3D 3.0 SDK Release (Sunell)

1. ~~Not yet~~ released to developers en masse
2. Working with selected developers on game projects
3. Dependencies with Stratocaster schedule
4. Will launch when SQ3500 is launched -
5. HOW MANY Samples required? 0 now but 25 for GDC
6. Docs in process, almost complete.
7. Final DLL ready 2/11/00.
8. CDs not available until GDC timeframe (3/7)
9. Datasheets supposed to be delivered 2/14
10. Does not include S/W Dolby Decoder (will use one user already has)

2/14/00

check

C. Linux Drivers for Vortex Cards

1. Have publicly released a 1.04 driver for 8810, 8820, and 8830.
 - a) Next steps are open source, then A3D.
2. Open source likely to be delayed until February - if will not be ready for Linux World
3. RESOURCES ARE STILL A BIG ISSUE!!!
4. Prepare a Press Release when Linux open source release is imminent (Sunell/Eldy) - GDC
5. Could be delayed till April for beta Linux driver with A3D supt.
6. Questions re: inclusion in OEM/ Retail package??? NO RETAIL CHANGE-PUT ON WEB SITE.
7. AT&T 6-CH Linux drivers and WDM drivers -- quote from Intellegraphics = 12 wks = \$48K
8. Linux developer as will connect with Jibran/Sunell for follow up.

D. QUAKE III Supports A3D Press Release

1. Current status: Left msg. with Andrea T. at Activision to pursue release/approvals. *ASK Sunell*
2. Activision is Ok with the wording, need to time it for GDC (Sunell / Eldy)

E. Mac OS support

1. Newer Tech engineer willing to contract to do all work. Engineer to have further meeting with Jibran. *GO/NO-GO? - ASK Jibran*

F. A3D Integration with Third Parties (Chet)

1. Nvidia:
 - a) Nvidia needs to rethink the model completely.
 - b) Look into Nvidia's involvement with the MS X BOX program
2. AMD:
 - a) AMD is urging us to join the Audio Communications Riser (ACR) SIG, to come up with an industry spec for a new riser standard.
 - b) We can't enter into any agreements at this time due to ongoing negotiations.
 - c) Marc has set a meeting on Wednesday, 2/9/00 with the AMD core logic people to discuss further. Has invited Chet to attend the meeting in Austin. *root*
3. SIS
 - a) *root gates and embedded go-on.*
Chet to come with business proposal for evaluation. *SIS has* ~~to the equation it is a matter of how much they are willing to pay for~~ ~~to the equation~~

MARKETING MEETING MINUTES
FEBRUARY 15TH, 2000

4. Chet to create 1) Proposal Template and 2) ADA (if not in place)
- a) Speaking with Marc, as soon as we put together any proposal, it will generate a lot of questions, and the only people qualified to answer them are Brian, Sessone, or maybe Chris Brown, and both of them are swapped with other tasks.
 - b) Chet will gather whatever material he can for now but we have to realize the shortage of VLSI resources to even do an effective transfer of information.

G. SW Priority meeting (Chet)

- 1. Priority list was distributed at marketing meeting and discussed so as to go into the Tuesday morning meeting with a coherent marketing strategy.

H. New Product MRD

- 1. Product Idea needs MRD: FM transmitter on SoundCard with SW that helps you set up correct frequency on your FM Stereo. **DONE!! End of week.**
- 2. Prototypes in house this week.
- 3. PLL crystal for better transmission stability. Expected to be a \$2 cost adder.
- 4. Discussion on how to get Antenna out of the chassis. a) Hole on back bracket rolled into baseboard design; b) for upgrades (if offered), ship with a drilled backplate (\$0.09 cost).
- 5. Need to work the control of the transmitter into Vortex control panel. To investigate trying the transmission frequency to a slider switch. Need to get working sample ASAP.
- 6. Volumes expected to be 20K pcs per month, replace SQ2500 as mainstream product.
- 7. "Daughtercard" solution may be worked into a single card solution for cost savings.
- 8. Need brainstorming on naming the product. Try to get it out of the Soundcard category.
- 9. Campaign and Positioning (\$99 retail) needs to be worked out.

I. MISC

- 1. Other Product / Solution Ideas
- 2. Voice over IP. We need to evaluate :
 - a) www.Net2phone.com
 - b) www.visitalk.com - Expected meeting at end of this week.
 - c) www.Dialpad.com
 - d) www.Taotalk.com
 - e) www.freephone.com [STATUS?]
 - f) www.rogerwilco.com
 - g) www.phonefree.com
- 3. Need to plan how VoIP fits into product line - ROGER TO UPDATE BUSINESS SIDE
- 4. MaxPhone has approached Roger with a headset / mike bundling deal.
- 5. MWM Digital Microphones - Samples coming - Roger to update

J. Next Generation Motherboard Targeted Products—on hold, minimum 5 month effort with no available resources

K. SILO.COM

- 1. Rick Allen has handed off Silo marketing to the Marcom group.
- 2. Eldy and Cameron are performing background research
- 3. Silo 2.0 software has been handed off to Aureal engineering

L. Speaker Program

- 1. Hardware problems that can be solved are almost finished
- 2. No software resources.

Wendy and I support SKAs,

MARKETING MEETING MINUTES
FEBRUARY 15TH, 2000

M. Au 8838

- 1. A.k.a. Marmot, Suneil & Roger to take at the latest engineering spec being circulated.
(Pending receipt of latest specs from Engineering)
- 2. 3.3V compatibility doesn't meet spec.

N. Tradeshows

- 1. GDC ~~Progress for simulating~~ *Board not detected*
- 2. sets of Impact speakers located (some may not be fully functioning)

O. Nintendo)

- 1. Alan Yee waiting for info from Nintendo.

a. RFD group. GDC

chip board

RFD

Order Line	Br Wh number no.	Description	Order Ship date date	Stocking units B/o qty U/M	To ship value	To B/O value	Day Status
1	FG 002929	NAH88T30A-01B ASSY,BD,VORTEX2,(INCA)	03/07 03/10	540	10,260.00	10,260.00	OK
Customer : AII1001 - AII TECHNOLOGIES, INC							
Total for customer : AII1001							
1	FG 002935	FG, ADVANTAGE(SV),W/CD V3220	03/07 03/10	200	2,200.00	2,200.00	1 Cr/Sp
5	FG 002836	FG,SQ2500 (RETAIL) Rev B	02/17 02/21	60	3,600.00	3,600.00	20 Hd/Bo
Customer : AME001 - AMERICAN ADM INC (ASA)							
Total for customer : AME001							
1	CA 002940	FG, ADVANTAGE(SV),W/CD	03/08 03/08	120	1,230.00	1,230.00	0 Cr/Sp
Customer : ELEC003 - ELECTRONIC EQUIPMENT TRADE, AS							
Total for customer : ELEC003							
1	CA 002909	FG,SUPERQUAD,W/CD/MAN	03/05 03/24	500	17,500.00	17,500.00	3 Cr/Sp
Customer : FDI001 - FUJITSU DEVICES INC.							
Total for customer : FDI001							
1	FT 002867	FG,VORTEX2,W/CD/MAN CD UPDATE	02/24 03/16	1800	41,580.00	41,580.00	13 Hd/Bo
Customer : FOUN001 - FOUNTAIN TECHNOLOGIES, INC.							
Total for customer : FOUN001							
2	FG 002891	FG,SOUNDCOM,W/CD/MAN	03/01 03/02	540	10,260.00	10,260.00	7 Cr/Sp
3	FG 002891	FG,SUPERQUAD,W/CD/MAN	03/01 03/02	120	4,080.00	4,080.00	7 Cr/Sp
1	FG 002891	FG, ADVANTAGE(SV),W/CD	03/01 03/02	540	5,400.00	5,400.00	7 Cr/Sp
Customer : FUTU002 - FUTURE TECHNOLOGIES INT'L							
Total for customer : FUTU002							

Ship

Ship

Don't ship

OK

Order Backlog by Customer Report

Order Line -----> Stocking units B/o qty U/M
 Order ship date date ship date date
 To ship value To B/o value Day Status

Order Line	Description	Br Wh number no.	Order ship date	Ship date	Ship qty	B/o qty	U/M	To ship value	To B/o value	Day Status	
Customer : HARV001 - Harvest Drivemaster Pte Ltd.											
Total for customer : HARV001											
FG8VL10A-02B	FG, ADVANTAGE(5V),W/CD V3220	1A BA 002885	02/29 03/09		1500	1500		18,750.00	18,750.00	8 Cr/Sp	

Order Line	Description	Br Wh number no.	Order ship date	Ship date	Ship qty	B/o qty	U/M	To ship value	To B/o value	Day Status	
Customer : HEW003 - HEWLETT PACKARD SINGAPORE PTE											
Total for customer : HEW003											
HARBA10A-01	ASSY,BD,ADVANTAGE (AMP)	1A BA 002859	02/23 03/13		3000	3000		27,000.00	27,000.00	14 Book	
		1A BA 002859	02/23 03/27		3000	3000		27,000.00	27,000.00	14 Book	
		1A BA 002859	02/23 04/03		6000	6000		54,000.00	54,000.00	14 Book	

Order Line	Description	Br Wh number no.	Order ship date	Ship date	Ship qty	B/o qty	U/M	To ship value	To B/o value	Day Status	
Customer : HEW005 - HEWLETT PACKARD COMPANY											
Total for customer : HEW005											
HARBA10A-02	ASSY,BD,ADVANTAGE (AMP/AUX)	01 FG 002811	02/15 03/07		30	30		292.50	292.50	22 Shpdp	
HARBD30A-01	ASSY,BD,SQ2500 REV C	01 FG 002811	02/15 03/06		40	40		996.00	996.00	22 Shpdp	

Order Line	Description	Br Wh number no.	Order ship date	Ship date	Ship qty	B/o qty	U/M	To ship value	To B/o value	Day Status	
Customer : IBM01 - IBM											
Total for customer : HEWL005											
HARST30A-02A	ASSY,BD,VORTEX2 (WARE/IBM)	01 BA 002914	03/06 03/06		1489	1489		28,291.00	28,291.00	2 Book	
		01 BA 002914	03/06 03/08		1489	1489		28,291.00	28,291.00	2 Book	
		01 EG 002914	03/06 03/15		1489	1489		28,291.00	28,291.00	2 Book	
		01 EG 002914	03/06 03/22		1449	1449		27,531.00	27,531.00	2 Book	
		01 EG 002914	03/06 03/29		1449	1449		27,531.00	27,531.00	2 Book	
		01 EG 002914	03/06 04/05		1239	1239		23,541.00	23,541.00	2 Book	
		01 EG 002914	03/06 04/12		29	29		551.00	551.00	2 Book	
		01 EG 002914	03/06 04/19		29	29		551.00	551.00	2 Book	
		01 EG 002915	03/06 04/26		29	29		551.00	551.00	2 Book	
		01 EG 002915	03/06 05/01		29	29		551.00	551.00	2 Book	

Order Line	Description	Br Wh number no.	Order ship date	Ship date	Ship qty	B/o qty	U/M	To ship value	To B/o value	Day Status	
Customer : IOMA001 - I/O MAGIC											
Total for customer : IBM001											
HARBA10A-02A	ASSY,BD,ADVANTAGE(LITE)	01 BA 002792	02/09 03/03		10000	10000		87,000.00	87,000.00	28 Shpdp	
		01 BA 002793	02/09 04/05		0	0		0.00	0.00	28 Shpdp	

BPA 14000

BPA 3554
FG 203

MICRON

34852

351

1787K

1787K

Order Line	Stock code	Description	Br Wh number no.	Order date	Ship date	Stocking units	To ship	To B/O	Order Status
Customer : PACK03 - PACKARD BELL NEC EUROPE BV									
Total for customer : PACK03									
3	01 FG 002853	FG,SQ2500(SI/COAX),W/CD/MAN		02/23 03/08		120	0.00	4,020.00	14 Hd/Bo
4	01 FG 002853			02/23 03/15		120	0.00	4,020.00	14 Hd/Bo
5	01 FG 002853			02/23 03/22		120	0.00	4,020.00	14 Hd/Bo
3	01 CA 002820	FG, VORTEX ADVANTAGE PCI W/CD		02/16 02/22		0	2,640.00	0.00	21 Book
6	01 CA 002820			02/16 03/06		0	2,640.00	0.00	21 Book
7	01 CA 002820			02/16 03/10		240	0.00	2,640.00	21 Book
4	01 CA 002844			02/22 03/17		240	0.00	2,640.00	15 Hd/Bo
5	01 CA 002844			02/22 03/24		240	0.00	2,640.00	15 Hd/Bo
Customer : PROF01 - PROFESSIONAL COMPUTER HK LTD									
Total for customer : PROF01									
3	1A BA 002892	FG,SOUNDCOM,W/CD/MAN		03/02 03/15		500	0.00	12,500.00	6 Cr/Sp
1	1A BA 002892	FG, ADVANTAGE(SV),W/CD V3220		03/02 03/15		3000	0.00	33,000.00	6 Cr/Sp
2	1A BA 002892			03/02 03/28		7000	0.00	77,000.00	6 Cr/Sp
4	1A FG 002892	FG,SQ2500 (RETAIL)		03/02 03/15		500	0.00	30,000.00	6 Cr/Sp
Customer : SCI5001 - SCI SYSTEMS									
Total for customer : SCI5001									
9	01 FG 002684	ASSY,BD,ADVANTAGE (AMP/AUX)		01/19 05/03		2520	0.00	22,680.00	49 Hd/Bo
Customer : TATU001 - TATUNG									
Total for customer : TATU001									
6	01 FG 002694	ASSY,BD,ADVANTAGE (AMP)		01/21 03/20		1500	0.00	13,500.00	47 Shp/d
Customer : TECH007 - TECH WORKS UK LIMITED									
Total for customer : TECH007									
2	01 BA 002112	VORTEX2 SQ DIG PCI W/MNL, CD		11/30 03/31		1400	0.00	49,000.00	99 Cr/Sp
Total for customer : TECH007									

Order Line	Description	Br Wh number no.	Order Ship	date date	Ship qty	Stocking units	To ship	To B/O	Value Day Status
			<----			B/o qty U/M	value	value	

Customer : VIDEO1 - VIDEOLOGIC									
FG88DL30A-01	VORTEX2 SQ DIG PCI W/ MNL, CD	01 FG 002598	3	12/28 03/31	0	3000	0.00	99,000.00	71 Cr/Sp
Total for customer : VIDEO1									

Customer : VOYE01 - VOYETRA TURTLE BEACH, INC									
AU8830A2-40	VORTEX AU8830 VERSION A2	01 BA 002333	6	11/02 04/01	0	70000	0.00	490,000.00	127 Cr/Sp
		01 BA 002898	1	03/02 05/18	0	50000	0.00	275,000.00	6 Cr/Sp
		01 BA 002898	2	03/02 06/29	0	60000	0.00	330,000.00	6 Cr/Sp
Total for customer : VOYE01									

Customer : WP1001 - WORLD PEACE INDUSTRIAL CO.LTD									
AU8810A2T-40	VORTEX AU8810 VERSION A2 TQFP	3A BA 002164	7	10/11 04/03	0	24500	0.00	98,000.00	149 Hd/Bo
		3A BA 002164	8	10/11 04/10	0	25000	0.00	100,000.00	149 Hd/Bo
		3A BA 002917	1	03/07 03/20	0	19000	0.00	76,000.00	1 Book
		3A BA 002917	2	03/07 04/03	0	18000	0.00	72,000.00	1 Book
		3A BA 002917	3	03/07 04/06	0	10000	0.00	40,000.00	1 Book
		3A BA 002917	4	03/07 04/10	0	17000	0.00	68,000.00	1 Book
		3A BA 002917	5	03/07 04/25	0	18000	0.00	72,000.00	1 Book
		3A BA 002917	6	03/07 05/02	0	5000	0.00	20,000.00	1 Book
AU8830B0-40	VORTEX AU8830 VERSION B0	3A BA 002765	2	02/03 03/20	0	5000	0.00	29,000.00	34 Hd/Bo
		3A BA 002765	3	02/03 04/10	0	5000	0.00	29,000.00	34 Hd/Bo
Total for customer : WP1001									

Customer : ZOOM001 - ZOOM-TEK									
BA88AS10A-02	ASSY,BD,ADVANTAGE (AMP/AUX)	01 FG 002886	2	03/01 03/01	0	2	0.00	0.00	7 Hd/Bo
Total for customer : ZOOM001									

AUFR000051

Prepared : 2000/01/27 09:54
Version : 4.0.010

AURCAD INC.
Customer Movement Report

Customer: RAB001 - RAAB KARCHER ELECTRONIC SYSTEM

Invoice	Date	Stock code	Description	Wh Br	Sls Geo	P/cl	Qt	Quantity	Sale Amt	
000810	07/02/98	BA88200RTB1B2	OBSOLETE	FG 01	RS	EU	DEMO	1	0.00	
002802	12/09/99	CA 01 N	EU B003 U	FG 01	N	EU	B003	4980	164,340.00	
002802	12/09/99	FG 01 N	EU B003 U	FG 01	N	EU	B003	30	0.00	
002802	12/09/99	CA 01 N	EU B003 U	CA 01	N	EU	B003	1260	41,580.00	
002802	12/09/99	CI 01 CS	EU B003 U	CI 01	CS	EU	B003	3000	30,600.00	
002976	01/12/00	CA 01 N	EU B001 U	CA 01	N	EU	B001	30	0.00	
002802	12/09/99	FG 01 N	EU B001 U	FG 01	N	EU	B001	1260	12,852.00	
002976	01/12/00	FG 01 N	EU B001 U	FG 01	N	EU	B001	1	0.00	
000810	07/02/98	SW8820C112C	CD,VORTEX1,V1.12(OBSOLETE)	FG 01	RS	EU	VOR	1	0.00	
Customer totals									10562	249,372.00
Grand totals									10562	249,372.00

End of report

> Report options selected >

Report sequence : Customer, Stock Code

From date : Lowest

To date : Highest

From stock code : Lowest

To stock code : Highest

From warehouse : Lowest

To warehouse : Highest

From customer : RAB001

To customer : RAB001

From salesperson : Lowest

To salesperson : Highest

From product class : Lowest

To product class : Highest

From branch : Lowest

To branch : Highest

From supplier : Lowest

To supplier : Highest

Order type : All

From geographic : Lowest

To geographic : Highest

Summary report : No

Subtotals required : No

Profit details : No

New page for each customer : No

Product Class: B001 - 9810 AUDIO BOARDS	Stock Code	Description	Quantity	Sale Amt	Profit	FF%
	BAB8AL10A-01	ADVANTAGE LITE	10000	87,000.00	17,949.30	20.63
	BAB8AS10A-01	ASSY, BD, ADVANTAGE (AMP)	24340	219,022.50	218,632.50	99.82
	BAB8AS10A-02	ASSY, BD, ADVANTAGE (AMP/AUX)	2	0.00	0.00	0.00
	BAB8DC10A-01	ASSY, BD, SQ1500	881	18,210.00	4,844.07	26.60
	BAB8VL10A-01	ASSY, BD, ADVANTAGE (SV)	1817	21,600.00	9,053.47	41.91
	BAB8AC10AD-01	FG, SOUND COM, W/CD/MAN	723	17,231.00	3,837.94	22.27
	BAB8DC10A-01	NOT USED	132	3,120.00	974.35	31.22
	BAB8VL10A-01	FG, VORTEX ADVANTAGE PCI W/CD	18051	199,913.00	120,926.47	60.48
	BAB8VL10A-02	FG, ADVANTAGE (SV), W/CD	88480	938,302.00	273,193.58	29.11
	BAB8VL10A-02	FG, SQ1500 (RETAIL)	541	19,834.50	12,391.61	62.47
	BAB8VL10A-01	FG, SQ1500 (RETAIL)	1000	8,250.00	8,250.00	100.00
	VSP901	** Non stocked **				
Product class: B002 - 9820 VORTEX1 BOARDS (AUDIO)			145967	1,532,483.00	670,053.19	43.72

Product class: B003 - 9830 VORTEX2 BOARDS (AUDIO)	Product class: B001	Product class totals
		145967
		1,532,483.00
		670,053.19
		43.72

Product class: B004 - 9838 AUDIO BOARDS	Product class: B003	Product class totals
		68857
		1,051,444.10
		203,552.15
		19.35

Product class: B020 - ALL MODEM PRODUCTS	Product class: B004	Product class totals
		133360
		3,967,534.75
		1,191,468.60
		30.03

Product class: DEMO - DEMO	Product class: B020	Product class totals
		16054
		162,657.00
		65,005.09
		39.96

Product class: DEMO - DEMO	Product class: B001	Product class totals
		1005
		660.00
		61.60
		9.33

*Andy Walker
 CTO / Business Dev*

Stock Code	Description	Quantity	Sale Amt	Profit	Pct %
Product class: EV01 - EVALUATION SAMPLES					
ASP 301E1	** Non stocked **	150	0.00	0.00	0.00
SW3P00004-01	CD, DescendC3: Sol Ascend	650	0.00	726.00-	0.00
SW8810AR3100	CD, VCOM, ST, V2100	5560	0.00	2,051.00-	0.00
SM8810SQ3220-01	CD, SQ1500, RETAIL, V2220	836	0.00	396.41-	0.00
SM8830SQ2040-01	CD, SQ2500, RETAIL, V2040	503	0.00	224.42-	0.00
SWA3DSDK20-01	CD, A3D 2.0 SDK REV 01	163	0.00	0.00	0.00
Product cls totals					
		8182	0.00	3,397.83-	0.00

Product class: INRB - INVENTORY REIMBURSEMENT	Quantity	Sale Amt	Profit	Pct %	
AU8820B2-40	** Non stocked **	25-	237.50-	237.50-	100.00
BA88DC30A-01B	** Non stocked **	10	283.75	283.75	100.00
BA88DL30D-04R	** Non stocked **	5635-	149,327.50-	149,327.50-	100.00
Components	** Non stocked **	1	8,343.45	8,343.45	100.00
FG88DL30A-01	** Non stocked **	240	8,400.00	8,400.00	100.00
FG88VLI0A-01	** Non stocked **	0	0.00	0.00	0.00
SI3012-KS	** Non stocked **	10040-	13,052.00-	13,052.00-	100.00
SI3024-KS	** Non stocked **	10040-	13,052.00-	13,052.00-	100.00
Product cls totals					
		25489-	158,641.80-	158,641.80-	100.00

Product class: MRB1 - Material Review Board	Quantity	Sale Amt	Profit	Pct %	
AU8808CO-40	** Non stocked **	4-	21.00-	21.00-	100.00
AU8808CO-40	** Non stocked **	0	0.00	0.00	0.00
FG88DL30A-01	** Non stocked **	119-	928.00-	928.00-	100.00
AU8820B2-40	** Non stocked **	5000-	55,000.00-	55,000.00-	100.00
AU8830A2-40	** Non stocked **	3030-	36,360.00-	36,360.00-	100.00
FG88VLI0A-01	** Non stocked **	8153-	92,309.00-	92,309.00-	100.00
Product cls totals					
		8153-	92,309.00-	92,309.00-	100.00

Product class: REBT - REBATES	Quantity	Sale Amt	Profit	Pct %	
FG88DL30A-01	** Non stocked **	700-	5,110.00-	5,110.00-	100.00
FG88ST30A-01	** Non stocked **	25000-	100,000.00-	100,000.00-	100.00
Product cls totals					
		25700-	105,110.00-	105,110.00-	100.00

Product class: RY00 - LICENCE/ROYALTY	Quantity	Sale Amt	Profit	Pct %	
LICENSE	** Non stocked **	1	15,000.00	15,000.00	100.00
Product cls totals					
		1	15,000.00	15,000.00	100.00

Product class: RYRE - ROYALTY REIMBURSEMENT	Quantity	Sale Amt	Profit	Pct %	
ROYALTY COSTS	** Non stocked **	1	121,750.00	121,750.00	100.00
Product cls totals					
		1	121,750.00	121,750.00	100.00

Product class: S001 - AU8820 Vortex 1	Quantity	Sale Amt	Profit	Pct %	
AU8820CO-40	VORTEX AU8820 VERSION C0	47000	282,000.00	170,759.46	60.55
Product cls totals					
		47000	282,000.00	170,759.46	60.55

Product class: S002 - AU8830, Vortex 2	Quantity	Sale Amt	Profit	Pct %	
AU8830A2-40	VORTEX AU8830 VERSION A2	306270	2,165,271.00	1,283,101.88	59.25
AU8830B0-40	VORTEX AU8830 VERSION B0	40	0.00	159.28-	0.00
SW8830MEI2041-2	CD, SQ2500, MICRON, V2041-02	4790	3,592.50	4,981.60-	138.66-
Product cls totals					
		311100	2,168,863.50	1,277,961.00	58.92

Product class: S003 - 8808 VORTEX1 CHIP	Quantity	Sale Amt	Profit	Pct %	
AU8808CO-40	** Non stocked **	32406-	135,252.00-	151,938.08-	112.33
Product cls totals					
		32406-	135,252.00-	151,938.08-	112.33

Report : 2000/01/07 10:13
 Date : 1/20/00

AUREAL INC.
 Customer Movement Report

Page : 1

Product Class	Stock Code	Description	Quantity	Sale Amt	Profit	Eff %
Product Class: S003	- 9909	VORTEX CHIP				
			32406-	135,252.00-	151,938.08-	112.33
Product cls totals						
Product Class: S004	- 8810A1/A2	AUDIO CHIP				
		** Non stocked **	72843	291,372.00	291,372.00	100.00
			72843	291,372.00	291,372.00	100.00
Product cls totals						
Product Class: S006	- 8810A1/A2T	AUDIO/MODEM				
			152740	593,715.00	345,501.81	58.19
			96032	384,128.00	226,168.28	58.87
			248772	977,843.00	571,670.09	58.46
Product cls totals						
Product Class: S007	- A08838	AUDIO CHIPS				
		** Non stocked **	1000	8,250.00	8,250.00	100.00
			1000	8,250.00	8,250.00	100.00
Product cls totals						
Product Class: SF00	- PACKAGED	SOFTWARE SALES				
			3780	0.00	4,158.00-	0.00
			200	0.00	70.00-	0.00
			1620	1,215.00	356.40	29.33
			15	159.00	159.00	100.00
Product cls totals			5615	1,374.00	3,712.60-	270.20-
Grand totals			967992	10,089,735.85	3,941,600.99	39.06

End of report

Stock code	ASP	301E1	Non stocked	WH Br	Sls	Geo	P/c1	Qc	Quantity	Sale Amt	Profit	Pft %
02447	10/13/99	OPS 001	OPS TECHNOLOGY LIMITED	** 01 N	PR	EV01	U	150	0.00	0.00	0.00	0.00
Stock code totals												
									150	0.00	0.00	0.00

Stock code	AU8808CO-40	Non stocked	** 01 AL	CA	MRB1	U	4-	21.00-	21.00-	100.00		
00187	11/19/99	BCM001	BCM ADVANCED RESEARCH	FG 1A	JL	AP	S003	U	950	5,700.00	3,451.52	60.55
02614	11/08/99	TRIG001	TRIGEM COMPUTER	FG 1A	JL	AP	S003	U	6100	36,600.00	22,162.40	60.55
02615	11/08/99			** 3A	JL	PR	S003	U	39456-	177,552.00-	177,552.00-	100.00
00185	11/18/99	WPI001	WORLD PEACE INDUSTRIAL CO.LTD	Stock code totals								
									32410-	135,273.00-	151,959.08-	112.33

Stock code	AU8808CO-40	Non stocked	** 01 AL	CA	MRB1	U	4-	21.00-	21.00-	100.00		
00191	11/22/99	BCM001	BCM ADVANCED RESEARCH	** 01	AL	CA	MRB1	U	4	21.00	21.00	100.00
00027	11/23/99			Stock code totals								
									0	0.00	0.00	0.00

Stock code	AU8810A1T-40	-	VORTEX AU8810 VERSION A1 TOFP	Z2	2A	JL <th>PR <th>S006 <th>U <th>83760 <th>335,040.00 <th>198,924.14 <th>59.37</th> </th></th></th></th></th></th>	PR <th>S006 <th>U <th>83760 <th>335,040.00 <th>198,924.14 <th>59.37</th> </th></th></th></th></th>	S006 <th>U <th>83760 <th>335,040.00 <th>198,924.14 <th>59.37</th> </th></th></th></th>	U <th>83760 <th>335,040.00 <th>198,924.14 <th>59.37</th> </th></th></th>	83760 <th>335,040.00 <th>198,924.14 <th>59.37</th> </th></th>	335,040.00 <th>198,924.14 <th>59.37</th> </th>	198,924.14 <th>59.37</th>	59.37
02677	11/12/99	WPI001	WORLD PEACE INDUSTRIAL CO.LTD	Z2	2A	JL	PR	S006	U	68980	258,675.00	146,577.67	56.66
02677	11/12/99			Stock code totals									
									152740	593,715.00	345,501.81	58.19	

Stock code	AU8810A2T-40	-	VORTEX AU8810 VERSION A2 TOFP	BA	03	JL <th>PR <th>S006 <th>U <th>11042 <th>44,168.00 <th>26,223.98 <th>59.37</th> </th></th></th></th></th></th>	PR <th>S006 <th>U <th>11042 <th>44,168.00 <th>26,223.98 <th>59.37</th> </th></th></th></th></th>	S006 <th>U <th>11042 <th>44,168.00 <th>26,223.98 <th>59.37</th> </th></th></th></th>	U <th>11042 <th>44,168.00 <th>26,223.98 <th>59.37</th> </th></th></th>	11042 <th>44,168.00 <th>26,223.98 <th>59.37</th> </th></th>	44,168.00 <th>26,223.98 <th>59.37</th> </th>	26,223.98 <th>59.37</th>	59.37
102435	10/12/99	WPI001	WORLD PEACE INDUSTRIAL CO.LTD	C	03	JL	PR	S006	U	33958	135,832.00	80,647.87	59.37
102442	10/12/99			Z2	2A	JL	PR	S006	U	23875	95,500.45	56,701.45	59.37
102677	11/12/99			C	3A	JL	PR	S006	U	27157	108,628.00	62,594.98	57.62
102826	12/15/99			** 3A	JL	PR	S004	U	22843	91,372.00	91,372.00	100.00	
102837	12/17/99			** 3A	JL	PR	S004	U	50000	200,000.00	200,000.00	100.00	
102837	12/17/99			Stock code totals									
									168875	675,500.00	517,540.28	76.61	

Stock code	AU8820B2-40	-	** Non stocked **	** 01 AL	CA	MRB1	U <th>42-</th> <th>252.00-</th> <th>252.00-</th> <th>100.00</th>	42-	252.00-	252.00-	100.00	
000188	11/19/99	BCM001	BCM ADVANCED RESEARCH	** 01	AL	CA	MRB1	U	42-	252.00-	252.00-	100.00
000190	11/22/99			** 01	AL	CA	MRB1	U	42	252.00	252.00	100.00
000228	11/23/99			** 01	DM	MRB1	R	25-	237.50-	237.50-	100.00	
000165	10/04/99	YANG001	THE YANG GROUP	** 01	DM	MRB1	R	40-	380.00-	380.00-	100.00	
000166	10/04/99			** 01	DM	MRB1	R	37-	296.00-	296.00-	100.00	
000167	10/04/99			Stock code totals								
									144-	1,165.50-	1,165.50-	100.00

Stock code	AU8820CO-40	-	VORTEX AU8820 VERSION CO	FG	01	AL	US <th>S001</th> <th>U <th>10000</th> <th>60,000.00</th> <th>36,331.80</th> <th>60.55</th> </th>	S001	U <th>10000</th> <th>60,000.00</th> <th>36,331.80</th> <th>60.55</th>	10000	60,000.00	36,331.80	60.55
002418	10/06/99	VOYE001	VOYETRA TURTLE BEACH, INC	FG	01	AL	US	S001	U	12000	72,000.00	43,598.16	60.55
002418	10/06/99			FG	01	AL	US	S001	U	15000	90,000.00	54,497.70	60.55
002745	11/26/99			FG	01	AL	US	S001	U	10000	60,000.00	36,331.80	60.55
002745	11/26/99			Stock code totals									
									47000	282,000.00	170,759.46	60.55	

Stock code	AU8830A2-40	-	** Non stocked **	** 01 JL	US <th>MRB1</th> <th>U <th>5000-</th> <th>55,000.00-</th> <th>55,000.00-</th> <th>100.00</th> </th>	MRB1	U <th>5000-</th> <th>55,000.00-</th> <th>55,000.00-</th> <th>100.00</th>	5000-	55,000.00-	55,000.00-	100.00		
000189	11/22/99	SAMSUNG	SAMSUNG ELECTRONICS AMERICA	FG	01	AL	US	S002	U	52812	369,684.00	159,382.39	43.11
002501	10/27/99	VOYE001	VOYETRA TURTLE BEACH, INC	C	01	AL	US	S002	U	8713	60,991.00	26,295.14	43.11
002511	10/27/99			FG	01	AL	US	S002	U	23475	164,325.00	70,845.67	43.11
002603	11/05/99			FG	01	AL	US	S002	U	19302	135,114.00	58,251.89	43.11
002603	11/05/99			FG	01	AL	US	S002	U	53195	372,365.00	152,027.05	40.82
002748	11/29/99			FG	01	AL	US	S002	U	27503	192,521.00	192,521.00	100.00
002829	12/16/99			Stock code totals									
									5000-	55,000.00-	55,000.00-	100.00	

Invoice	Date	Customer	Name	Mh	Bf	Sls	Geo	P/ci	Cr	Quantity	Sale Amt	Profit	Pct %
2830	12/16/99			** 01	AL	US	S002	U		50000	350,000.00	350,000.00	100.00
2613	11/08/99	MP1001	WORLD PEACE INDUSTRIAL CO.LTD	FG 3A	JL	AP	S002	U		3960	28,908.00	13,138.96	45.45
2613	11/08/99			FG 3A	JL	AP	S002	U		3300	23,360.00	10,617.34	45.45
2677	11/12/99			22 2A	JL	PR	S002	U		41010	299,373.00	136,067.90	45.45
2838	12/17/99			** 3A	JL	PR	S002	U		9930	72,270.00	72,270.00	100.00
2937	12/31/99			C 3A	JL	PR	S002	U		13300	96,360.00	41,684.54	43.25
Stock code totals										301270	2,110,271.00	1,228,101.88	58.19

Stock code:	AU8830B0-40	-	VORTEX AU8830 VERSION B0
12505	10/27/99	SONE001	SONY ELECTRONICS INC.
12502	10/27/99	SONY002	SONY ELECTRONICS, INC
Stock code totals			
FG 01 MH US S002 U 20			
FG 01 AL US S002 P 20			
Stock code totals 40			
Sales: 0.00 Profit: 79.64- Pct: 0.00			

Stock code:	AU8830B0-40	-	** Non stocked **
12873	12/21/99	VOYE001	VOYETRA TURTLE BEACH, INC
Stock code totals			
** 01 AL US B003 U 30			
Stock code totals 30			
Sales: 0.00 Profit: 0.00 Pct: 0.00			

Stock code:	BA88A110A-01	-	ADVANTAGE LITE
12421	10/08/99	IOHA001	I/O MAGIC
12440	10/12/99		
Stock code totals			
BA 01 IDC US B001 S 9780			
BA 01 IDC US B001 S 220			
Stock code totals 10000			
Sales: 85,086.00 Profit: 17,554.42 Pct: 20.63			

Stock code:	BA88A10A-01	-	** Non stocked **
02454	10/14/99	HEM001	HEWLETT PACKARD
02458	10/18/99		
02465	10/18/99		
02633	11/10/99		
02678	11/12/99		
02694	11/16/99		
02724	11/19/99		
127793	12/07/99	HEM003	HEWLETT PACKARD SINGAPORE PTE
12871	12/21/99		
12871	12/21/99		
12878	12/22/99		
12878	12/22/99		
12879	12/22/99		
12932	12/31/99	HEM004	HEWLETT-PACKARD, SHANGHAI
12990	12/28/99	SCIS001	SCI SYSTEMS
12794	12/08/99	TATU001	TATUNG
102851	12/20/99		
102929	12/30/99		
102930	12/30/99		
Stock code totals			
** 01 JS US B001 U 5			
** 01 JS US B001 U 7			
** 01 JS US B001 U 8			
** 01 JS US B001 U 7			
** 01 JS US B001 U 8			
** 01 JS US B001 U 4			
** 01 JS US B001 U 1			
** 01 JS US B001 U 30			
BA 1A JL AP B001 U 5000			
BA 1A JL AP B001 U 5000			
BA 1A JL AP B001 U 600			
BA 1A JL AP B001 U 140			
BA 1A JL AP B001 U 5000			
BA 1A JL AP B001 U 4860			
BA 1A JL AP B001 U 60			
BA 1A JL AP B001 U 10			
BA 01 JS EU B001 U 100			
BA 01 JS EU B001 U 3000			
BA 01 JS EU B001 U 500			
Stock code totals			
24340			
Sales: 219,022.50 Profit: 218,632.50 Pct: 99.82			

Stock code:	BA88A10A-02	-	ASSY, BD, ADVANTAGE (AMP/AUX)
102877	12/22/99	HEM001	HEWLETT PACKARD
Stock code totals			
FG 01 JS US B001 P 2			
Stock code totals 2			
Sales: 0.00 Profit: 0.00 Pct: 0.00			

Stock code:	BA88DC10A-01	-	ASSY, BD, S01500
002420	10/07/99	3DS1001	3DSL
002524	10/29/99	ACCL001	ACCLAIM ENTERTAINMENT
002508	10/27/99	ACER002	ACER INC.
002578	11/03/99	ACTI002	ACTIVISION
002670	11/12/99		
002598	11/05/99	AURAN	AURAN PTY. LTD.
Stock code totals			
FG 01 CS EU B001 U 12			
FG 01 SM US B001 P 2			
FG 01 JS PR B001 U 8			
FG 01 SM US B001 P 2			
FG 01 SM US B001 P 2			
FG 01 N PR B001 P 2			
Stock code totals			
181.26- 0.00			
32.51- 0.00			
130.04- 0.00			
30.21- 0.00			
30.21- 0.00			
30.21- 0.00			

PO# CODE: BA88DC30A-01 - ASSY, BD, SQ2500

PO#	Date	Customer	Name	Wh	3r	Sis	Geo	P/c1	Qt	Quantity	Sale Amt	Profit	Prct %
2532	10/29/99	BLOW001	BLOWARE	FG 01	SM	CA	B001	P	2	2	0.00	32.51-	0.00
2533	10/29/99	BLIZ001	BLIZZARD	FG 01	SM	US	B001	P	2	2	0.00	32.51-	0.00
2577	11/03/99	BLOOD001	BLOODSHOT ENTERTAINMENT	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
2577	11/12/99	BOOT001	BOOTPRINT ENTERTAINMENT	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
2523	10/29/99	BUNNG001	BUNGIE SOFTWARE	FG 01	SM	US	B001	P	2	2	0.00	32.51-	0.00
2799	12/08/99	CAR0001	CARO GROUP	FG 01	3D	EU	B001	U	60	60	5,560.00	649.50	41.63
2479	10/21/99	CDC001	CDC POINT SPA	FG 01	CS	EU	B001	P	2	2	0.00	45.32-	0.00
2162	11/30/99	CREA003	CREATIVE EXTREMES	FG 01	SM	PR	B001	P	2	2	0.00	30.35-	0.00
2888	12/23/99	CYBE000	CYBERLINK CORP	FG 01	N	US	B001	P	2	2	0.00	30.35-	0.00
2904	12/28/99	EDGE001	EDGE	FG 01	IDC	EU	B001	P	3	3	0.00	45.53-	0.00
12751	11/29/99	EER 001	EET NORWAY AS	FG 01	SM	US	B001	U	2	2	0.00	30.21-	0.00
12715	11/19/99	EID0001	EIDOS INTERACTIVE	FG 01	IDC	EU	B001	P	3	3	0.00	45.53-	0.00
12747	11/29/99	ELEC002	ELECTRONIC APPL. CORP.	FG 01	SM	EU	B001	P	4	4	0.00	60.42-	0.00
12553	11/03/99	EMPI001	EMPIRE INTERACTIVE	CI 01	3D	EU	B001	U	4	4	0.00	60.42-	0.00
12662	11/12/99	GAME002	GAMETECH OR AB LIMITED	FG 01	SM	US	B001	P	2	2	12,000.00	4,749.57	39.57
12597	11/05/99	GTIN001	GT INTERACTIVE	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
12560	11/03/99	HASB001	HASBRO INTERACTIVE CORP. Q/A	FG 01	3D	EU	B001	P	4	4	0.00	60.42-	0.00
12797	12/08/99	IDA001	IDEAL HARDWARE PLC	FG 01	3D	EU	B001	U	2	2	3,120.00	1,298.99	41.63
12606	11/05/99	IGUA001	IGUANA ENTERTAINMENT	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
12671	11/12/99	INFO002	INFOGRAVES ENTERTAINMENT, INC.	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
12673	11/12/99	INFO003	INFOGRAVES NORTH AMERICA	FG 01	SM	US	B001	P	2	2	0.00	45.53-	0.00
12749	11/29/99	INGR001	INGRAM MICRO (UK) LTD.	FG 01	IDC	EU	B001	P	3	3	0.00	75.53-	0.00
12579	11/03/99	INTE009	INTERPLAY	FG 01	SM	US	B001	P	2	2	0.00	32.51-	0.00
02525	10/29/99	ION001	ION STORM	FG 01	IDC	EU	B001	U	1	1	0.00	15.11-	0.00
02477	10/21/99	IP L001	IP LABS	FG 01	N	US	B001	P	2	2	0.00	30.21-	0.00
02595	11/05/99	KNOWLED	KNOWLEDGE ADVENTURE	FG 01	SM	US	B001	P	8	8	0.00	130.04-	0.00
02531	10/29/99	LUCAS A	LUCAS ARTS ENTERTAINMENT	FG 01	IDC	US	B001	P	2	2	0.00	45.32-	0.00
02735	11/24/99	M TEO01	M TEAM SYSTEMS	FG 01	SM	US	B001	P	3	3	0.00	30.21-	0.00
02666	11/12/99	MATT001	MATTEL MEDIA, INC.	FG 01	SM	EU	B001	P	2	2	0.00	30.21-	0.00
02551	11/03/99	MED1004	MEDIA DESIGN GROUP	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02527	10/29/99	MICR005	MICROPROSE SOFTWARE	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02667	11/12/99	MIDW001	MIDWEST MICRO CORP.	FG 01	RCH	US	B001	P	2	2	0.00	30.21-	0.00
02717	11/19/99	NEWM001	NEW WORLD COMPUTING	FG 01	SM	US	B001	U	2	2	0.00	30.21-	0.00
02596	11/05/99	NEW0001	NEW WORLD COMPUTING	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02720	11/19/99	NVID001	NVIDIA	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02664	11/12/99	ORIG001	ORIGIN	FG 01	SM	US	B001	P	2	2	0.00	15.18-	0.00
02757	11/30/99	PC C001	OUTRAGE ENTERTAINMENT	FG 01	IDC	US	B001	P	1	1	0.00	45.52-	0.00
02570	11/03/99	PC C001	PC CLUB	FG 01	N	EU	B001	P	3	3	0.00	32.51-	0.00
02570	11/03/99	PC C001	PC CLUB	FG 01	N	EU	B001	P	2	2	0.00	30.21-	0.00
02526	10/29/99	PSYGNOS	PSYGNOSIS	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02571	11/19/99	REMEDY	REMEDY ENTERTAINMENT LTD	FG 01	SM	US	B001	U	2	2	0.00	30.21-	0.00
02665	11/12/99	RIPCO01	RIPCORD GAMES	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02665	11/12/99	RIPCO01	RIPCORD GAMES	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02665	11/12/99	SNAVA001	SAVAGE ENTERTAINMENT LLC	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02665	11/12/99	SNAVA001	SAVAGE ENTERTAINMENT LLC	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02663	11/12/99	SER003	SIERRA ON-LINE, INC.	FG 01	SM	US	B001	P	2	2	0.00	30.35-	0.00
02663	11/12/99	SER003	SIERRA ON-LINE, INC.	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
02763	11/30/99	SOUT001	SOUTHBREAK INTERACTIVE	FG 01	SM	EU	B001	P	2	2	0.00	30.21-	0.00
02763	11/30/99	SOUT001	SOUTHBREAK INTERACTIVE	FG 01	SM	EU	B001	P	2	2	0.00	30.21-	0.00
02566	11/03/99	SQUA001	SPIRAL HOUSE LTD.	FG 01	SM	US	B001	P	2	2	0.00	15.11-	0.00
02566	11/03/99	SQUA001	SPIRAL HOUSE LTD.	FG 01	SM	US	B001	P	1	1	0.00	15.11-	0.00
02566	11/03/99	SQUA001	SPIRAL HOUSE LTD.	FG 01	SM	US	B001	P	1	1	0.00	15.11-	0.00
02567	11/12/99	SUNST001	SUNSTORM INTERACTIVE	FG 01	SM	US	B001	P	1	1	0.00	15.11-	0.00
02567	11/12/99	SUNST001	SUNSTORM INTERACTIVE	FG 01	SM	US	B001	P	1	1	0.00	15.11-	0.00
02567	11/12/99	SUNST001	SUNSTORM INTERACTIVE	FG 01	SM	US	B001	P	1	1	0.00	15.11-	0.00
002675	11/03/99	TANT001	TANTALUS ENTERTAINMENT	FG 01	SM	PR	B001	P	1	1	0.00	30.21-	0.00
002675	11/12/99	TANT001	TANTALUS ENTERTAINMENT	FG 01	SM	PR	B001	P	2	2	0.00	30.21-	0.00
002489	10/22/99	TECH008	TECHNOLOGY MARKETING	FG 01	IDC	US	B001	P	2	2	0.00	32.51-	0.00
002518	10/29/99	TERM001	TERMINAL REALITY INC.	FG 01	SM	US	B001	P	2	2	0.00	32.51-	0.00
002528	10/29/99	THE 005	THE 3DO COMPANY	FG 01	SM	US	B001	P	2	2	0.00	30.21-	0.00
002708	11/18/99	THE 006	THE CHIP MERCHANT, INC.	FG 01	3D	US	B001	U	60	60	1,530.00	619.50	40.49
002785	12/02/99	THQ001	THQ INC.	FG 01	3D	US	B001	U	2	2	0.00	16.26-	0.00
002514	10/29/99	THQ001	THQ INC.	FG 01	SM	US	B001	P	1	1	0.00	30.21-	0.00
002672	11/12/99	VERA001	VERANT INTERACTIVE	FG 01	SM	US	B001	P	2	2	0.00	60.42-	0.00
002558	11/03/99	VERA001	VERANT INTERACTIVE	FG 01	SM	US	B001	P	4	4	0.00	30.21-	0.00
002550	11/03/99	VISA002	VISUAL SCIENCES LTD.	FG 01	SM	US	B001	P	2	2	0.00	75.53-	0.00
002426	10/08/99	WTC001	WTC	FG 01	IDC	US	B001	P	5	5	0.00	75.53-	0.00
002635	11/10/99	XITE001	XITEL, PTY. LTD.	FG 01	MH	EU	B001	P	5	5	0.00	75.53-	0.00

Stock code totals 881 18,210.00 4,844.07 26.60

Stock code: BA88DC30A-01A - ASSY, BD, SQ2500, REV A (MICRON)
 002420 10/07/99 3DS1001 3DSL 215.54- 0.00
 002410 10/05/99 MICR008 MICRON ELECTRONICS 1,806.83 35.84

CRK CODE: BAB8DC30A-01A - ASSY,BD,S02500,REV A, MICRO

Invoice	Date	Customer	Name	Wh Br	Sls	Geo	P/Cl	Qt	Quantity	Sale Amt	Profit	Pct %
12519	10/05/99			SK 01	JS	US	B003	U	300	3,400.00	3,011.39	35.84
12422	10/08/99			SK 01	JS	US	B003	S	60	1,680.00	602.28	35.85
12445	10/12/99			SK 01	JS	US	B003	U	300	8,400.00	3,011.38	35.84
12468	10/19/99			SK 01	JS	US	B003	U	300	9,400.00	3,011.38	35.84
12491	10/25/99			SK 01	JS	US	B003	U	180	5,040.00	1,806.83	35.84
12541	11/03/99			SK 01	JS	US	B003	U	480	13,440.00	4,818.20	35.84
12542	11/03/99			SK 01	JS	US	B003	U	240	6,720.00	2,409.10	35.84
12619	11/08/99			SK 01	JS	US	B003	U	600	16,800.00	6,022.75	35.84
12637	11/10/99			SK 01	JS	US	B003	U	180	5,040.00	1,806.83	35.84
12701	11/16/99			SK 01	JS	US	B003	U	60	1,680.00	602.28	35.85
12705	11/17/99			SK 01	JS	US	B003	U	120	3,360.00	1,204.55	35.84
12719	11/23/99			SK 01	JS	US	B003	U	360	10,080.00	3,613.65	35.84
12731	11/24/99			SK 01	JS	US	B003	U	240	6,720.00	2,370.70	35.27
12792	12/07/99			SK 01	JS	US	B003	U	300	8,400.00	2,963.38	35.27
12809	12/09/99			SK 01	JS	US	B003	U	110	3,920.00	1,260.83	35.27
12868	12/21/99			SK 01	JS	US	B003	U	480	13,440.00	4,741.40	35.27
12901	12/29/99			SK 01	JS	US	B003	U	381	3,763.49	3,763.49	35.27
12906	12/29/99			SK 01	JS	US	B003	U	1260	35,280.00	12,446.18	35.27
12922	12/30/99			SK 01	JS	US	B003	U	180	5,040.00	1,778.03	35.27
12919	12/31/99			SK 01	JS	US	B003	U	180	5,040.00	1,778.03	35.27
12941	12/31/99			SK 01	JS	US	B003	U	13-	390.00-	390.00-	100.00
				SK 01	JS	US	B003	U	180	5,040.00	1,778.03	35.27
				SK 01	JS	US	B003	U	180	4,770.00	1,508.03	31.61
Stock code totals									8220	229,528.00	80,878.10	35.23

CA BAR #05-20211

Lock code	Code	Description	Wh Br	Sls	Geo	P/Cl	Qt	Quantity	Sale Amt	Profit	Pct %
		- ASSY,BD,S02500,REV B,(B0)									
02487	10/22/99	ABS001 ABS COMPUTER TECHNOLOGIES	FG 01	RCH	US	B003	P	2	0.00	35.92-	0.00
02524	10/29/99	ACCL001 ACCLAIM ENTERTAINMENT	FG 01	SM	US	B003	P	4	0.00	89.45-	0.00
02507	10/27/99	ACER002 ACER INC.	FG 01	JS	PR	B003	U	8	0.00	178.90-	0.00
02508	10/27/99	ACTI002 ACTIVISION	FG 01	JS	PR	B003	U	4	0.00	67.09-	0.00
02578	11/03/99	AURAN AURAN PTY. LTD.	FG 01	SM	US	B003	P	4	0.00	71.85-	0.00
02598	11/12/99	BIOW01 BIOWARE	FG 01	N	PR	B003	P	4	0.00	71.85-	0.00
02532	10/29/99	BLITZ01 BLITZARD	FG 01	SM	CA	B003	P	4	0.00	71.85-	0.00
102533	10/29/99	BLOOD01 BLOODSHOT ENTERTAINMENT	FG 01	SM	US	B003	P	4	0.00	89.45-	0.00
102577	11/03/99	BOOT001 BOOTPRINT ENTERTAINMENT	FG 01	SM	US	B003	P	2	0.00	35.92-	0.00
102668	11/12/99	BUNGIE01 BUNGIE SOFTWARE	FG 01	SM	US	B003	P	4	0.00	89.45-	0.00
102523	10/29/99	CHA0002 CHA	FG 01	IDC	PR	B003	P	2	0.00	36.24-	0.00
102777	12/03/99	CREAD01 CREATIVE EXTREMES	FG 01	N	PR	B003	P	4	0.00	72.49-	0.00
102762	11/30/99	CREAD02 CREATIVE LABS	FG 01	N	US	B003	P	1	0.00	18.12-	0.00
102888	12/23/99	CYBER003 CYBERLINK CORP	FG 01	N	US	B003	P	2	0.00	36.24-	0.00
102888	12/23/99	DEREK001 DEREK SMART	FG 01	SM	US	B003	P	4	0.00	71.85-	0.00
102563	11/03/99	DIAM001 DIAMOND MULTIMEDIA SYSTEMS, INC	FG 01	JS	US	B003	P	5	0.00	90.61-	0.00
102759	11/30/99	DIGI007 DIGITAL IMAGE DESIGN	FG 01	SM	EU	B003	P	2	0.00	35.92-	0.00
102575	11/03/99	DRAM001 DRAMAERA	FG 01	SM	EU	B003	P	4	0.00	71.85-	0.00
102568	11/03/99	EDGE	FG 01	IDC	US	B003	U	2	0.00	36.24-	0.00
102775	12/03/99	EDGE	FG 01	IDC	US	B003	P	2	0.00	36.24-	0.00
102776	12/03/99	EET 001 EET NORWAY AS	FG 01	IDC	EU	B003	P	3	0.00	54.37-	0.00
102751	11/29/99	EID0001 EIDOS INTERACTIVE	FG 01	SM	US	B003	P	6	0.00	107.77-	0.00
102564	11/03/99	ELEC002 ELECTRONIC APPL. CORP.	FG 01	SM	US	B003	U	4	0.00	71.85-	0.00
102715	11/19/99	EMPI001 EMPIRE INTERACTIVE	FG 01	SM	EU	B003	P	3	0.00	54.37-	0.00
102747	11/29/99	GT 001 GT INTERACTIVE	FG 01	SM	US	B003	P	4	0.00	71.85-	0.00
102553	11/03/99	HASB001 HASBRO INTERACTIVE CORP. Q/A	FG 01	SM	US	B003	P	4	0.00	71.85-	0.00
102597	11/05/99	HOLD001 HYBRID HOLDING	FG 01	SM	EU	B003	P	4	0.00	71.85-	0.00
102560	11/03/99	ID 001 ID SOFTWARE	FG 01	SM	US	B003	P	4	0.00	35.92-	0.00
102556	11/03/99	IGUA001 IGUANA ENTERTAINMENT	FG 01	SM	US	B003	P	4	0.00	71.85-	0.00
102547	11/05/99	INFO002 INFOGRAMS ENTERTAINMENT, INC.	FG 01	SM	US	B003	P	4	0.00	71.85-	0.00
102606	11/03/99	INFR003 INFOGRAMS NORTH AMERICA	FG 01	SM	US	B003	P	4	0.00	71.85-	0.00
102673	11/12/99	INGR001 INGRAM MICRO (UK) LTD.	FG 01	IDC	EU	B003	P	4	0.00	54.37-	0.00
102749	11/29/99	INSID01 INSIDIA	FG 01	SM	EU	B003	P	4	0.00	71.85-	0.00
102569	11/03/99	INTE009 INTERPLAY	FG 01	SM	US	B003	P	4	0.00	49.05-	0.00
102579	11/03/99	INTE009 INTERPLAY	FG 01	SM	US	B003	P	25	0.00	49.05-	0.00

CA BAR #05-20211

VOICE	DATE	CUSTOMER	NAME	WH	SR	SLS	QTY	P/CI	QTY	QTY	SALE AMT	PROFIT	PRF %
2525	10/29/99	IONCG1	ION STORM	FG	01	SM	4	0.00	4	0.00	89.45-	0.00	
2477	10/21/99	IP L001	IP LABS	FG	01	IDC	1	0.00	1	0.00	17.96-	0.00	
2770	12/01/99	KARMO01	KARMA FRANCE	FG	01	IDC	240	10,080.00	240	5,730.70	56.95	0.00	
2807	12/09/99	KNOWLED	KNOWLEDGE ADVENTURE	FG	01	IDC	2	0.00	2	0.00	36.24-	0.00	
2595	11/05/99	LITOU001	LITOU ARTS ENTERTAINMENT	FG	01	SM	2	0.00	2	0.00	71.85-	0.00	
2764	11/30/99	LUCAS A	LUCAS ARTS ENTERTAINMENT	FG	01	SM	8	0.00	8	0.00	36.24-	0.00	
2531	10/29/99	M TEAM	M TEAM SYSTEMS	FG	01	IDC	3	0.00	3	0.00	178.90-	0.00	
2735	11/24/99	MATTEL	MATTEL MEDIA, INC.	FG	01	SM	3	0.00	3	0.00	53.89-	0.00	
1266	11/12/99	MATTTEL	MATTTEL INTERACTIVE-ENTERTAINME	FG	01	SM	2	0.00	2	0.00	71.85-	0.00	
12987	12/23/99	MEDIA D	MEDIA DESIGN GROUP	FG	01	SM	2	0.00	2	0.00	36.24-	0.00	
12551	11/03/99	MICRO04	MICROPROSE SOFTWARE	FG	01	SM	2	0.00	2	0.00	35.92-	0.00	
12527	10/29/99	MICRO05	MICROPROSE SOFTWARE	FG	01	SM	5	0.00	5	0.00	89.45-	0.00	
12559	11/03/99	MICRO08	MICRON ELECTRONICS	FG	01	SM	5	0.00	5	0.00	89.41-	0.00	
12455	10/14/99	NEWMO01	NEW WORLD COMPUTING	**	01	JS	5	140.00	5	140.00	143.75	100.00	
12457	10/18/99	NEWMO01	NEW WORLD COMPUTING	FG	01	JS	24	143.75	24	258.91	37.52	0.00	
12478	10/21/99	NRVID00	NRVIDIA	FG	01	JS	14	690.00	14	151.03	37.52	0.00	
12573	11/03/99	NRVID00	NRVIDIA	FG	01	SM	4	402.50	4	0.00	71.85-	0.00	
12596	11/05/99	ORIGI001	ORIGIN	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02574	11/12/99	OUTRO01	OUTRAGE ENTERTAINMENT	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02612	11/10/99	PACIFIC	PACIFIC TECHNOLOGY AMERICA	FG	01	RG	19	0.00	19	341.28-	0.00	0.00	
02570	11/03/99	PSYGN05	PSYGNOSIS	FG	01	N	4	0.00	4	0.00	71.85-	0.00	
02583	10/31/99	RAVEN S	RAVEN SOFTWARE	FG	01	N	4	0.00	4	0.00	71.85-	0.00	
02526	10/29/99	REMED01	REMEDY ENTERTAINMENT LTD	FG	01	SM	4	0.00	4	0.00	89.45-	0.00	
02579	11/19/99	RIPCO01	RIPCORD GAMES	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02665	11/12/99	SAVA001	SAVAGE ENTERTAINMENT LLC	FG	01	SM	2	0.00	2	0.00	35.92-	0.00	
02896	10/04/99	SIERO03	SIERRA ON-LINE, INC.	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02555	11/03/99	SIR-001	SIR-TECH CANADA, LTD.	FG	01	SM	2	0.00	2	0.00	35.92-	0.00	
02663	11/12/99	SOUT001	SOUTHPeAK INTERACTIVE	FG	01	SM	4	0.00	4	0.00	72.49-	0.00	
02763	11/30/99	SPIR001	SPIRAL HOUSE LTD.	FG	01	SM	2	0.00	2	0.00	17.96-	0.00	
02566	11/03/99	SQUA001	SQUARESOFT INC.	FG	01	SM	1	0.00	1	0.00	35.92-	0.00	
02566	11/03/99	SQUA001	SQUARESOFT INC.	FG	01	SM	2	0.00	2	0.00	17.96-	0.00	
02674	11/12/99	SUNSO01	SUNSTORM INTERACTIVE	FG	01	SM	2	0.00	2	0.00	35.92-	0.00	
02567	11/03/99	SYLU001	SYLUM ENTERTAINMENT LTD.	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02564	10/31/99	SYLU001	SYLUM ENTERTAINMENT LTD.	FG	01	SM	2	0.00	2	0.00	35.92-	0.00	
02567	11/03/99	TAKE001	TAKE 2 INTERACTIVE SOFTWARE	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02675	11/12/99	TANTO01	TANTALUS ENTERTAINMENT	FG	01	IDC	1	0.00	1	0.00	17.96-	0.00	
02489	10/22/99	TECH008	TECHNOLOGY MARKETING	FG	01	SM	4	0.00	4	0.00	89.45-	0.00	
02518	10/29/99	TERMO01	TERMINAL REALITY INC.	FG	01	SM	2	0.00	2	0.00	35.92-	0.00	
02528	10/29/99	THE 005	THE 3DO COMPANY	FG	01	SM	2	0.00	2	0.00	22.36-	0.00	
02561	11/03/99	THE001	THERE INC.	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02514	10/29/99	THO001	THO INC.	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02572	11/12/99	VERA001	VERANT INTERACTIVE	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02558	11/03/99	VISU002	VISUAL SCIENCES LTD.	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02550	11/03/99	VISU002	VISUAL SCIENCES LTD.	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	
02554	11/03/99	YAGE001	YAGER GBR	FG	01	SM	4	0.00	4	0.00	71.85-	0.00	

Stock code totals 596 11,456.25 639.74 5.58

Stock code:	BA88DL30-DB01	- MX300 DIAMOND BULK SOUNDCRD	BA 01	BO	US	B003	U	7500	288,750.00	120,119.40	41.59
Stock code:	DIAM001	DIAMOND MULTIMEDIA SYSTEMS, INC	BA 01	BO	US	B003	U	7500	288,750.00	120,119.40	41.59
Stock code:	DIAM001	DIAMOND MULTIMEDIA SYSTEMS, INC	Stock code totals								

Stock code:	BA88DL30A-03	- ASSY, BD, SQ2200 (HP)	CI	01	JS	US	B003	U	12	372.00	94.54	25.41	
002490	10/22/99	HEW001	HEWLETT PACKARD	CI	01	JS	US	B003	U	10	310.00	77.18	24.89
002875	12/21/99	HEW001	HEWLETT PACKARD	CI	01	JS	US	B003	U	10	4,960.00	1,260.47	25.41
002412	10/05/99	SCI5001	SCI SYSTEMS	CI	01	JS	US	B003	S	20	620.00	157.56	25.41
002450	10/14/99	SCI5001	SCI SYSTEMS	CI	01	JS	US	B003	S	300	9,300.00	2,363.38	25.41
002470	10/21/99	SCI5001	SCI SYSTEMS	CI	01	JS	US	B003	U	300	9,300.00	2,363.38	25.41
002522	10/29/99	SCI5001	SCI SYSTEMS	CI	01	JS	US	B003	U	300	9,300.00	2,363.38	25.41
002624	11/09/99	SCI5001	SCI SYSTEMS	CI	01	JS	US	B003	U	300	9,300.00	2,363.38	25.41
002685	11/15/99	SCI5001	SCI SYSTEMS	CI	01	JS	US	B003	U	1380	42,780.00	10,871.53	25.41

CK code: BA88DL30A-03 - ASSY, 3D, 322222 89
 Voice Date Customer name

Wh Br	Sls	Geo	P/Cl	Ot	Quantity	Sale Amt	Profit	Prf %
CI 01	JS	US	B003	U	1080	33,420.00	9,508.15	25.41
CI 01	JS	US	B003	U	840	26,040.00	6,483.05	24.89
CI 01	JS	US	B003	U	1440	44,640.00	11,113.80	24.89
CI 01	JS	US	B003	U	1140	35,340.00	8,798.43	24.89
CI 01	JS	US	B003	U	1380	42,780.00	10,650.73	24.89
CI 01	JS	US	B003	U	420	11,970.00	2,191.53	18.30
CI 01	JS	US	B003	U	1680	47,880.00	8,766.11	18.30
Stock code totals					10762	328,372.00	78,426.60	23.88

CK code: BA88DL30D-04R - WX300 RETAIL
 2405 10/04/99 KRYSS001 KRYSTALTECH SEMICONDUCTORS
 0168 10/04/99

BA 01	BA	US	B003	U	5635	149,327.50	22,629.71	15.15
** 01	BA	US	INRB	U	5635-	149,327.50-	149,327.50-	100.00
Stock code totals					0	0.00	126,697.79-	0.00

CK code: BA88M010AD-01 - ASSY, BD, VCOM V90 DOM, MODEM
 2508 10/27/99 ACER002 ACER INC.
 2813 12/10/99 EVER002 EVERTEX

FG 01	JS	PR	B020	U	8	0.00	49.72-	0.00
FG 01	IDC	US	B020	U	5860	58,600.00	18,254.31-	31.15-
Stock code totals					5868	58,600.00	18,304.03-	31.23-

CK code: BA88ST20A-02 - ** Non stocked **
 0198 12/31/99 PC C001 PC CLUB
 0198 12/31/99

** 01	IDC	US	B004	U	1-	14.70-	14.70-	100.00
** 01	IDC	US	B004	U	4-	48.00-	48.00-	100.00
Stock code totals					5-	62.70-	62.70-	100.00

CK code: BA88ST30A-01B - ASSY, BD, VORTEX2, (INCA)
 0698 11/16/99 AITT001 AII TECHNOLOGIES, INC
 0801 12/09/99
 0823 12/13/99
 0884 12/22/99
 0889 12/23/99
 0927 12/30/99

CI 01	JS	US	B003	U	660	12,540.00	3,740.83	29.83
CI 01	JS	US	B003	U	460	8,740.00	2,533.64	28.98
CI 01	JS	US	B003	U	500	9,500.00	2,753.96	28.98
CI 01	JS	US	B003	U	200	3,800.00	1,101.58	28.98
CI 01	JS	US	B003	U	20	380.00	110.16	28.98
CI 01	JS	US	B003	U	300	5,700.00	1,652.38	28.98
Stock code totals					2140	40,660.00	11,892.55	29.24

CK code: BA88ST30A-02A - ASSY, BD, VORTEX2 (WARE/IBM)
 0821 12/10/99 IBM001 IBM

FG 01	JS	US	B003	U	25	475.00	475.00	100.00
Stock code totals					25	475.00	475.00	100.00

CK code: BA88ST30A-02B - ** Non stocked **
 02437 10/12/99 IBM001 IBM
 02744 11/26/99
 02752 11/29/99 IBM002 IBM UNITED KINGDOM LTD

** 01	JS	US	B003	U	90	1,710.00	1,710.00	100.00
FG 01	JS	US	B003	U	30	570.00	132.24	23.20
FG 01	JS	EU	B003	U	50	950.00	212.40	22.35
Stock code totals					170	3,230.00	2,054.64	63.61

CK code: BA88VL10A-01 - ** Non stocked **
 00198 12/31/99 PC C001 PC CLUB

** 01	IDC	US	B004	U	12-	120.00-	120.00-	100.00
Stock code totals					12-	120.00-	120.00-	100.00

CK code: BA88VL10A-02 - ASSY, BD, ADVANTAGE (SV)
 002420 10/07/99 3DSL001 3DSL
 002417 10/06/99 ABS001 ABS COMPUTER TECHNOLOGIES
 002414 10/05/99 ACER002 ACER INC.

FG 01	CS	EU	B001	U	10	0.00	69.05-	0.00
FG 01	RCH	US	B001	P	2	0.00	13.81-	0.00
FG 01	JS	PR	B001	P	3	0.00	20.72-	0.00

CA BAR #05-20211
 EXHIBIT #1

Invoice	Date	Customer	Name	Wh Br	Sls	Geo	3/Cl	Qt	Quantity	Sale Amt	Profit	Prf %
002411	10/05/99	ICMA001	I/O MAGIC	BA 01	IDC	US	B001	U	1800	21,600.00	9,170.37	42.45
002425	10/08/99	SYNN01	SYNNEX	FG 01	IDC	US	B001	P	1	0.00	6.91-	0.00
002416	10/06/99	WEST001	WEST TECHNOLOGY INC.	FG 01	BA	US	B001	P	1	0.00	6.91-	0.00
Stock code totals												
									1817	21,600.00	9,053.47	41.91

Stock code: Components - ** Non stocked **

Stock code	Components	01	CS	PR	INRB	U	1	8,343.45	8,343.45	100.00	
002915	12/30/99	OCEA002	OCEAN MFG. LTD.								
Stock code totals											
							1	8,343.45	8,343.45	100.00	

Stock code: FG88AC10AD-01 - FG,SOUNDCOM,W/CD/MAN

Stock code	FG88AC10AD-01	FG 01	CS	EU	B001	U	2	0.00	0.00	0.00
002420	10/07/99	3DSL001	3DSL	FG 01	RCH	US	B001	P	2	0.00
002417	10/06/99	ABS001	ABS COMPUTER TECHNOLOGIES	FG 01	RCH	US	B001	P	2	0.00
002487	10/22/99			FG 01	JS	PR	B001	P	8	0.00
002507	10/27/99	ACER002	ACER INC.	FG 01	JS	PR	B001	P	8	0.00
002508	10/27/99			FG 01	TK	US	B001	P	1	0.00
002453	10/14/99	BOLD001	BOLDATA	FG 01	IDC	CA	B001	P	1	0.00
002718	11/19/99	ESSA001	ESSAN ALHANSY	FG 01	IDC	CA	B001	P	5	0.00
002601	11/05/99	FUTU001	FUTURE ELECTRONICS INC.	FG 01	IDC	CA	B001	P	2	0.00
002697	11/16/99			FG 01	IDC	CA	B001	P	2	0.00
002765	11/30/99			FG 01	IDC	CA	B001	P	1	0.00
002848	12/17/99	GBM1001	GB MICRO ELECTRONICS INC.	FG 01	IDC	US	B001	P	1	0.00
002733	11/24/99	HI-V001	HI-VALL, INC.	FG 01	IDC	US	B001	P	3	0.00
002477	10/21/99	IP L001	IP LABS	FG 01	IDC	US	B001	P	1	0.00
002436	10/12/99	PERR001	MIKE PERRANOSKY	BA 1A	EC	AP	B001	P	500	13,250.00
002825	12/15/99	PROF001	PROFESSIONAL COMPUTER HK LTD	FG 01	BA	US	B001	P	1	0.00
002530	10/29/99	PT1001	P.T.I.	FG 01	RCH	CA	B001	P	1	0.00
002760	11/30/99	SUPE003	SUPERCOM	FG 01	RCH	US	B001	P	1	0.00
002427	10/08/99	SUPE004	SUPERCOM	FG 01	IDC	US	B001	P	1	0.00
002425	10/08/99	SYNN001	SYNNEX	FG 01	IDC	US	B001	P	1	0.00
002708	11/18/99	THE 006	THE CHIP MERCHANT, INC.	FG 01	RCH	US	B001	P	2	0.00
002416	10/06/99	WEST001	WEST TECHNOLOGY INC.	FG 01	BA	US	B001	P	1	0.00
Stock code totals										
							723	17,231.00	3,837.84	22.27

Stock code: FG88DC10A-01 - NOT USED

Stock code	FG88DC10A-01	FG 01	RCH	US	B001	P	2	0.00	0.00	0.00
002487	10/22/99	ABS001	ABS COMPUTER TECHNOLOGIES	FG 01	JS	PR	B001	P	8	0.00
002507	10/27/99	ACER002	ACER INC.	FG 01	IDC	EU	B001	P	2	0.00
002517	10/29/99	EB S001	EB STORES GROUP LTD.	FG 01	IDC	EU	B001	P	2	0.00
002846	12/17/99	HERT001	HERTA TRADING CO. LIMITED	FG 01	3D	EU	B001	U	120	3,120.00
Stock code totals										
							132	3,120.00	974.35	31.22

Stock code: FG88DL30A-01 - FG,SUPERQUAD,W/CD/MAN

Stock code	FG88DL30A-01	CA 01	CS	EU	B003	P	120	0.00	2,773.45-	0.00
002755	11/29/99	3DSL001	3DSL	FG 01	RCH	US	B003	P	2	0.00
002417	10/06/99	ABS001	ABS COMPUTER TECHNOLOGIES	** 01	3D	EU	INRB	U	6000-	198,000.00-
000169	10/12/99	ABS001	ABSOLUTE.M.COM AB	** 01	3D	EU	INRB	U	4020-	132,660.00-
000169	10/12/99			** 01	CS	EU	INRB	U	6000	198,000.00
000169	10/12/99			** 01	CS	EU	INRB	U	4020	132,660.00
002446	10/12/99	ABS002	ABSOLUTE MULTIMEDIA LTD.	** 01	CS	EU	INRB	U	10020-	330,660.00-
000194	12/30/99			FG 01	CS	EU	B003	P	3	0.00
002414	10/05/99	ACER002	ACER INC.	FG 01	JS	PR	B003	P	8	0.00
002507	10/27/99			FG 01	JS	PR	B003	U	8	0.00
002508	10/27/99			FG 01	JS	PR	B003	U	60-	2,190.00-
000175	10/29/99	AEE 001	ABACUS EQUIPMENT ELECTRONIQUE	FG 01	CS	EU	B003	U	60-	2,700.00
002500	10/26/99	ALIE001	ALIEMWARE PC SYSTEMS	CI 01	N	US	B003	U	60	2,700.00
002880	12/22/99			CI 01	N	US	B003	U	60	2,700.00
002431	10/08/99	AMD001	ADVANCED MICRO DEVICES	CI 01	BA	US	B003	U	180	6,804.00
002611	11/05/99			CI 01	BA	US	B003	U	180	6,804.00
002626	11/09/99	ARGU001	ARGUS	FG 01	RCH	US	B003	P	1	0.00
002552	11/03/99	BERR001	BERRY JENNINGS	FG 01	BA	US	B003	P	1	0.00
002439	10/12/99	BOST001	BOSTON LIMITED	CA 01	3D	EU	B003	U	120	5,040.00
Stock code totals										
							2,773.45-	43.99-	198,000.00-	198,000.00-
							132,660.00-	132,660.00-	100.00	100.00
							198,000.00	198,000.00	100.00	100.00
							330,660.00-	99,076.96-	29.96	29.96
							65.99-	175.96-	0.00	0.00
							175.96-	0.00	0.00	0.00
							870.30-	39.73	39.73	39.73
							1,380.30	51.12	51.12	51.12
							1,313.28	48.64	48.64	48.64
							2,844.89	41.81	41.81	41.81
							2,672.63	39.28	39.28	39.28
							22.95-	0.00	0.00	0.00
							22.95-	0.00	0.00	0.00
							2,400.59	47.63	47.63	47.63

Invoice	Date	Customer	Name	Wh	3r	Sls	Geo	P/Cl	Qt	Quantity	Sale Amt	Percent	Est %
2498	10/26/99			CA	01	3D	EU	B003	U	120	4,536.00	1,356.52	41.51
0174	10/27/99			**	01	3D	EU	REBT	U	120-	940.00-	240.00-	100.00
2822	12/13/99			CA	01	3D	EU	B003	U	120	4,536.00	1,782.55	38.85
2727	11/22/99	CAR0001	CARO GROUP	CA	01	3D	EU	B003	U	120	4,536.00	1,781.75	39.28
2495	10/26/99	CC0001	CDC POINT SPA	CA	01	CS	EU	B003	U	480	12,000.00	1,442.36	12.01
0181	11/08/99			CA	01	CS	EU	B003	U	1980	49,500.00	5,949.74	12.01
2496	10/26/99			**	01	CS	EU	REBT	U	480-	3,840.00-	3,840.00-	100.00
12842	12/17/99	CENT001	CENTERPRISE INTERNATIONAL LMTD	CA	01	3D	EU	B003	U	2460	61,500.00	4,644.28	7.55
12899	12/23/99			CA	01	3D	EU	B003	U	1020	33,660.00	10,244.88	30.44
12535	10/29/99	CHS001	CHS ELECTRONICS	CA	01	3D	EU	B003	U	1020	30,600.00	7,025.68	22.95
12448	10/14/99	COMP005	COMPONENT RESOURCES	CA	01	3D	EU	B003	U	60	1,800.00	413.28	22.96
10171	10/14/99			CA	01	3D	EU	B003	U	480	15,000.00	0.00	0.00
12631	11/10/99			FG	01	IDC	US	B003	P	1	0.00	0.00	0.00
12517	10/29/99	EB_S001	EB STORES GROUP LTD.	FG	01	IDC	US	B003	P	1	0.00	0.00	0.00
12218	11/19/99	ESSA001	ESSAN ALHANSY	FG	01	IDC	US	B003	U	480	15,000.00	4,442.36	29.61
12244	11/24/99	FDT001	FUJITSU DEVICES INC.	BA	JA	JL	JA	B003	U	480	15,000.00	4,442.36	29.61
12467	10/18/99			CA	01	3D	EU	B003	U	480	15,120.00	4,103.00	27.13
12833	12/16/99	FUTU001	FUTURE ELECTRONICS INC.	CA	01	3D	EU	B003	P	2	0.00	0.00	0.00
02939	11/05/99			FG	01	IDC	CA	B003	P	120	4,200.00	1,426.55	33.96
02883	12/22/99	GAME002	GAMETECH OR AB LIMITED	CA	01	3D	EU	B003	U	120	4,536.00	1,896.59	41.81
02466	10/18/99			CA	01	3D	EU	B003	U	480	18,144.00	7,050.20	38.85
02183	11/29/99	GBM1001	GB MICRO ELECTRONICS INC.	CA	01	IDC	CA	B003	U	240	8,832.00	3,553.18	40.23
02492	10/25/99			CI	01	IDC	CA	B003	U	240	8,832.00	3,285.10	37.19
02773	12/02/99			CI	01	IDC	CA	B003	U	360	13,248.00	4,927.65	37.19
02945	12/31/99			FG	01	IDC	US	B003	P	2	0.00	45.90-	0.00
02733	11/24/99	HI-V001	HI-VAL, INC.	CA	01	3D	EU	B003	U	480	16,800.00	5,706.20	33.96
02789	12/03/99	IDEA001	IDEAL HARDWARE PLC	CI	01	IDC	EU	B003	U	60	2,268.00	948.30	41.81
02477	10/21/99	IP L001	IP LABS	CI	01	IDC	EU	B003	U	120	4,380.00	1,606.55	36.67
02770	12/01/99			FG	01	CS	EU	B003	P	15	0.00	344.28-	0.00
02627	11/09/99	JOHNO02	JOHN MILNER	CI	01	IDC	US	B003	U	60	2,268.00	948.30	41.81
02452	10/14/99	KRYS001	KRYSTALTECH SEMICONDUCTORS	CI	01	IDC	US	B003	U	120	4,200.00	1,445.75	34.42
02610	11/05/99			FG	01	BA	US	B003	P	60	0.00	1,386.72-	0.00
02772	12/02/99			CI	01	IDC	US	B003	U	3000	105,000.00	35,663.76	33.96
02829	12/16/99			CI	01	IDC	US	B003	U	4000	128,000.00	35,551.68	27.77
02293	12/30/99			CI	01	IDC	US	B003	U	43000	1,376,000.00	382,180.56	27.77
02475	10/21/99	MICR007	MICRO PRO INC.	FG	01	IDC	US	B003	U	60	2,160.00	840.30	38.90
02590	11/04/99			CI	01	IDC	US	B003	U	60	2,160.00	782.88	36.24
02630	11/10/99			CI	01	IDC	US	B003	U	120	4,320.00	1,565.75	36.24
02896	12/23/99			CI	01	IDC	US	B003	U	60	2,160.00	773.28	35.80
02911	12/29/99			CI	01	IDC	US	B003	U	240	8,904.00	3,395.50	38.13
02593	11/04/99	MICR011	MICRO STANDARD	CI	01	IDC	US	B003	U	60	2,226.00	848.88	38.13
02266	11/11/99			FG	01	N	US	B003	U	3	0.00	65.99-	0.00
02441	10/05/99	MINDSCA	MINDSCAPE	BA	01	N	PR	B003	U	500	16,000.00	5,002.46	31.26
02441	10/12/99	OCE001	OCEAN OFFICE AUTOMATION	FG	01	TK	US	B003	U	1	0.00	22.00-	0.00
02415	10/05/99	PACIO02	PACIFIC MAGTRON, INC.	CI	01	IDC	US	B003	U	240	8,832.00	3,553.18	40.23
02461	10/18/99			CI	01	TK	US	B003	U	240	8,832.00	3,285.10	37.19
02779	11/29/99			FG	01	IDC	US	B003	R	2	0.00	46.22-	0.00
02812	12/10/99	PACK001	PACKARD BELL NEC SCOTLAND LTD.	CA	01	3D	EU	B003	U	240	8,400.00	3,121.18	37.15
02483	10/21/99			CA	01	3D	EU	B003	U	120	4,200.00	1,560.59	37.15
002483	10/21/99			CA	01	3D	EU	B003	U	120	4,200.00	1,445.75	34.42
002594	11/01/99			CA	01	3D	EU	B003	U	240	8,400.00	2,891.50	34.42
002594	11/01/99			CA	01	3D	EU	B003	U	240	8,400.00	2,891.50	34.42
002689	11/16/99			CA	01	3D	EU	B003	U	240	8,400.00	2,891.50	34.42
002703	11/17/99			CA	01	3D	EU	B003	U	60	2,100.00	713.28	33.96
002876	12/21/99			CI	01	IDC	US	B003	U	60	2,268.00	948.30	41.81
002476	10/21/99	PAM 001	PAM PACIFIC ASSOCIATES, INC.	FG	01	IDC	US	B003	U	120	4,536.00	1,781.75	39.28
002587	11/04/99			CI	01	IDC	US	B003	U	60	2,268.00	890.88	39.28
002711	11/18/99			CI	01	IDC	US	B003	U	60	2,268.00	881.28	38.85
002784	11/30/99			FG	01	IDC	US	B003	U	60	2,268.00	881.28	38.85
002865	12/21/99			CI	01	IDC	US	B003	U	120	4,416.00	1,776.59	40.23
002423	10/08/99	PC C001	PC CLUB	CI	01	IDC	US	B003	U	60	2,208.00	888.30	40.23
002451	10/14/99			CI	01	IDC	US	B003	U	120	0.00	2,639.41-	0.00
002494	10/25/99												

Invoice	Date	Customer	Name	Wh	Br	Sls	Geo	P/ci	Qt	Quantity	Date	Rate	Profit	Prf %
2434	10/25/99			CI 01	IDC	US	B003	U	60	2,298.00		369.30	40.23	
2661	11/12/99			CI 01	IDC	US	B003	U	60	2,208.00		330.88	37.63	
2736	11/23/99			CI 01	IDC	US	B003	U	60	2,208.00		321.28	37.19	
2891	12/23/99			CI 01	IDC	US	B003	U	60	2,208.00		321.28	37.19	
2894	12/23/99			CI 01	IDC	US	B003	U	60	2,268.00		321.28	38.85	
2912	12/29/99			CI 01	IDC	US	B003	U	60	2,208.00		321.28	37.19	
2913	12/29/99			CI 01	IDC	US	B020	U	4-	147.20-		147.20-	100.00	
0199	12/31/99			CA 01	3D	EU	B003	U	120	4,536.00		1,762.55	38.85	
2808	12/09/99			FG 01	BA	US	B003	P	1	0.00		0.00	0.00	
2530	10/29/99			** 01	CS	EU	REBT	U	100-	430.00-		430.00-	100.00	
0199	12/09/99			CA 01	N	EU	B003	U	498	164,340.00		49,241.84	29.96	
2802	12/09/99			FG 01	N	EU	B003	U	30	0.00		693.36-	0.00	
2471	10/21/99			** 01	RCH	CA	INRB	U	240	9,400.00		8,400.00	100.00	
2499	10/26/99			CI 01	RCH	CA	B003	P	180	6,300.00		2,340.89	37.15	
12503	10/27/99			CI 01	RCH	US	B003	U	480	16,800.00		5,783.00	34.42	
12521	10/29/99			FG 01	IDC	US	B003	P	1	0.00		22.00-	0.00	
12623	11/09/99			FG 01	SM	US	B003	P	2	0.00		43.99-	0.00	
12425	10/08/99			CI 01	RCH	US	B003	U	60	2,226.00		906.30	40.71	
12428	10/08/99			CI 01	RCH	US	B003	U	180	6,498.00		2,366.63	36.42	
12433	10/08/99			CI 01	RCH	US	B003	U	180	6,498.00		2,337.83	35.97	
12588	11/04/99			CI 01	RCH	US	B003	U	180	6,498.00		2,311.11-	0.00	
12796	12/08/99			CI 01	RCH	US	B003	R	1	0.00		23.11-	0.00	
12874	12/21/99			FG 01	RCH	US	B003	U	120	4,332.00		1,558.55	35.97	
12910	12/29/99			CA 01	3D	EU	B003	U	3480	114,840.00		38,297.12	33.34	
12482	10/21/99			CA 01	N	EU	B003	U	1980	55,440.00		9,678.08	17.45	
02931	12/31/99			FG 01	IDC	EU	B003	P	1	0.00		23.11-	0.00	
02810	11/29/99			BA 1A	JL	AP	B003	U	120	4,536.00		1,762.55	38.85	
02810	12/10/99			CI 01	IDC	US	B003	U	60	2,340.00		1,020.30	43.60	
02432	10/08/99			CI 01	BA	US	B003	U	60	2,340.00		953.28	40.73	
02925	12/30/99			CI 01	BA	US	B003	P	1	0.00		22.00-	0.00	
02416	10/06/99			FG 01	BA	US	B003	U	120	4,536.00		1,762.55	38.85	
02898	12/23/99			CA 01	3D	EU	B003	U	300	10,500.00		3,614.38	34.42	
02612	11/05/99			CI 01	MH	EU	B003	U	180	6,300.00		2,188.63	34.42	
02786	12/02/99			BA 01	N	EU	B003	U	180	6,300.00		2,139.83	33.96	
02787	12/02/99			CI 01	N	EU	B003	U	180	6,300.00		2,139.83	33.96	
02872	12/21/99			FG 01	N	EU	B003	U	60	2,100.00		713.28	33.96	
02909	12/29/99			BA 01	CS	EU	B003	U	180	6,300.00		2,139.83	33.96	
02914	12/29/99			CI 01	N	EU	B003	U	60	2,100.00		713.28	33.96	
02942	12/31/99			FG 01	N	EU	B003	U	120	4,200.00		1,426.55	33.96	
02942	12/31/99			CI 01	N	EU	B003	U	180	6,300.00		2,139.83	33.96	

Stock code totals 70866 2,285,480.80 649,220.71 28.40

CA BAR #05-20211

EXHIBIT

Stock code	code	FG	01	SM	US	B003	P	2	0.00	0.00	0.00	0.00
Stock code:	FG88MD10AD-01	-	FG,	VCOM	V90	(DOM)	,W/CD/MAN/CBL					
Stock code:	FG88DL30D-03R	-	MX300	RETAIL								
Stock code:	FG88DL30D-03R	-	TERMINAL	REALITY	INC.							
Stock code totals												

Stock code	code	FG	01	CS	EU <th>B020</th> <th>U <th>2</th> <th>0.00</th> <th>0.00</th> <th>0.00</th> <th>0.00</th> </th>	B020	U <th>2</th> <th>0.00</th> <th>0.00</th> <th>0.00</th> <th>0.00</th>	2	0.00	0.00	0.00	0.00
002420	10/07/99			3DSL	001			2	0.00			14.75-
002417	10/06/99			ABS	COMPUTER	TECHNOLOGIES		2	0.00			0.00
002507	10/27/99			ACER	R002			8	0.00			59.00-
002453	10/14/99			BOLD	DATA			1	0.00			7.38-
002718	11/19/99			ESSAN	ALHANSY			1	0.00			14.71-
002761	11/30/99			EVER	TECH			2	0.00			29.55-
002813	12/10/99			CI 01	IDC	US	B020	U	3400	34,000.00		16,235.24-
002946	12/31/99			CI 01	IDC	US	B020	U	759	7,590.00		3,624.28-
002947	12/31/99			CI 01	IDC	US	B020	U	5601	56,010.00		26,745.17-
002947	12/31/99			CI 01	JS	US	B020	P	5	0.00		73.88-
002861	12/21/99			FOUNTAIN	TECHNOLOGIES,	INC.		60	957.00			74.70
002697	11/16/99			FUTURE	ELECTRONICS	INC.		2	0.00			29.55-
002765	11/30/99			GBM	T001			240	4,068.00			58.78
002696	11/16/99			GB	MICRO	ELECTRONICS	INC.					13.24
002733	11/24/99			HI	-VAL,	INC.		1	0.00			14.71-

EXHIBIT FF

FILED

United States Bankruptcy Court

00 OCT -2 AM 9:07

NEEMAN L. GARDNER, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Fitzgerald Communications Inc.
245 First St., 12th Fl
Cambridge, MA 02142**

2. Your entire claim as shown in the amount of **\$3,265.89** has been transferred pursuant to the Purchase Letter dated as of September 26th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: September 26, 2000



Ed Morrell
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Fitzgerald Communications Inc, having a mailing address at 245 First St, 12th Fl, Cambridge, MA 02142 ("Assignor"), in consideration of the sum of \$ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aural, Inc Case No. 00-42104 (LT) ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), jointly administered under Aural, Inc, Case No. 00-42104 (LT), in the currently outstanding amount of not less than \$3,265.89 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- A Proof of Claim has not been filed in the proceedings.
- A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$3,265.89 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets his hand this _____ day of _____ 2000.

ATTEST:

By: ME [Signature]
Signature

CEO

Print Name/Title

Telephone # _____

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 26 day of September 2000.

ATTEST:

By: E. M. Morrell
Ed Morrell
Argo Partners, Inc.
212-643-5456

FILED

00 OCT -2 AM 9:07

RECEIVED
U.S. BANKRUPTCY CLERK
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND, CA.

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:
Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Pathway Public Relations, Ltd.**
269 High Street, Berkhamsted,
Hertfordshire, UK
HP4 1-EG
2. Your entire claim as shown in the amount of **\$15,295.99** has been transferred pursuant to the Purchase Letter dated as of September 26th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: September 27, 2000

C. M. Morrell

Ed Morrell
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Pathway Public Relations, Ltd, having a mailing address at 269 High Street - Berkhamsstead, Hertfordshire, UK Hp4 1-Eg ("Assignor"), in consideration of the sum of US\$ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc Case No. 00-42104 (LT) ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), jointly administered under Aureal, Inc, Case No. 00-42104 (LT), in the currently outstanding amount of not less than US\$15,295.99 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than US\$15,295.99 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by the paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 26th day of September 2000.

ATTEST:

By:


Signature WILLIAM J. DONNELLY

DIETZDOR

Print Name/Title

444 1442 874006

Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 27th day of September 2000.

ATTEST:

By:

E. M. Morrell

Ed Morrell
Argo Partners, Inc.
212-643-5456

United States Bankruptcy Court

~~OF ORIGINATING FESSD~~
COPY

FILED

Northern District of California, Oakland Division
00 OCT -3 AM 9:46

00 OCT -9 AM 9:1

KEEP IN FILE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CA,
OAKLAND, CA

KEEP IN FILE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CA,
OAKLAND, CA

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

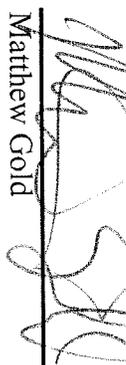
Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Vector Fabrication**
1629 Watson Court
Milpitas, CA 95035
2. Your entire claim as shown in the amount of **\$1,100.21** has been transferred pursuant to the Purchase Letter dated as of September 29th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: September 29, 2000


Matthew Gold

Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Vector Fabrication, having a mailing address at **1629 Watson Court, Milpitas, CA 95035** ("Assignor"), in consideration of the sum of _____ the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aural, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than **\$1,100.21** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$1,100.21** that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 25 day of Sept. 2000.

ATTEST:

By: 
Signature

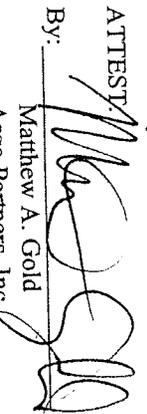
KIMBERLY WINTERS / SALES ADMIN
Print Name/Title

Vector Fabrication

(408) 942 9850
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 25th day of September 2000.

ATTEST:

By: 

Matthew A. Gold
Argo Partners, Inc.
212-643-5445

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Debtor

Chapter 11
Case No. 00-42104

FILED

00 OCT -3 AM 9:47

RECEIVED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND, CA.

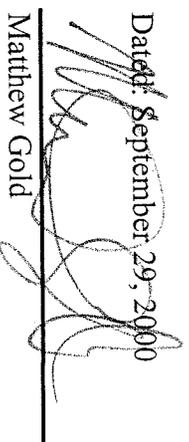
NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: **Ziff-Davis, Inc.**
28 E. 28th Street
NY, NY 10016-7930

1. Your entire claim as shown in the amount of **\$112,378.59** has been transferred pursuant to the Purchase Letter dated as of September 29th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: September 29, 2000



Matthew Gold
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

ZIFF-Davis, Inc., having a mailing address at **File 2082, Los Angeles, CA 90074** ("Assignor"), in consideration of the sum of \$_____ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LJ) in the currently outstanding amount of not less than **\$112,378.59** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of 112,378.59 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$112,378.59** that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may

exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 29TH day of SEPTEMBER 2000.

ATTEST:
By: 
Signature

Chris G. STANDAL - DIRECTOR OF CREDIT COLLECTIONS
Print Name/Title
Ziff Davis, Inc.
Print Name/Title
212.503.9202
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 29 day of September 2000.

ATTEST:
By: 
Matthew A. Gold
Argo Partners, Inc.
212-643-5445

United States Bankruptcy Court

FILED

00 OCT -6 PM 2:10



Northern District of California, Oakland Division

RECEIVED
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CAL.
OAKLAND, CAL.

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

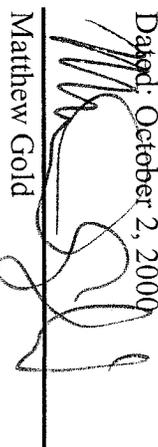
NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: **DTP Direct**
6690 Shady Oak Road
Eden Prairie, MN 55344

1. Your entire claim as shown in the amount of **\$6,740.06** has been transferred pursuant to the Purchase Letter dated as of October 2nd, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: October 2, 2000



Matthew Gold
Argo Partners, Inc.
(212) 643-5444

200

ASSIGNMENT OF CLAIM

DTP Direct having a mailing address at **5198 W 76th St, Edina, MN 55439** ("Assignor"), in consideration of the sum of _____ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Arreal, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than **\$6,740.06** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- A Proof of Claim has not been filed in the proceedings.
- A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$6,740.06** that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 2 day of October 2000.

ATTEST:

By: 
Signature

STEVEN FASTREE - Director of Credit
Print Name/Title
DTP Direct

612-259-4778
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 2 day of October 2000.

ATTEST

By: Matthew A. Gold
Argo Partners, Inc.
212-643-5445

United States Bankruptcy Court

me
FILED

00OCT 10 AM 9:06

Northern District of California, Oakland Division

RECEIVED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CA.
OAKLAND, CA.

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **CD Works**
2009 O'Toole Avenue
San Jose, CA 95131

2. Your entire claim as shown in the amount of **\$3,795.36** has been transferred pursuant to the Purchase Letter dated as of October 3rd, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: October 3, 2000

Edward Morrell

Ed Morrell
Argo Partners, Inc.
(212) 643-5444

Sent By: ARGO PARTNERS;

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 3 day of October 2000.

ATTEST

By:  Signature

Wade Hirsch / CEO
Print Name/Title

408-321-7483
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 3 day of October 2000.

ATTEST:

By: 

Ed Morrell
Argo Partners, Inc.
212-643-5456

FILED

OCT 10 2000

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

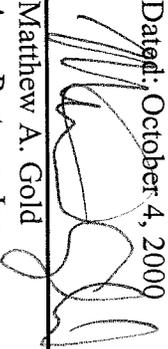
NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Martin Staffing Resources
1777 Botelho Drive #275
Walnut Creek CA, 94596**

2. Your entire claim as shown in the amount of **\$37,647.47** has been transferred pursuant to the Purchase Letter dated as of October 3rd, 2000 to:

**Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018**

Dated: October 4, 2000



Matthew A. Gold

Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

1777 BORNHARD DR #275, WOODBURY CA 94594

Martin Staffing Resources, having a mailing address at 400 Hayward Rd, Suite #10, Pleasanton, CA 94568 ("Assignor"), in consideration of the sum of (the "Purchase Price"), does hereby transfer to Argo Partners, Inc, having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee"), all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than \$36,201.97 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of \$37,647.47 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$36,201.97 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by Assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim: Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 30(f) of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 3rd day of October 2000.

ATTEST:

By: Linda Martin
Signature

LINDA MARTIN, PRESIDENT

Print Name/Title
Martin Staffing Resources

Telephone # 925-253-1271

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 4th day of October 2000.

ATTEST:

By: Matthew A Gold

Matthew A Gold
Argo Partners, Inc.
212-643-3445

NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

Name of Debtor
Aurzel, Inc., a Delaware corporation

Case Number
00-42104
Chapter 11
Creditor Id:



ORIGINAL FILED
SEP 28 2000

BANK TRUSTEE COURT
OAKLAND, CALIFORNIA

THIS SPACE IS FOR COURT USE ONLY

Name of Creditor (The person or other entity to whom the debtor owes money or property):

The MARTIN AGENCIES, Inc.
4000 MARTIN SWERING RESOURCES
1777 BOTHAITE DRIVE #275
DUBLITT CREEK CA 94596

Telephone Number:
925-938-6400

Account or other number by which creditor identifies debtor:

CUSTOMER # 1168

Check here if replaces amends a previously filed claim, dated _____
this claim:

Retire benefits as defined in 11 U.S.C. §1114(a)
Your SS #: _____
Unpaid compensation for services performed
from _____ to _____ (date) (date)

1. Basis for Claim
- Goods sold
 - Services performed
 - Money loaned
 - Personal injury/wrongful death
 - Taxes
 - Other

2. Date debt was incurred: 2/10/00, 2/12/00, 3/13/00, 3/13/00, 4/13/00, 4/13/00, 4/13/00

3. If court judgment, date obtained:
\$ 37,627.47

4. Total Amount of Claim at Time Case Filed: \$ 37,627.47

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.
 Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

Check this box if your claim is secured by collateral (including a right of setoff).
Brief Description of Collateral:
 Real Estate Motor Vehicle
 Other _____

6. Unsecured Priority Claim.

- Check this box if you have an unsecured priority claim
Amount entitled to priority \$ _____
Specify the priority of the claim:
 Wages, salaries, or commissions (up to \$4,300). * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
 Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
 Up to \$ 1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
 Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
 Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
 Other - Specify applicable paragraph of 11 U.S.C. § 507(a)() _____.

*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. **DO NOT SEND ORIGINAL DOCUMENTS.** If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

MAIL CLAIM TO:
Clerk's Office
U.S. Bankruptcy Court
P.O. Box 2070
Oakland, CA 94606-2070

Date

9/27/00

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):
Burt Martin, PRESIDENT

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

United States Bankruptcy Court

Northern District of California, Oakland Division

FILED

00 OCT 10 PM 1:33

KEEN
U.S. BANKRUPTCY CLERK
NORTHERN DIST. OF CA.
OAKLAND, CA.

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

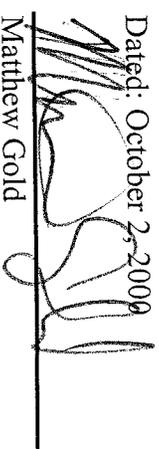
NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: **Parallax d/b/a Parallax Sales Inc**
734 Walt Whitman Rd #209
Melville, NY 11747

1. Your entire claim as shown in the amount of \$11,080.17 has been transferred pursuant to the Purchase Letter dated as of October 2nd, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: October 2, 2000


Matthew Gold

Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Parallax d/b/a Parallax Sales Inc, having a mailing address at 734 Walt Whitman Rd #209, Melville, NY 11747 ("Assignor"), in consideration of the sum of \$_____ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc, having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aural, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LJ) in the currently outstanding amount of not less than \$11,080,17 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- A Proof of Claim has not been filed in the proceedings.
- A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$11,080,17 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 2 day of Oct. 2000.

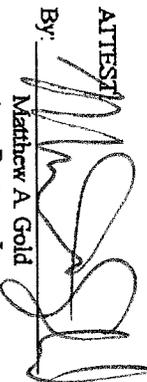
ATTEST:

By: 
Signature

Robert De Stefano, Pres.
Print Name/Title
Parallax d/b/a Parallax Sales Inc.

516-351-1000
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 2nd day of October 2000.

ATTEST:

By: Matthew A. Gold
Argo Partners, Inc.
212-643-5445

United States Bankruptcy Court

W
FILED

00 OCT 10 PM 1:32

KEVIN J. STANLEY, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: **Eagle Management Group, Inc**
650 Grove Rd, Suite 105
Paulsboro, NJ 08062

1. Your entire claim as shown in the amount of **\$3,049,28** has been transferred pursuant to the Purchase Letter dated as of October 2nd, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: October 2, 2000

Ed Morrell

Ed Morrell
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Eagle Management Group, Inc., having a mailing address at 650 Grove Rd, Suite 105, Paulsboro, NJ 08059 ("Assignor"), in consideration of the sum of \$3,049.28 (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aural, Inc Case No. 00-42104 (LT) ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), jointly administered under Aural, Inc, Case No. 00-42104 (LT), in the currently outstanding amount of not less than \$3,049.28 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Aural in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings;

A Proof of Claim in the amount of 3,049.28 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$3,049.28 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part,

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall permit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights thereunder pursuant to this Assignment of Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any

action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 27th day of October 2000.

ATTEST:

By: Robert M. Muraudola
Signature

Robert M. Muraudola CFO
Print Name/Title

(856) 848-7266 X122
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 2 day of October 2000.

ATTEST:

By: Ed Murrell

Ed Murrell
Argo Partners, Inc.
212-643-5456

FILED *W*

00 OCT 12 PM 1: 56

United States Bankruptcy Court

KEENAN G. CASADY, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11

Case No. 00-42104

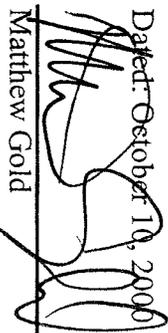
Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: **PSINet, Inc.**
PO Box 485
Herndon, VA 20172

- 1. Your entire claim as shown in the amount of \$8,160.94 has been transferred pursuant to the Purchase Letter dated as of September 29th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: October 10, 2000

Matthew Gold
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

PSINET, Inc., having a mailing address at PO Box 485, Herndon, VA 20172 ("Assignor"), in consideration of the sum of \$ 77,42 (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th St., 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc Case No. 00-42104 (LT) ("Debtor"). Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), jointly administered under Aureal, Inc, Case No. 00-42104 (LT), in the currently outstanding amount of not less than \$8,160.94 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or impud by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of \$ 8160.94 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$8,160.94 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights thereunder pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand, this 29th day of September 2000.

ATTEST:

By: 
Signature

Arthur Slye, Credit Manager
Print Name/Title

703-726-1532
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 29th day of September 2000.

ATTEST: 
By: 
~~Arthur Slye, Credit Manager~~
Argo Partners, Inc.
212-643-5456

United States Bankruptcy Court

FILED
00 OCT 12 PM 1:56

Northern District of California, Oakland Division

KEENAN G. CASADY, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: **Emery Worldwide**
PO Box 371232
Pittsburgh, PA 15250

1. Your entire claim as shown in the amount of \$14,458.48 has been transferred pursuant to the Purchase Letter dated as of October 4th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Date: October 10, 2000


Matthew Gold

Argo Partners, Inc.
(212) 643-5444

217A

ASSIGNMENT OF CLAIM

Emery Worldwide, having a mailing address at **PO Box 371232, Pittsburgh, PA 15250** ("Assignor"), in consideration of the sum of \$ _____ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc, having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LJ) in the currently outstanding amount of not less than **\$12,642.35** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of 14,458.48 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$12,642.35** that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 4 day of October 2000.

ATTEST

By: 
Signature

Manager Recoveries.
Print Name
Title
Emery Worldwide

570-969-8330
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 10 day of October 2000.

ATTEST

By: 
Matthew A. Gold

Argo Partners, Inc.
212-643-5445

FILED

00 OCT 12 PM 1:57

KEENAN G. CASADY, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11

Case No. 00-42104

Debtor

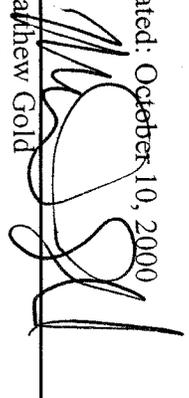
**NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

TO: **Networkguys, Inc.**
39235 Liberty Street, Suite D-O
Freemont, CA 94538

1. Your entire claim as shown in the amount of \$3,280.00 has been transferred pursuant to the Purchase Letter dated as of October 10th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: October 10, 2000


Matthew Gold

Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Networkguys, Inc, having a mailing address at 39235 Liberty Street, Suite D-O, Fremont, CA 94538 ("Assignor"), in consideration of the sum of (the "Purchase Price"), does hereby transfer to Argo Partners, Inc, having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LJ) in the currently outstanding amount of not less than \$3,280.00 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- A Proof of Claim has not been filed in the proceedings.
- A Proof of Claim in the amount of \$3,280.00 ⁴³ Ree 5222 ⁴³ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court. (net \$3,280.00)

Assignor further represents and warrants that the amount of the Claim is not less than \$3,280.00 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 10th day of October 2000.

ATTEST:

By: 
Signature

D.E. Edwards, CFO
Print Name/Title
Networkguys, Inc

510-713-8880 x304
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 10 day of October 2000.

ATTEST:

By: 

Matthew A. Gold
Argo Partners, Inc
212-643-5445

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Debtor

KEENAN G. CASADY, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
OAKLAND, CA.
Chapter 11
Case No. 00-42104(LT)

FILED
00 OCT 12 PM 1:57

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: Brooks Technical Group, Inc.
10080 North Wolfe Rd, Ste 100
Cupertino, CA 95014

2. Your entire claim as shown in the amount of **\$6580.85** has
been transferred pursuant to the Purchase Letter dated as of
September 29th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: October 10, 2000

Matthew Gold
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Brooks Technical Group, Inc. having a mailing address at **10080 North Wolfe Rd, Ste 100, Cupertino, CA 95014** ("Assignor"), in consideration of the sum of _____ the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than **\$5,917.53** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- A Proof of Claim has not been filed in the proceedings.
- A Proof of Claim in the amount of \$1580.85 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$5,917.53** that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 28th day of SEPTEMBER 2000.

ATTEST:

By: *Michele Potter for Brooks Technical Group*
Signature

Michele Potter - Corp Secretary
Print Name/Title

Brooks Technical Group, Inc

408-252-3880

Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 29 day of September 2000.

ATTEST:

By: *Matthew A. Gold*
Matthew A. Gold

Argo Partners, Inc.
212-643-5445

United States Bankruptcy Court

FILED

SEP 27 2000

Northern District of California, Oakland Division

**BANKRUPTCY COURT
OAKLAND, CALIFORNIA**

In re:
Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

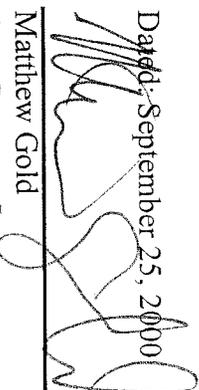
NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Hruska Audio Products, Inc.**
66 Rear Dudley Street
Arlington, MA 02476

2. Your entire claim as shown in the amount of **\$40,900.00** has been transferred pursuant to the Purchase Letter dated as of September 25th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

~~Dated:~~ September 25, 2000



Matthew Gold
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Hruska Audio Productions, Inc., having a mailing address at 66 Rear Dudley Street, Arlington, MA 02476 ("Assignor"), in consideration of the sum of: 9 (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aureal, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than \$40,000.00 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of \$40,900.00 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$40,000.00 that to the best of the Assignor's knowledge the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings; provided, however, that Assignee shall promptly provide Assignor with a copy of any objection filed against the Claim which seeks to disallow all or any portion of the Claim, and shall allow Assignor to participate in the defense of the Claim, at Assignor's own expense, should such an objection be filed.

Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor herunto sets its hand this 25th day of September 2000.

ATTEST:


Signature

Jennifer Hruska, President
Print Name/Title
Hruska Audio Productions, Inc.

781-641-0063
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 25th day of September 2000.

ATTEST:

By: Matthew A. Gold
ArgoPartners, Inc. Ph. 212-643-5445

FROM : HRUSKA AUDIO PRODUCTIONS, INC. PHONE NO. : 781 641 0448 Sep. 25 2000 09:13AM P4
 FROM : HRUSKA AUDIO PRODUCTIONS, INC. PHONE NO. : 781 641 0448 Apr. 10 2000 12:52PM P5

KRM:BJD (Judicial Form 109-408)
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

Name of Debtor:
 Aural, Inc., a Delaware corporation

Case Number:
 00-42104
 Chapter 11
 Creditor ID: 2581572

Name of Creditor (The person or other entity to whom the debtor owes money or property):
 Hruska Productions Audio Inc
 Name and Address where notices should be sent:
 Hruska Productions Audio Inc
 66 Reed Dudley Street
 Arlington, MA 02476

Telephone Number: 781-641-0063

Account or other number by which creditor identifies debtor:

1. Funds for Claims
- Goods sold
 - Services performed
 - Money loaned
 - Personal injury/wrongful death
 - Taxes
 - Other

2. Date debt was incurred: 9-22-99

3. If exact judgment, date obtained: 40,000.00 forty thousand nine hundred dollars

4. Total Amount of Claim at Time Case Filed:
 If all or part of your claim is secured or entitled to priority, also complete item 5 or 6 below.
 Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.
 5. Secured Claim:
 Check this box if your claim is secured by collateral (including a right of setoff).
 Brief Description of Collateral:
 Real Estate Motor Vehicle
 Other _____
 Value of Collateral: \$ _____
 Amount of principal and other charges at time case filed included in secured claim, if any: \$ _____

6. Unsecured Priority Claim:
 Check this box if you have an unsecured priority claim. Amount entitled to priority \$ _____
 Specify the priority of the claim:
 Wage, salary, or commissions (up to \$4,300) earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
 Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
 Up to \$1,950* of deposits toward purchase, lease, or rental of primary or secondary residence, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
 Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
 Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
 Other - Specify applicable paragraph of 11 U.S.C. § 507(a) () _____

*Amounts are subject to adjustment on 11/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
MAIL CLAIM TO:
 Clerk's Office
 U.S. Bankruptcy Court
 P.O. Box 2070
 Oakland, CA 94606-2070

7. Creditor: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.
 8. Supporting Documents: Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are voluminous, attach a summary.
 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.
 Date: 7-13-00
 Sign and print the name and title, if any, of the creditor or other person authorized to file this claim. Attach copy of power of attorney, if any:
 [Signature]
 Penalty for providing fraudulent claims: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§ 152 and 3571.

Check here if judgment settlement other
 this claim
 Reduce balance as defined in 11 U.S.C. § 541(c)(2)
 Waive setoff, and compensation (if any) for SS #:
 Unpaid compensation for services rendered from _____ to _____ (date) (date)

00 JUL 2000
 OF 00
 THE DEBTOR HAS REPORTED USE OF
 THIS SERVICE
 MAIL FILED

United States Bankruptcy Court

Northern District of California, Oakland Division

FILED

SEP 27 2000

**BANKRUPTCY COURT
OAKLAND, CALIFORNIA
Chapter 11
Case No. 00-42104**

In re:

Aureal, Inc.

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Cellular One Monthly Rental
PO Box 7107
San Francisco, CA 94120**

2. Your entire claim as shown in the amount of **\$2,117.97** has been transferred pursuant to the Purchase Letter dated as of September 22nd, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: September 25, 2000

E. M. Morrell

Ed Morrell
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Cellular One Monthly Rental, having a mailing address at **PO Box 7107, San Francisco, CA 94120** ("Assignor"), in consideration of the sum of _____ (the "Purchase Price"), does hereby transfer to **Argo Partners, Inc.**, having an address at **12 West 37th Street, 9th Floor, New York, NY 10018** ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against **Aural, Inc.** Case No. **00-42104 (LT)** ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), jointly administered under **Aural, Inc.** Case No. **00-42104 (LT)**, in the currently outstanding amount of not less than **\$2,117.97** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$2,117.97** that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offers or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignor nor any agent or representative of Assignor has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignor, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 22 day of Sept. 2000.

ATTEST:

By: [Signature]
Signature

Warren I. Alderson / Corporate Receiver's Supervisor
Print Name/Title

650/827-8588
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 22 day of September 2000.

ATTEST:

By: [Signature]
Ed Morrell
Argo Partners, Inc.
212-643-5456

United States Bankruptcy Court

Northern District of California, Oakland Division

FILED

SEP 27 2000

**BANKRUPTCY COURT
OAKLAND, CALIFORNIA**

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

Debtor

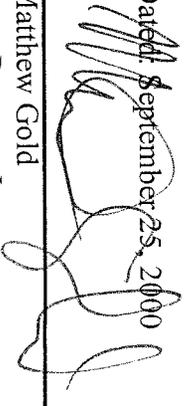
**NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

1. TO: **Center Capital Corporation
PO Box 1188
Farmington, CT 06034**

2. Your entire claim as shown in the amount of **\$44,904.76** has been transferred pursuant to the Purchase Letter dated as of September 25th, 2000 to:

**Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018**

Dated ~~September 25, 2000~~


Matthew Gold

Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Center Capital Corporation, having a mailing address at **PO Box 1188, Farmington, CT 06034** ("Assignor"), in consideration of the sum of:

⁴ (the "Purchase Price"), does hereby transfer to **Argo Partners, Inc.**, having an address at **12 West 37th Street, 9th Floor, New York, NY 10018** ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against **Avreal, Inc.** ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than **\$44,904.76** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$44,904.76** that the Claim in that amount is valid and that no objection to the Claim has been made. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information, made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee, with specific limited authority, to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignee agrees to take any such further action, at its own expense, as it may deem necessary or desirable to effect any payments or distributions on account of the Claim to Assignee.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 25 day of September 2000.

ATTEST:

By: *Matthew A. Gold*
Signature

Wayne Johnson, Special Asset Manager
Print Name/Title
Center Capital Corporation

800-908-2810
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 25th day of September 2000.

ATTEST

By: *Matthew A. Gold*
Matthew A. Gold
Argo Partners, Inc.
212-643-5445

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Debtor

RECEIVED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CAL.
OAKLAND, CA.

FILED

00 SEP 29 AM 11:55

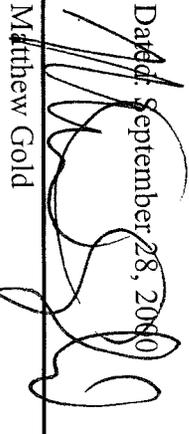
Chapter 11
Case No. 00-42104 T

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: **Innominds Software, Inc**
995 Cape Anita Place,
San Jose, CA 95133

2. Your entire claim as shown in the amount of **\$26,010.55** has been transferred pursuant to the Purchase Letter dated as of September 28th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: September 28, 2000

Matthew Gold
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Innominds Software, Inc., having a mailing address at **995 Cape Anita Place, San Jose, CA 95133** ("Assignor"), in consideration of the sum of \$ 0 (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aural, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LJ) in the currently outstanding amount of not less than **\$24,840.00** and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- A Proof of Claim has not been filed in the proceedings.
- A Proof of Claim in the amount of 26010.55 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than **\$24,840.00** that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party, claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as Assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

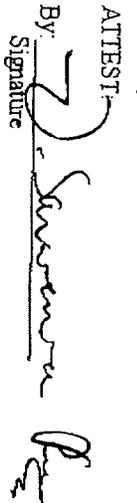
Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

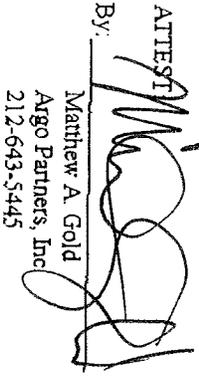
IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 28 day of Sept 2000.

ATTEST:
By: 
Signature

Leo V. Vermola / CEO
Print Name/Title
Innominds Software, Inc

Telephone # _____

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 28th day of September 2000.

ATTEST

By: _____
Matthew A. Gold
Argo Partners, Inc
212-643-5445

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

PROOF OF CLAIM

Name of Debtor
Aureal, Inc., a Delaware corporation

Case Number
00-42104
Chapter 11
Creditor Id: 2561594



Name of Creditor (The person or other entity to whom the debtor owes money or property):
Innominds Software Inc

Name and Address where notices should be sent:
Innominds Software Inc
2328Q Walsh Avenue
Santa Clara, CA 95051-1312

Telephone Number:

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
 Check box if you have never received any notices from the bankruptcy court in this case.
 Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACES FOR COVER USE ONLY

Account or other number by which creditor identifies debtor:

Check here if replaces this claim amends a previously filed claim, dated _____

1. Basis for Claim
- Goods sold
 - Services performed
 - Money loaned
 - Personal injury/wrongful death
 - Taxes
 - Other

Retiree benefits as defined in 11 U.S.C. §1114(a)
 Wages, salaries, and compensation (fill out below)
Your SS #: _____
Unpaid compensation for services performed from 12/95 to 1/31/00
(date) (date)

2. Date debt was incurred:
12/95 1/31/00

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: \$ 24,000.55
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.
 Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.
 Check this box if your claim is secured by collateral (including a right of setoff).
Brief Description of Collateral:
 Real Estate Motor Vehicle Other _____
Value of Collateral: \$ _____
Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

6. Unsecured Priority Claim.
 Check this box if you have an unsecured priority claim Amount entitled to priority \$ 24,000.55
Specify the priority of the claim:
 Wages, salaries, or commissions (up to \$4,300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
 Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
 Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
 Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
 Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
 Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ().

*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

MAIL CLAIM TO:

Clerk's Office
U.S. Bankruptcy Court
P.O. Box 2070
Oakland, CA 94606-2070

Date

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim. (Attach copy of power of attorney, if any):
6/21/00 Z. Sauerbarch Bauer, CEO, SARWICKA RW VENDOR

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Debtor

Chapter 11
Case No. 00-42104

00 SEP 29 PM 3:24
U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CAL.
OAKLAND, CA.

FILED

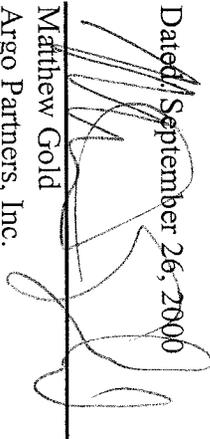
NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (2) or (4) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

1. TO: Tri-Valley Tradeshow
7567 Amador Valley Rd, Suite 104
Dublin, CA 94568

2. Your entire claim as shown in the amount of \$2,212.38 has
been transferred pursuant to the Purchase Letter dated as of
September 25th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated September 26, 2000


Matthew Gold
Argo Partners, Inc.
(212) 643-5444

ASSIGNMENT OF CLAIM

Tri-Valley Tradeshow, having a mailing address at 7567 Amador Valley Rd, Suite 104, Dublin, CA 94568 ("Assignor"), in consideration of the sum of _____ (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth in the "Claim(s)" against Aureal, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than \$2,212.38 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

A Proof of Claim has not been filed in the proceedings.

A Proof of Claim in the amount of \$ 2,212.38 has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$2,212.38 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights there under pursuant to this Assignment of

Claim. Assignor agrees that the powers granted by this paragraph are discretionary and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right, and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor hereunto sets its hand this 25th day of September 2000.

ATTEST:

By: Mary Hevener
Signature

MARY HEVENER / Hevener
Print Name/Title
Tri-Valley Tradeshow

(925) 875-9265
Telephone #

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 26 day of September 2000.

ATTEST:

By: Matthew A. Goid
Argo Partners, Inc.
212-643-5445

INVOICE TOTAL **\$2,169.00**
CREDIT SERVICE CHARGE, IF NOT PAID BY 4/29/99 **\$43.38**

PAYABLE UPON RECEIPT * CREDIT SERVICE CHARGE WILL BE

\$2,212.38

United States Bankruptcy Court

Northern District of California, Oakland Division

In re:

Aureal, Inc.

Chapter 11
Case No. 00-42104

FILED
03 NOV 27 PM 3:40
U.S. BANKRUPTCY COURT
OAKLAND, CA, 94612

Debtor

NOTICE OF TRANSFER OF CLAIM
PURSUANT TO RULE 3001 (E) (1) or (3) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: **Digital Testing Services, Inc.**
3600 Peterson Way
Santa Clara, CA 95054

1. Your entire claim as shown in the amount of \$10,399.31 has been transferred pursuant to the Purchase Letter dated as of November 16th, 2000 to:

Argo Partners, Inc.
12 West 37th St., 9th Floor
New York, NY 10018

Dated: November 17, 2000


Jeff Herles
Argo Partners, Inc.
(212) 643-5444

Sent By: DIGITAL TESTING SERVI
Sent By: ARGO PARTNERS;

4087273136;
212 643 6401;

NOV 00 15:35;
NOV-3-00 14:34;

Page 2/3
Page 3/4

ASSIGNMENT OF CLAIM

Digital Testing Service, Inc. having a mailing address at 3400 Peterson Way, Santa Clara, CA 95054 ("Assignor"), in consideration of the sum of (the "Purchase Price"), does hereby transfer to Argo Partners, Inc., having an address at 12 West 37th Street, 9th Floor, New York, NY 10018 ("Assignee") all of Assignor's right, title and interest in and to the claim or claims of Assignor, as more specifically set forth (the "Claim") against Aural, Inc. ("Debtor"), Debtor in proceedings for reorganization (the "Proceedings") in the United States Bankruptcy Court for the Northern District of California, (the "Court"), Case No. 00-42104 (LT) in the currently outstanding amount of not less than \$10,399.31 and all rights and benefits of Assignor relating to the Claim, including without limitation the Proof of Claim identified below and Assignor's rights to receive all interest, penalties and fees, if any, which may be paid with respect to the Claim, and all cash, securities, instruments and other property which may be paid or issued by Debtor in satisfaction of the Claim. The Claim is based on amounts owed to Assignor by Debtor as set forth below and this assignment shall be deemed an absolute and unconditional assignment of the Claim for the purpose of collection and shall not be deemed to create a security interest.

Assignor represents and warrants that (Please Check One):

- Proof of Claim has not been filed in the proceedings.
- Proof of Claim in the amount of _____ has been duly and timely filed in the Proceedings (and a true copy of such Proof of Claim is attached to this Assignment). If the Proof of Claim amount differs from the Claim amount set forth above, Assignee shall nevertheless be deemed the owner of that Proof of Claim subject to the terms of this Agreement and shall be entitled to identify itself as owner of such Proof of Claim on the records of the Court.

Assignor further represents and warrants that the amount of the Claim is not less than \$10,399.31 that the Claim in that amount is valid and that no objection to the Claim exists. Assignor further represents and warrants that no payment has been received by Assignor, or by any third party claiming through Assignor, in full or partial satisfaction of the Claim, that Assignor has not previously assigned, sold or pledged the Claim to any third party, in whole or in part, that Assignor owns and has title to the Claim free of any and all liens, security interests or encumbrances of any kind or nature whatsoever, and that there are no offsets or defenses that have been or may be asserted by or on behalf of Debtor or any other party to reduce the amount of the Claim or to impair its value.

Assignor is aware that the above Purchase Price may differ from the amount ultimately distributed in the Proceedings with respect to the Claim and that such amount may not be absolutely determined until entry of a final order confirming a plan of reorganization. Assignor acknowledges that, except as set forth in this Assignment, neither Assignee nor any agent or representative of Assignee has made any representation whatsoever to Assignor regarding the status of the Proceedings, the condition of Debtor (financial or otherwise) or any other matter relating to the Proceedings, the Debtor or the Claim. Assignor represents that it has adequate information concerning the business and financial condition of Debtor and the status of the Proceedings to make an informed decision regarding the sale of the Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate (including information available from the files of the Court in the Proceedings), made its own analysis and decision to enter into this Assignment of Claim.

Assignor agrees to make to Assignee immediate proportional restitution and repayment of the above Purchase Price to the extent that the Claim is disallowed for any reason whatsoever in whole or in part, together with interest at the rate of ten percent (10%) per annum on the amount repaid for the period from the date of this Assignment through the date such repayment is made. Assignor further agrees to reimburse Assignee for all losses, costs, and expenses, including reasonable legal fees and costs, incurred by assignee as a result of such disallowance.

In the event the Claim is ultimately allowed in an amount in excess of the amount purchased herein, Assignor is hereby deemed to sell to Assignee, and Assignee hereby agrees to purchase, the balance of said Claim at the same percentage of claim paid herein not to exceed twice the claim amount specified above. Assignee shall remit such payment to Assignor upon Assignee's satisfaction that the Claim has been allowed in the higher amount and is not subject to any objection by the Debtor.

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney and authorizes Assignee to act in Assignor's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Claim herein assigned. Assignor grants unto Assignee full authority to do all things necessary to enforce the claim and its rights thereunder pursuant to this Assignment of

Sent By: ARGO PARTNERS;

212 643 6401;

NOV-3-00 4:34;

Page 4/4

Claim. Assignor agrees that the powers granted by this paragraph are discretionary in nature and that Assignee may exercise or decline to exercise such powers at Assignee's sole option. Assignee shall have no obligation to take any action to prove or defend the Claim's validity or amount in the Proceedings. Assignor agrees to take such further action, at its own expense, as may be necessary or desirable to effect the assignment of the Claim and any payments or distributions on account of the Claim to Assignee including, without limitation, the execution of appropriate transfer powers, corporate resolutions and consents.

Assignor agrees to forward to Assignee all notices received from Debtor, the Court or any third party with respect to the Claim assigned herein and to vote the Claim, and to take such other action with respect to the Claim in the Proceedings, as assignee may from time to time request. Assignor further agrees that any distribution received by Assignor on account of the Claim, whether in the form of cash, securities, instrument or any other property, shall constitute property of Assignee to which Assignee has an absolute right and that Assignor will hold such property in trust and will, at its own expense, promptly deliver to Assignee any such property in the same form received, together with any endorsements or documents necessary to transfer such property to Assignee.

Assignor hereby acknowledges that Assignee may at any time reassign the Claim, together with all right, title and interest of Assignee in and to this Assignment of Claim. All representation and warranties made herein shall survive the execution and delivery of this Assignment of Claim and any such re-assignment. This Assignment of Claim may be executed in counterparts and all such counterparts taken together shall be deemed to constitute a single agreement.

This Assignment of Claim shall be governed by and construed in accordance with the laws of the State of New York. Any action arising under or relating to this Assignment of Claim may be brought in any State or Federal court located in the State of New York, and Assignor consents to and confers personal jurisdiction over Assignor by such court or courts and agrees that service of process may be upon Assignor by mailing a copy of said process to Assignor at the address set forth in this Assignment of Claim, and in any action hereunder Assignor waives the right to demand a trial by jury.

CONSENT AND WAIVER

Assignor hereby acknowledges and consents to all of the terms set forth in this Assignment of Claim and hereby waives its right to raise any objections thereto and its right to receive notice pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

IN WITNESS WHEREOF, the undersigned Assignor herunto sets its hand this 16th day of November 2000.

ATTES:

By: Lucie Hartline
Signature

Sisie Hartline / A/E Supervisor

Print Name/Title
Digital Testing Service, Inc

Telephone # (608) 567-4376

IN WITNESS WHEREOF, the undersigned on behalf of each Assignee has hereunto sets its hand this 17 day of NOVEMBER 2000.

ATTEST:

By: [Signature]
~~Witness~~ STEFAN VANCE
Argo Partners, Inc.
212-643-5444

EXHIBIT GG

CONROY
RUCC BENNETT 105430
JAMES O. JOHNSTON (SBN 167330)
JOSHUA M. MESTER (SBN 194783)
HENNIGAN & BENNETT

601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Telephone: (213) 694-1200
Facsimile: (213) 694-1234

Proposed Reorganization Counsel for
Debtor and Debtor in Possession

CO COPY
03 APR -5 11 12: 23
RECEIVED
U.S. COURT
NORTHERN DISTRICT OF CALIF.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

Case No. **00 42104**
(Chapter 11)

In re
AUREAL, INC., d/b/a SILO.COM,
f/k/a AUREAL
SEMICONDUCTOR, INC., f/k/a
MEDIA VISION TECHNOLOGY,
INC., a Delaware corporation;

DECLARATION OF JAMES O. JOHNSTON IN
SUPPORT OF APPLICATION OF DEBTOR
AND DEBTOR IN POSSESSION TO EMPLOY
HENNIGAN & BENNETT AS
REORGANIZATION COUNSEL

Debtor.

[No Hearing Required]

22 I, James O. Johnston, declare:
23 1. I am a member in good standing of the Bar of the State of California. I am
24 admitted to practice before, among other courts, the United States District Court for the
25 Northern District of California. I am a partner in Hennigan & Bennett ("H&B"),
26 proposed reorganization counsel for Aureal, Inc., the debtor and debtor in possession
27 (the "Debtor") in the above-captioned bankruptcy case. I make this Declaration in
28 support of the "Application Of Debtor And Debtor In Possession For Authority To

HENNIGAN & BENNETT

DECLARATION OF JAMES O. JOHNSTON IN SUPPORT OF DEBTOR AND DEBTOR IN POSSESSION APPLICATION
TO EMPLOY HENNIGAN & BENNETT AS REORGANIZATION COUNSEL

1 Employ Hennigan & Bennett As Reorganization Counsel (the "Application"). I have
2 personal knowledge of the matters set forth below and, if called to testify, I would and
3 could competently testify thereto.

4 2. This Declaration is made pursuant to 11 U.S.C. §§ 327, and 329(a) and Rule
5 2016(b) of the Federal Rules of Bankruptcy Procedure.

6 3. By the Application, the Debtor has applied to the Court for authority to
7 engage H&B as its reorganization counsel on substantially the terms and conditions set
8 forth in the retention agreement attached as Exhibit B to the Application (the "Retention
9 Agreement").

10 4. To the best of my knowledge, information, and belief, all attorneys
11 comprising or employed by H&B who will render services in this case are or will be duly
12 admitted to practice law in the courts of the State of California and in the United States
13 District Court for the Northern District of California and are familiar with the
14 Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy
15 Rules for this District.

16 5. H&B has received a retainer of \$300,000 for services to be rendered to the
17 Debtor in connection with this chapter 11 case. H&B has deposited the unearned
18 portion of the retainer in a trust account in the name of the Debtor, as a trust
19 fund/security retainer, to secure the payment of H&B's allowed fees and expenses in
20 this case. During the one year period prior to the filing date of the chapter 11 petition,
21 H&B did not receive from the Debtor any other payments for services rendered to the
22 Debtor in connection with this case and the reorganization of its business. H&B does not
23 have a prepetition claim against the Debtor's estate.

24 6. H&B has agreed to accept as compensation for its services its retainer and
25 such additional reasonable sums as may be allowed by this Court in accordance with
26 law, based upon the time spent and services rendered, the results achieved, the
27 difficulties encountered, the complexities involved, and other appropriate factors. As set
28 forth in the Retention Agreement, the Debtor has agreed to pay H&B a reasonable fee.

1 Such fee may exceed ~~the~~ fee calculated by reference to H&B's standard guideline hourly
2 rates.

3 7. I understand that the provisions of Sections 328, 329 and 330 of the
4 Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2016 require, among other
5 things, Court approval of employment of professionals and Court authorization of any
6 fees and costs that H&B shall receive from the Debtor after appropriate notice and a
7 hearing.

8 8. H&B has not shared or agreed to share any compensation for its
9 representation of the Debtor with any other person, except as among the members of
10 H&B.

11 9. H&B represents Oaktree Capital Management, LLC, an affiliate of the
12 Debtor's largest secured creditor and largest equity holder, in an unrelated litigation
13 matter entitled Farallon Capital Partners, L.P., et. al. v. Gleacher & Co. Inc. et. al, which
14 is pending in the California Superior Court in Los Angeles, as case number BC 215260.
15 Despite that concurrent representation which is within the scope of and permitted by
16 retention agreement, I believe that H&B is "disinterested" within the meaning of section
17 101(14) of the Bankruptcy Code, and does not hold or represent an interest materially
18 adverse to the estates within the meaning of section 327 of the Bankruptcy Code.

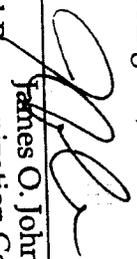
19 10. Except as set forth above, to the best of my knowledge, information, and
20 belief, neither H&B nor any of the attorneys comprising as employed by it has any prior
21 connection to the Debtor or is an insider of the Debtor or any other related entities in
22 which the Debtor may have an interest, its creditors, or any other party in interest in this
23 case or its respective attorneys or accountants. If at any subsequent time during the
24 course of this proceeding, H&B learns of any representation that may give rise to a
25 conflict, an amended Declaration identifying and specifying such potential conflict will
26 be filed promptly with the Court and the Office of the United States Trustee.
27
28

HENNIGAN & BENNETT

1 11. In the following supplemental disclosures, references to H&B include all
 2 members thereof who are expected to render services in this case. To the best of my
 3 knowledge, information and belief:
 4 a. H&B is not and has not been a creditor, an equity security holder or
 5 an insider of the Debtor.
 6 b. H&B is not and has not been an investment banker for any
 7 outstanding security of the Debtor.
 8 c. H&B is not and has not been an investment banker for a security of
 9 the Debtor, or an attorney for such an investment banker in connection with the offer,
 10 sale or issuance of any security of the Debtor.
 11 d. H&B is not and has not been a director, officer or employee of the
 12 Debtor or of any investment banker for any security of the Debtor.
 13 e. H&B has no interest materially adverse to the interest of the estate
 14 or of any class of creditors or equity security holders, by reason of any direct or indirect
 15 relationship to, connection with, or interest in, the Debtor or an investment banker for
 16 any security of the Debtor, or for any other reason.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of April, 2000, at Los Angeles, California.

By: 
 James O. Johnston
 Proposed Reorganization Counsel for Debtor
 And Debtor in Possession

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EXHIBIT HH

FILED
JUN 2 8 2000
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
AUREAL, INC., etc.,
No. 00-42104 T
Chapter 11

Debtor-in-Possession.

MEMORANDUM OF DECISION RE EMPLOYMENT OF ACCOUNTANTS

Aureal, Inc. (the "Debtor"), a chapter 11 debtor-in-possession, seeks to employ PricewaterhouseCoopers LLP ("PWC") as its accountants and financial advisors in connection with the above-captioned bankruptcy case. The Office of the United States Trustee (the "UST") and Creative Technology, Inc. ("Creative"), a creditor engaged in litigation with the Debtor, object to PWC's employment. They contend that PWC's past, present, and contemplated future employment by Creative disqualifies PWC from being employed by the Debtor pursuant to 11 U.S.C. § 327. For the reasons stated below, the Court overrules the objection in part and sustains it in part. Whether the Debtor may employ PWC depends on PWC's willingness to forego providing a portion of its proposed current and contemplated future services to Creative.¹

¹The UST also objects to PWC's request that it be employed on a nunc pro tunc basis. The Debtor filed its chapter 11 petition on April 5, 2000. The Debtor's application to employ PWC was not filed until May 4, 2000. The Debtor represented that it delayed filing the application in an attempt to resolve this employment dispute with Creative and the UST. The Court is satisfied with

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1 In the PWC employment application, the Debtor stated that it
2 wished to employ PWC for a variety of purposes, including to assist
3 in the sale of its business as a going concern. The application
4 disclosed various connections with interested parties which the
5 Debtor contended were not disqualifying. The only controversial
6 connection is the services performed and to be performed by PWC for
7 Creative.

8 The PWC employment application disclosed that PWC performs
9 audit and tax work for ("Creative") and its subsidiaries. It
10 disclosed that PWC has also been engaged by Creative as technical
11 consulting experts in litigation against the Debtor. Finally, the
12 application disclosed that PWC may assist Creative in making an offer
13 for the purchase of all or a portion of the assets of the Company.
14 The employment application stated that an "ethical wall" had been
15 created by PWC and would be maintained to ensure that PWC's
16 involvement with Creative was kept separate from its involvement with
17 the Debtor.

18 The UST and Creative objected to the Debtor's employment of PWC
19 under these circumstances. They contended that PWC's past, present,
20 and contemplated future services for Creative gave it an interest
21 adverse to the Debtor. As a result, they contended, PWC was not
22 disinterested as required by 11 U.S.C. § 327(a).

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25 this explanation given the slight delay. The Court is also
26 satisfied with the notice of the application given to creditors.
Thus, if PWC may be employed by the Debtor, it may be employed on a
nunc pro tunc basis.

1 The Debtor and PWC contended that PWC was and is disinterested.
2 They emphasized the difference between an accountant's role and an
3 attorney's, at least when an accountant is performing auditing
4 services. Whereas an attorney owes its primary duty to its client,
5 in performing auditing services, an accountant owes its primary duty
6 to the public.

7 Furthermore, ethical rules governing accountants circumscribe
8 what other services an accountant can perform for a client without
9 losing the independence necessary to continue to perform auditing
10 services. PWC's general counsel had concluded that serving as a
11 consulting expert in connection with Creative's litigation with the
12 Debtor and assisting Creative in connection with the purchase of the
13 Debtor's assets fell within the zone of these permitted services.²
14 Since the additional services that PWC provides to Creative do not
15 compromise its independence in accordance with ethical standards
16 governing accountants, they should not be deemed to create a conflict
17 of interest for bankruptcy purposes.

18 Section 327(a) of the Bankruptcy Code provides that, subject to
19 the other subsections of that section, "the trustee, with the court's
20 approval, may employ one or more...accountants...that do not hold or
21 represent an interest adverse to the estate, and that are
22 _____

23 ²PWC and Creative described the contemplated services in
24 connection with the purchase of the Debtor's assets somewhat
25 differently. PWC described the services as "due diligence."
26 Creative described them as "providing advice concerning the
proposed purchase." However, the Court is satisfied that there is
no meaningful difference between these two descriptions for
purposes of this application.

1 representation, PWC has clearly been employed and proposes to
2 continue to be employed by Creative. Pursuant to 11 U.S.C. § 327(c)
3 and § 101(14) (E), the Court finds the critical issue presented by
4 this dispute not to be whether PWC represents Creative but rather
5 whether the services provided by PWC to Creative create a conflict of
6 interest with the Debtor and the estate.

7
8 At the hearing on the application, the UST cited four cases in
9 support of its position that PWC's services for Creative disqualify
10 it from employment by the Debtor: In re Micro-Time Management
11 Systems, Inc., 102 BR 602 (Bankr. E.D. Mich. 1989); In re CVC, Inc.,
12 120 B.R. 874 (Bankr. N.D. Ohio 1990); In re Trust Amercia Corp., 175
13 B.R. 413 (Bankr. M.D. Fla. 1994); and In re Thrifty Oil Co., 205 B.R.
14 1009 (Bank. S.D. Cal. 1997). In a supplemental brief, the UST cited
15 two additional cases: In re Aircraft Instrument & Development, Inc.,
16 151 B.R. 939 (Bankr. D. Kan. 1993) and In re Michigan General
17 Corporation, 77 B.R. 97 (Bankr. N.D. Tex. 1987). PWC contended that
18 the cases cited by the UST were all factually distinguishable.⁴

19 The Court agrees with PWC to some extent.⁵ Most of the cases
20 cited involved fee applications, not an employment application as
21 does this case. In several of the cases, the professionals had not
22
23
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⁴PWC did not have an opportunity to comment on the two cases
first cited by the UST in its supplemental brief since the parties'
supplemental briefs were submitted simultaneously. However, the
Court has read and considered these additional cases.

⁵The remainder of the supplemental response is not
particularly helpful due to its focus on the meaning of the term
"representation" in 11 U.S.C. § 327(a). As noted above, the Court
has concluded that this issue is not determinative of the outcome
of this dispute.

1 disclosed, or at least not fully disclosed, the nature and extent of
2 the potentially disqualifying connections. There is no such failure
3 to disclose in this case. In several of the cases, the accountant
4 had clearly "represented" the debtor-in-possession or committee by
5 negotiating with third parties. In one instance, the accountant
6 served a chapter 11 trustee. PWC has not played any such role on
7 behalf of Creative nor does it propose to do so in the future.

8 However, the cases do provide some guidance. The Thrifty Oil
9 and Aircraft Instrument & Development courts concluded that an
10 accounting firm may concurrently represent a debtor-in-possession or
11 creditor's committee and perform auditing services for a creditor or
12 other party with an interest adverse to the estate. The Court agrees
13 that this dual employment does not constitute an actual conflict of
14 interest and is therefore permissible pursuant to 11 U.S.C. § 327(c).
15 Although presenting a somewhat different issue and not addressed by
16 any of the cases cited, the Court concludes that the tax work
17 performed by PWC for Creative is also not disqualifying as long as
18 PWC does not serve as an advocate for Creative in tax litigation. In
19 obtaining tax work from accountant, Creative is not pursuing an end
20 adverse to the Debtor.

21 At the other end of the issue spectrum, the Trust America court
22 concluded that, if a proposed concurrent representation of a debtor-
23 in-possession or committee, on the one hand, and a creditor, on the
24 other, would represent an actual conflict of interest, creating an
25 "ethical wall" would not solve the problem. Trust America, 175 B.R.
26 at 421. Again, the Court agrees with this conclusion.

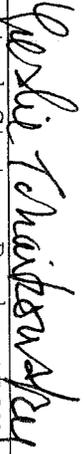
1 However, the Court must still decide whether PWC's proposed
2 services for Creative, other than audit and tax services, do create
3 a conflict of interest. The cases do not assist the Court in making
4 this determination. Instead, the Court must consider the questions
5 from a practical point of view. From this vantage point, the Court
6 concludes that serving as Creative's consulting expert in litigation
7 against the Debtor and advising Creative in connection with the
8 purchase of the Debtor's assets would pose a conflict of interest
9 with its representation of the Debtor.

10 Certainly, in both capacities, as a professional, PWC must give
11 its most objective professional opinion to Creative. Presumably,
12 Creative is counting on PWC's doing so. Nevertheless, by providing
13 these opinions to Creative, PWC is assisting Creative in matters that
14 are adverse to the Debtor and the estate. The dual employment would
15 present a problem of divided loyalty. Moreover, Creative may be
16 required to give PWC confidential information in order to obtain its
17 professional opinion. Creative may have concerns about whether that
18 information will be kept confidential. As the case law recognizes,
19 an "ethical wall" is not always effective despite the professional's
20 best intentions. Id. The difficulty of ensuring that such
21 protective measures are effective is greater when the dual employment
22 is concurrent than when it is successive. For this reason, the Court
23 agrees with case law that an "ethical wall" may resolve a conflict in
24 the latter instance but not in the former.
25
26

CONCLUSION

For the reasons stated above, the Court concludes that the Debtor may employ PWC only if PWC: (1) agrees not to continue serving as Creative's consulting expert nor to provide Creative with advice concerning the purchase of the Debtor's assets and (2) maintains and "ethical wall" to preserve the confidentiality of any information obtained as a result of any such services for Creative in the past. The Debtor shall submit an order granting or denying its application, as appropriate. If the order seeks approval of the employment of PWC, it shall be accompanied by a declaration from an appropriate representative of PWC, agreeing to the foregoing conditions.

Dated: June 28, 2000


United States Bankruptcy Judge

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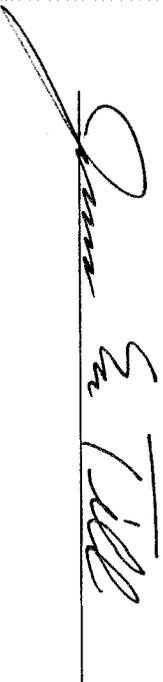
PROOF OF SERVICE

I, the undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Northern District of California at Oakland, hereby certify:

That I, in the performance of my duties as such clerk, served a copy of the foregoing document by depositing it in the regular United States mail at Oakland, California, on the date shown below, in a sealed envelope bearing the lawful frank of the Bankruptcy Court, addressed as listed below.

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

Dated: June 28, 2000



Office of the United States Trustee
Document placed in UST mailbox at
US Bankruptcy Court
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Oakland, CA 94612

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EXHIBIT II

ORIGINAL

1 MICHAEL A. MORRIS (SBN 89842)
2 SIDNEY P. LEVINSON (SBN 139419)
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4 601 South Figueroa Street, Suite 3300
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6 Telephone: (213) 694-1200
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8 Reorganization and Litigation Counsel
9 for Debtor and Debtor in Possession

FILED
OCT 25 2001
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

10 UNITED STATES BANKRUPTCY COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 In re

14 Case No. 00-42104-TT11

15 AUREAL INC., d/b/a SILO.COM,
16 f/k/a AUREAL SEMICONDUCTOR,
17 INC., f/k/a MEDIA VISION
18 TECHNOLOGY, INC., a Delaware
19 corporation;

20 (Chapter 11)

21 Debtor.

22 NOTICE OF APPLICATION AND
23 TWELFTH APPLICATION OF HENNIGAN,
24 BENNETT & DORMAN FOR ALLOWANCE
25 OF COMPENSATION AND
26 REIMBURSEMENT OF EXPENSES FOR
27 PROFESSIONAL SERVICES RENDERED
28 AS REORGANIZATION COUNSEL AND
LITIGATION COUNSEL TO THE DEBTOR
AND DEBTOR IN POSSESSION FROM
AUGUST 1, 2001 THROUGH AND
INCLUDING AUGUST 31, 2001

[No Hearing Requested]

PLEASE TAKE NOTICE, that Hennigan, Bennett & Dorman, ("HBD"), counsel to

Aureal Inc., d/b/a Silo.com, f/k/a Aureal Semiconductor, Inc., f/k/a Media Vision Technology,

Inc., a Delaware corporation (the "Debtor"), in the above-captioned case, respectfully submits to the Court, pursuant to sections 327, 330, 331 and 503(b) of title 11 of the United States Code (the

"Bankruptcy Code"), and Rule 2015 of the Federal Rule of Bankruptcy Procedure (the

"Bankruptcy Rule"), this "Notice of Application and Twelfth Application of Hennigan, Bennett &

Dorman for Allowance of Compensation and Reimbursement of Expenses for Professional

HENNIGAN, BENNETT & DORMAN

NOTICE OF APPLICATION AND TWELFTH INTERIM APPLICATION OF HENNIGAN, BENNETT & DORMAN FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONAL SERVICES RENDERED AS REORGANIZATION COUNSEL

1 Services Rendered as Reorganization Counsel and Litigation Counsel to the Debtor and Debtor in
2 Possession," ("Twelfth Application"). By the Twelfth Application, HBD respectfully requests
3 allowance of interim compensation for professional services rendered in the amount of
4 \$54,878.00 and reimbursement of actual, necessary and reasonable expenses in the amount of
5 \$5,784.07 incurred during the period August 1, 2001, through August 31, 2001.

6 **PLEASE TAKE FURTHER NOTICE**, that pursuant to the "Order Granting Motion For
7 Administrative Order Under Sections 105(a) and 331 of the Bankruptcy Code Establishing
8 Procedures For Interim Compensation and Reimbursement of Expenses For Professionals and
9 Committee Members," (the "Administrative Order"), a copy of which is attached hereto as
10 Exhibit A, and Bankruptcy Local Rule ("B.L.R.") 9014-1 of the United States Bankruptcy Court
11 for the Northern District of California, any objection to the requested relief, or a request for
12 hearing on the matter below, must be filed and served upon counsel for the Aural, Inc., debtor
13 and debtor in possession in the above-captioned case, (the "Debtor"), at the address listed above,
14 within twenty (20) days of mailing of this notice. A request for hearing or objection must be
15 accompanied by any declarations or memoranda of law the party objecting or requesting wishes
16 to present in support of its position. If there is not a timely objection to the requested relief or a
17 request for hearing, the Court may enter an order granting the relief by default. Counsel for the
18 Debtor will provide at least 10 days written notice of hearing to the objecting or requesting party,
19 as well as to the U.S. Trustee and to the Official Committee of Unsecured Creditors (the
20 "Committee"), in the event an objection or request for hearing is timely made.

21 **I. RELIEF REQUESTED**

22 1. By this Application, Hennigan, Bennett & Dorman ("HBD"), reorganization and
23 litigation counsel to the Debtor, respectfully applies to the Court, pursuant to sections 327, 330,
24 331 and 503(b) of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 2015 of
25 the Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rule"), for allowance of interim
26 compensation for professional services rendered in the amount of \$54,878.00 and
27 reimbursement of actual, necessary and reasonable expenses in the amount of \$5,784.07,
28 incurred during the period August 1, 2001, through August 31, 2001.

HENNIGAN, BENNETT & DORMAN

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II. BACKGROUND

2. On April 5, 2000 (the "Petition Date"), the Debtor commenced its reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtor is continuing in possession of its assets and is operating and managing its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. Since the commencement of this bankruptcy case, the Debtor and its professionals have devoted most of their attention to four issues: (1) the sale of the Debtor's assets; and (2) the litigation claims by and against Creative Technology, Inc. ("Creative"); (3) the filing of a plan of reorganization and disclosure statement and solicitation thereof; and (4) analysis and litigation of claims held by and asserted against the Debtor.

**III. RETENTION OF APPLICANT AS REORGANIZATION
COUNSEL AND LITIGATION COUNSEL**

5. HBD has extensive bankruptcy and reorganization experience representing debtors in possession in large and complex cases such as this one. HBD has, in years past, successfully helped reorganize several different types of businesses through chapter 11 reorganizations.

6. HBD has provided reorganization and bankruptcy legal services to the Debtor for the period March 22, 2000 through the present. HBD received a prepetition retainer in the amount of \$300,000 ("Prepetition Retainer"). Of that amount, \$76,402.17 was applied against the Prepetition Retainer for prepetition services rendered and expenses incurred.

7. On April 5, 2000, (the "Petition Date"), the Debtor filed the "Application Of Debtor and Debtor in Possession for Authority to Employ Hennigan & Bennett as Reorganization Counsel" (the "Employment Application"). The Employment Application was subsequently granted through the "Order Authorizing Debtors To Employ Hennigan & Bennett As Reorganization Counsel to the Debtor and Debtor in Possession" (the "Retention Order"), on June 19, 2000. By the Retention Order, the Court approved the Debtor's employment of HBD as reorganization counsel pursuant to section 327(a) of the Bankruptcy Code and authorized HBD to be compensated at the expense of the estate as set forth in the Employment Application, subject to interim and final allowance by the Court.

1 8. On or about June 12, 2000, HBD filed its "Application of Debtor and Debtor in
2 Possession to Expand Employment of Hennigan, Bennett & Dorman and Approve Litigation
3 Engagement Agreement." Subsequently, on or about August 9, 2000, HBD filed the "Amended
4 Application of Debtor and Debtor in Possession to Expand Employment of Hennigan, Bennett
5 & Dorman and Approve Litigation Engagement Agreement" (the "Litigation Application"). By
6 the Litigation Application, the Debtor sought to expand HBD's employment to include HBD's
7 representation of the Debtor in the pending cases that were brought prepetition by and against
8 Creative Labs, Inc. and its affiliates (collectively, "Creative"). The Court approved the
9 Litigation Application on October 25, 2000.

10 9. On November 15, 2000, this Court entered an "Order Approving First Interim
11 Application of Hennigan, Bennett & Dorman for Allowance of Compensation and
12 Reimbursement of Expenses for Professional Services Rendered as Reorganization Counsel to
13 the Debtor and Debtor in Possession" (the "First Interim Fee Order"). Pursuant to the First
14 Interim Fee Order, the Court allowed HBD's fees in the amount of \$606,938.00 and expenses in
15 the amount of \$57,250.51, for the period April 5, 2000 through June 30, 2000, and authorized
16 the Debtor to pay eighty percent (80%) of the allowed fees and one-hundred percent (100%) of
17 the allowed expenses. The balance of the Prepetition Retainer was applied to the fees and
18 expenses awarded from the First Interim Fee Order.

19 10. On December 1, 2000, HBD Filed its original Notice of Application and Second
20 Interim Application of Hennigan, Bennett & Dorman for Allowance of Compensation and
21 Reimbursement of Expenses as Reorganization Counsel to the Debtor and Debtor in Possession.
22 Subsequently, on February 14, 2001, HBD filed the Notice of Amended and Amended Second
23 Interim Application of Hennigan, Bennett & Dorman for Allowance of Compensation and
24 Reimbursement of Expenses as Reorganization Counsel to the Debtor and Debtor in Possession
25 (the "Amended Second Application"). Pursuant to the Amended Second Application, HBD
26 sought allowance of fees in the amount of \$421,818.50 and reimbursement of expenses in the
27 amount of \$61,700.83 for the period July 1, 2000 through September 30, 2000. The Amended
28 Second Application was approved by this Court on February 16, 2001.

HENNIGAN, BENNETT & DORMAN

1 11. On December 27, 2000, HBD filed its original Notice of Application and Third
2 Interim Application of Hennigan, Bennett & Dorman for Allowance of Compensation and
3 Reimbursement of Expenses as Reorganization Counsel to the Debtor and Debtor in Possession.
4 Subsequently, on February 15, 2001 HBD filed the Notice of Amended and Amended Third
5 Interim Application Of Hennigan, Bennett & Dorman for Allowance of Compensation and
6 Reimbursement of Expenses as Reorganization Counsel to the Debtor and Debtor in Possession.
7 (the "Amended Third Application"). Pursuant to the Amended Third Application, HBD sought
8 allowance of fees in the amount of \$107,145.50 and reimbursement of expenses of \$6,854.31
9 for the period October 1, 2000 through October 31, 2000. The Amended Third Application was
10 approved by this Court on February 21, 2001.

11 12. On February 16, 2001, HBD filed its Notice of Application and Fourth Interim
12 Application for Allowance of Compensation and Reimbursement of Expenses for Professional
13 Services Rendered as Reorganization Counsel to the Debtor and Debtor in Possession (the
14 "Fourth Application"). Pursuant to the Fourth Application, HBD sought allowance of fees in
15 the amount of \$93,241.50 and reimbursement of expenses in the amount of \$34,064.65 for the
16 period November 1, 2000 through December 1, 2001. The Fourth Application was approved by
17 the Court on April 4, 2001.

18 13. On April 20, 2001, HBD filed its Notice of Application and Fifth Interim
19 Application for Allowance of Compensation and Reimbursement of Expenses for Professional
20 Services Rendered as Reorganization Counsel to the Debtor and Debtor in Possession (the
21 "Fifth Application"). Pursuant to the Fifth Application, HBD sought allowance of fees in the
22 amount of \$65,410.50 and reimbursement of expenses in the amount of \$4,523.20 for the period
23 January 1, 2001 through January 31, 2001. The Fifth Application was approved by the Court on
24 June 11, 2001.

25 14. On or about June 28, 2001, HBD filed its Notice of Application and Sixth Interim
26 Application for Allowance of Compensation and Reimbursement of Expenses for Professional
27 Services Rendered as Reorganization Counsel to the Debtor and Debtor in Possession (the
28 "Sixth Application"). Pursuant to the Sixth Application, HBD sought allowance of fees in the

1 amount of \$40,666.00 and reimbursement of expenses in the amount of \$14,080.56 for the
2 period February 1, 2001 through February 28, 2001. The Sixth Application was approved by
3 the Court on August 3, 2001.

4 15. On or about July 6, 2001, HBD filed its Notice of Application and Seventh Interim
5 Application for Allowance of Compensation and Reimbursement of Expenses for Professional
6 Services Rendered as Reorganization Counsel to the Debtor and Debtor in Possession (the
7 “Seventh Application”). Pursuant to the Seventh Application, HBD sought allowance of fees in
8 the amount of \$49,201.00 and reimbursement of expenses in the amount of \$6,229.02 for the
9 period March 1, 2001 through March 31, 2001. The Seventh Application was approved by the
10 Court on August 6, 2001.

11 16. On or about August 6, 2001, HBD filed its Notice of Application and Eighth
12 Interim Application for Allowance of Compensation and Reimbursement of Expenses for
13 Professional Services Rendered as Reorganization Counsel to the Debtor and Debtor in
14 Possession (the “Eighth Application”). Pursuant to the Eighth Application, HBD sought
15 allowance of fees in the amount of \$75,071.00 and reimbursement of expenses in the amount of
16 \$12,274.94 for the period April 1, 2001 through April 30, 2001. The Eighth Application was
17 approved by the Court on October 22, 2001.

18 17. On or about October 18, 2001, HBD filed its Notice of Application and Ninth
19 Interim Application for Allowance of Compensation and Reimbursement of Expenses for
20 Professional Services Rendered as Reorganization Counsel to the Debtor and Debtor in
21 Possession (the “Ninth Application”). Pursuant to the Ninth Application, HBD sought
22 allowance of fees in the amount of \$66,465.00 and reimbursement of expenses in the amount of
23 \$11,296.46 for the period May 1, 2001 through May 31, 2001. The Ninth Application has not
24 been approved as of the date of this application.

25 18. On or about October 18, 2001, HBD filed its Notice of Application and Tenth
26 Interim Application for Allowance of Compensation and Reimbursement of Expenses for
27 Professional Services Rendered as Reorganization Counsel to the Debtor and Debtor in
28 Possession (the “Tenth Application”). Pursuant to the Tenth Application, HBD sought

1 allowance of fees in the amount of \$51,668.00 and reimbursement of expenses in the amount of
2 \$19,442.35 for the period June 1, 2001 through June 30, 2001. The Tenth Application has not
3 been approved as of the date of this application.

4 19. On or about October 24, 2001, HBD filed its Notice of Application and Eleventh
5 Interim Application for Allowance of Compensation and Reimbursement of Expenses for
6 Professional Services Rendered as Reorganization Counsel to the Debtor and Debtor in
7 Possession (the "Eleventh Application"). Pursuant to the Eleventh Application, HBD sought
8 allowance of fees in the amount of \$83,303.00 and reimbursement of expenses in the amount of
9 \$12,454.26 for the period July 1, 2001 through July 31, 2001. The Eleventh Application has not
10 been approved as of the date of this application.

11 **IV. DESCRIPTION OF SERVICES RENDERED BY APPLICANT**

12 20. The services rendered by HBD during the Twelfth Fee Period are grouped into the
13 fee categories set forth below. The fees have been subdivided into 44 separate categories to
14 comply with the requirements of this Court. The attorneys and paralegals who rendered services
15 relating to each category are identified in Exhibit C attached hereto. The total number of hours
16 that each individual spent as well as the total compensation sought for each category are
17 reflected in the fee statements attached hereto as Exhibit B.

18 21. Case Administration (010). This category includes a number of different tasks that
19 are necessary to administer the bankruptcy case including inventory of correspondence and
20 pleadings, and preparation for and attendance of status conference. During the Twelfth Fee
21 Period, HBD rendered 31.30 hours of services and incurred fees in the amount of \$3,055.00.

22 22. Meetings of and Communications with Creditors (020). This category includes
23 time spent participating in telephone conferences regarding the case status. During the Twelfth
24 Fee Period, HBD rendered 0.30 hours of services and incurred fees in the amount \$112.50.

25 23. General Business Operations (030). This category includes time spent reviewing
26 and preparing correspondence regarding a copy of notice of the commencement of the case.
27 During the Twelfth Fee Period, HBD rendered 2.00 hours of service and incurred fees in the
28 amount of \$295.00.

- 1 24. Monthly Operating Reports (033). This category includes time spent reviewing
2 and revising the monthly operating report. During the Twelfth Fee Period, HBD rendered 0.20
3 hours of services and incurred fees in the amount of \$33.00.
- 4 25. Trademarks (034). This category includes time spent preparing correspondence
5 regarding the payment of outstanding fees. During the Twelfth Fee Period, HBD rendered 0.80
6 hours of services and incurred fees in the amount of \$132.00.
- 7 26. Fee/Employment Applications (040). This category includes time spent preparing
8 correspondence regarding payment of fees and participating in telephone conferences regarding
9 a check received. During the Twelfth Fee Period, HBD rendered 1.30 hours of services and
10 incurred fees in the amount of \$214.50.
- 11 27. HBD Fee Applications (042). This category includes time spent drafting and
12 revising the Eighth and Ninth Applications of HBD, as well as preparing the declaration in
13 support of the Eighth Application. During the Twelfth Fee Period, HBD rendered 7.40 hours of
14 services and incurred fees in the amount of \$1,221.00.
- 15 28. Ritter, Van Pelt (047). This category includes time spent preparing
16 correspondence and participating in a telephone conference regarding fees. During the Twelfth
17 Fee Period, HBD rendered 1.20 hours of services and incurred fees in the amount of \$198.00.
- 18 29. Mohler, Nixon (048). This category includes time spent reviewing and preparing
19 correspondence regarding Mohler Nixon retainer agreement. During the Twelfth Fee Period,
20 HBD rendered 0.40 hours of services and incurred fees in the amount of \$66.00.
- 21 30. Claims Administration (070). This category includes time spent reviewing and
22 preparing correspondence, participating in telephone conferences, and conducting research
23 regarding various claims. During the Twelfth Fee Period, HBD rendered 5.30 hours of services
24 and incurred fees in the amount of \$1,075.50.
- 25 31. Omnibus Claims Objection Motion (072). This category includes spent time
26 reviewing and revising a response to Momentum's response to the second omnibus claims
27 objection. During the Twelfth Fee Period, HBD rendered 0.50 hours of services and incurred
28 fees in the amount of \$105.00.

1 32. Ocean Claims (076). This category includes time spent participating in multiple
2 telephone conferences and preparing correspondence regarding the status conference and
3 preparing and processing notice of the status conference. During the Twelfth Fee Period, HBD
4 rendered 1.70 hours of services and incurred fees in the amount of \$331.50.
5 33. Account Receivable Recovery (General) (086). This category includes multiple
6 conferences regarding accounts receivable issues. During the Twelfth Fee Period, HBD
7 rendered 0.60 hours of services and incurred fees in the amount of \$225.00.
8 34. Asset Disposition (090). This category includes time spent on a telephone
9 conference regarding sale of the corporate shell. During the Twelfth Fee Period, HBD rendered
10 0.20 hours of services and incurred fees in the amount of \$75.00.
11 35. Plan/Disclosure Statement (100). This category includes time spent analyzing
12 third amended plan and preparing third amended plan for filing. During the Twelfth Fee Period,
13 HBD rendered 2.80 hours of services and incurred fees in the amount of \$679.00.
14 36. Disclosure Statement (101). This category includes time spent reviewing
15 correspondence regarding filing of the plan. During the Twelfth Fee Period, HBD rendered 0.20
16 hours of services and incurred fees in the amount of \$33.00.
17 37. Plan of Reorganization (102). This category includes time spent preparing and
18 revising the Plan and Order for filing and participating in telephone conferences regarding the
19 Plan and Order. During the Twelfth Fee Period, HBD rendered 5.80 hours of services and
20 incurred fees in the amount of \$2,133.00.
21 38. Plan Related Documents (105). This category includes time spent reviewing the
22 file regarding Copelco documents. During the Twelfth Fee Period, HBD rendered 0.40 hours of
23 services and incurred fees in the amount of \$66.00.
24 39. Litigation (120). This category includes time spent reviewing files regarding
25 objections to claims; participating in telephone conferences regarding a status conference; and
26 attending to status conference issues. During the Twelfth Fee Period, HBD rendered 9.50 hours
27 of services and incurred fees in the amount of \$1,747.50.
28

- 1 40. Creative Sale/ Creative Stock (179). This category includes time spent reviewing
2 and revising the prospectus and resolutions; and participating in telephone conferences
3 regarding Creative stock. During the Twelfth Fee Period, HBD rendered 2.90 hours of services
4 and incurred fees in the amount of \$1,087.50.
- 5 41. Micro Pro Inc. Complaint (210). This category includes time spent preparing and
6 reviewing correspondence, drafting and revising a motion to approve settlement, and
7 participating in a telephone conference regarding case settlement. During the Twelfth Fee
8 Period, HBD rendered 2.40 hours of services and incurred fees in the amount of \$681.50.
- 9 42. Ecovision/Communications with Other Side (225). This category includes time
10 spent drafting correspondence regarding responses to discovery requests. During the Twelfth
11 Fee Period, HBD rendered 0.70 hours of services and incurred fees in the amount of \$147.00.
- 12 43. Future Technologies Complaint (240). This category includes time spent drafting
13 an order approving a settlement agreement with Future Technologies. During the Twelfth Fee
14 Period, HBD rendered 0.20 hours of services and incurred fees in the amount of \$42.00.
- 15 44. World Peace Complaint (260). This category includes time spent participating in
16 telephone conferences and preparing correspondence regarding World Peace complaint and
17 settlement. During the Twelfth Fee Period, HBD rendered 0.60 hours of services and incurred
18 fees in the amount of \$162.00.
- 19 45. World Peace/ Communications with Other Side (265). This category includes
20 time spent participating in a telephone conference with counsel for World Peace regarding
21 settlement. During the Twelfth Fee Period, HBD rendered 0.20 hours of services and incurred
22 fees in the amount of \$75.00.
- 23 46. Krystaltech Complaint (270). This category includes time spent participating in
24 telephone and office conferences regarding status conference, settlement, and production of
25 documents; review of documents provided by Krystaltech; research regarding potential
26 witnesses; and preparation of evidence regarding claim. During the Twelfth Fee Period, HBD
27 rendered 19.00 hours of services and incurred fees in the amount of \$5,358.00.
28

- 1 47. Kryvstatche/Discovery (272). This category includes time spent reviewing
2 correspondence regarding discovery. During the Twelfth Fee Period, HBD rendered 0.10 hours
3 of services and incurred fees in the amount of \$37.50.
- 4 48. Centerprise/Discovery (292). This category includes time spent participating in a
5 conference regarding discovery issues. During the Twelfth Fee Period, HBD rendered 0.30
6 hours of services and incurred fees in the amount of \$112.50.
- 7 49. Raab Karcher Complaint (300) This category includes time spent participating in
8 telephone conferences and reviewing and revising an order regarding the Avnet settlement
9 agreement. During the Twelfth Fee Period, HBD rendered 0.90 hours of services and incurred
10 fees in the amount of \$189.00.
- 11 50. Raab Karcher/ Communications with Other Side (305). This category includes
12 time spent participating in telephone conferences regarding the Avnet settlement agreement.
13 During the Twelfth Fee Period, HBD rendered 1.00 hours of services and incurred fees in the
14 amount of \$210.00.
- 15 51. Supercom Richmond Complaint (320). This category includes time spent
16 reviewing bankruptcy rules and rules of civil procedure and reviewing files in preparation for a
17 status conference. During the Twelfth Fee Period, HBD rendered 0.50 hours of services and
18 incurred fees in the amount of \$140.00.
- 19 52. Supercom Richmond/Discovery (322). This category includes time spent
20 attending a status conference. During the Twelfth Fee Period, HBD rendered 0.50 hours of
21 services and incurred fees in the amount of \$140.00.
- 22 53. Integradyne Complaint (360). This category includes time spent participating in
23 multiple telephone conferences regarding documents and claims and review of documents
24 relating to Integradyne claim. During the Twelfth Fee Period, HBD rendered 10.80 hours of
25 service and incurred fees in the amount of \$3,699.50.
- 26 54. I/O Magic Complaint (370). This category includes time spent reviewing answer
27 to I/O Magic complaint. During the Twelfth Fee Period, HBD rendered 0.30 hours of services
28 and incurred fees in the amount of \$84.00.

1 55. IP Labs Complaint (380). This category includes time spent participating in a
2 telephone conference regarding the IP Labs conference and drafting an order approving the IP
3 Labs settlement agreement. During the Twelfth Fee Period, HBD rendered 0.30 hours of
4 services and incurred fees in the amount of \$63.00.

5 56. Citicorp Motion to Reconsider (400). This category includes time spent
6 participating in telephone and office conferences regarding Citicorp claim issues; drafting
7 pleadings, declarations, and correspondence in opposition to CVF's motion to reconsider; and
8 researching multiple legal issues related to the CVF motion. During the Twelfth Fee Period,
9 HBD rendered 31.30 hours of services and incurred fees in the amount of \$7,140.00.

10 57. Service of Citicorp (401). This category includes time spent participating in a
11 telephone conference regarding service of a pleading. During the Twelfth Fee Period, HBD
12 rendered 0.10 hours of services and incurred fees in the amount of \$37.50.

13 58. Citicorp/Discovery (402). This category includes time spent preparing for and
14 participating in telephone conferences regarding discovery issues; drafting document requests
15 and reviewing documents; preparing for and participating in discovery hearing; and drafting and
16 revising correspondence regarding discovery. Discovery in this proceeding was contentious and
17 HBD was required to schedule two hearings to compel CVF to comply with its discovery
18 obligations. During the Twelfth Fee Period, HBD rendered 22.40 hours of services and incurred
19 fees in the amount of \$6,255.00.

20 59. Citicorp/Response to Discovery (403). This category includes time spent
21 participating in telephone and office conferences and preparing correspondence regarding
22 discovery issues, as well as drafting a deposition outline. During the Twelfth Fee Period, HBD
23 rendered 3.50 hours of services and incurred fees in the amount of \$847.50.

24 60. Citicorp/Deposition (404). This category includes time spent participating in
25 conferences regarding litigation and deposition issues; drafting, reviewing and revising
26 deposition outlines for Elizabeth Sullivan, CVF's chief witness who testified by declaration in
27 support of the motion to reconsider; preparing for and conducting Sullivan deposition; and
28 analysis and review of the deposition transcript; and factual investigation of CVF's claims,

1 including interviews with current and former employees and consultants who provided
2 declarations in response to CVF's allegations in its motion for reconsideration. During the
3 Twelfth Fee Period, HBD rendered 22.60 hours of services and incurred fees in the amount of
4 \$5,505.00.

5 61. Citicorp/Communications with Other Side (405). This category includes time
6 spent participating in telephone conferences and preparing and reviewing correspondence
7 regarding discovery and settlement issues. During the Twelfth Fee Period, HBD rendered 3.40
8 hours of services and incurred fees in the amount of \$855.00.

9 62. Next Factors/Momentum Data Claim (410). This category includes time spent
10 participating in telephone and office conferences regarding claims; factual investigation
11 regarding the merits of the amended proof of claim, including interviews with former
12 employees; drafting, reviewing, revising and filing objections and responses to Next Factors and
13 Momentum Data's proofs of claim in anticipation of a hearing scheduled for September 6, 2001;
14 legal research regarding subordination of \$100,000.00 of the claim; and drafting, reviewing and
15 revising settlement proposals. During the Twelfth Fee Period, HBD rendered 38.50 hours of
16 services and incurred fees in the amount of \$9,372.00.

17 63. Service of Next Factors (411). This category includes time spent participating in a
18 telephone conference regarding notice of deposition; analyzing standing of Next Factors; and
19 reviewing deposition notices. During the Twelfth Fee Period, HBD rendered 1.80 hours of
20 services and incurred fees in the amount of \$405.00.

21 64. Next Factors/Response to Discovery (413). This category includes time spent
22 participating in telephone conferences regarding a subpoena and notice of deposition, and
23 drafting correspondence regarding standing issues. During the Twelfth Fee Period, HBD
24 rendered 1.20 hours of services and incurred fees in the amount of \$435.00.

25 **V. RELIEF REQUESTED AND BASIS THEREOF**

26 65. During the Twelfth Fee Period, HBD seeks payment for 237.40 hours of services,
27 in the amount of \$54,878.00 as detailed in the fee statements attached hereto as Exhibit B. HBD
28

1 has also incurred expenses in the amount of \$5,784.07, as indicated in Exhibit B, attached
 2 hereto.

3 66. As previously mentioned, on June 19, 2000, the Debtor filed the Notice of Motion
 4 and Motion For Administrative Order Under Sections 105(a) and 331 of the Bankruptcy Code
 5 Establishing Procedures and Deadlines for Interim Compensation and Reimbursement of
 6 Expenses For Professionals and Committee Members (the "Fee Procedures Motion"). On or
 7 about July 28, 2000, the Administrative Order. Pursuant to the Administrative Order,
 8 professionals employed under section 327, 328, 331, and 1108 of the Bankruptcy Code may file
 9 and serve a monthly fee application for interim compensation.

10 67. By this Application, HBD requests interim approval of its fees and expenses for
 11 the Twelfth Fee Period, in accordance with the Administrative Order. The period of
 12 compensation requested by this Application commenced on August 1, 2001 and ran to and
 13 including August 31, 2001. The total compensation for this period requested by HBD amounts
 14 to \$54,878.00, based on 237.40 hours of services rendered. During this period, HBD also
 15 incurred actual, reasonable and necessary business expenses in the aggregate amount of
 16 \$5,784.07. Copies of the detailed statements showing fees and expenses incurred by HBD are
 17 attached hereto as Exhibit B. HBD requests that the Court authorize the Debtor to pay eighty
 18 percent (80%) of fees and one hundred percent (100%) of expenses approved by the Court.

19 68. For all of the foregoing reasons, HBD believes that the fees requested in this
 20 Application are reasonable and reflect the value of the services provided to the Debtor's estate.
 21 Moreover, HBD has requested reimbursement only of actual and necessary expenses.

22 **WHEREFORE**, HBD requests that this Court enter an order granting HBD (a) interim
 23 allowance of fees in the amount of \$54,878.00 and expenses in the amount of \$5,784.07;
 24 (b) authority for the Debtor to pay eighty percent (80%) of approved fees and one-hundred
 25 percent (100%) of approved expenses, and (c) such other and further relief as the Court may deem
 26 just and proper.
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Exhibit D

to filing under California Rules of Court 9.13 (d), (e), and (f)



THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
AUDIT & REVIEW

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

TELEPHONE: (213) 765-1612
TDD: (213) 765-1566
FAX: (213) 765-1442
<http://www.calbar.ca.gov>

December 20, 2006

David O'Donnell
72 Van Reipen Avenue #37
Jersey City, NJ 07306

Re: Case No.: 05-20211
Respondent: Joshua Mester/Linda Goldman/James Johnston/Karen Kupetz/
Linda Kontos/Joshua Morse/Michael Morris/Sidney Levinson

Dear Mr. O'Donnell:

The Audit and Review Unit of the State Bar has completed its review of your complaint and a determination has been made to reopen the case and forward it for further investigation. You will be informed once an investigator has been assigned to the file. In the meantime, we appreciate your patience and continued cooperation in this matter.

OFFICE OF THE CHIEF TRIAL COUNSEL/AUDIT AND REVIEW
N02

Exhibit E

to filing under California Rules of Court 9.13 (d), (e), and (f)



THE STATE BAR
OF CALIFORNIA

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT

TELEPHONE: (213) 765-1000
TDD: (213) 765-1566
FAX: (213) 765-1318

DIRECT DIAL: (213) 765-1384

December 28, 2006

David P. O'Donnell
72 Van Reipen Avenue #37
Jersey City, NJ 07306

Respondents/Case No. Joshua M. Mester 06-O-15523;
 Sidney P. Levinson 06-O-15529;
 James O. Johnston 06-O-15524;
 Linda A. Kontos 06-O-15526
 Joshua D. Morse 06-O-15527;
 Karen L. Kupetz 06-O-15525;
 Michael A. Morris 06-O-15527

Dear Mr. O'Donnell:

Your complaint against attorneys Joshua M. Mester; Sidney P. Levinson; James O. Johnston; Linda A. Kontos; Joshua D. Morse; Karen L. Kupetz; Michael A. Morris has been reviewed and forwarded to the Enforcement Unit for further investigation and prosecution, if warranted.

Please note the new case number above and refer to this number in all future correspondence.

Deputy Trial Counsel Katherine Kinsey and Investigator William Graham have been assigned to your complaint. After they have had an opportunity to review the file, the investigator will contact you.

If you have any questions or a change of address or telephone number, please contact the investigator at (213) 765-1384.

Thank you for bringing this matter to our attention. We look forward to your continued assistance.

Very truly yours,


Paula Gavaldon
Administrative Assistant

/peg

Exhibit F

to filing under California Rules of Court 9.13 (d), (e), and (f)

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FILED

JUL 23 2002

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

In re
AUREAL, INC., etc.,
Debtor.

No. 00-42104 T
Chapter 11

MEMORANDUM OF DECISION

The fee application of PriceWaterhouseCoopers LLP ("PWC") (the "Second Fee Application") seeking final allowance of \$245,159.50 in fees and \$48,157.48 in costs came on for hearing on April 26, 2002. The Official Creditors Committee (the "Committee") objected to the Second Fee Application (the "Objection"), requesting disallowance of at least \$121,332.75 of the fees requested and all of the costs for a total reduction of at least \$169,490.23. The Court has reviewed all of the evidence and argument presented by the parties. Moreover, pursuant to its independent duty to scrutinize all fee applications, the Court has reviewed the entire case file. Based on its review, for the reasons specified below, the Court concludes that all fees and costs requested by PWC should be denied, that the order approving its retention should be revoked, and that PWC should be ordered to disgorge the \$94,735.36 balance of the retainer received pre-petition.

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SUMMARY OF FACTS AND PROCEDURAL HISTORY

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On or about March 22, 2002, Aural, Inc. ("Aural") engaged PWC to provide it with financial consulting services in contemplation of filing bankruptcy. The PWC partner assigned responsibility for the engagement was Glenn Hiraga ("Hiraga"). An engagement letter was executed by Aural on April 5, 2000, the day the bankruptcy petition was filed. Between March 22, 2000 and April 4, 2000, PWC provided services to Aural, giving rise to fees of \$48,617.50, and incurred expenses of \$6,647.14.¹ On April 4, 2000, Aural paid PWC a retainer of \$150,000 which PWC applied to pay the fees and costs incurred pre-petition, leaving a \$94,735.36 balance of the retainer available for payment of post-petition fees and costs.

The engagement letter stated that PWC was checking for conflicts and would inform Aural promptly if it discovered a potential conflict. On or about April 4, 2000, Hiraga discovered that PWC was providing financial consulting services to Creative Technologies, Ltd. ("Creative") in connection with litigation between Creative and Aural.²

¹According to the Second Fee Application, the services provided actually gave rise to fees of \$49,707.50, but PWC voluntarily reduced its fees to \$48,617.50.

²The Court bases its finding regarding the date PWC discovered the conflict on the detailed time records covering PWC's pre-petition work for Aural provided to the Court by PWC in response to the Court's order of June 3, 2002. There was no time entry prior to April 4, 2000 relating to an investigation of conflicts. However, time entries on April 4, 2000 show that Hiraga spent 11 hours and Shawn Kelly, another PWC employee, spent 9 hours in work described as: "Examine and review interested parties re: employment disclosure and conflicts."

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Hiraga asked Hillary Krane ("Krane"), PWC's Assistant General Counsel, whether PWC's work for Creative would prevent PWC from providing consulting services to Aural. Krane assured Hiraga that it would not as long as PWC was not asked to provide any services to Aural in connection with the Creative litigation. Hiraga also informed Aural's bankruptcy counsel of the work being performed by PWC for Creative. Aural's bankruptcy counsel did not advise Hiraga that PWC's work for Creative would prevent Aural's engagement of PWC.

On or about April 4, 2000, either Krane or Hiraga also informed Matt Lynde ("Lynde"), the PWC partner in charge of the Creative engagement, of PWC's intention to perform work for Aural. Lynde was instructed to inform Creative's litigation counsel of this intention. When he did so, Creative's litigation counsel objected, expressing the fear that Aural would use the dual engagement as grounds for disqualifying PWC in the Creative litigation. In an attempt to mollify this fear, Krane advised Hiraga to obtain a letter from Aural agreeing not to do so. Aural agreed to provide such a letter (and in fact did so by a letter dated May 3, 2000.)

On or before April 19, 2000, Lynde informed Krane that, despite Aural's agreement not to attempt to disqualify PWC in the Creative litigation, Creative continued to object to Aural's employment of PWC. As a result, Krane had a series of conversations with Erica Rottenberg ("Rottenberg"), Creative's General Counsel. Rottenberg informed Krane that Creative anticipated asking PWC to assist it in

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making a bid for Aural's assets. Consequently, Creative did not wish PWC to do any work for Aural.

Notwithstanding Creative's continuing objection, Aural did not attempt to find a different financial consultant nor did it immediately file an application to employ PWC, disclosing the existence of the dispute concerning PWC's qualification to be employed. Instead, Aural did not file an employment application (the "Employment Application") until May 4, 2000, approximately one month after the bankruptcy petition was filed. During this period, PWC continued to perform services for Aural, incurring substantial fees and costs.

On May 24, 2000, the Office of the United States Trustee (the "UST") and Creative filed objections to the Employment Application. Both the UST and Creative contended that PWC's concurrent representation of Creative and Aural created a conflict of interest so that PWC was not qualified to be employed by Aural. Creative represented that it had informed PWC that it would not waive the conflict presented by this concurrent representation. The UST also objected to the Employment Application's request for approval nunc pro tunc as of the petition date.

PWC filed a response to the objections on June 14, 2000. In its response, PWC contended that accountants should not be held to the same ethical standards as attorneys because they perform a different function. They do not "represent" or "advocate for" their clients as do attorneys. As a consequence, a dual engagement such as the one presented here would not prejudice either client as long as

1 appropriate steps were taken to ensure that confidential information
2 was not "shared." PWC indicated that it would take such steps.

3 A hearing was conducted with respect to the Employment
4 Application on June 19, 2000, and the Court took the matter under
5 submission. On June 28, 2000, the Court issued a written memorandum
6 stating the terms upon which the Debtor would be permitted to employ
7 PWC (the "Memorandum"). The Court concluded that PWC's concurrent
8 employment by Creative and the Debtor constituted a conflict of
9 interest which the creation of an ethical wall would not remedy.

10 However, the Court concluded that the Debtor could employ PWC if
11 PWC agreed not to perform any services for Creative while employed by
12 Aureal and to create an "ethical wall" to protect against the
13 disclosure of confidential information acquired during its prior
14 engagement by Creative. If PWC accepted these conditions, the Court
15 agreed that PWC could be employed on a nunc pro tunc basis, relating
16 back to the bankruptcy petition date. The Court directed that any
17 order employing PWC be "accompanied" by a declaration stating that
18 PWC accepted these conditions.

19 According to Krane, shortly after reviewing the Memorandum, on
20 or about July 6, 2000, she informed Hiraga and Lynde, who in turn
21 informed Creative and Aureal, that, because PWC was being compelled
22 to cease providing services to Creative, PWC also felt compelled to
23 cease providing services to Aureal. Nevertheless, on July 7, 2000,
24 Krane signed a declaration (the "Krane Declaration"), stating only
25 that PWC would cease performing services for Creative and would
26 create an "ethical wall" so that information acquired from Creative

1 would not be "shared" with Aural. The Krane Declaration did not
2 disclose that PWC would also resign from its engagement by Aural.

3 Moreover, the Krane Declaration did not "accompany" the proposed
4 form of order as directed by the Memorandum. The proposed form of
5 order (the "Retention Order") was not submitted for two more weeks.
6 Like the Krane Declaration, the Retention Order did not disclose
7 PWC's intent to resign.

8 On June 3, 2002, the Court issued an order, requesting
9 additional information in connection with this dispute. In response
10 to this order, PWC submitted a declaration executed by Krane in which
11 she contended that PWC's decision to resign had been promptly
12 communicated to the Court in the letter transmitting the Krane
13 Declaration to the Court (the "Transmittal Letter"). A copy of the
14 Transmittal Letter was attached to Krane's current declaration. The
15 second page of the Transmittal Letter did disclose PWC's intent to
16 resign. However, there was no copy of the Transmittal Letter in the
17 case file, and the Court has no recollection of ever having seen it.

18 For purposes of this dispute, the Court will assume that the
19 letter was actually sent to the Court with the Krane Declaration.³
20 However, the Court does not view this method of disclosure as a good
21 faith attempt to inform the Court. Moreover, although counsel for
22 the Committee appeared at the hearing on the UST's and Creative's
23
24

25
26 ³At a telephonic hearing on July 10, 2002, PWC's counsel, the
author of the letter, represented to the Court that he had sent the
July 7, 2000 Letter to the Court with the Krane Declaration.

1 objection to the Employment Application, PWC's counsel failed to
2 serve her with a copy of the Transmittal Letter.⁴

3 On August 9, 2000, the Debtor filed an application to employ EYR
4 Restructuring LLC ("EYR") as its financial and restructuring
5 advisors, nunc pro tunc as of July 24, 2000, based on a letter of
6 understanding dated July 24, 2000. On September 15, 2000, the
7 Debtor filed an application to employ Neilson Elggren, LLP ("Neilson
8 Elggren") as its tax consultants and accountants, nunc pro tunc as of
9 September 1, 2000. Neither application disclosed that the Debtor's
10 need for these professionals' services was the result of PWC's
11 resignation immediately after obtaining the Retention Order.

12 On August 25, 2000, PWC filed a fee application (the "First Fee
13 Application"), seeking \$237,657.50 in fees and \$48,345.75 in expenses
14 for services performed and expenses incurred from April 5, 2000
15 through July 31, 2000. The First Fee Application did not expressly
16 disclose that PWC had previously resigned from its engagement by
17 Aureal. To the contrary, the First Fee Application was described as
18 an "interim" fee application, suggesting that PWC's services were
19 ongoing. The only clue to PWC's having resigned was on page 11, in
20 the narrative description of the services performed in Category E,
21 entitled "Transitional Procedures" as follows:

22 24. PwC played a significant role searching for
23 a suitable replacement as financial advisor to
24 Aureal. PwC transitioned the new financial

25 ⁴At the telephonic hearing on July 10, 2002, counsel for PWC
26 represented that the failure to serve the Committee's counsel was
an oversight. Again, for purposes of this dispute, the Court will
assume that this is true.

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advisors into their roles through updates on key issues including inventory valuations and the sale of Company assets as well as provide (sic) pertinent documents to facilitate their duties.

However, by this time, the Committee had apparently learned about PWC's resignation because, on September 14, 2000, the Committee filed an objection to the First Fee Application (the "First Fee Objection"). Aureal never scheduled a hearing with respect to the First Fee Application. Instead, on November 8, 2001, PWC filed the Second Fee Application.

The Second Fee Application sought final approval of fees and costs. The fees requested in the Second Fee Application were only slightly higher than those requested in the First Fee Application. The costs were approximately the same. On February 26, 2002, the Committee filed the Objection, raising the same grounds raised in the First Fee Objection: i.e., that the fees incurred litigating PWC's right to be employed by Aureal did not benefit the estate and, for other reasons as well, PWC's fees and costs were excessive.

PWC filed a reply (the "Reply") on March 8, 2002. In the Reply, PWC contended that the Objection should be overruled because, among other reasons, its services had been instrumental in obtaining an outstanding recovery for the Debtor's unsecured creditors: i.e., approximately an 83% dividend. According to PWC, by the time it resigned, it had already performed the essential services leading to this outstanding result. A hearing was conducted with respect to the Second Fee Application on April 26, 2002 and a subsequent telephonic hearing was conducted on July 10, 2002.

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DISCUSSION

Section 327 of the Bankruptcy Code permits a debtor-in-possession, with the court's approval, to employ an attorney, accountant, or other professional person that does not hold or represent an interest adverse to the bankruptcy estate and who is "disinterested." The term "disinterested" is defined in 11 U.S.C. § 101(14). To be disinterested, a person must not "have an interest materially adverse to the interest of the estate...." 11 U.S.C. § 101(14).

The Bankruptcy Code does not define the phrase "adverse interest." However, an "adverse interest" has been described as an "economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant, or;...a predisposition under circumstances that render such a bias against the estate." *In re Crivello*, 134 F.3d 831, 835 (7th Cir. 1998) (citing *In re Roberts*, 46 B.R. 815, 827 (Bankr.D.Utah (1985))." *In re Midway Industrial Contractors, Inc.*, 272 B.R. 651, 661-662. The Court views PWC's engagement by Creative, a major creditor and competitor of Aural, with which Aural was engaged in litigation, as an "economic interest" creating an "actual conflict" with the interests of the estate and therefore disqualifying PWC from employment by Aural.

The standards for employment applicable to attorneys apply equally to accountants. *Matter of BH & P, Inc.*, 119 B.R. 35, 42 (D. N.J. 1990). These standards:

1
2 "serve the important policy of ensuring that
3 all professionals pursuant to section 327(a)
4 tender undivided loyalty and provide untainted
5 advice and assistance in furtherance of their
6 fiduciary responsibilities. *Id.* [Crivello] at
7 836 (quoting *Rome v. Braunstein*, 19 F.3d 54, 58
8 (1st Cir. 1994)).

9 Midway, 272 B.R. at 662. These standards may not be ignored out of
10 expediency, based on the professional's confidence that, despite the
11 conflict, it can act fairly and impartially or based on the debtor-
12 in-possession's conclusion that the professional's services are
13 unique and urgently needed. See In re Gray, 64 B.R. 505, 507 (Bankr.
14 E.D. Mich. 1986) (accountants' fees were disallowed based on failure
15 to disclose \$11,000 pre-petition claim despite accountants'
16 confidence that "it could do the job for which it was retained fairly
17 and impartially....excellent working relationship [with debtor
18 and]...tax situation...so complex that to involve a different firm at
19 this time would be a waste of assets....").

20 "The rule of disqualification is to be rigidly applied; it
21 cannot be waived because of the integrity or ability of the
22 particular person or firm involved. [Citation omitted]" *Id.* at 507.
23 "[I]t is...plain that Congress, when it enacted § 327(a), made a
24 choice that efficiency would be sacrificed for the appearance of
25 propriety." Gray, at 508; see also In re Micro-Time Management
26 Systems, Inc., 102 B.R. 602, 605 (Bankr. E.D. Mich. 1989) (citing,
among other cases, In re Consolidated Bancshares, Inc., 785 F.2d
1249, 1256 n.6 (5th Cir. 1986) and In re Chicago Rapid Transit Co.,
93 F.2d 832, 838 (7th Cir. 1937)).

1 In the instant case, one day before the bankruptcy petition was
2 due to be filed, PWC learned of its ongoing engagement with Creative.
3 Nevertheless, it did not resign from its engagement by either client.
4 Krane contended that PWC did not perceive any conflict in the dual
5 engagement. PWC's perception (or lack thereof) cannot be squared
6 with the case law. See e.g., In re CVC, Inc., 120 B.R. 874, 876-877
7 (Bankr. N.D. Ohio 1990) (debtor-in-possession's accountant, who
8 concurrently performed services for individual related to
9 individual's purchase of estate assets, was not "disinterested" and
10 had "obvious" conflict of interest; consequently, court disallowed
11 all fees despite creditors' committee's withdrawal of its objection
12 based on accountant's agreement to reduce amount of request); In
13 re Micro-Time Management Systems, Inc., 102 B.R. 602, 608 (Bankr.
14 E.D. Mich. 1989) ("...Bohl's work for Comerica does present a
15 potential, if not an actual, conflict of interest. Comerica was a
16 major creditor of Micro-Time. The amount of its debt was very
17 strongly disputed and there had been an adverse relationship between
18 the principal of the debtor (Kirkland) and Comerica....Any hint of
19 any prior or ongoing relationship between Comerica and Bohl would
20 create at least the appearance of impropriety").

21 PWC appeared to base its belief that its dual engagement
22 presented no conflict on two assumptions, each of which the Court
23 views as erroneous. First, as noted above, PWC contended that
24 accountants should not be held to the same ethical standards as
25 attorneys because they do not "represent" or "advocate" for their
26 clients. In the past, some lower courts may have been persuaded by

1 this argument. See In re Aircraft Instrument and Development, Inc.,
2 151 B.R. 939, 943 (Bankr. D. Kan. 1993), cited in Matter of Trust
3 America Service Corp., 175 B.R. 413, 419, fn5 (Bankr. M.D. Fla.
4 1994). Whatever persuasive force this argument had in the past
5 (which this Court views as slight), it has no persuasive force at
6 present.

7
8 Second, PWC contended that it could protect its two clients from
9 any prejudice as a result of the dual representation by creating an
10 "ethical wall." However, an "ethical wall" is typically only viewed
11 as sufficient protection against disclosure of confidential
12 information acquired from a past conflicting representation. It is
13 generally considered insufficient to protect against prejudice from
14 concurrent conflicting engagements. See Trust America, 175 B.R. at
15 421.

16 Based on its understanding of the law discussed above, the Court
17 concluded that PWC could be employed by Aureal only if it ceased
18 performing services for Creative and created an "ethical wall." The
19 Memorandum made it clear that the Court's decision to permit Aureal
20 to employ PWC was conditioned on PWC's compliance with these
21 requirements. Moreover, the Court's approval of PWC's employment on
22 a nunc pro tunc basis was clearly premised on the understanding that
23 PWC would provide ongoing services to Aureal on the conditions set
24 forth by the Court.⁵

25 ⁵Viewed in hindsight, the Court believes that its decision to
26 approve PWC's employment on a nunc pro tunc basis was ill advised.
Given the clear nature of the conflict and Creative's objection to
Aureal's employment of PWC, Aureal's one month delay in filing the

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2 The Court's decision to approve PWC's employment on a
3 conditional basis presented PWC with a dilemma. Unless PWC's
4 employment was approved by the Court, it could not be paid the fees
5 and costs incurred up to that point (which fees and costs represent
6 the bulk of the compensation requested in the Second Fee
7 Application).⁶ Yet, perhaps out of fear of being sued by Creative,
8 PWC was unwilling to accept the conditions for its employment
9 established by the Court.⁷

10 PWC could have approached the dilemma in a straightforward
11 manner. It could have advised the Court of its unwillingness to
12 continue to provide services to Aural under the prescribed
13 conditions and asked the Court to reconsider its ruling and to permit
14 it to be employed only on a nunc pro tunc basis. The Court might not
15 have granted the request. However, this would have been the ethical

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17 Employment Application seems unreasonable. Moreover, in light of
18 subsequent delays, this delay now seems to have been designed to
19 obtain the benefit of PWC's services regardless of the outcome of
20 the dispute. Aural knew when it filed the case that it would only
21 need PWC's services for a brief period since it intended to sell
22 substantially all of its assets as soon as possible. Moreover, the
23 strategy appears to have worked. As noted by PWC, by the time it
24 resigned, PWC had provided the essential services that Aural
25 desired.

26
27 ⁶See In re Weibel, Inc., 176 B.R. 209, 211 (9th Cir.
28 1994) ("(c)court approval of employment...is the sine qua non to
29 counsel getting paid."); In re Monument Auto Detail, Inc., 226
30 B.R. 219, 224 (9th Cir. BAP 1998).

31
32 ⁷Given the case law cited above, PWC should have anticipated
33 the possibility that the Court would require it to choose between
34 its clients. It should have advised in connection with the
35 Employment Application the Court whether, if forced to choose, it
36 would choose Aural.

1 thing to do. Instead, as discussed above, PWC went to great lengths
2 to give the appearance that it was accepting the Court's conditions
3 despite its decision to resign. The only disclosure of its true
4 intent was "buried" on the second page of a transmittal letter not
5 even served on the Committee's counsel.

6 If the court has issued an order "erroneously" approving a
7 professional's employment, the court can revoke the order and deny
8 compensation. 11 U.S.C. § 328(c); see Midway, 272 B.R. at 663:
9 "Bankruptcy judges are given wide latitude in deciding whether a
10 denial of fees on an "erroneously employed" professional in whole or
11 in part is appropriate. Crivello, 234 F.3d at 839....The first
12 factor the bankruptcy court should consider before it elects to
13 disallow a portion of the requested fees is whether any evidence
14 exists to support an inference of intentional non-disclosure. *Id.*
15 If there is evidence in support of such an inference, the court
16 'should not fall prey to the professional's story of confusion,
17 miscommunication or negligence'. *Id.* The punishment for intentional
18 non-disclosure should be treated by the bankruptcy court as severely
19 as a fraud upon the court. *Id.*⁸ Based on the facts recited above,
20 its inferences from those facts, and the above-cited case authority,
21 the Court concludes that the Retention Order should be revoked.⁹

22
23 ⁸This principle distinguishes this case from In re Thrifty Oil
24 Co., 205 B.R. 1009, 1015 (Bankr. S.D. Cal. 1997), in which PWC
25 failed to do an adequate conflicts check so as to identify a
26 disqualifying conflict but in which the court overruled this ground
for objection to PWC's request for fees.

⁹Given the Committee's request for only a partial reduction in
fees and costs, PWC may contend that it has not had an adequate

1 "Although some courts have allowed compensation to professionals
2 who later turned out not to have been qualified to serve as debtor in
3 possession," as the Gray court concluded (and this Court agrees),
4 "the better procedure is to not only set aside the order authorizing
5 the appointment of the professional, but also to disallow
6 compensation for services rendered in that ostensible capacity...."
7 Gray, 64 B.R. at 508. "[T]he denial of compensation [in such
8 circumstances] is prophylactic. It constitutes a deterrent.' *In re*
9 *Roberts*, 46 B.R. at 847.... 'the argument that possible harm...could
10 be counter-balanced by greater benefit [to the estate],...does not
11 cover the '...policy consideration which look to the harm to
12 representation, the loss of confidence, etc.' *Id.* (footnotes and
13 citations omitted)." Micro-Time Management, 102 B.R. at 608.

14 Given the case law cited above, PWC should have anticipated the
15 possibility that the Court would require it to choose between its two
16 clients. PWC should have advised the Court from the onset whether it
17 was willing to relinquish its engagement by Creative and perform
18 services solely for Aural. If PWC had disclosed that it was not
19 willing to do so, the Court would never have issued the Retention
20 Order. In that event, PWC could not have received any compensation
21 for post-petition services and costs. Any ruling other than a
22 complete denial of fees and costs would reward PWC's intentional
23

24 _____
25 opportunity to address the basis for the Court's decision. The
26 Court would not agree with this contention. Moreover, PWC's right
to file a motion for reconsideration provides it an additional
opportunity to correct any facts that the Court has mistaken or to
persuade the Court that this ruling constitutes a manifest
injustice. See Fed.R.Bankr.Proc. 9024; Fed.R.Civ.Proc. 60(b).

1 nondisclosure and thus would be contrary to the strict standards set
2 forth in the case law.

3
4 **CONCLUSION**

5 For the reasons stated above, the Second Fee Application will be
6 denied in its entirety. PWC will be denied all compensation and all
7 reimbursement of costs. The Retention Order will be revoked, and PWC
8 will be ordered to disgorge the balance of the retainer received pre-
9 petition. Counsel for the Committee is directed to submit a proposed
10 form of order in accordance with this decision.

11 Dated: July 23, 2002

12 
13 United States Bankruptcy Judge

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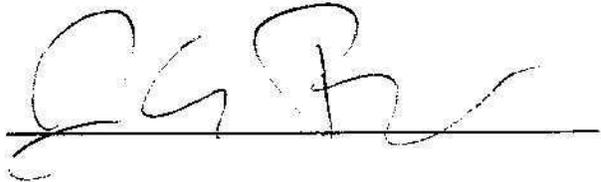
PROOF OF SERVICE

I, the undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Northern District of California at Oakland, hereby certify:

That I, in the performance of my duties as such clerk, served a copy of the foregoing document by depositing it in the regular United States mail at Oakland, California, on the date shown below, in a sealed envelope bearing the lawful frank of the Bankruptcy Court, addressed as listed below.

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

Dated: July 5, 2002



Office of the United States Trustee
Document placed in UST mailbox at
US Bankruptcy Court
1300 Clay Street, Third Floor
Oakland, CA 94612

McCutchen, Doyle, Brown & Enersen, LLP
Randy Michelson
Three Embarcadero Center
San Francisco, CA 94111-4067

Sheppard, Mullin, Richter & Hampton LLP
Michael H. Ahrens
Four Embarcadero, 14th Floor
San Francisco, CA 94111

Hennigan, Bennett & Dorman
Sidney P. Levinson
601 S. Figueroa St., Ste. 3300
Los Angeles, CA 90017

Exhibit G

to filing under California Rules of Court 9.13 (d), (e), and (f)

July 31, 2007

Investigator William Graham
Office of the Chief Trial Counsel, Enforcement
State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

via eMail

RE: Request Documents for California Bar Investigations # 06-O-15523 thru 06-O-15529

Dear Mr. Graham:

This narrative accompanies the documents you requested ("Requested Documents") for the State Bar Of California ("CA Bar") in furtherance of the investigation of my Original Complaint 05-20211 as reasserted and supplemented by the Revised Complaint.

"Respondents" herein includes each attorney, whether named or known, engaging in alleged misconduct as well as the law firm Hennigan, Bennett & Dorman

The original respondents to the Revised Complaint were assigned case numbers 06-O-15523 thru 06-O-15529 by your office. The Revised Complaint additionally complained of the law firm Hennigan, Bennett & Dorman LLP ("HBD")¹, as a separate entity, as to its standard policies and referring to §6169 of the Bar Act. Nevertheless, my understanding is that a case number has not yet been assigned to HBD. Subsequent to the submission of the Revised Complaint and the reopening of the investigation, it was determined that four additional attorneys were involved in the conflicted representation, including two named partners² of HBD. This narrative shall refer to all attorneys at HBD who engaged in any conflicted representation of Aureal or its adversaries, as well as the firm itself, as either Respondents or HBD, together or individually as appropriate, regardless if or when each has been assigned a case number or when their identity or related conduct becomes known.

The Requested Documents Demonstrate the CA Bar Incorrectly Assumes Misconduct Is Reported By Officials

The Requested Documents demonstrate that the CA Bar erroneously ruled upon the Original Complaint under the false assumption that when unethical conduct was found by a court in California, such misconduct would be reported to the CA Bar. The Original Complaint was rejected by the CA Bar decision³ which indicated that a complaint which asserted misconduct by an attorney before a judge would not be investigated if such judge did not assert jurisdiction and refer such conduct to the CA Bar. The CA Bar must not draw any negative inference as to the validity of the Revised Complaint and related materials due to the lack of referral by any official or lawyer as the Requested Document clearly shows the court found misconduct. I believe that the CA Bar should assign resources sufficient for a

1 The Original Complaint referred to the firm as "H&B" which was the firms' own abbreviation used their initial retention and blind waiver documents. Our current references to HBD are as successor to and incorporate H&B.

2 In addition to the firm HBD, specific lawyers listed in my eMail of 6/25/07 include Bruce Bennett, Esq., Roderick G, Dorman, Esq., William E. Stoner, Esq., and Thomas B. Watson, Esq.

3 A copy of said decision is included at EXHIBIT S - CA BAR #05-20211PAGE 1 of the Revised Complaint.

complete investigation of the Revised Complaint with all related materials in light of the disconcerting absence of referrals in the face of misconduct.

The Requested Documents illustrate misconduct by Respondents and another Law Firm

The Requested Documents are the Memorandum of Decision dated July 23, 2002 (Exhibit A) and the resulting Order Denying Second And Final Of PriceWaterhouseCoopers LLP, Directing Revocation Of Retention Order And Ordering Disgorgement (Exhibit B) together the "Requested Documents".

These documents clearly evidence numerous indisputable instances of misconduct by PriceWaterhouseCoopers ("PWC"), specifically referencing the Assistant General Counsel for PWC. HBD was involved with such misconduct not only by aiding and abetting such conduct, but by their attempts to hide the PWC conflict of interest issues from the court. Furthermore, the court found that HBD handled the PWC matters on behalf of the debtor with deceptive and purposeful intent, and found that the sworn declaration of HBD's lead counsel was not believable.

HBD likely failed to obtain CRPC 3-310 waivers vis-a-vis PWC and each of Aureal and Oaktree

While not specifically mentioned in the Revised Complaint, PWC and HBD were clients of each other. HBD likely continued to implement their flawed CRPC 3-310 policy and resulting failures by failing to obtain contemporaneous informed written consent for the conflicts between 1) PWC & Aureal, and 2) PWC & the Oaktree entities. Furthermore, as with other conflicts, HBD should have bought failed to obtain substitute counsel to handle all instances when PWC and Aureal were potentially or actually adverse. Instead, HBD chose to handle all such issues themselves, a statutorially prohibited representation.⁴

Reference is made, without limitation, to relevant statutes, under California and Federal codes.

Securities Exchange Act of 1934

Section 13(a) of the Exchange Act and Rule 13a-11 promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission current reports on Form 8-K upon the occurrence of certain events, including the departure of directors or principal officers. Item 5.02(a) of Form 8-K specifies that if a director has resigned because of a disagreement with the registrant, known to an executive officer of the registrant, on any matter relating to the registrant's operations, policies, or practices, the registrant must, among other things, disclose a brief description of the circumstances representing the disagreement that the registrant believes caused, in whole or in part, the director's resignation. In addition, the registrant must provide the resigning director with a copy of the disclosure no later than the day the company files the disclosure with the Commission. Also, the registrant must provide the director with the opportunity to furnish a response letter

⁴ Prohibited without limitation under Title 11 U.S.C. § 327(a)

stating whether the director agrees with the disclosure in the registrant's Form 8-K. In the event that the registrant receives a response letter from the former director, the letter must be filed by the registrant as an amendment to its Form 8-K within two business days of its receipt. No showing of scienter is required to establish a violation of Section 13(a) of the Exchange Act. *SEC v. Savoy*, 587 F.2d 1149, 1167 (D.C. Cir. 1978).⁵

SEC forms are completed under criminal penalties and often include the warning:

“ATTENTION Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. § 1001)”

Federal Criminal Statutes

- **Title 18 U.S.C. § 1001** (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;shall be fined under this title, imprisoned not more than 5 years.
- **Title 18 U.S.C. § 2 Principals.** (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.
- **Title 18 U.S.C. § 3 Accessory after the fact.** Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
- **Title 18 U.S.C. § 4 Misprision of felony.** Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.
- **Title 18 U.S.C. § 152 Concealment of assets; false oaths and claims;**

⁵ Excerpted from <http://www.sec.gov/litigation/admin/2007/34-55801.pdf>.

- **Title 18 U.S.C. § 153. Embezzlement against estate** (a) Offense.— A person described in subsection (b) who knowingly and fraudulently appropriates to the person’s own use, embezzles, spends, or transfers any property or **secretes or destroys any document belonging to the estate of a debtor** shall be fined under this title, imprisoned not more than 5 years, or both. (b) Person to Whom Section Applies.— A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person’s participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.
- **Title 18 U.S.C. § 157. Bankruptcy fraud** A person who, **having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so**— (1) files a petition under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title; (2) **files a document** in a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title; or (3) **makes a false or fraudulent representation, claim, or promise** concerning or in relation to a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title, shall be fined under this title, imprisoned not more than 5 years, or both.

California Statutes and Rules

California Evidence Code § 956. Services of Lawyer Obtained to Aid in Commission of Crime or Fraud There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud. (Added by Stats. 1965, ch. 299, operative January 1, 1967.) Note: We believe this includes violations of SEC rules, statutes, and related 18 U.S.C. § 1001 crimes

California Evidence Code § 958. Breach of Duty Arising Out of Lawyer-Client Relationship in Issue There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship. (Added by Stats. 1965, ch. 299, operative January 1, 1967.) Note: We believe this includes violations of California Rules of Professional Conduct including without limitation: Rule 3-310. Avoiding the Representation of Adverse Interests

CALIFORNIA PENAL CODE SECTIONS 132-140

§ 132. Every person who upon any trial, proceeding, inquiry, or investigation

whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

§ 133. Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

§ 134. Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

§ 135. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

California Code of Civil Procedure §§ 2016-2036 including § 2023

CALIFORNIA Business and Professions Code sections 6086.7; 6086.8(a); and 6068(o)

Original Complaint's CRPC 3-310 Focus Emerges As Inextricably Intertwined With SEC Allegations

The Original Complaint was focused solely on CRPC 3-310. The CA Bar decided against conducting an investigation, but invited a request for review accompanied by additional information. The Revised Complaint included approximately 700 pages of exhibit evidence and expanded the scope of the complaint to include other instances of misconduct and violations of rules and regulations governing attorneys in the state of California and under federal law. Furthermore, the Revised Complaint introduced allegations of criminal misconduct. This narrative presents new evidence to the CA Bar of SEC violations and contemporaneously related federal criminal violations ("SEC Allegations") by Respondents and their conflicted clients.⁶

⁶ Upon information and belief, no referral has been made to the Securities and Exchange Commission related to the SEC Allegations. My understanding is that SEC expects any governmental or regulatory entity aware of SEC violations to refer same. Linda Chatman Thomsen is Director of the Commission's Division of Enforcement (202) 551-4500; and Marc J. Fagel is Associate Regional Director (415) 705-2449 San Francisco Regional Office. I was unaware of the SEC Allegations at the time of the Revised Complaint.

Consideration by the CA Bar of the ethical misconduct in the Revised Complaint involves allegations which are inextricably intertwined with statutory crimes.

Specifically, the true nature of the Oaktree entities' involvement with Aureal commenced pre-petition and continued thereafter: the de-facto takeover of the public company Aureal by Oaktree. While we concede that Oaktree may have had a controlling interest in the public stock which may have eventually enabled Oaktree to accomplish a takeover of Aureal in a lawful manner; neither did Oaktree perform the takeover, nor did Aureal respond to certain events, in accordance with SEC regulations. Furthermore, as explained in the Original Complaint 2.5 Facts Illustrating Egregious Nature of Conflict⁷, Oaktree's conduct as secured lender to Aureal which then took control of the company gave rise to potential Lender Liability and Equitable Subordination claims by Aureal against Oaktree.

Thus, the failures of HBD to fully disclose the Oaktree issues was not merely a breach of Respondents duty to fully disclose under CRPC 3-310, but was executed in the furtherance of the SEC Allegations. Together the SEC Allegations and failures to fully disclose the Oaktree issues performed the same purpose.⁸ To protect the financial interest of Oaktree, and to enable Oaktree to extract the full amount of the secured loan they purchased shortly before the bankruptcy filing⁹ as quickly as possible without exposing Oaktree to Lender Liability and Equitable Subordination risk. It is impossible to perform a complete or intelligent investigation of the alleged ethical misconduct without acknowledging the parallel SEC violations and criminal conduct. The newly identified SEC Allegations will demonstrate multiple counts of civil SEC violations with related federal criminal violations.

The SEC Allegations must be considered by the CA Bar as part of the Revised Complaint for several reasons:

1. The SEC Allegations are *inextricably intertwined* with the alleged ethical misconduct of HBD such as their failing to meet CRPC 3-310 requirements vis-a-vis Oaktree (and perhaps PWC); as well as disclosures to the U.S. Trustee, the official committee of unsecured creditors, and the federal bankruptcy court, as to the full facts surrounding Oaktree.¹⁰
2. to understand the context of the failure to fully disclose the Oaktree conflict, and which further demonstrates intent.
3. To establish the “*relevant circumstances*” and “*reasonably foreseeable ... consequences*”¹¹ which were necessary components of HBD's required CRPC 3-310 written disclosure and consent with Aureal.
4. That the alleged ethical misconduct by Respondents in failing to fully disclose “*relevant circumstances*” and “*reasonably foreseeable ... consequences*” of their conflict involving Oaktree was in direct furtherance of violations of SEC regulations and related criminal statutes.

7 Copy appearing in Revised Complaint EXHIBIT R - CA BAR #05-20211 PAGE 7.

8 HBD's own web site candidly states: “We are exceedingly entrepreneurial and frequently unconventional. We employ “outside the box” strategies to end commercial disputes quickly and advantageously for our clients.” In my opinion, it seems that the “box” and convention which HBD transcends include professional ethics and criminal statutes.

9 Oaktree is a premiere bankruptcy investor and is known to make most of their debt purchases at discount.

10 The Revised Complaint includes numerous statutory and case law references demonstrating the high standard imposed upon lawyers in California to make a full, broad, and candid disclosure of all facts related to a conflict.

11 CRPC 3-310 as referenced in the Original Complaint requires that “reasonably foreseeable” adverse consequences be disclosed. Clearly, consequences related to aiding, abetting, and furtherance of SEC Violations for the benefit of the Oaktree entities were important, relevant, and consequences to Aureal.

5. The SEC Allegations, specifically without limitation 18 U.S.C. 1001, act to broadly incriminate all professionals involved with the false statements and omissions. The CA Bar must consider 18 U.S.C. § 2 Principals which functions to equate the conduct of all professionals who would have contributed, allowed, or induced false statements or omissions. Clearly, this would include any professional at HBD, Oaktree, the Oaktree directors, and any accounting firm or other professional who was involved in the fraudulent SEC filings. Each of these parties is an extremely sophisticated member of the public company investment industry and thus has no excuse for claiming ignorance as to their role or their knowledge of the facts. Similarly, 18 U.S.C. § 3 *Accessory after the fact* and 18 U.S.C. § 4 *Misprision of felony* act to expand the parties with culpability for the SEC Allegations.¹²

Detail of SEC Civil and Related Criminal Violations

Section 13(a) of the Securities Exchange Act of 1934 and Rule 13a-11 promulgated thereunder require an 8-K filing *within 4 business days* whenever:

1. A director resigns.
2. A directors is appointed.
3. If a directors resigns due to a dispute, a description of the dispute must be disclosed.

The requirement to file an 8-K disclosure is perhaps the most basic and most frequently occurring SEC filing required by a public company. Professionals of Aureal committed numerous counts of SEC Violations by their failure to disclose multiple instances of each of the above listed events. HBD prepared Aureal's **Amended Disclosure Statement In Support of Debtor's Second Amended Plan Of Reorganization**¹³ which states at page 6 lines 5-6:

"On March 24, 2000, the Debtor's management, including key officers and directors, resigned from employment with the Debtor."

Thus, by Friday March 28, 2000 an 8-K filing was due with the SEC announcing the resignation of the officers and directors. The Original Complaint demonstrated that at least one of the resigning directors resigned due to a disagreement¹⁴ and quoted the CEO and director of Aureal at as saying:

*"Management hoped to sell to avoid bankruptcy, while the shareholders thought we should hold out for a better deal. So we left"*¹⁵

We see that the dispute involved the actions of Oaktree, a secured lender, exerting de-facto control over Aureal. Significantly, such a fact would add to the risk of Oaktree under both Lender Liability and Equitable Subordination issues. Thus, the failure to make such a required disclosure can be seen to be purposeful to protect the private equity/hedge fund conglomerate: Oaktree. Since the resigning CEO was also a director of Aureal, any announced of his resignation as CEO would have to include that he was also resigning as a director, and therefore also include a description of the dispute which caused his

¹² A related question emerges related to opponents of Next Factors' efforts to expose the misconduct, now demonstrated to be inextricably intertwined with criminal acts. Arguably, any party opposing such efforts, for example by invoking privilege, may be culpable as an accessory after the fact or for misprision.

¹³ Previously transmitted to the CA Bar as N148.pdf included herein at exhibit C

¹⁴ See EXHIBIT R - CA BAR #05-20211 PAGE 29

¹⁵ From press report in EXHIBIT R - CA BAR #05-20211 PAGE 7

resignation. An SEC Violation occurred for each instance where an 8-K was not issued to announce a director resignation, a director appointment, and that a director resignation due to a dispute. Upon information and belief, each such violation are continuing.

While an 8-K filing was not made by March 28, 2000, an SEC form Form NTN 10K signed on April 3, 2000 by Steve Mitchell, Director of Human Resources was filed with the SEC [Exhibit D] (hereinafter "SEC-F1"). Despite the clear warning in the official form: *ATTENTION Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. 1001)*, SEC-F1 included omissions in violation of 18 U.S.C. § 1001. A criminal violation results for each failure to mention the resignation of each director, that all directors other than the Oaktree representative resigned, and a description of the dispute with respect to each director who resigned based upon a dispute. As to failing to mention a director resigned due to a dispute, we haven proven one count with respect to the CEO/director, but we can reasonably infer that the other directors also resigned due to the dispute. Remember, HBD and other professionals involved in the SEC documents can not hide behind the conduct of Steve Mitchell¹⁶.

A press release on April 11, 2000 indicates the appointment of two new directors, Kenneth Liang and Gloria Noh¹⁷.

The SEC violations described above continued, and the criminal 18 U.S.C. § 1001 violations compounded, by another filing. FORM 12b-25 was signed on May 16, 2000 by Steve Mitchell, Chief Operating Officer [Exhibit E] (hereinafter "SEC-F2"). SEC-F2 compounds each of the omissions of SEC-F1 by the continuing failures to disclose the director events, as well as the appointments of the two new directors. That Mr. Liang and Ms. Noh were Oaktree operatives underscores the intent and amplifies the severity of the violations. That Steve Mitchell was apparently appointed "Chief Operating Officer" begs obvious questions to Steve Mitchell, COO:

1. Who told you that you had to file SEC forms, and who assisted who?
2. Who appointed you COO?
3. Was there a meeting of directors?
4. Who was at the meeting?
5. Did you hide the change in directors and the circumstances of your appointment from HBD and any other professional who assisted or directed SEC-F1 and SEC-F2.

Thus at least six SEC violations and six related criminal violations of 18 U.S.C. § 1001 occurred by Aureal and all those culpable under 18 U.S.C. §§'s 2,3, & 4.

SEC-F2 also revealed:

The Company [Aureal] is submitting a letter to the Securities and Exchange Commission (the "Commission") requesting confirmation that the Commission, or any member of its staff will not recommend enforcement action against the Company if the Company implements, in lieu of

16 Such would be frivolous even without the contemporaneous 3-310 violations, as HBD and Oaktree are themselves necessarily experts on SEC matters. Furthermore as explained above, 18 U.S.C. §§'s 2,3, & 4 are operative.

17 A press release does not satisfy SEC 8-K regulations but does indicate that Aureal's management and professionals were aware of the changing directors. Not surprisingly, Kenneth Liang and Gloria Noh are easily shown to be operatives of Oaktree by simple internet searches. The appointment of two replacement directors served no purpose but to consolidate Oaktree's control and was accomplished in a manner designed to keep Oaktree's involvement low profile. In any event, the director appointments were afoul of SEC regulations.

the periodic reports required under the Exchange Act, a modified reporting procedure.

Such letter likely continued the intentional omission re: the Oaktree issues and SEC Allegations; and may thus violate federal statutes. Furthermore, SEC-F1 and SEC-F2 were transmitted by mail and electronically and may thus trigger Mail Fraud and Wire Fraud statutes.

The Cumulative Effect of the Evidence of Criminal, Civil, And Ethical Misconduct Compels A Thorough Investigation By Authorities Empowered To Investigate Under Penalty of Obstruction Of Justice

Attorney Client Privilege does not protect Respondents

We believe that the SEC Allegations demonstrate that the retention of HBD was for unlawful purpose and thus attorney/client privilege does not exist. Furthermore, it is well settled that criminal conduct terminates, among other things, attorney/client privilege. *In any event, privilege would never cover an investigation of CRPC 3-310 violations as California Evidence Code § 958 invalidates any such claim to privilege.*

We believe that the Revised Complaint, Requested Documents, and this Narrative Expose Conspiracy Among HBD and PWC to defraud the Court

The court found intentional misconduct on the parts of both HBD and PWC to hide relevant facts from the court. The court correctly equates the severity of intentional non-disclosure with a “*fraud upon the court*”.¹⁸

Low Threshold Exists for the Commission of Federal Crime of Bankruptcy Fraud

The CA Bar must reevaluate the broken promises of HBD with respect to their promises to promptly notify the court of any conflict, and their promise to avoid representing Argo again without first seeking and obtaining authorization. Such promises were clearly broken. 18 U.S.C. § 157 clearly prohibits a false promise. Furthermore, 18 U.S.C. § 157 prohibits any document or false statement designed as part of a scheme to defraud or conceal same. Intentional non-disclosure is a fraud upon the court and upon all parties to whom the attorney, and his client, bore a fiduciary obligation. We believe that each of numerous instances of deception to the court violated 18 U.S.C. § 157 and taken as a whole is extremely egregious.

Magnitude of Conflict and Intent of the Professionals is Clear

PWC and HBD shared as a conflicted client the \$40 Billion private equity/hedge fund conglomerate known as Oaktree. Their obvious selfish interest at protecting such a powerful and continuing client vastly overshadowed their incentive to zealously represent the small and liquidating Aureal. HBD's failure to provide full disclosure defrauded and deprived all parties from avoiding this conflict. No proof of any additional wrongdoing or possibility of an alternative superior result is required to demonstrate the existence of severity of misconduct by HBD in failing to fully disclose, such conduct by itself is of extreme ethical and criminal significance.

¹⁸ See Requested Document at Exhibit A herein page 14 lines 17 - 20

Additional Criminal Allegations exist which are inextricably intertwined with Discovery Misconduct

We have gone to great expense to research, detail, and report to date allegations of numerous instances of misconduct and criminal conduct by Respondents. Such efforts have resulted in severe retribution by HBD, and their designated successors, against Next Factors and its principal officer. Nevertheless, we believe additional acts of discovery misconduct exist which are themselves inextricably intertwined with state and federal criminal statutes. The Revised Complaint describes documents which were apparently fabricated. Such documents were produced at a deposition where HBD failed to obey the court's order to produce the officer who performed the search of the books and records and retrieved responsive documents. Instead, HBD produced an individual who clearly stated that he performed not document search, that documents were given to him by HBD, and he further claimed no knowledge that he was designated by Aural as the officer who searched for and retrieved the documents. The attorney for HBD, perhaps in another ill conceived attempt to change to testimony of the witness, procured testimony by the individual that he had been shown a number of documents the night before the deposition; these documents included the statements to the affect that the individual had performed the document search and was designated as the corporate officer to testify to such at the deposition. Clearly, the HBD attorney exposed a violation of CALIFORNIA PENAL CODE SECTION § 133.



David P. O'Donnell, President

Enclosures:

Exhibit A

Memorandum of Decision dated July 23, 2002

Exhibit B

Order Denying Second And Final Of PriceWaterhouseCoopers LLP, Directing Revocation Of Retention Order And Ordering Disgorgement

Exhibit C

Amended Disclosure Statement N148.pdf

Exhibit D

SEC-F1 Form NTN 10K signed on April 3, 2000 by Steve Mitchell

Exhibit E

SEC-F2 Form 12b-25 signed on May 16, 2000 by Steve Mitchell, Chief Operating Officer

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FILED
JUL 23 2002
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
AUREAL, INC., etc.,
Debtor.

No. 00-42104 T
Chapter 11

MEMORANDUM OF DECISION

The fee application of PriceWaterhouseCoopers LLP ("PWC") (the "Second Fee Application") seeking final allowance of \$245,159.50 in fees and \$48,157.48 in costs came on for hearing on April 26, 2002. The Official Creditors Committee (the "Committee") objected to the Second Fee Application (the "Objection"), requesting disallowance of at least \$121,332.75 of the fees requested and all of the costs for a total reduction of at least \$169,490.23. The Court has reviewed all of the evidence and argument presented by the parties. Moreover, pursuant to its independent duty to scrutinize all fee applications, the Court has reviewed the entire case file. Based on its review, for the reasons specified below, the Court concludes that all fees and costs requested by PWC should be denied, that the order approving its retention should be revoked, and that PWC should be ordered to disgorge the \$94,735.36 balance of the retainer received pre-petition.

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SUMMARY OF FACTS AND PROCEDURAL HISTORY

On or about March 22, 2002, Aural, Inc. ("Aural") engaged PWC to provide it with financial consulting services in contemplation of filing bankruptcy. The PWC partner assigned responsibility for the engagement was Glenn Hiraga ("Hiraga"). An engagement letter was executed by Aural on April 5, 2000, the day the bankruptcy petition was filed. Between March 22, 2000 and April 4, 2000, PWC provided services to Aural, giving rise to fees of \$48,617.50, and incurred expenses of \$6,647.14.¹ On April 4, 2000, Aural paid PWC a retainer of \$150,000 which PWC applied to pay the fees and costs incurred pre-petition, leaving a \$94,735.36 balance of the retainer available for payment of post-petition fees and costs.

The engagement letter stated that PWC was checking for conflicts and would inform Aural promptly if it discovered a potential conflict. On or about April 4, 2000, Hiraga discovered that PWC was providing financial consulting services to Creative Technologies, Ltd. ("Creative") in connection with litigation between Creative and Aural.²

¹According to the Second Fee Application, the services provided actually gave rise to fees of \$49,707.50, but PWC voluntarily reduced its fees to \$48,617.50.

²The Court bases its finding regarding the date PWC discovered the conflict on the detailed time records covering PWC's pre-petition work for Aural provided to the Court by PWC in response to the Court's order of June 3, 2002. There was no time entry prior to April 4, 2000 relating to an investigation of conflicts. However, time entries on April 4, 2000 show that Hiraga spent 11 hours and Shawn Kelly, another PWC employee, spent 9 hours in work described as: "Examine and review interested parties re: employment disclosure and conflicts."

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Hiraga asked Hillary Krane ("Krane"), PWC's Assistant General Counsel, whether PWC's work for Creative would prevent PWC from providing consulting services to Aural. Krane assured Hiraga that it would not as long as PWC was not asked to provide any services to Aural in connection with the Creative litigation. Hiraga also informed Aural's bankruptcy counsel of the work being performed by PWC for Creative. Aural's bankruptcy counsel did not advise Hiraga that PWC's work for Creative would prevent Aural's engagement of PWC.

On or about April 4, 2000, either Krane or Hiraga also informed Matt Lynde ("Lynde"), the PWC partner in charge of the Creative engagement, of PWC's intention to perform work for Aural. Lynde was instructed to inform Creative's litigation counsel of this intention. When he did so, Creative's litigation counsel objected, expressing the fear that Aural would use the dual engagement as grounds for disqualifying PWC in the Creative litigation. In an attempt to mollify this fear, Krane advised Hiraga to obtain a letter from Aural agreeing not to do so. Aural agreed to provide such a letter (and in fact did so by a letter dated May 3, 2000.)

On or before April 19, 2000, Lynde informed Krane that, despite Aural's agreement not to attempt to disqualify PWC in the Creative litigation, Creative continued to object to Aural's employment of PWC. As a result, Krane had a series of conversations with Erica Rottenberg ("Rottenberg"), Creative's General Counsel. Rottenberg informed Krane that Creative anticipated asking PWC to assist it in

making a bid for Areal's assets. Consequently, Creative did not

wish PWC to do any work for Areal.

Notwithstanding Creative's continuing objection, Areal did not

attempt to find a different financial consultant nor did it

immediately file an application to employ PWC, disclosing the

existence of the dispute concerning PWC's qualification to be

employed. Instead, Areal did not file an employment application

(the "Employment Application") until May 4, 2000, approximately one

month after the bankruptcy petition was filed. During this period,

PWC continued to perform services for Areal, incurring substantial

fees and costs.

On May 24, 2000, the Office of the United States Trustee (the

"UST") and Creative filed objections to the Employment Application.

Both the UST and Creative contended that PWC's concurrent

representation of Creative and Areal created a conflict of interest

so that PWC was not qualified to be employed by Areal. Creative

represented that it had informed PWC that it would not waive the

conflict presented by this concurrent representation. The UST also

objected to the Employment Application's request for approval nunc

pro tunc as of the petition date.

PWC filed a response to the objections on June 14, 2000. In its

response, PWC contended that accountants should not be held to the

same ethical standards as attorneys because they perform a different

function. They do not "represent" or "advocate for" their clients as

do attorneys. As a consequence, a dual engagement such as the one

presented here would not prejudice either client as long as

JUL 23 2002

appropriate steps were taken to ensure that confidential information was not "shared." FWC indicated that it would take such steps.

A hearing was conducted with respect to the Employment Application on June 19, 2000, and the Court took the matter under submission. On June 28, 2000, the Court issued a written memorandum stating the terms upon which the Debtor would be permitted to employ FWC (the "Memorandum"). The Court concluded that FWC's concurrent employment by Creative and the Debtor constituted a conflict of interest which the creation of an ethical wall would not remedy.

However, the Court concluded that the Debtor could employ FWC if FWC agreed not to perform any services for Creative while employed by Aural and to create an "ethical wall" to protect against the disclosure of confidential information acquired during its prior engagement by Creative. If FWC accepted these conditions, the Court agreed that FWC could be employed on a nunc pro tunc basis, relating back to the bankruptcy petition date. The Court directed that any order employing FWC be "accompanied" by a declaration stating that FWC accepted these conditions.

According to Krane, shortly after reviewing the Memorandum, on or about July 6, 2000, she informed Hiraga and Lynde, who in turn informed Creative and Aural, that, because FWC was being compelled to cease providing services to Creative, FWC also felt compelled to cease providing services to Aural. Nevertheless, on July 7, 2000, Krane signed a declaration (the "Krane Declaration"), stating only that FWC would cease performing services for Creative and would create an "ethical wall" so that information acquired from Creative

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2002 JUL 23 COURT REPORT

1 would not be "shared" with Aural. The Krane Declaration did not
2 disclose that PWC would also resign from its engagement by Aural.

3 Moreover, the Krane Declaration did not "accompany" the proposed
4 form of order as directed by the Memorandum. The proposed form of
5 order (the "Retention Order") was not submitted for two more weeks.
6 Like the Krane Declaration, the Retention Order did not disclose
7 PWC's intent to resign.

8 On June 3, 2002, the Court issued an order, requesting
9 additional information in connection with this dispute. In response
10 to this order, PWC submitted a declaration executed by Krane in which
11 she contended that PWC's decision to resign had been promptly
12 communicated to the Court in the letter transmitting the Krane
13 Declaration to the Court (the "Transmittal Letter"). A copy of the
14 Transmittal Letter was attached to Krane's current declaration. The
15 second page of the Transmittal Letter did disclose PWC's intent to
16 resign. However, there was no copy of the Transmittal Letter in the
17 case file, and the Court has no recollection of ever having seen it.

18 For purposes of this dispute, the Court will assume that the
19 letter was actually sent to the Court with the Krane Declaration.³
20 However, the Court does not view this method of disclosure as a good
21 faith attempt to inform the Court. Moreover, although counsel for
22 the Committee appeared at the hearing on the UST's and Creative's
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26 ³At a telephonic hearing on July 10, 2002, PWC's counsel, the
author of the letter, represented to the Court that he had sent the
July 7, 2000 Letter to the Court with the Krane Declaration.

1 objection to the Employment Application, PWC's counsel failed to
2 serve her with a copy of the Transmittal Letter.⁴

3 On August 9, 2000, the Debtor filed an application to employ EYR
4 Restructuring LLC ("EYR") as its financial and restructuring
5 advisors, nunc pro tunc as of July 24, 2000, based on a letter of
6 understanding dated July 24, 2000. On September 15, 2000, the
7 Debtor filed an application to employ Neilson Elggren, LLP ("Neilson
8 Elggren") as its tax consultants and accountants, nunc pro tunc as of
9 September 1, 2000. Neither application disclosed that the Debtor's
10 need for these professionals' services was the result of PWC's
11 resignation immediately after obtaining the Retention Order.

12 On August 25, 2000, PWC filed a fee application (the "First Fee
13 Application"), seeking \$237,657.50 in fees and \$48,345.75 in expenses
14 for services performed and expenses incurred from April 5, 2000
15 through July 31, 2000. The First Fee Application did not expressly
16 disclose that PWC had previously resigned from its engagement by
17 Aureal. To the contrary, the First Fee Application was described as
18 an "interim" fee application, suggesting that PWC's services were
19 ongoing. The only clue to PWC's having resigned was on page 11, in
20 the narrative description of the services performed in Category E,
21 entitled "Transitional Procedures" as follows:

22 24. PwC played a significant role searching for
23 a suitable replacement as financial advisor to
24 Aureal. PwC transitioned the new financial

25 ⁴At the telephonic hearing on July 10, 2002, counsel for PWC
26 represented that the failure to serve the Committee's counsel was
an oversight. Again, for purposes of this dispute, the Court will
assume that this is true.

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advisors into their roles through updates on key issues including inventory valuations and the sale of Company assets as well as provide (sic) pertinent documents to facilitate their duties.

However, by this time, the Committee had apparently learned about PWC's resignation because, on September 14, 2000, the Committee filed an objection to the First Fee Application (the "First Fee Objection"). Aureal never scheduled a hearing with respect to the First Fee Application. Instead, on November 8, 2001, PWC filed the Second Fee Application.

The Second Fee Application sought final approval of fees and costs. The fees requested in the Second Fee Application were only slightly higher than those requested in the First Fee Application. The costs were approximately the same. On February 26, 2002, the Committee filed the Objection, raising the same grounds raised in the First Fee Objection: i.e., that the fees incurred litigating PWC's right to be employed by Aureal did not benefit the estate and, for other reasons as well, PWC's fees and costs were excessive.

PWC filed a reply (the "Reply") on March 8, 2002. In the Reply, PWC contended that the Objection should be overruled because, among other reasons, its services had been instrumental in obtaining an outstanding recovery for the Debtor's unsecured creditors: i.e., approximately an 83% dividend. According to PWC, by the time it resigned, it had already performed the essential services leading to this outstanding result. A hearing was conducted with respect to the Second Fee Application on April 26, 2002 and a subsequent telephonic hearing was conducted on July 10, 2002.

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DISCUSSION

Section 327 of the Bankruptcy Code permits a debtor-in-possession, with the court's approval, to employ an attorney, accountant, or other professional person that does not hold or represent an interest adverse to the bankruptcy estate and who is "disinterested." The term "disinterested" is defined in 11 U.S.C. § 101(14). To be disinterested, a person must not "have an interest materially adverse to the interest of the estate...." 11 U.S.C. § 101(14).

The Bankruptcy Code does not define the phrase "adverse interest." However, an "adverse interest" has been described as an "economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant, or;...a predisposition under circumstances that render such a bias against the estate." *In re Crivello*, 134 F.3d 831, 835 (7th Cir. 1998) (citing *In re Roberts*, 46 B.R. 815, 827 (Bankr.D.Utah (1985))." *In re Midway Industrial Contractors, Inc.*, 272 B.R. 651, 661-662. The Court views PWC's engagement by Creative, a major creditor and competitor of Aural, with which Aural was engaged in litigation, as an "economic interest" creating an "actual conflict" with the interests of the estate and therefore disqualifying PWC from employment by Aural.

The standards for employment applicable to attorneys apply equally to accountants. *Matter of BH & P, Inc.*, 119 B.R. 35, 42 (D. N.J. 1990). These standards:

1
2 "serve the important policy of ensuring that
3 all professionals pursuant to section 327(a)
4 tender undivided loyalty and provide untainted
5 advice and assistance in furtherance of their
6 fiduciary responsibilities. *Id.* [Crivello] at
7 836 (quoting *Rome v. Braunstein*, 19 F.3d 54, 58
8 (1st Cir. 1994)).

9 Midway, 272 B.R. at 662. These standards may not be ignored out of
10 expediency, based on the professional's confidence that, despite the
11 conflict, it can act fairly and impartially or based on the debtor-
12 in-possession's conclusion that the professional's services are
13 unique and urgently needed. See In re Gray, 64 B.R. 505, 507 (Bankr.
14 E.D. Mich. 1986) (accountants' fees were disallowed based on failure
15 to disclose \$11,000 pre-petition claim despite accountants'
16 confidence that "it could do the job for which it was retained fairly
17 and impartially....excellent working relationship [with debtor
18 and]...tax situation...so complex that to involve a different firm at
19 this time would be a waste of assets....").

20 "The rule of disqualification is to be rigidly applied; it
21 cannot be waived because of the integrity or ability of the
22 particular person or firm involved. [Citation omitted]" *Id.* at 507.
23 "[I]t is...plain that Congress, when it enacted § 327(a), made a
24 choice that efficiency would be sacrificed for the appearance of
25 propriety." Gray, at 508; see also In re Micro-Time Management
26 Systems, Inc., 102 B.R. 602, 605 (Bankr. E.D. Mich. 1989) (citing,
among other cases, In re Consolidated Bancshares, Inc., 785 F.2d
1249, 1256 n.6 (5th Cir. 1986) and In re Chicago Rapid Transit Co.,
93 F.2d 832, 838 (7th Cir. 1937)).

1 In the instant case, one day before the bankruptcy petition was
2 due to be filed, PWC learned of its ongoing engagement with Creative.
3 Nevertheless, it did not resign from its engagement by either client.
4 Krane contended that PWC did not perceive any conflict in the dual
5 engagement. PWC's perception (or lack thereof) cannot be squared
6 with the case law. See e.g., In re CVC, Inc., 120 B.R. 874, 876-877
7 (Bankr. N.D. Ohio 1990) (debtor-in-possession's accountant, who
8 concurrently performed services for individual related to
9 individual's purchase of estate assets, was not "disinterested" and
10 had "obvious" conflict of interest; consequently, court disallowed
11 all fees despite creditors' committee's withdrawal of its objection
12 based on accountant's agreement to reduce amount of request); In
13 re Micro-Time Management Systems, Inc., 102 B.R. 602, 608 (Bankr.
14 E.D. Mich. 1989) ("...Bohl's work for Comerica does present a
15 potential, if not an actual, conflict of interest. Comerica was a
16 major creditor of Micro-Time. The amount of its debt was very
17 strongly disputed and there had been an adverse relationship between
18 the principal of the debtor (Kirkland) and Comerica....Any hint of
19 any prior or ongoing relationship between Comerica and Bohl would
20 create at least the appearance of impropriety").

21 PWC appeared to base its belief that its dual engagement
22 presented no conflict on two assumptions, each of which the Court
23 views as erroneous. First, as noted above, PWC contended that
24 accountants should not be held to the same ethical standards as
25 attorneys because they do not "represent" or "advocate" for their
26 clients. In the past, some lower courts may have been persuaded by

1 this argument. See In re Aircraft Instrument and Development, Inc.,
2 151 B.R. 939, 943 (Bankr. D. Kan. 1993), cited in Matter of Trust
3 America Service Corp., 175 B.R. 413, 419, fn5 (Bankr. M.D. Fla.
4 1994). Whatever persuasive force this argument had in the past
5 (which this Court views as slight), it has no persuasive force at
6 present.

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8 Second, PWC contended that it could protect its two clients from
9 any prejudice as a result of the dual representation by creating an
10 "ethical wall." However, an "ethical wall" is typically only viewed
11 as sufficient protection against disclosure of confidential
12 information acquired from a past conflicting representation. It is
13 generally considered insufficient to protect against prejudice from
14 concurrent conflicting engagements. See Trust America, 175 B.R. at
15 421.

16 Based on its understanding of the law discussed above, the Court
17 concluded that PWC could be employed by Aureal only if it ceased
18 performing services for Creative and created an "ethical wall." The
19 Memorandum made it clear that the Court's decision to permit Aureal
20 to employ PWC was conditioned on PWC's compliance with these
21 requirements. Moreover, the Court's approval of PWC's employment on
22 a nunc pro tunc basis was clearly premised on the understanding that
23 PWC would provide ongoing services to Aureal on the conditions set
24 forth by the Court.⁵

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26 ⁵Viewed in hindsight, the Court believes that its decision to
approve PWC's employment on a nunc pro tunc basis was ill advised.
Given the clear nature of the conflict and Creative's objection to
Aureal's employment of PWC, Aureal's one month delay in filing the

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2 The Court's decision to approve PWC's employment on a
3 conditional basis presented PWC with a dilemma. Unless PWC's
4 employment was approved by the Court, it could not be paid the fees
5 and costs incurred up to that point (which fees and costs represent
6 the bulk of the compensation requested in the Second Fee
7 Application).⁶ Yet, perhaps out of fear of being sued by Creative,
8 PWC was unwilling to accept the conditions for its employment
9 established by the Court.⁷

10 PWC could have approached the dilemma in a straightforward
11 manner. It could have advised the Court of its unwillingness to
12 continue to provide services to Aural under the prescribed
13 conditions and asked the Court to reconsider its ruling and to permit
14 it to be employed only on a nunc pro tunc basis. The Court might not
15 have granted the request. However, this would have been the ethical

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17 Employment Application seems unreasonable. Moreover, in light of
18 subsequent delays, this delay now seems to have been designed to
19 obtain the benefit of PWC's services regardless of the outcome of
20 the dispute. Aural knew when it filed the case that it would only
21 need PWC's services for a brief period since it intended to sell
22 substantially all of its assets as soon as possible. Moreover, the
23 strategy appears to have worked. As noted by PWC, by the time it
24 resigned, PWC had provided the essential services that Aural
25 desired.

22 ⁶See In re Weibel, Inc., 176 B.R. 209, 211 (9th Cir.
23 1994) ("(c)court approval of employment...is the sine qua non to
24 counsel getting paid."); In re Monument Auto Detail, Inc., 226
25 B.R. 219, 224 (9th Cir. BAP 1998).

25 ⁷Given the case law cited above, PWC should have anticipated
26 the possibility that the Court would require it to choose between
its clients. It should have advised in connection with the
Employment Application the Court whether, if forced to choose, it
would choose Aural.

1 thing to do. Instead, as discussed above, PWC went to great lengths
2 to give the appearance that it was accepting the Court's conditions
3 despite its decision to resign. The only disclosure of its true
4 intent was "buried" on the second page of a transmittal letter not
5 even served on the Committee's counsel.

6 If the court has issued an order "erroneously" approving a
7 professional's employment, the court can revoke the order and deny
8 compensation. 11 U.S.C. § 328(c); see Midway, 272 B.R. at 663:
9 "Bankruptcy judges are given wide latitude in deciding whether a
10 denial of fees on an "erroneously employed" professional in whole or
11 in part is appropriate. Crivello, 234 F.3d at 839....The first
12 factor the bankruptcy court should consider before it elects to
13 disallow a portion of the requested fees is whether any evidence
14 exists to support an inference of intentional non-disclosure. *Id.*
15 If there is evidence in support of such an inference, the court
16 'should not fall prey to the professional's story of confusion,
17 miscommunication or negligence'. *Id.* The punishment for intentional
18 non-disclosure should be treated by the bankruptcy court as severely
19 as a fraud upon the court. *Id.*⁸ Based on the facts recited above,
20 its inferences from those facts, and the above-cited case authority,
21 the Court concludes that the Retention Order should be revoked.⁹

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23 ⁸This principle distinguishes this case from In re Thrifty Oil
24 Co., 205 B.R. 1009, 1015 (Bankr. S.D. Cal. 1997), in which PWC
25 failed to do an adequate conflicts check so as to identify a
26 disqualifying conflict but in which the court overruled this ground
for objection to PWC's request for fees.

⁹Given the Committee's request for only a partial reduction in
fees and costs, PWC may contend that it has not had an adequate

1 "Although some courts have allowed compensation to professionals
2 who later turned out not to have been qualified to serve as debtor in
3 possession," as the Gray court concluded (and this Court agrees),
4 "the better procedure is to not only set aside the order authorizing
5 the appointment of the professional, but also to disallow
6 compensation for services rendered in that ostensible capacity...."
7 Gray, 64 B.R. at 508. "[T]he denial of compensation [in such
8 circumstances] is prophylactic. It constitutes a deterrent.' *In re*
9 *Roberts*, 46 B.R. at 847.... 'the argument that possible harm...could
10 be counter-balanced by greater benefit [to the estate],...does not
11 cover the '...policy consideration which look to the harm to
12 representation, the loss of confidence, etc.' *Id.* (footnotes and
13 citations omitted)." Micro-Time Management, 102 B.R. at 608.

14 Given the case law cited above, PWC should have anticipated the
15 possibility that the Court would require it to choose between its two
16 clients. PWC should have advised the Court from the onset whether it
17 was willing to relinquish its engagement by Creative and perform
18 services solely for Aural. If PWC had disclosed that it was not
19 willing to do so, the Court would never have issued the Retention
20 Order. In that event, PWC could not have received any compensation
21 for post-petition services and costs. Any ruling other than a
22 complete denial of fees and costs would reward PWC's intentional
23

24 opportunity to address the basis for the Court's decision. The
25 Court would not agree with this contention. Moreover, PWC's right
26 to file a motion for reconsideration provides it an additional
opportunity to correct any facts that the Court has mistaken or to
persuade the Court that this ruling constitutes a manifest
injustice. See Fed.R.Bankr.Proc. 9024; Fed.R.Civ.Proc. 60(b).

1 nondisclosure and thus would be contrary to the strict standards set
2 forth in the case law.

3 **CONCLUSION**

4 For the reasons stated above, the Second Fee Application will be
5 denied in its entirety. PWC will be denied all compensation and all
6 reimbursement of costs. The Retention Order will be revoked, and PWC
7 will be ordered to disgorge the balance of the retainer received pre-
8 petition. Counsel for the Committee is directed to submit a proposed
9 form of order in accordance with this decision.

10 Dated: July 23, 2002

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12 United States Bankruptcy Judge

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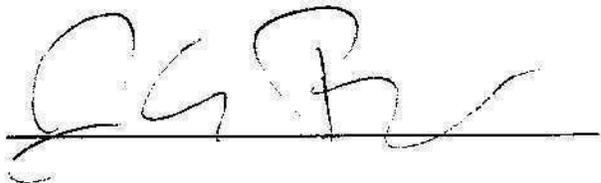
PROOF OF SERVICE

I, the undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Northern District of California at Oakland, hereby certify:

That I, in the performance of my duties as such clerk, served a copy of the foregoing document by depositing it in the regular United States mail at Oakland, California, on the date shown below, in a sealed envelope bearing the lawful frank of the Bankruptcy Court, addressed as listed below.

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

Dated: July 5, 2002



Office of the United States Trustee
Document placed in UST mailbox at
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7
8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

FILED
AUG 07 2002
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

10 In re
11 AUREAL, INC., d/b/a Silo.com, f/k/a Aureal
12 Semiconductor, Inc., f/k/a Media Vision
13 Technology, Inc.,
14 Debtor.

Case No. 00-42104-T11
Chapter 11

**ORDER DENYING SECOND AND
FINAL FEE APPLICATION OF
PRICEWATERHOUSECOOPERS LLP,
DIRECTING REVOCATION OF
RETENTION AND ORDERING
DISGORGEMENT**

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17 The Second and Final Fee Application of PriceWaterhouseCoopers LLP ("PWC")
18 for Allowance and Payment of Compensation and Reimbursement of Expenses (the "Second Fee
19 Application") having come before the Court and the Court having issued its Memorandum of
20 Decision on July 23, 2002,

21 IT IS HEREBY ORDERED:

- 22 1. The Second Fee Application is denied in its entirety and PWC is denied all
23 compensation and all reimbursement of costs;
24 2. The Order Approving Application to Employ PriceWaterhouseCoopers
25 LLP Nunc Pro Tunc as Accountants and Financial Advisers to the Debtor and Debtor in
26 Possession, filed July 26, 2000, is revoked; and

ORDER DENYING SECOND AND FINAL FEE APPLICATION OF PRICEWATERHOUSECOOPERS LLP
DIRECTING REVOCATION OF RETENTION AND ORDERING DISGORGEMENT (Case No. 00-42104 T)

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3. PWC is ordered to disgorge \$94,735.36, the balance of the retainer received pre-petition.

IT IS SO ORDERED.

Dated: Aug. 7, 2002

Georgio Tchirbousky
United States Bankruptcy Judge

APPROVED AS TO FORM:
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By Montrey K. Rehfeld
Montrey K. Rehfeld
Attorneys for Price WaterhouseCoopers LLP

HENNIGAN, BENNETT & DORMAN

By _____
Sidney P. Levinson
Attorneys for Debtor and Debtor-in-Possession

JUL-26-2002 5:07PM

BINGHAM SCUTCHEN - SF

NO. 6988 P. 4/4

1 3. PWC is ordered to disgorge \$94,735.36, the balance of the retainer
2 received pre-petition.

3 IT IS SO ORDERED.

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5 Dated: _____

United States Bankruptcy Judge

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APPROVED AS TO FORM:

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____
Jeffrey K. Rehfeld
Attorneys for PriceWaterhouseCoopers LLP

HENNIGAN, BENNETT & DORMAN

By *Signy P. Levinson*
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6 Debtor and Debtor in Possession

7
8 UNITED STATES BANKRUPTCY COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 In re) Case No. 00-42104-T11
12)
12 AUREAL INC., d/b/a SILO.COM, f/k/a AUREAL) (Chapter 11)
SEMICONDUCTOR, INC., f/k/a MEDIA VISION)
13 TECHNOLOGY, INC., a Delaware corporation,) **AMENDED DISCLOSURE STATEMENT IN**
14 Debtor.) **SUPPORT OF DEBTOR'S SECOND AMENDED**
) **PLAN OF REORGANIZATION**
15)
15) Date: July 19, 2001
16) Time: 3:00 p.m.
16) Place: Courtroom 201
17) 1300 Clay Street
) Oakland, CA 94612

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HENNIGAN, BENNETT & DORMAN

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1 **I. INTRODUCTION**

2 Aureal Inc., d/b/a Silo.com, f/k/a Aureal Semiconductor, Inc., f/k/a Media Vision Technology, Inc. ("Aureal" or
3 the "Debtor") filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code")
4 on April 5, 2000 (the "Petition Date"), thereby commencing case number 00-42104-T11 (the "Bankruptcy Case")
5 currently pending before the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy
6 Court"). Since the Petition Date, the Debtor has managed its affairs as a debtor and debtor in possession pursuant to
7 sections 1107 and 1108 of the Bankruptcy Code.

8 The Debtor submits this Disclosure Statement to holders of impaired Claims and Equity Interests pursuant to
9 Bankruptcy Code section 1125 for the purpose of soliciting acceptances of the Second Amended Plan of Reorganization
10 (the "Plan") proposed by the Debtor and filed with the Bankruptcy Court. A copy of the Plan is attached hereto as
11 Exhibit A. The Bankruptcy Court has conditionally determined that this Disclosure Statement contains "adequate
12 information" within the meaning of section 1125 of the Bankruptcy Code and has authorized the Debtor to transmit it to
13 holders of impaired Claims and Equity Interests in connection with the solicitation of votes with respect to the Plan.
14 Unless otherwise defined herein, all capitalized terms contained herein shall have the meanings ascribed to them in the
15 Plan.

16 As described more fully elsewhere in this document, the Debtor believes that the Plan provides the largest and
17 earliest possible recoveries to holders of Claims and Equity Interests, that acceptance of the Plan is in the best interests of
18 all parties, and that any alternative would result in further delay, uncertainty, expense, and ultimately, smaller
19 distributions to holders of Allowed Unsecured Claims and Equity Interests (i.e., shareholders).

20 **A. The Purpose Of This Disclosure Statement**

21 The Bankruptcy Code generally requires that the proponent(s) of a plan of reorganization prepare and file with
22 the Bankruptcy Court a "disclosure statement" that provides information of a kind, and in sufficient detail, that would
23 enable a typical holder of claims or equity interests in a class impaired under that plan to make an informed judgment
24 with respect to the plan. This Disclosure Statement provides such information, as well as information regarding the
25 deadlines for casting ballots with respect to the Plan, the deadlines for objecting to confirmation of the Plan, the
26 requirements that must be satisfied in order for the Bankruptcy Court to confirm the Plan, and other relevant information.
27 Parties in interest should read this Disclosure Statement, the Plan, and all of the accompanying exhibits in their entirety
28 in order to ascertain:

How the Plan will affect their Claims against and Equity Interests in the Debtor;

Their rights with respect to voting for or against the Plan;

Their rights with respect to objecting to confirmation of the Plan; and

How and when to cast a ballot with respect to the Plan.

The Disclosure Statement, however, cannot and does not provide holders of Claims and Equity Interests with
legal or other advice, or inform such parties of all aspects of their rights. Claimants are advised to consult with their
lawyers and/or financial advisors to obtain specific advice regarding how the Plan will affect them and regarding their
best course of action with respect to the Plan.

The Disclosure Statement has been prepared by the Debtor in good faith and in compliance with applicable
provisions of the Bankruptcy Code. Based upon information currently available, the Debtor believes that the information
contained in this Disclosure Statement is correct as of the date of its filing. The Disclosure Statement, however, does not
and will not reflect events that occur on or after May 9, 2001 (and certain earlier dates where indicated herein), and the
Debtor assumes no duty and presently does not intend to prepare or distribute any amendments or supplements to reflect
such events.

1 **B. Summary Of Entities Entitled To Vote On The Plan And Of Certain Requirements**

2 Only holders of Allowed Claims in Classes 3 and 4 and Holders of Allowed Equity Interests in Class 5
3 (collectively the "Voting Classes"), are entitled to vote on the Plan because such Classes are: (i) impaired under the Plan
4 within the meaning of section 1124 of the Bankruptcy Code; and (ii) may receive distributions of property under the Plan
5 and therefore are not deemed to have rejected the Plan under Section 1126(g) of the Bankruptcy Code. Classes 1 and 2
6 are not impaired under the Plan, and holders of Allowed Claims in such Classes are deemed to have accepted the Plan
7 and therefore are not entitled to vote on the Plan. Members of non-voting Classes, however, may object to confirmation
8 of the Plan. (See Section III for a description of the various Classes of Claims and Equity Interests and of the treatment
9 of such Claims and Equity Interests under the Plan, and see Section IV for an explanation of impairment and of the
10 entities that are entitled to vote on the Plan.)

11 The Bankruptcy Court may confirm the Plan only if at least one (1) Class of impaired Claims has voted to
12 accept the Plan (without counting the votes of any insiders whose Claims are classified within that Class) and if certain
13 statutory requirements are met as to both non-consenting members within a consenting Class and as to dissenting Classes.
14 A Class of Claims has accepted the Plan only when at least one-half (1/2) in number and at least two-thirds (2/3) in dollar
15 amount of the Allowed Claims actually voting in that Class vote in favor of the Plan. A Class of Interests has accepted
16 the Plan when at least two-thirds (2/3) in amount of the Allowed Interests actually voting in that Class vote in favor of
17 the Plan.

18 In the event of a rejection of the Plan by one or more Voting Classes, the Debtor may request that the
19 Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, which permits
20 confirmation notwithstanding such rejection if the Bankruptcy Court finds that the Plan "does not discriminate unfairly"
21 and is "fair and equitable" with respect to the rejecting Classes.

22 **C. Voting Procedures, Balloting Deadline, Confirmation Hearing, And Other Important Dates,
23 Deadlines And Procedures**

24 **1. Voting Procedures And Deadlines**

25 The Debtor has provided copies of this Disclosure Statement and ballots (which include detailed voting
26 instructions) to all known holders of impaired Claims or Interests in the Voting Classes. Those holders of an Allowed
27 Claim or Equity Interest in a Voting Class who seek to vote to accept or reject the Plan must complete the enclosed ballot
28 and return it in the enclosed envelope to Ms. Joanne Stern, Hennigan, Bennett & Dorman, 601 South Figueroa Street,
Suite 3300, Los Angeles, California 90017 (the "Ballot Tabulator"), so that it actually is received by no later than the
Balloting Deadline (as defined below). Ballots do not constitute proofs of Claim or Equity Interests and must not be
returned directly to the Debtor, the Official Committee of Unsecured Creditors (the "Committee"), counsel for the
Committee, or the Bankruptcy Court. Readers are encouraged to read and review their ballots carefully.

All ballots, including ballots transmitted by facsimile, must be completed, signed, returned to, and actually
received by the Ballot Tabulator by not later than July 9, 2001, at 4:00 p.m. Pacific Daylight Time (the "Balloting
Deadline"). Ballots received after the Balloting Deadline, and ballots returned directly to the Debtor, the Committee,
counsel for the Committee, the Bankruptcy Court, or any entity other than the Ballot Tabulator, will not be counted in
connection with confirmation of the Plan.

**2. Date Of The Confirmation Hearing And Deadlines For Objection To Confirmation Of
The Plan**

The hearing to determine whether the Bankruptcy Court will confirm the Plan (the "Confirmation Hearing") will
commence on July 19, 2001, at 3:00 p.m. Pacific Daylight Time in the Courtroom of the Honorable Leslie Tchaikovsky,
United States Bankruptcy Judge for the Northern District of California, 1300 Clay Street, Courtroom 201, Oakland,
California. The Confirmation Hearing may be continued from time to time by announcement in open Court without
further notice.

Any objections to confirmation of the Plan must be filed with the Bankruptcy Court and served on the following
entities (collectively, the "Notice Parties") so as to be received by no later than July 9, 2001 at 4:00 p.m. Pacific Daylight

1 Time: (a) Aureal Inc., 7034 Commerce Circle, Suite H, Pleasanton, California 94588, Attention: Steve Mitchell;
2 (b) Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017.
3 Attention: Sidney P. Levinson, Esq.; (c) McCutchen, Doyle, Brown & Enersen LLP, Three Embarcadero Center,
4 Suite 1800, San Francisco, California 94111, Attention: Randy Michelson, Esq.; (d) McDermott, Will & Emory,
5 2049 Century Park East, 34th Floor, Los Angeles, California 90067, Attention: Eric Reimer, Esq.; and (e) The Office of
6 the United States Trustee, 1301 Clay Street, Suite 690N, Oakland, California 94612-5217. Attention: Mark Pope, Esq.
7 Objections that are not timely filed and served may not be considered by the Bankruptcy Court. *Please refer to the*
8 *accompanying notice of the Confirmation Hearing for specific requirements regarding the form and nature of objections*
9 *to confirmation of the Plan.*

6 **D. Important Notice And Cautionary Statement**

7 The historical financial data relied upon in preparing the Plan and this Disclosure Statement is based upon the
8 Debtor's books and records. The liquidation analysis, estimates, and other financial information referenced in this
9 Disclosure Statement or attached hereto as exhibits have been developed by the Debtor with the assistance of its
10 professional advisors. Although these professional advisors assisted in the preparation of this Disclosure Statement, in
11 doing so such professionals relied upon factual information and assumptions regarding financial, business, and
12 accounting data provided by the Debtor and third parties, much of which information has not been audited. *The*
13 *professional advisors of the Debtor have not independently verified such information and, accordingly, make no*
14 *representations as to its accuracy.* Moreover, although reasonable efforts have been made to provide accurate
15 information, the Debtor has not conducted an audit of its financial books and records since the resignation of its officers
16 and directors in March 2000. Accordingly, the Debtor cannot warrant or represent that the information in this Disclosure
17 Statement, including any and all financial information, is without inaccuracy or omissions, or that actual values or
18 distributions will comport with the estimates set forth herein.

13 No entity may rely upon the Plan or this Disclosure Statement or any of the accompanying exhibits for any
14 purpose other than to determine whether to vote in favor of or against the Plan. Nothing contained in such documents
15 constitutes an admission of any fact or liability by any party, and no such information will be admissible in any
16 proceeding involving the Debtor, the Committee, or any other person, nor will this Disclosure Statement be deemed
17 evidence of the tax or other legal effects of the Plan on holders of Claims or Equity Interests in the Bankruptcy Case.

16 **CAUTIONARY STATEMENT**

17 Certain information included in this Disclosure Statement and its exhibits contains forward looking statements
18 within the meaning of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended.
19 Such forward looking information is based on information available when such statements are made and is subject to
20 risks and uncertainties that could cause actual results to differ materially from those expressed in the statements.

20 **E. Additional Information**

21 If you have any questions about the procedures for voting on the Plan, desire another copy of a ballot, or seek
22 further information about the timing and deadlines with respect to confirmation of the Plan, please write to the Ballot
23 Tabulator at the address set forth above. The Ballot Tabulator, however, cannot and will not provide holders of Claims
24 or Equity Interests with any advice, including advice regarding how to vote on the Plan or the legal effect that
25 confirmation of the Plan will have upon Claims against or Interests in the Debtor.

23 **II. BACKGROUND INFORMATION**

24 **A. The Debtor's Prepetition Business And Operations**

25 **1. The Debtor's Prior Bankruptcy Case**

26 Media Vision Technology Inc. ("Media Vision"), as predecessor to the Debtor, was formed in 1990 for the
27 purpose of designing, manufacturing and marketing multimedia computing products, including circuit boards, sub-
28 systems and chip sets, that added enhanced sound and graphic capabilities to IBM PC and compatible personal

1 computers. Media Vision acquired Pellucid, Inc. ("Pellucid") in May 1993 for the purpose of developing graphic
2 accelerator technology for use in Media Vision's graphic accelerator board products.

3 On or about July 25, 1994, Media Vision and Pellucid filed voluntary petitions for bankruptcy relief under
4 chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California,
5 Oakland Division, Case Nos. 94-45107 and 94-45108, respectively. The reasons precipitating the Media Vision and
6 Pellucid bankruptcy filings, as set forth in more detail in the "Disclosure Statement for Debtors' Second Amended Joint
7 Plan of Reorganization," a copy of which was filed with the bankruptcy court on or about November 10, 1994, include a
8 combination of, among other things, significant operating losses suffered by the Debtors during fiscal year 1993 and the
9 first two quarters of 1994, a dramatic decrease in value of Media Vision's shares and corresponding loss of investor
10 confidence, loss of the Debtors' senior management and many employees, an investigation that was initiated by the SEC
11 and the Department of Justice into alleged fraudulent conduct relating to the retroactive change in the 1993 financial
12 results, and a multitude of lawsuits pending against Media Vision and certain of its directors and officers based on
13 alleged securities fraud and collection actions by creditors.

14 As part of their Plan of Reorganization, Media Vision and Pellucid were substantively consolidated and merged.
15 Media Vision, as the sole remaining entity, emerged from chapter 11 bankruptcy protection in December 1994.

16 2. The Debtor's Name Changes and the Public Trading of Its Stock

17 In August 1995, Media Vision announced that it was divesting its retail operations and implementing a business
18 plan based on the sale of audio semiconductor solutions for personal computers and other consumer electronic markets,
19 as well as licensing related audio technologies. In conjunction with its change in business strategy, the reorganized
20 company formally changed its name to Aural Semiconductor Inc. at its annual stockholders meeting in May 1996.

21 Subsequently, in May 1999, the Debtor's stockholders voted to change the name of the company from Aural
22 Semiconductor Inc. to Aural Inc. in an effort to explore more business opportunities and to not be limited by the
23 "semiconductor" name.

24 Prior to the Petition Date, the Debtor's Common Stock was traded publicly on the OTC Bulletin Board with the
25 symbol AURL. Shortly after the filing of the chapter 11 petition, however, the Debtor's Common Stock was delisted and
26 is no longer traded on the OTC Bulletin Board.

27 3. The Debtor's General Business Operations Prior To The Petition Date

28 Prior to the Petition Date, the Debtor was a leading provider of advanced digital audio imaging solutions, which
is the process of creating a highly realistic audio experience by closely simulating the real world physics of audio.
Specifically, the Debtor's business involved the development and sale of audio processing semiconductor chips and
audio-based add-in cards primarily for use in the personal computer market, as well as the licensing of technology that
was designed to define and develop advanced audio standards in the marketplace. As of the Petition Date, the Debtor
had developed a series of audio products based upon its proprietary A3D technologies, and was in the process of
integrating its A3D technologies with internet based applications to increase its consumer base.

Prior to the Petition Date, the Debtor employed approximately sixty-one (61) employees. The majority of the
Debtor's operations were located in approximately 103,000 square feet of leased office and warehouse space located in
Fremont, California. Additional office space was leased in Austin, Texas. At these offices, the Debtor conducted sales,
shipping, production, research and development for its proprietary technology.

The Debtor also has two (2) wholly-owned subsidiaries, neither of which are debtors in this Bankruptcy Case:
Crystal Rivers Engineering, Inc. ("CRE") and Aural Limited (collectively, the "Affiliates"). CRE, a privately held firm
that was founded in 1987, specialized in the development of 3D audio technologies. In May 1996, the Debtor acquired
100% ownership of CRE for the purpose of incorporating CRE's 3D audio technology into a number of its future
products. As such, CRE has been an inactive corporation since its acquisition by the Debtor in 1996, and does not have
any assets. Aural Limited, located in Hong Kong, was established in March 1998 as an overseas sales, technical
support and field engineering office. Although the Reorganized Debtor will continue to own and operate Aural Limited,
it will endeavor to wind-down and ultimately deregister that business following confirmation of the Plan.

1 For the three years prior to the Petition Date, the Debtor recorded operating losses as a result of, among other
2 things, the decision in mid-1995 to concentrate all of the company's resources on development of audio technologies and
3 semiconductor solutions for the personal computer and consumer electronics markets, which led to a period of increased
expenses for product development without significant corresponding revenues. Since the company's emergence from
chapter 11 protection, the Debtor has recorded an accumulated deficit of \$201 million as of January 2, 2000, the end of
fiscal year 1999.

4 In order to fund its business operations, on or about June 5, 1998, Aureal executed a Loan and Security
5 Agreement, as amended and modified from time to time (collectively, the "Prepetition Credit Agreement"), with various
6 financial institutions (collectively, the "Original Lenders") and Transamerica Business Credit Corporation as the
7 administrative agent (the "Agent"). Through the Prepetition Credit Agreement, the Original Lenders provided a
revolving loan commitment with a maximum loan amount that changed periodically pursuant to numerous amendments
to the Prepetition Credit Agreement.

8 As security for the Debtor's obligations under the Prepetition Credit Agreement, the Debtor executed a Stock
9 Pledge Agreement, dated June 5, 1998, whereby it pledged the stock of its two Affiliates in favor of the Agent. The
10 Debtor also granted security interests in favor of the Agent on substantially all of its assets, including, without limitation,
11 copyrights, patents, trademarks, books, records, accounts (including deposit accounts located at Wells Fargo Bank),
general intangibles, negotiable instruments, and proceeds (collectively, together with the aforementioned pledge of stock,
the "Prepetition Collateral"), through the execution of the Prepetition Credit Agreement, as well as a Copyright Security
Agreement, Patent Security Agreement, Trademark Security Agreement, and Deposit Security Agreement, all dated
June 5, 1998.

12 On March 17, 2000, various entities related to, affiliated with, or managed by Oaktree Capital Management
13 LLC, specifically OCM Opportunities Fund II, L.P., TCW Special Credits Fund IIIb, TCW Special Credits Trust,
14 TCW Special Credits Trust IIIb, The Board of Trustees of the Delaware State Employees' Retirement Fund,
Weyerhaeuser Company Master Retirement Trust, and Columbia/HCA Master Retirement Trust (collectively, the
15 "Lenders"), entered into an assignment and acceptance agreement with the Original Lenders and the Agent, whereby, the
Original Lenders assigned to the Lenders their rights against the Debtor under the Prepetition Credit Agreement. The
16 Lenders, in turn, assumed the obligation to fund the Prepetition Credit Agreement. In addition, on March 17, 2000, the
Agent resigned and OCM Administrative Services II, LLC accepted the position as successor agent (the "Successor
Agent").

17 As of the Petition Date, the Debtor believes that it was indebted to the Lenders in the aggregate principal
18 amount of \$18,151,739, exclusive of accrued interest and alleged fees and expenses, under the Prepetition Credit
Agreement.

19 **B. The Debtor's Financial Difficulties And Significant Events Leading To The Commencement Of**
20 **The Bankruptcy Case**

21 **1. The Debtor's Litigation With Its Principal Market Competitor**

22 As more fully described below, the Debtor experienced significant financial difficulties and operated at a loss
23 for the three (3) years prior to the filing of this Bankruptcy Case. These losses resulted from, among other things,
substantial litigation expenses incurred by the Debtor predominantly in the defense of various patent claims brought
against the Debtor relating to its technology.

24 Specifically, in February 1998, Creative Technology Ltd. ("Creative") and its subsidiary E-Mu Systems, Inc.
25 ("E-Mu"), competitors of the Debtor, brought a lawsuit against the Debtor alleging patent infringement in the United
States District Court for the Northern District of California. In October 1998, Creative Labs, Inc., the U.S. based
26 subsidiary of Creative, filed a second lawsuit against the Debtor alleging false advertising and unfair business practices
(the "Creative Labs Litigation"). In December 1998, the Debtor filed a lawsuit against Creative and E-Mu for infringing
27 on two of its patents relating to its proprietary A3D technology (collectively, the three lawsuits are referred to as the
"Creative Litigation").

1 The Creative Litigation was enormously expensive. As of the Petition Date, the Debtor had paid, in cash and
2 stock options, an estimated \$6 million in attorneys' fees to Orrick, Herrington & Sutcliffe LLP ("Orrick"), counsel to the
3 Debtor in connection with the Creative Litigation. Orrick also has asserted a claim against the Debtor in the Bankruptcy
4 Case for an additional approximately \$1.5 million of alleged outstanding attorneys' fees and other expenses incurred
5 between December 1999 and April 2000, which the Debtor disputes. In addition to the huge litigation expenses to
6 defend itself, the Creative Litigation damaged the Debtor's business relationship with existing and potential customers
7 and distracted the company and its employees from the business.

5 2. The Debtor's Loss Of Its Senior Management And Litigation Counsel

6 On or about March 24, 2000, the Debtor's management, including its key officers and directors, resigned from
7 employment with the Debtor. This loss of key personnel not only had a demoralizing effect on the remaining employees,
8 several of whom resigned shortly thereafter, but it also had a materially adverse effect on the Debtor's business and its
9 ability to effectively continue its operations. With the exception of one officer's position, namely the position of Chief
10 Operating Officer that was subsequently filled by Steve Mitchell following management's resignation, the prepetition
11 management team of the Debtor has not been replaced.

12 In addition to the loss of its management, on April 4, 2000, Orrick unexpectedly submitted an *ex parte* motion
13 to withdraw as Debtor's counsel in the Creative Litigation. The certificate of service attached to the motion revealed that
14 Bruce Bennett of Hennigan, Bennett & Dorman had been retained by the Debtor as proposed reorganization counsel.
15 Prior to the filing of Orrick's motion, the Debtor was exploring its business alternatives, which included the possibility of
16 filing for chapter 11 bankruptcy protection. However, the fact that the Debtor had retained reorganization counsel was at
17 that time confidential information that had been provided to Orrick in confidence. Unfortunately, Orrick's *ex parte*
18 motion, with the certificate of service revealing the retention of Mr. Bennett and his law firm, although purportedly filed
19 under seal, was served on Creative's counsel. Faced with this unexpected, unauthorized and premature disclosure by
20 Orrick of the Debtor's business strategy, as well as the threat of losing the services of its legal counsel in the Creative
21 Litigation (which had incurred more than \$7 million in fees during the past sixteen (16) months alone), the Debtor had no
22 choice but to move immediately to file for bankruptcy protection, which it did the following day on April 5, 2001.

23 Orrick disputes the Debtor's description of these events.

24 3. Debtor's Marketing Of Its Business And Assets

25 The negative impact of the Creative Litigation adversely affected the Debtor's cash flow, and the Debtor
26 realized that it might become unable to service its indebtedness to the Lenders, or otherwise satisfy its debts as they
27 became due. Accordingly, beginning in late 1999, the Debtor began to explore strategic alternatives to its continued
28 operation as a going concern, including commencing discussions with a number of third-parties toward potential
29 transactions to provide additional capital to continue and grow the Debtor's operations. These early discussions
30 occurred primarily with Creative (which discussions also focused on the Creative Litigation), Cirrus Logic, and Intel,
31 Inc. Unfortunately, during the course of these preliminary discussions, the Debtor's entire senior management team
32 resigned. The loss of such key personnel seriously impaired the Debtor's ability to negotiate a favorable going concern
33 sale of its assets with a functioning management team and business plan in place.

34 C. The Current Bankruptcy Case

35 In order to preserve its assets and adjust to the loss of its senior management and threatened loss of its litigation
36 counsel, and in light of the unauthorized and premature disclosure by Orrick that the Debtor had retained Hennigan,
37 Bennett & Dorman as reorganization counsel, the Debtor filed a voluntary petition for relief under chapter 11 of the
38 Bankruptcy Code in the Northern District of California on April 5, 2000. The Bankruptcy Case is assigned to the
39 Honorable Leslie Tchaikovsky, United States Bankruptcy Judge for the Northern District of California.

1 1. **Matters Relating To The Administration Of The Debtor's Estate And The Debtor's**
2 **Postpetition Business Operations**

3 a) **Schedules Of Assets And Liabilities And Statements Of Financial Affairs**

4 Pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure, the Debtor filed separate Schedules of Assets and Liabilities (the "Schedules") and separate Statements of Financial Affairs on May 15, 2000. As set forth in the Schedules, the Debtor estimated that it had total liabilities in excess of \$24.5 million.

5 b) **Appointment of the Official Committee of Unsecured Creditors**

6 On April 18, 2000, the United States Trustee for the Northern District of California appointed, pursuant to section 1102 of the Bankruptcy Code, the following members to act as the Official Committee of Unsecured Creditors (the "Committee") in the Bankruptcy Case: (i) Edmond Wong for Ocean Data Products, Ltd.; (ii) Huai-Jen Lu for UMC (Group) USA; (iii) Terry Campbell for Flatland Online, Inc.; (iv) Juan Gonzales for KPMG, LLP; (v) O'Neil Petrone for Finova Capital Corporation; (vi) R. Scott Holmgren for Highsoft, Inc.; and (vii) John Lysdahl for Imagine Media, Inc.

7 c) **Postpetition Debtor In Possession Financing**

8 On the Petition Date, the Debtor filed a motion for interim approval of a stipulation between the Debtor and the Lenders to use cash collateral. The Court approved, initially on an interim basis and on May 1, 2000, on a final basis, a cash collateral stipulation that provided the Debtor with authority to use cash collateral in the ordinary course of business and the provision of replacement liens to the Lenders to the extent of the diminution of such collateral.

9 Thereafter, the Debtor filed a financing motion seeking the Court's approval of a stipulation between the Debtor, the Lenders, and the Committee, dated September 6, 2000, which granted the Debtor authority to borrow up to \$500,000 from the Lenders (the "DIP Financing Stipulation"). Following a hearing, and by order entered September 8, 2000, the Court approved interim financing from the Lenders in an amount not to exceed \$275,000, pending a final hearing. The Court further ordered, in response to an objection asserted at the hearing by Orrick, that the interest rate charged by the Lenders could not exceed the maximum legal limit under applicable law. Orrick subsequently filed a written objection to final approval of the DIP Financing Stipulation, which was resolved through a letter agreement executed on September 27, 2000, between Orrick and the Lenders (the "Letter Agreement"). On October 2, 2000, the Court entered a final order approving the Stipulation (the "DIP Financing Order"), as modified by the Letter Agreement, authorizing the Debtor to borrow a maximum of \$500,000 under a debtor in possession facility (the "DIP Facility") funded by the Lenders.

10 Under the DIP Facility, the Debtor borrowed \$500,000 from the Lenders. In accordance with the DIP Financing Order, and in order to prevent the accrual of additional interest, on November 6, 2000, the Debtor paid the Lenders the outstanding amount under the DIP Facility, which amount, with interest, totaled \$505,828.48 as of that date.

11 d) **Retention Of Professionals**

12 Following the Petition Date, pursuant to sections 327 and 328 of the Bankruptcy Code, the Court approved the employment of the following counsel, financial advisors, and other professionals by the Debtor and the Committee:

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<u>Professional</u>	<u>Nature of Representation</u>	<u>Retention Order Date</u>
Hennigan, Bennett & Dorman	Reorganization Counsel and Special Litigation Counsel for the Debtor	June 19, 2000 and October 25, 2000
McCutchen, Doyle, Brown & Enersen, LLP	Counsel to the Committee	August 3, 2000

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<u>Professional</u>	<u>Nature of Representation</u>	<u>Retention Order Date</u>
PricewaterhouseCoopers LLP	Accountants and Financial Advisors for the Debtor	July 26, 2000
E&Y Capital Advisors LLC	Financial and Restructuring Advisors for the Debtor	October 27, 2000
CB Richard Ellis, Inc.	Real Estate Broker for the Debtor	October 25, 2000
Ritter, Van Pelt and YI LLP	Special Patent Counsel for the Debtor	July 24, 2000
Gallagher & Lathrop	Special Patent Counsel for the Debtor	August 1, 2000
Mohler, Nixon & Williams	Auditors of the Tax Deferred Savings Plan of the Debtor	July 24, 2000
Neilson Elggren, LLP	Tax Consultants and Accountants for the Debtor	September 21, 2000
Sidley & Austin	Special Employee Benefits Counsel	May 3, 2001
Sall & Smolowitz	Special Litigation Counsel	May 14, 2001

From the Petition Date through April 30, 2001, pursuant to orders of the Bankruptcy Court, the Debtor's Estate has paid approximately \$1.3 million in fees and expenses to approved professionals (exclusive of any prepetition retainers held by certain of the professionals), as further set forth on Exhibit B hereto. The Debtor further estimates that approximately \$1.03 million in fees and expenses of Professional Persons retained in the Chapter 11 Case have accrued but remain unpaid as of May 1, 2001. The majority of these professional fees and expenses were incurred in connection with the Debtor's sale to Creative of substantially all of its assets (described further in Section C.2 below). Pursuant to sections 330 and 331 of the Bankruptcy Code, the fees and expenses of all professionals are subject to the interim and final review and approval of the Court. (See Section III.A for a description of provisions of the Plan regarding the deadlines for the filing of final fee applications by Professional Persons in the Bankruptcy Case.)

e) The Debtor's Unexpired Nonresidential Real Property Leases

As of the Petition Date, the Debtor was party to the following two agreements for the lease of nonresidential real property: (i) a sublease agreement, dated June 7, 1999 (the "Sublease"), with Lam Research Corporation ("Lam") for the lease of the Debtor's headquarter and warehouse facilities located in Fremont, California (the "Fremont Premises"); and (ii) a lease agreement, dated August 28, 1995, with USAA Stratum Executive Center for the lease of auxiliary commercial space located in Austin, Texas (the "Austin Premises").

(1) Rejection of the Austin Premises

In an effort to consolidate its business operations and decrease its administrative expenses, on or about April 21, 2000, the Debtor surrendered the Austin Premises to the landlord. Shortly thereafter, on May 4, 2000, the Debtor moved to reject the lease governing the Austin Premises pursuant to section 365 of the Bankruptcy Code. The rejection of the Austin Premises was approved pursuant to order of the Bankruptcy Court on June 5, 2000.

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(2) Extension Of Deadline To Assume Or Reject Leases

The Sublease governing the Fremont Premises was believed by the Debtor to be a valuable asset of the bankruptcy estate because the rental payments provided for under the Sublease were significantly under market, meaning that any assignment of the Sublease to a third party likely would generate additional value for the benefit of the Estate. Thus, in order to allow it adequate opportunity to sell the assets of the estate and to evaluate and market the Fremont Premises, the Debtor brought a motion to extend the deadline within which it was required to assume or reject the nonresidential lease governing the Fremont Premises. After resolution of objections by the landlord of the Fremont Premises, the Debtor was successful in obtaining two extensions of time, up to and including December 22, 2000, to allow for the orderly sale of substantially all of its assets and for the marketing of the Sublease to third parties.

(3) The Rejection Agreement with Lam

To facilitate its marketing efforts, on June 23, 2000, the Debtor applied to the Bankruptcy Court to employ CB Richard Ellis, Inc. as its real estate broker, which employment was approved by the Bankruptcy Court on October 25, 2000. On July 18, 2000, the Debtor filed a motion to sell certain of its assets to Guillemot Corporation ("Guillemot") for the sum of \$8 million (the "Sale Motion"), which assets included, among other things, approximately 10,000 square feet of the Fremont Premises to Guillemot through an assignment of the Sublease. The Debtor, through its real estate broker, also actively marketed the remaining space to other interested third parties. After receiving competing offers from potential tenants, on August 4, 2000, the Debtor executed a letter of intent with Centillium Communications, Inc. ("Centillium"), whereby the Debtor proposed to assign approximately 70,000 square feet of the Fremont Premises to Centillium. On or about August 7, 2000, the Debtor filed a "Motion for Order Authorizing the Assumption and Assignment of Nonresidential Real Property Lease" with the Bankruptcy Court seeking authority to assume the Sublease, and to assign the Sublease *pro tanto* to Guillemot and Centillium. In connection with the Sale Motion, Lam objected to the anticipated *pro tanto* assignment of the Sublease.

As further discussed below, Guillemot was not the successful bidder at the hearing on the Sale Motion. In addition, subsequent to the hearing on the Sale Motion, Centillium withdrew its offer to sublease the Fremont Premises. The Debtor nonetheless continued its efforts to seek out potential assignees, and although several potential tenants expressed an interest, none of the discussions resulted in a consummation of an assignment agreement. On or about November 2000, while the Debtor was negotiating with a potential third party assignee, Lam made a proposal for the Debtor to reject the Sublease in exchange for a cash payment by Lam. On November 28, 2000, the Debtor and Lam executed a rejection agreement (the "Rejection Agreement"), pursuant to which the Debtor agreed to reject the Sublease in exchange for a cash payment of \$350,000, the return of a \$100,000 security deposit (minus any amounts Lam was entitled to withhold under the Sublease), and Lam's waiver of the Debtor's rent obligations -- in the amount of approximately \$74,160 -- for the month of December. The Debtor and Lam also agreed to a mutual general release, with minor exceptions, of any and all claims either party may have against the other that relate to the Sublease. On December 18, 2000, the Bankruptcy Court entered an order approving the Rejection Agreement.

(4) The Debtor's New Headquarter Facilities

In anticipation of the Rejection Agreement and in an effort to reduce operating costs following the sale of substantially all of its assets to Creative (as further discussed below), the Debtor relocated its headquarter facilities from the Fremont Premises to new office space located in Pleasanton, California (the "Pleasanton Office"). The initial term of the lease for the Pleasanton Office expires on May 19, 2001, and continues from month to month thereafter. The Pleasanton Office is approximately 1,500 square feet, and requires a monthly rental payment of approximately \$1,600, which amount includes utilities.

f) Exclusive Period to File Plan of Reorganization

Pursuant to section 1121(b) of the Bankruptcy Code, a debtor has the exclusive right to file a plan of reorganization within the first 120 days after the commencement of a chapter 11 case (the "Exclusive Period"). Pursuant to section 1121(d) of the Bankruptcy Code, the Bankruptcy Court may "for cause" extend the Exclusive Period. By order dated July 17, 2000, the Bankruptcy Court extended the Debtor's Exclusive Period until December 1, 2000. On November 29, 2000, the Debtor filed a second motion requesting another extension of time of the Exclusive Period, up

1 to and including January 15, 2000 to file a plan of reorganization, and up to and including April 2, 2001 in which to
2 solicit acceptances to such plan, which motion was granted by the Bankruptcy Court on December 19, 2000.

3 In order to enable the Debtor and the Committee to further negotiate and attempt to resolve any remaining
4 issues with respect to the Plan, the Debtor and the Committee entered into three stipulations -- on January 16, 2001,
5 January 26, 2001 and February 5, 2001 -- to extend further the exclusive period. The last of those stipulations extended
6 the exclusive period until February 12, 2001 to file a plan and until April 19, 2001, to solicit acceptances to the Plan.

7 During these extensions, the Debtor and the Committee engaged in diligent negotiations. As a result of these
8 efforts, the Debtor and the Committee were able to reach a consensus on nearly all of the issues related to the plan.
9 However, the parties were unable to reach agreement concerning the manner of the future sale of the Creative Stock,
10 which the Debtor received from Creative as partial consideration for the sale of the Debtor's assets. Accordingly, on
11 February 9, 2001, the Debtor filed its original plan of reorganization (the "Original Plan"), which provided that the
12 Reorganized Debtor would have the exclusive right for eight (8) months after the Effective Date to liquidate the Creative
13 Stock, at which time control over the sale will transfer to the Committee. The Committee was unwilling to agree to that
14 provision. Subsequently, on April 10, 2001, the Debtor requested an extension of the exclusive period to solicit
15 acceptance of its Plan, from April 19, 2001 through June 15, 2001. The Committee objected. At a hearing held April
16 30, 2001, the Court denied the motion and ruled that the exclusive period would not be further extended. A more
17 detailed discussion of the events leading to the motion to extend the exclusive period for solicitation of acceptance until
18 June 15, 2001 is set forth in Section III.C.3, below.

11 2. The Sale Process And Approval Of Proposed Sale Of Substantially All Of The Debtor's 12 Assets To Creative

13 Following the filing of the Bankruptcy Case, the Debtor continued, as it had before the Petition Date, to market
14 and sell its assets. The Debtor, through its financial advisor at the time, PricewaterhouseCoopers ("PwC"), identified
15 approximately fifteen (15) entities that were related to the computer audio imaging industry and that were potentially
16 interested in purchasing all or a portion of the Debtor's assets (each an "Interested Party" and collectively, the
17 "Interested Parties"). The Debtor executed confidentiality agreements with certain of the Interested Parties, and sent
18 such parties copies of various bankruptcy pleadings, as well as other public financial information about the Debtor as
19 requested. The Debtor also assembled a centralized "Data Room" located at the Debtor's headquarters in Fremont,
20 California, to accord all Interested Parties an equal opportunity to review information concerning the Debtor's assets.
21 The Data Room contained several different categories of information, including, without limitation, intellectual property,
22 contracts, personnel data, inventory data, and litigation documents. Additionally, the Debtor provided Interested Parties
23 with the opportunity to meet or speak with various former key personnel to answer any question concerning the assets.
24 Specifically, the Debtor reached agreements with both Mr. Kip Kokinakakis, the former Chief Executive Officer, and Mr.
25 Brendan O'Flaherty, the former General Counsel and Chief Operating Officer, to make them available during the due
26 diligence process. Also, the Debtor set up a working demonstration of its technology at its headquarters to familiarize
27 Interested Parties with the complete audio experience.

28 Upon assembling the contents of the Data Room, the Debtor then sent a letter to the Interested Parties that had
executed Confidentiality Agreements, which letter described the information in the Data Room, the availability of the
Data Room, and the deadline to submit letters of intent for a transaction with the Debtor. Of the more than fifteen (15)
Interested Parties that were contacted about a possible transaction with the Debtor, approximately seven (7) conducted
further discussions with the Debtor. Approximately five (5) Interested Parties visited the Data Room and conducted
extensive due diligence.

The Debtor's marketing efforts culminated with three (3) Interested Parties presenting the Debtor with various
letters of intent. Of those offers, the two (2) most favorable were those submitted by Conexant Systems, Inc. and
Guillemot. Although the Debtor initially executed a letter of intent with Conexant, Conexant subsequently withdrew
from the sale process. The Debtor then executed a letter of intent with Guillemot.

On or about June 12, 2000, the Debtor filed a motion for order: (i) establishing sale procedures for the
proposed sale of certain assets of the estate, including approval of overbid procedures and break-up fee arrangements in
the event that Guillemot was not the ultimate purchaser of the assets; and (ii) setting a hearing date to hold an auction, if
necessary, for the Bankruptcy Court to consider and approve the sale (the "Sale Procedures Motion"). Limited

1 objections to the Sale Procedures Motion were filed by certain creditors of the Debtor, including the Committee, which
2 objections eventually were resolved prior to the hearing on that motion. At the hearing on the relief requested in the Sale
3 Procedures Motion, the Court approved the bidding procedures and breakup fee, and scheduled a final hearing on the
4 sale of substantially all of the Debtor's assets for August 15, 2000.

5 On July 18, 2000, the Debtor filed with the Bankruptcy Court a motion seeking authority to sell substantially all
6 of its assets free and clear of certain liens and authorizing the assumption and assignment of specified executory
7 contracts (the "Sale Motion"). Objections to the Sale Motion were filed by the Committee and several of the Debtor's
8 creditors, including Ocean Data Products, Orrick, Lam, and a potential buyer, 3dfx. Competing bids to purchase the
9 assets of the estate were submitted by Guillemot and Creative. Unlike the Guillemot offer, the Creative bid required a
10 mutual release and dismissal of all pending and future litigation between Creative and the Debtor. Following a spirited
11 auction between Guillemot and Creative that began on August 15, 2000, and continued until August 18, 2000, the
12 Debtor, the Committee, the Lenders, Ocean and Orrick agreed that the bid of Creative, as increased, was the superior bid,
13 and requested that the Court approve the sale of the assets of the estate to Creative on the terms of its increased bid.

14 Pursuant to that bid, the purchase price to be paid to the Debtor's estate for the acquired assets and release and
15 dismissal of the Creative Litigation, among other things, was approximately \$28 million cash (subject to various
16 adjustments), plus the issuance to the Debtor of 208,079 shares of Creative's common stock, par value \$.25 Singapore
17 dollars per share, plus the assumption by Creative of certain liabilities of the Debtor. The Debtor did not receive any
18 higher bids for the assets, and the Court, with the express written consent of the Debtor, the Committee, Creative, Orrick
19 and Ocean, entered an order approving the sale to Creative on September 20, 2000. The Debtor and Creative eventually
20 entered into a final Asset Purchase Agreement, dated October 31, 2000, as amended from time to time (the "Asset
21 Purchase Agreement"). On November 3, 2000, the Debtor and Creative closed the sale transaction, and on November
22 14, 2000, the Debtor received the share certificates as provided in the Asset Purchase Agreement. The sale proceeds will
23 be used to make the distributions contemplated by the Plan.

24 In accordance with the Asset Purchase Agreement, as well as the Mutual Release and Dismissal executed in
25 connection therewith, on the Effective Date, any and all claims asserted by Creative shall be withdrawn or disallowed in
26 their entirety.

27 3. The Dispute Between the Debtor and the Committee Regarding the Timing and Manner 28 of the Sale of the Creative Stock

As stated above, the Debtor and the Committee disagree on how to maximize the return to the estate from the
sale of the Creative Stock held by the Debtor. The Debtor believes, based on its evaluation of the value of the Creative
Stock as compared to its current market price per share, that it is premature to sell all of the Creative Stock immediately.
The following is a list of some of the factors that have contributed to that belief.

THE ANALYSIS OF THE CREATIVE STOCK AND THE ESTIMATES PROVIDED HEREIN ARE
FORWARD-LOOKING IN NATURE AND DO NOT PURPORT TO BE AN ESTIMATE OR PREDICTION OF THE
CURRENT OR FUTURE VALUE, OR TRADING PRICE, OF THE CREATIVE STOCK. SUCH ACTUAL VALUE,
OR TRADING PRICE, MAY BE MATERIALLY MORE OR LESS FAVORABLE THAN THE ANALYSIS SET
FORTH HEREIN. BECAUSE SUCH ANALYSIS IS INHERENTLY SUBJECT TO UNCERTAINTIES AND
CONTINGENCIES, ALL OF WHICH ARE DIFFICULT TO PREDICT, NEITHER THE DEBTOR, NOR ITS
OFFICERS, DIRECTORS, PROFESSIONALS OR ADVISORS, NOR ANY OTHER PERSON, CAN PROVIDE ANY
ASSURANCES OR ASSUME RESPONSIBILITY FOR ITS ACCURACY. HOLDERS OF CLAIMS OR EQUITY
INTERESTS ARE ADVISED TO SEEK ADVICE FROM THEIR OWN PROFESSIONALS AND ADVISORS IN
DECIDING WHETHER TO ACCEPT OR REJECT THE PLAN.

First, Creative has been and remains a strong, large and financially stable company. Sales for its fiscal year
ending June 30, 2001 are estimated to exceed \$1.25 billion. Creative is well positioned to weather the current difficulties
in the personal computer ("PC") market, given the stability of its balance sheet which has minimal debt and a high level
of working capital (cash, accounts receivable and inventory) that is more than sufficient to remain current on its
obligations. Creative's operating profit (excluding restructuring charges) as a percentage of sales has, for the last six (6)
reported quarters, averaged about 5.6%.

1 Second. Creative has a near monopoly in the sound card area, particularly now that it has purchased the assets
2 of Aureal (its only viable competitor). As a result, Creative has consistently maintains high gross profit margin, which in
recent quarters has averaged approximately 28%.

3 Third, the consensus estimate of analysts is that Creative's earnings per share will grow at 11-12% per year for
4 the next five years. As the PC market emerges from this difficult period, the current consensus estimate for earnings per
5 share for fiscal years ending June 30, 2001 and June 30, 2002 is \$0.72 and \$1.04 respectively (a 44.4% increase during
that 12-month period). This includes an estimated increase in earnings per share between the third quarter ending
March 31, 2001 and the fourth quarter ending June 30, 2001, from \$0.06 per share to \$0.10 per share.

6 Fourth, based on estimated earnings of \$0.72 for the year ending June 30, 2001, Creative currently trades at a
7 price/earnings ratio ("P/E ratio") of about 13, and based on estimates of \$1.04 per share for the year ending June 30,
8 2002, a P/E ratio of about 9. (By contrast, the S&P 500 has an aggregate P/E ratio of about 28 and NASDAQ has an
aggregate P/E ratio in excess of 100). These multiples are highly attractive given Creative's dominant market position,
strong balance sheet and the 1-year and 5-year growth rates estimated by analysts.

9 Fifth, the price of the Creative Stock has suffered in recent months, as evidenced by the decline from \$22.75 per
10 share on August 18, 2000 (when the Creative bid for Aureal's assets was accepted) to \$9.875 on December 18, 2000.
11 This decline, which occurred prior to the approval of the registration of the Creative Stock, was attributable in large part
12 to the slowdown in the PC market that serves as Creative's primary customer base, as well as the general decline during
13 that period of stocks trading on the NASDAQ market. However, analysts believe that the slowdown will end in the near
14 term as the liquidation of excess PC inventory concludes. Moreover, Creative has increased its presence in the retail sale
channel, where it sells upgrades that can be used by existing PC owners. All of the above financial information and
analysis suggests that the Creative Stock is undervalued. Indeed, numerous investment analysts at Zachs.com and
elsewhere have, as of May 13, 2001, identified Creative as a "strong buy" during a period when many other technology
stocks have been downgraded. Indeed, Zachs.com recently rated Creative first out of seventy (70) companies in the
computer periphery industry.

15 In contrast to the Debtor, the Committee has taken the position that all of the Creative Stock should be
16 liquidated immediately. To date, the Committee has provided no indication, either in filings with the Court or in
discussions with the Debtor, that it has engaged in any analysis to determine whether the current value of the Creative
Stock as compared with its price justifies an immediate liquidation of the Creative Stock, as the Committee advocates.

17 Notwithstanding the above, the Committee campaigned to solicit votes to reject the Debtor's Original Plan
18 based solely on the dispute regarding the Creative Stock. This campaign included the circulation by the Committee, to
19 all creditors, of a letter urging them to vote against the Original Plan. However, when the votes on the Original Plan
20 were tallied, it turned out that 82% of the number of claims voted to *accept* the Plan, far more than the majority required
21 under the Bankruptcy Code. Unfortunately, because the holders of larger dollar claims voted to reject the Original Plan,
that plan did not receive the acceptances needed to confirm the Original Plan. Since filing the original Plan, the Debtor
has continued to seek to engage in negotiations with the Committee to resolve the dispute concerning the Creative Stock.
On March 22, 2001, the Debtor proposed the following timetable (the "March 22 Proposal") under which the Committee
could direct the sale of the Creative Stock:

22 Fifteen percent (15%) – on the Confirmation Date (which assumed a confirmation hearing on April 16, 2001);

23 Twenty percent (20%) – on the Effective Date;

24 Fifteen percent (15%) – three (3) months after the Effective Date;

25 Twenty-five percent (25%) – five (5) months after the Effective Date; and

26 Twenty-five percent (25%) – six (6) months after the Effective Date.

27 After more than a week, with the April 2, 2001 voting and objection deadline on the Plan fast approaching, the
28 Committee rejected the Debtor's March 22 Proposal, did not make any new proposal, and instead advised the Debtor that

1 its members would vote against the Plan and that the Committee would also seek the appointment of a trustee or
conversion of the case to chapter 7. The Committee filed such a motion on April 4, 2001.

2 Although a significant majority of the number of claims supported the Plan, as well as a substantial majority of
3 the stockholders, the Debtor continues to seek resolution and consensus with the Committee and with its largest creditors.
4 Accordingly, on April 10, 2001, the Debtor filed an amended plan of reorganization (the "First Amended Plan"). The
5 First Amended Plan, like the current Plan, essentially incorporates the March 22 Proposal made to the Committee
6 regarding the sale of the Creative Stock, with one modification, to permit the Committee to direct the sale of the stock as
7 follows:

8 Fifteen percent (15%) – on the Confirmation Date

9 Twenty percent (20%) – on the Effective Date

10 Fifteen percent (15%) – three (3) months after the Effective Date

11 Twenty-five percent (25%) – five (5) months after the Effective Date

12 Twenty-five percent (25%) – ten (10) months after the Effective Date.

13 A hearing on the Trustee Motion was held on April 30, 2001. At that hearing, the Court ruled that it would not
14 appoint a general trustee or convert the case to chapter 7 as the Committee had requested. The Court did, however, by
15 order dated May 8, 2001, appoint an examiner to evaluate the proposals of the Debtor and the Committee regarding the
16 sale of the Creative Stock and determine the appropriate timing and manner of sale of the Creative Stock. The Debtor is
17 in the process of evaluating whether it will seek reconsideration of, or appeal, the Court's ruling.

18 The Debtor remains open to negotiations with the Committee to resolve the dispute regarding the Creative
19 Stock, so that the Plan can be confirmed promptly and distributions to creditors can begin.

20 **4. The Bar Date and Resolution of Certain Claims**

21 **a) The Bar Date Deadline**

22 The claims bar date established by the Court was July 31, 2000. On August 28, 2000, the Bankruptcy Court
23 approved a stipulation between the Debtor, the Committee and the Lenders that set forth a supplemental notice of an
24 extended bar date, up to and including September 30, 2000, for certain creditors that may not have received notice of the
25 initial bar date. Creditors filed approximately 146 proofs of Claim, which together with the Claims scheduled by the
26 Debtor, total approximately 227 in number and approximately \$19.8 million in Claims against the Estate. The Debtor
27 currently is in the process of finalizing its review and analysis of all Claims filed to date to determine which Claims, if
28 any, are Disputed Claims.

21 **b) Payment of Prepetition Claims of Certain Critical Vendors**

22 In order to ensure that the Debtor's inventory that was located in overseas warehouses was released to the
23 Debtor and made available to Creative under the Asset Purchase Agreement, the Debtor sought relief from the Court
24 authorizing it to pay the prepetition claims of certain critical vendors. Specifically, on October 25, 2000, the Bankruptcy
25 Court authorized the Debtor to pay the pre-petition sum of \$11,847.86 to Circle International (Holland) B.V. ("Circle")
26 in exchange for Circle's agreement to release the Debtor's inventory, valued in excess of approximately \$135,000 book
27 value, from its warehouse facility in Holland. The Debtor has, with Creative's consent, arranged for the release of that
28 inventory, and will make a payment to Circle of \$15,000, representing both pre-petition and post-petition obligations due
to Circle.

Similarly, on October 25, 2000, the Bankruptcy Court authorized the Debtor to pay the sum of \$431,415.64 to
Caesar Technology, Inc. ("Caesar") in exchange for Caesar's agreement to release the Debtor's inventory, valued in
excess of approximately \$1,398,000 book value, from its warehouse facility in Taiwan. All of the inventory that was

1 released to the Debtor was included in the assets that were sold to Creative. Absent the delivery of such inventory, the
2 purchase price paid by Creative under the Asset Purchase Agreement would have decreased by nearly \$1.1 million.

3 Based on the foregoing, on the Effective Date, any and all Claims asserted by Caesar shall be disallowed in their
4 entirety.

5 **c) Stipulation To Pay Prepetition Secured Claim**

6 As previously discussed, on April 7, 2000, the Court approved the Cash Collateral Stipulation finding, among
7 other things, that as of the Petition Date, the Lenders assert that the Debtor was indebted to them in the aggregate
8 principal amount of \$18,151,739, exclusive of accrued interest and alleged fees and expenses, under the Prepetition
9 Credit Agreement (the "Prepetition Claim"). Because interest on the Prepetition Claim was accruing at a per diem rate of
10 approximately \$7,311.12, on November 30, 2000, the Debtor filed with the Bankruptcy Court a "Stipulation and Order
11 Authorizing Payment of Prepetition Secured Claim" (the "Stipulation"). The Stipulation was entered into by the Debtor,
12 the Committee, the Lenders and the U.S. Trustee, and provided for the payment by the Debtor of the prepetition Claim in
13 full satisfaction of any and all outstanding obligations owing by the Debtor to the Lenders. Pursuant to the Stipulation, in
14 the event that the unsecured creditors are not paid in full, the Committee reserves its rights to assert, on behalf of the
15 Estate, any objections or affirmative claims against the Lenders that have not otherwise been waived or released. An
16 interim order approving the Stipulation was entered by the Bankruptcy Court on November 29, 2000, which order
17 became final on or about December 18, 2000. On December 4, 2000, the Debtor paid the Lenders in Cash
18 approximately \$20,289,269.96 in full satisfaction of their prepetition Claim.

19 **D. Claims Asserted Against The Debtor And Identification Of Disputed Claims**

20 As stated above, the Court established July 31, 2000, as the initial bar date and deadline for the filing of proofs
21 of Claim against and Interests in the Debtor, and September 30, 2000 as the extended bar date deadline for certain other
22 creditors and equity-holders of the Debtor. Claimants filed approximately 146 proofs of Claim and Interest, which
23 together with the Scheduled Claims, represents more than approximately \$19.8 million in asserted Claims against the
24 Debtor. As set forth below, the Debtor believes that the total amount of Claims allowed in this case will be significantly
25 less than the amount of Claims asserted against the Debtor. In addition, the Debtor will be amending the Schedules to
26 include approximately \$281,000 of Allowed Claims, and deleting from the Schedules approximately \$364,000 of Claims
27 that were previously Scheduled.

28 **1. Allowed Claims**

Based on the Debtor's initial analysis of the Claims, the Debtor plans to consent to allow approximately
\$2.2 million in asserted Claims, which Claims are listed on Exhibit C hereto, against the Debtor without objection.

2. The Debtor's First Omnibus Objection to Claims

On December 7, 2000, as amended on December 11, 2000, and re-noticed on February 2, 2001, the Debtor filed
its "First Omnibus Objection to Claims (Duplicative Claims, Cured Claims, Reclassified Claims, No Basis Claims,
Equity Claims, Amended Claims, and Late Claims)" (the "First Omnibus Objection"). Through the First Omnibus
Objection, the Debtor disputed approximately seventy-four (74) of the approximately 146 Claims asserted against the
Debtor, and sought Court approval to disallow, expunge, reclassify, and/or reduce approximately \$7.4 million of such
Claims. Following four (4) hearings on the First Omnibus Objection, the Court entered orders that reduced allowed
claims by an aggregate of \$6,995,948.30.

¹ The estimated \$19.8 million of asserted and Scheduled Claims includes both Claim No. 75 and Claim No. 145, filed
by Ocean Data Products in the amount of \$5,889,342.40 and \$5,246,233.30 respectively. The Order Sustaining
Debtor's First Omnibus Objection to Claims dated March 5, 2001, expunged Claim No. 75, and as such, the Debtor
believes that the total amount of asserted and Scheduled Claims is significantly less.

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3. Additional Disputed Claims

Certain of the largest and most material Claims asserted against the Debtor are described or referenced below (or in other parts of the Disclosure Statement). Moreover, Exhibit D to this Disclosure Statement identifies those Claims that the Debtor currently anticipates will be disputed as of the Effective Date. As further described in Section III.D.1. the Plan enables objections to Claims and Equity Interests to be filed at any time before 120 days after the Effective Date of the Plan, except that the Committee has until 240 days after the Effective Date of the Plan in which to assert, on behalf of the Estate, any objection or affirmative defense to the prepetition Claim of the Lenders that has not otherwise been waived or released, in accordance with the order of the Bankruptcy Court approving the Stipulation.²

Given the number and complexity of the asserted Claims, the Debtor has not yet completed its review and analysis of such Claims. Accordingly, the Debtor reserves all rights with respect to the allowance and disallowance of any and all Claims, including Claims not referenced below or in Exhibit D. In voting on the Plan, creditors may not rely on the absence of a reference in this Disclosure Statement (including Exhibit D) or the Plan or the absence of an objection to their proofs of Claim as any indication that the Debtor or any other party in interest ultimately will not object to the amount, priority, security, or allowability of their Claims.

Conversely, there can be no assurance that the Debtor ultimately will prevail in any or all of the objections to the Claims summarized below and in Exhibit D. While the investigation by the Debtor to date supports the complete or partial objection to such Claims, given the fact that the investigation is ongoing and the inherent uncertainties in any litigation regarding such Claims, there can be no assurance regarding the outcome of any litigation that may be initiated in objection to the Claims. Litigation of the magnitude that may be initiated against the various claimants who have asserted Disputed Claims is by its very nature lengthy, difficult, expensive, and, most importantly, uncertain in nature. Accordingly, the total amount of the Allowed Claims against the Debtor, and hence the distributions to be made to holders of Allowed Claims, is likely to vary materially depending upon the results of the process of negotiating, objecting to, and litigating over Disputed Claims. The Debtor can make no assurances in this regard.

a. **Ocean Data Products, Ltd.:** Ocean has filed a proof of claim in the amount of \$5,246,233.20, based on certain purchase orders under which Ocean was to manufacture and ship Sound Cards, using Microchips provided by the Debtor. Of that amount, only \$1,890,960.17 reflects Sound Cards actually shipped to the Debtor. The Debtor disputes any liability with respect to unshipped goods, or with respect to the claims of Ocean relating to unused parts or lost profits. In addition, the Debtor asserts a claim against Ocean based on that company's wrongful conversion of the Debtor's Microchips, which totaled about 525,000 units as of the Petition Date. As of the Petition Date, those Microchips had a fair market value of \$2,390,468.70. That figure does not include Aureal's Microchips that were incorporated into Sound Cards manufactured by Ocean. Ocean admits that, both before and after the Petition Date, it sold the Debtor's Microchips, and Sound Cards contain those Microchips, to third parties and kept the proceeds for itself. Ocean never sought relief from the automatic stay, or the consent of the Debtor, prior to those sales. The Debtor did agree to sell 40,000 Microchips to Ocean in April 2000, which were used by Ocean to manufacture Sound Cards that were sold to Hewlett-Packard ("HP"). The sale of those Microchips generated proceeds of \$112,000.00, which are being held by Ocean. The Debtor does not take issue with the sale of those 40,000 Sound Cards by Ocean to HP.

The Debtor also asserts a claim against an affiliate of Ocean, Ocean Office Automation, Ltd. in the amount of \$460,773.44, based upon boards sold both pre-petition and post-petition by Aureal to Ocean and/or its affiliate. (This claim may be subject to an offset for services provided by Ocean in connection with such boards). Aureal also will assert tort claims against Ocean based upon its conversion, willful violation of the automatic stay, and unjust enrichment, among other claims, and will seek compensatory and punitive damages on account of such claims.

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The statements and descriptions of Disputed Claims in this Disclosure Statement and in Exhibit D are intended to inform interested parties of the general nature of the Claims and of certain observations of and preliminary assessments by the Debtor with respect to such Claims. All of such statements, descriptions, observations, and assessments are based upon preliminary investigations and are not the result of extensive discovery. Accordingly, such matters may not be construed as admissions or waivers or in any way used by or against the Debtor, the Estate, the Reorganized Debtor, the Disbursing Agent, the Committee or any other entity, whether in any proceeding involving objections to such Claims or otherwise.

1 b. **3DSL:** Subsequent to the Petition Date, the Debtor and 3DSL negotiated a business
2 transaction whereby the Debtor agreed to ship certain product to 3DSL, and 3DSL, through Barclays Bank PLC
3 ("Barclays"), negotiated a letter of credit, dated June 13, 2000, for \$52,272.00 (the "Letter of Credit"), in order to pay
4 for the goods shipped. On June 9, 2000, the Debtor received confirmation of the Letter of Credit, and in reliance
5 thereon, the Debtor shipped the products to 3DSL in London on that same day. Due to a minor clerical error in the
6 paperwork submitted to Barclays, namely a misspelling in the Debtor's name, Barclays refused to honor the Debtor's
7 demand on the Letter of Credit. 3DSL has refused to provide the consent to Barclays necessary to resolve the minor
8 clerical error notwithstanding the fact that 3DSL has been in receipt of and enjoyed the benefit of the Debtor's product
9 for over seven (7) months. The Debtor engaged in exhaustive attempts to contact 3DSL, via e-mail, telephone, and
10 letter, in order to resolve this issue to no avail. On April 27, 2000, 3DSL filed Claim Number 29 for \$72,852.67. As a
11 result, the Debtor filed a Complaint for (1) Turnover of Property to the Estate and (2) Disallowance of Claim. The
12 complaint prompted payment by 3DSL of the amounts owed to the Debtor, which were received on or about March 19,
13 2001. The Debtor has since filed a Notice of Voluntary Dismissal of the complaint against 3DSL.

8 c. **Other Claims:** The Debtor also either has filed or anticipates filing, prior to the
9 Confirmation Hearing, objections to the following Claims that are in excess of \$100,000 because, among other things,
10 such asserted Claims differ from the amounts set forth in the Debtor's books and records and/or the Debtor's books and
11 records, or the preliminary legal and factual analysis performed by the Debtor and its professionals to date, indicate that
12 such claimants owe the Debtor funds: (i) Claim No. 129 in the amount of \$112,175.00 asserted by Krystaltech
13 Semiconductors Inc.; (ii) Claim No. 88 in the amount of \$1,505,031.57 asserted by Orrick; (iii) Claim No. 95 in the
14 amount of \$522,023.64 asserted by Integra-Dyne Corp.; (iv) Claim No. 96 in the amount of \$537,282.86 asserted by
15 World Peace Industrial Co. Ltd.; (v) Claim No. 18 in the amount of \$504,393.10 asserted by UMC Group (USA); and
16 (vi) Claim No. 62 in the amount of \$356,583.00 asserted by KPMG LLP. The Debtor expressly reserves its right to
17 bring affirmative claims seeking damages or other relief (including an amount in excess of the amount of such asserted
18 claims) as against each of these claimants.

14 4. Summary of Liabilities

15 Assuming that the claim of Ocean Data Products is disallowed in its entirety, then the Debtor projects that, even
16 under a "worse case" scenario, total estimated liabilities (including unpaid administrative expenses, priority claims, and
17 unsecured claims) will not exceed \$7.6 million. Under a "better case" scenario, total liabilities fall to less than
18 \$6.3 million.

17 E. The Debtor's Remaining Assets

18 Following the sale of substantially all of its assets to Creative, the Debtor anticipates that the following assets of
19 the Estate remain to be liquidated and the proceeds thereof distributed in accordance with this Plan:

<u>Asset</u>	<u>Estimated Fair Market Value</u>
Cash on hand	\$ 6,412,612.00
Creative Stock	\$ 1,976,750.50
Micron Settlement	\$ 100,000.00
Accounts Receivable	\$ 1,665,091.80
Furniture, Fixture & Equipment	\$ 0.00
Total	\$10,054,554.30

21 The Debtor's accounts receivable are derived from the Debtor's unaudited book balance for such assets as of
22 December 31, 2000, and exclude recent write-offs as well as setoffs against Allowed Claims. The cash on hand and the
23 proceeds of the Micron settlement reflect bank balances. As of May 9, 2001, the estimated fair market value of the
24 Creative Stock is based upon the actual market value of such shares as of the close of business on May 9, 2001, which
25

1 value was \$9.50 per share. In the Debtor's opinion, the fair market value of the furniture, fixture and equipment at the
2 Pleasanton Office, which consists primarily of a computer, a telephone, a printer and a fax machine, are of *de minimis*
value.

3 With respect to Accounts Receivables, the following is a summary of the specific claims that the Debtor has
4 brought as of May 7, 2001, or intends to bring shortly.³ Certain of the objections to claims the Debtor plans to file
shortly, referenced in Section II.D.3.C. above, will also seek the recovery of unpaid receivables.

5 **1. Voyetra Turtle Beach, Inc.**

6 Until recently, Voyetra owed the Debtor over \$621,849.76 in unpaid invoices and shipping charges related to
7 prepetition and postpetition credit sale transactions. On January 10, 2001, the Debtor commenced an adversary
8 proceeding against Voyetra seeking recovery of the unpaid invoices and shipping charges, plus interest in the amount of
9 10% per annum. In that adversary proceeding, the Debtor also seeks to disallow all but \$5,000 of the Proof of Claim
10 filed by Voyetra on July 31, 2000. Voyetra's claim consists of three (3) separate components, totaling \$319,935.54. The
11 three (3) separate components include: (i) an alleged contingent warranty exposure portion for \$188,707.00 (the
"Warranty Exposure Claim"); (ii) an alleged indemnification obligation portion for \$126,228.54 (the "Indemnification
Claim"); and (iii) an alleged license royalties portion for \$5,000.00 (the "License Amount"). The Debtor objects to the
Warranty Exposure Claim and the Indemnification Claim as without merit. Trial is scheduled in late July. Since the
commencement of the adversary proceeding, Voyetra recently paid the Debtor \$385,000 of the \$616,849.76 owed by
Voyetra, leaving a balance due of \$231,849.76 (exclusive of interest). Voyetra asserts that the payment of \$385,000
constitutes the undisputed amount owed to the Debtor. That adversary proceeding remains pending.

12 **2. American ADM, Inc.**

13 On February 20, 2001, the Debtor commenced an adversary proceeding against American ADM, Inc.
14 ("American") seeking recovery of \$32,200.00 in unpaid prepetition invoices. In response, American paid the amount
due. The Debtor has since filed a Notice of Voluntary Dismissal.

15 **3. Micron Electronics, Inc.**

16 On February 20, 2001, the Debtor commenced an adversary proceeding against Micron Electronics, Inc.
17 ("Micron") seeking recovery of \$106,746.25 in unpaid prepetition invoices and seeking to disallow the Micron Claim.
The Debtor and Micron were able to reach agreement regarding the payment of the unpaid prepetition invoices and the
18 disallowance of the Micron Claim through a settlement agreement dated March 23, 2001 (the "Micron Settlement
19 Agreement"), under which the Debtor will receive \$100,000. The money is being held in trust, pending Court approval
of the Micron Settlement Agreement.

20 **4. Future Technologies International, Inc.**

21 On February 20, 2001, the Debtor commenced an adversary proceeding against Future Technologies
22 International, Inc. ("FTI") seeking recovery of \$25,020.00 in unpaid prepetition invoices. On April 2, 2001, FTI filed its
Answer to Complaint for Turnover of Property to the Estate. At the status conference on April 19, 2001, and through the
Scheduling Order filed on April 19, 2001, the Court established a trial setting date of August 24, 2001.

23 **5. Fountain Technologies, Inc.**

24 On February 20, 2001, the Debtor commenced an adversary proceeding against Fountain Technologies, Inc.
25 ("Fountain") seeking recovery of \$151,907.30 in unpaid prepetition invoices. The Debtor did not receive an answer
26 from Fountain prior to the status conference on April 19, 2001, and is currently in the process of seeking a default
judgment against Fountain in this matter.

27 ³ The amount of each Account Receivable listed below does not include interest, which the Debtor believes equals ten
28 percent (10%) from the date of the breach.

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6. **Micro Pro Inc.**

On February 20, 2001, the Debtor commenced an adversary proceeding against Micro Pro Inc. ("MPI") seeking recovery of \$11,663.40 in unpaid prepetition invoices. The Debtor did not receive an answer from MPI prior to the status conference on April 19, 2001, and filed a Request to Enter Default. Upon receipt of the Request to Enter Default, counsel to MPI contacted counsel to the Debtor and appears to be in the process of investigating the claims set forth in the Complaint for Turnover of Property to the Estate.

7. **Ecovision Inc.**

On February 20, 2001, the Debtor commenced an adversary proceeding against Ecovision Inc. ("Ecovision") seeking recovery of \$46,048.14 in unpaid prepetition invoices. On May 3, 2001, Ecovision filed its Answer to Debtor's Complaint for Turnover of Property to the Estate. The Debtor does not believe that Ecovision has any meritorious defense to non-payment of the amount sought against Ecovision.

8. **Raab Karcher Electronic System**

On March 6, 2001, the Debtor commenced an adversary proceeding against Raab Karcher Electronic System ("RK") seeking recovery of \$228,312.00 in unpaid prepetition invoices. It appears that prior to the commencement of the adversary proceeding against RK, Avnet, Inc. ("Avnet"), purchased RK. Avnet contacted counsel to the Debtor and is in the process of determining whether it is liable for the amount sought by the Debtor. At the status conference on May 3, 2001, the Debtor sought a continuance, until July 9, 2001, in order to attempt to resolve this matter.

9. **Centerprise International Lmted.**

On March 6, 2001, the Debtor commenced an adversary proceeding against Centerprise International Lmted ("Centerprise") seeking recovery of \$46,800.00 in unpaid prepetition invoices. On April 7, 2001, counsel to Centerprise sent a letter to the Debtor that appears to be an informal answer to the Debtor's Complaint for Turnover of Property to the Estate. At the status conference on May 3, 2001, the Debtor sought a continuance, until July 9, 2001, in order to attempt to resolve this matter.

10. **Pam Pacific Associates, Inc.**

On March 26, 2001, the Debtor commenced an adversary proceeding against Pam Pacific Associates, Inc. ("Pam Pacific") seeking recovery of \$9,895.60 in unpaid prepetition invoices. The Debtor has yet to receive an answer from Pam Pacific and plans to seek the entry of a default at the status conference scheduled for May 16, 2001.

11. **Supercom Canada Ltd.**

On September 29, 2001, Supercom Canada Ltd. ("Supercom") filed Claim Number 131 (the "Supercom Claim"), asserting a claim for \$11,278.48. The Order Sustaining Debtor's First Omnibus Objection to Claims dated March 5, 2001 has subsequently reduced the Supercom Claim to \$7,225 (the "Remaining Supercom Claim"). On April 19, 2001, the Debtor commenced an adversary proceeding against Supercom seeking recovery of \$110,207.00 in unpaid prepetition invoices and disallowance of the Remaining Supercom Claim. The Debtor is currently awaiting verification of service of process on Supercom.

12. **I/O Magic**

I/O Magic and the Debtor entered into a distribution agreement dated August 4, 1999 (the "Distribution Agreement"). Pursuant to the terms of the Distribution Agreement, I/O Magic owes the Debtor \$561,700.00 (exclusive of interest) in unpaid prepetition invoices. The Debtor is currently preparing a complaint against I/O Magic.

III. **SUMMARY OF THE PLAN**

The Discussion of the Plan set forth below is qualified in its entirety by reference to the more detailed provisions set forth in the Plan and its exhibits, the terms of which are controlling. Holders of Claims and Equity

1 Interests and other interested parties are urged to read the Plan and the exhibits thereto in their entirety so that they may
2 make an informed judgment concerning the Plan.

3 In summary, the Plan generally provides that, on the Effective Date of the Plan, all assets of the Estate shall be
4 vested in the Reorganized Debtor. Except as otherwise provided in the Plan, the Reorganized Debtor shall sell and
5 reduce to Cash all remaining assets of the Estate and distribute such Cash in the manner provided for in the Plan.

6 **A. Classification and Treatment of Claims and Equity Interests**

7 The Plan provides for the treatment of four (4) Classes of Claims and one (1) Class of Equity Interests. The
8 treatment of Claims and Equity Interests described below applies only to Allowed Claims and Allowed Equity Interests.
9 Claims that are the subject of a pending objection before the Bankruptcy Court or other pending litigation, or that have
10 not been allowed pursuant to a Final Order of the Bankruptcy Court or a stipulation consented to by the Debtor, the
11 Committee, and the claimant, will receive distributions under the Plan only if and after they become Allowed Claims.
12 The Reorganized Debtor, and to a more limited extent, the Committee, retain the right to initiate proceedings to
13 subordinate or otherwise object to Claims and Equity Interests (*see* Section III.D herein).

14 **1. Unclassified Claims**

15 Article II of the Plan governs the treatment of certain Claims that are not classified into Classes under the Plan.
16 Specifically, Allowed Administrative Claims and Priority Tax Claims are not classified in the Plan. Distributions made
17 to unclassified Claims are subject to the withholding procedures for Disputed Claims, as further described in Section
18 III.D.2 herein.

19 **a) Administrative Claims**

20 **(1) Generally**

21 Administrative Claims are claims constituting a cost or expense of administration of the Bankruptcy Case
22 allowed under sections 503(b) and 507(a)(1) of the Bankruptcy Code. Such claims include any actual and necessary
23 costs and expenses of preserving the estate of the Debtor, any actual and necessary costs and expenses of operating the
24 business of the Debtor in Possession, any indebtedness or obligations incurred or assumed by the Debtor in Possession in
25 connection with the conduct of its business or the acquisition or lease of property or the rendition of services, any
26 allowance of compensation and reimbursement of expenses to the extent allowed by a Final Order of the Bankruptcy
27 Court under section 330 of the Bankruptcy Code, and fees or charges assessed against the Estate under section 1930 of
28 title 28 of the United States Code.

Under the Plan, and except as provided in Section 2.2 of the Plan governing professional compensation and
reimbursement claims, Allowed Administrative Claims shall be paid in full, in Cash, subject to the bar date provisions
described below, on the later of the Effective Date and the date on which an asserted Claim becomes an Allowed
Administrative Claim, or as soon thereafter as is practicable. Throughout the course of the Bankruptcy Case, the Debtor
believes that, except with respect to Professional Claims, it has paid the administrative expenses of the Estate as they
became due, and thus, the Debtor believes that, with the exception of Professional Claims, most Claims that would
otherwise constitute Allowed Administrative Claims previously have been or will be satisfied in the ordinary course on
or before the Effective Date. Because of delays in invoicing and the necessary approval process regarding Professional
Claims, however, not all such Claims will have been paid on the Effective Date. Moreover, after the Effective Date, the
Reorganized Debtor will retain a minimum number of employees and consultants, as needed, to assist with the orderly
liquidation of the remaining assets, which employees and consultants will be paid in the ordinary course of business from
amounts realized from the proceeds of the Estate as it is liquidated. The Debtor estimates that such compensation and
fees will total less than \$50,000.

(2) Compensation and Reimbursement Claims

Pursuant to the Plan, all Professional Persons retained in this Bankruptcy Case that are awarded compensation
and reimbursement of expenses by the Bankruptcy Court in accordance with section 330 or 331 or entitled to the
priorities established pursuant to section 503(b)(2), 503(b)(3) or 503(b)(4) of the Bankruptcy Code, will be paid in full,

1 in Cash, the amounts allowed by the Bankruptcy Court: (a) on or as soon as reasonably practicable following the later to
2 occur of: (i) the Effective Date, and (ii) the date on which the Bankruptcy Court order allowing such Claim becomes a
3 Final Order; or (b) upon such other terms as may be mutually agreed upon between such holder of an Allowed
4 Administrative Claim and the Debtor.

5 All payments to Professional Persons for compensation and reimbursement of expenses and all payments to
6 reimburse expenses of members of the Committee incurred by the Debtor prior to the Effective Date will be made in
7 accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules and the Bankruptcy Court
8 relating to the payment of interim and final compensation and expenses. The Debtor estimates that Allowed
9 Administrative Claims relating to compensation and reimbursement of expenses of Professional Persons retained in the
10 Bankruptcy Case and the Committee (net of previous allowances and amounts projected to have been paid prior to the
11 Effective Date) will aggregate approximately \$250,000.00 as of the Effective Date.

12 From and after the Effective Date, the Reorganized Debtor and the Committee also will retain certain
13 Professional Persons, including without limitation, Reorganization Counsel and Committee Counsel, as needed, to assist
14 with implementing and consummating the Plan, including, without limitation, resolving Disputed Claims and liquidating
15 and collecting the remaining assets of the Estate (*see* Section III.C.3 herein), which professionals will be paid in the
16 ordinary course of business from the Professional Fee Reserve without the necessity for any approval by the Bankruptcy
17 Court from amounts realized from the proceeds of the Estate as it is liquidated. The Debtor estimates that such
18 compensation and fees will not exceed \$300,000.

19 (3) **Bar Date For The Assertion Of Requests For Payment Of**
20 **Administrative Claims Other Than Claims by Professional Persons**

21 Section 2.2.c.i of the Plan provides that all requests for payment of Administrative Claims, other than Claims by
22 Professional Persons, must be filed by no later than thirty (30) days after the mailing of the Notice of the Effective Date.
23 Any request for payment of Administrative Claims that is not timely filed, as set forth above, shall be forever barred from
24 asserting such claims against the Debtor or any of its property.

25 (4) **Bar Date For Compensation For Professional Persons**

26 Section 2.2.c.ii of the Plan provides that applications for final allowance of compensation and reimbursement of
27 expenses by Professional Persons pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for
28 services rendered before the Effective Date must be filed by no later than forty-five (45) days after the mailing of the
Notice of the Effective Date. Except as provided in the Plan, objections to such applications of Professional Persons for
compensation or reimbursement of expenses must be filed and served on the pertinent administrative claimant, the
Reorganized Debtor, Reorganization Counsel, the United States Trustee, and Committee Counsel no later than sixty (60)
days after the mailing of the Notice of the Effective Date. Any application for payment of such Claims that is not timely
filed, as set forth above, shall be forever barred from asserting such Claims against the Debtor or any of its property.

b) **Priority Tax Claims**

Priority Tax Claims are those Claims for taxes entitled to priority in payment under section 507(a)(8) of the
Bankruptcy Code. The Plan provides for the payment in full, in Cash (including the payment of interest at the applicable
statutory rate from the Petition Date) of Allowed Priority Tax Claims on the later of the Effective Date and the date on
which an asserted Priority Tax Claim becomes an Allowed Priority Tax Claim. As further set forth in Exhibit E, six (6)
governmental taxing agencies have filed proofs of Claim for Priority Tax Claims in the aggregate amount of
approximately \$228,000. The Debtor disputes all but two (2) of those Claims, and estimates that the aggregate amount
of Allowed Priority Tax Claims will be less than \$10,200.

2. **Classes Of Claims And Equity Interests**

a) **Class 1 Claims (Secured Claims)**

Class 1 consists of all Allowed Secured Claims against the Debtor that have not been paid, released, or
otherwise satisfied prior to the Effective Date. Each Secured Claim in Class 1 is considered to be its own separate sub-

1 class within Class 1. To the extent that any Class 1 Claim is allowed by Final Order of the Bankruptcy Court, such Claim
2 shall be paid in Cash and in full by the Disbursing Agent on the later of the Effective Date and the date on which a Class
3 1 Claim becomes an Allowed Class 1 Claim, or as soon thereafter as is practicable. For the reasons set forth below, the
4 Debtor believes that there are no Allowed Class 1 Claims as of the date hereof because such Claims have been paid in
5 full or the collateral securing such claims has been transferred to the claimant.

6 Class 1 is unimpaired under the Plan. The holders of such Claims, if any, are conclusively presumed to have
7 accepted the Plan and are not entitled to vote to accept or reject the Plan.

8 (5) **Class 1A (the Lenders' Secured Claim).**

9 Class 1A is comprised of the Lenders' Claim arising from the Prepetition Credit Agreement, to the extent such
10 obligations are secured by substantially all of the Debtor's assets. The Lenders' Secured Claim against the Debtor is
11 Scheduled in the amount of approximately \$18,151,739, exclusive of interest and costs as provided for in the Prepetition
12 Credit Agreement. As previously discussed, *see* Section II.C.3.c herein, on December 4, 2000, the Debtor paid the
13 Lenders, in accordance with the Stipulation, approximately \$20,289,267 in full and complete satisfaction of their
14 prepetition Claim.

15 (6) **Class 1B (Imperial A.I. Credit Companies' Secured Claim).**

16 Prior to the Petition Date, Imperial A.I. Credit Companies ("Imperial"), an insurance premium finance
17 company, loaned certain sums to the Debtor to enable the Debtor to finance its insurance coverage. Pursuant to the
18 premium finance agreement between the Debtor and Imperial, Imperial acquired a secured interest in the unearned
19 premium that would be payable in the event of cancellation of the financed insurance coverage due to non-payment. On
20 or about April 18, 2000, Imperial filed a proof of Claim, Claim No. 17, against the Debtor, asserting a secured claim in
21 the amount of \$52,015. Subsequently, on September 20, 2000, Imperial filed an amended proof of Claim, Claim No.
22 114, asserting that the Debtor did not owe it any amounts. Accordingly, in its First Omnibus Objection, the Debtor
23 objected to Claim No. 17 as superceded by Claim No. 114. The Court expunged Claim No. 17 in the Order Sustaining
24 Debtor's First Omnibus Objection to Claims dated March 5, 2001.

25 (7) **Class 1C (AFCO Credit Corporation's Secured Claim).**

26 Prior to the Petition Date, AFCO Credit Corporation ("AFCO") loaned certain sums to the Debtor to enable the
27 Debtor to finance its insurance coverage. Pursuant to the premium finance agreement between the Debtor and AFCO,
28 AFCO acquired a secured interest in the unearned premium that would be payable in the event of cancellation of the
financed insurance coverage due to non-payment. On or about June 13, 2000, AFCO filed a proof of Claim, Claim No.
64, asserting a secured claim in the amount of \$75,115.96. Because the Debtor's books and records indicate that the
Claim asserted by AFCO has been paid in full, the Debtor plans to enter into a stipulation whereby AFCO agrees to
withdraw Claim No. 64.

(8) **Class 1D (Telogy, Inc.'s Secured Claim).**

On or about June 16, 1999, the Debtor entered into a Master Lease Agreement with Telogy, Inc. ("Telogy"),
pursuant to which the Debtor leased from Telogy certain equipment used in the engineering and testing of the Debtor's
products. On or about April 24, 2000, Telogy filed a proof of Claim, Claim No. 23, asserting a secured claim against the
Debtor's estate in the amount of \$70,059.60. Because the Debtor has returned the collateral that formed the basis of the
secured claim, however, the Debtor believes that such claim is properly reclassified as an unsecured claim. As such, the
Debtor, pursuant to the First Omnibus Objection, currently is seeking to reclassify Claim No. 23 as an unsecured claim,
and also disputes the amount of the Claim. The Court reduced and reclassified Claim No. 23 in the Order Sustaining
Debtor's First Omnibus Objection to Claims dated March 5, 2001. Accordingly, Claim No. 23 is allowed in the amount
of \$3,502.98 and will be paid in accordance with the distribution for Convenience Claims, as set forth below.

(9) **Class 1E (Minolta Business Systems' Secured Claim).**

On or about December 22, 1998, the Debtor entered into a S.M.A.R.T. Solution equipment lease agreement
with Minolta Business Systems ("Minolta"), pursuant to which Minolta agreed to lease to the Debtor that certain Minolta

1 DI 620 (the "S.M.A.R.T. Agreement"). On or about December 23, 1998, the Debtor entered into a Graphic Systems
2 Solution equipment lease and rental agreement, pursuant to which Minolta agreed to lease to the Debtor that certain
3 Minolta CF-900 with FIERY 2X-2100 (the "Graphic Systems Agreement"). Although Minolta filed a proof of Claim,
4 Claim No. 23, against the Debtor's estate asserting a secured claim in the amount of \$117,157.35, on August 23, 2000,
5 the Debtor and Copelco Capital Corporation, as successor in interest to Minolta, entered into a stipulation to reject the
6 S.M.A.R.T. Agreement and the Graphic Systems Agreement. In accordance with the parties' stipulation, the Debtor
7 returned the equipment governed by the two agreements to Copelco, and as such, the Debtor believes that Claim No. 44
8 is properly reclassified as an unsecured claim. Pursuant to the First Omnibus Objection, the Court reduced and
9 reclassified the Claim to a general unsecured claim for \$3,502.98. Accordingly, Claim No. 44 will be paid in accordance
10 with the distribution for Convenience Claims, as set forth below.

11
12 **b) Class 2 (Other Priority Claims)**

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14 Class 2 consists of all Claims entitled to priority under section 507(a) of the Bankruptcy Code, other than
15 Administrative Claims and Priority Tax Claims. Allowed Class 2 Claims consist primarily of Allowed Other Priority
16 Claims for contributions to an employee benefit plan arising from services rendered within 180 days before the Petition
17 Date in amounts of \$4,300 or less. Allowed Class 2 Claims will be paid in Cash and in full, less tax withholdings where
18 appropriate, by the Disbursing Agent on the later of the Effective Date and the date on which a Class 2 Claim becomes
19 an Allowed Class 2 Claim, or as soon thereafter as is practicable. Class 2 is unimpaired under the Plan. Holders of
20 Allowed Class 2 Claims are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or
21 reject the Plan.

22 Four (4) claimants filed proofs of Claim for Other Priority Claims in the aggregate amount of approximately
23 \$14,800. The Debtor believes, however, that after objections to either disallow or reclassify these claims, that there will
24 be less than \$8,300 of Claims that fall within Class 2.

25
26 **c) Class 3 (Convenience Claims)**

27 Class 3 consists of all Convenience Claims other than Convenience Claims with respect to which the holders
28 thereof have elected to opt out of Class 3 and into Class 4 by making such election on their Ballots and returning said
Ballots within the time fixed by the Bankruptcy Court. Any other holder of an Allowed Unsecured Claim which limits
and reduces its Allowed Unsecured Claim to only such portion of its Claim as meets the criteria to be a Convenience
Claim may elect to opt out of Class 4 and into Class 3 by electing and so reducing its Claim on the Ballot within the time
fixed by the Bankruptcy Court for completing and returning Ballots. A creditor participating in Class 3 shall not be
entitled to any distribution under Class 4. Class 3 is impaired under the Plan. Allowed Class 3 Claims shall be paid in
Cash eighty percent (80%) of the amount of such Allowed Class 3 Claims by the Disbursing Agent on the later of: (a)
the Effective Date; and (b) the date on which a Class 3 Claim becomes an Allowed Class 3 Claim. Approximately 57
claimants filed proofs of Claim, which are less than \$10,000 and thus eligible to participate in Class 3. These claims
aggregate about \$145,000.00.

29
30 **d) Class 4 (General Unsecured Claims)**

31 Class 4 consists of all other Unsecured Claims against the Debtor not otherwise classified in any other Class
32 hereof, including Claims arising from the rejection of executory contracts and unexpired leases. Class 4 is impaired
33 under the Plan, which provides that holders of Allowed Class 4 Claims, subject to the provisions of Article V of the Plan,
34 will share Pro Rata in distributions in Cash from the Estate after payment in full, or reserve for payment in full, of Post-
35 Effective Date Claims, Administrative Claims, Priority Tax Claims and Allowed Claims in Classes 1 and 2. Holders of
36 Allowed Claims in Class 4 will, if there are sufficient proceeds available, receive payment of interest on account of their
37 Allowed Claims for the period from the Petition Date through the date of payment. Such interest shall be paid at the
38 federal judgment rate, which as of May 9, 2001, was 3.90%.

39 Approximately 48 claimants filed proofs of Claim for Unsecured Claims in the aggregate of over \$18 million.
40 The Debtor believes that, after objections to disallow all or a portion of the Disputed Claims in Class 4 are resolved, the
41 Allowed amounts of such Claims will be in the range of approximately \$4.6 million to approximately \$10.2 million. It is
42 also possible, though unlikely, that the Allowed amounts of such Claims could be lower than this range. Based on the
43 estimated range of Allowed Claims, the Debtor estimates that distributions on behalf of Allowed Class 4 Claims may be

1 in the range of 75% to 100% depending on, among other things, the successful defense of Disputed Claims, the
2 collection of the Debtor's accounts receivable, and the value of the Creative Stock (*see* Section III.C.4).

3 ALL OF THESE VARIABLES ARE INHERENTLY SUBJECT TO UNCERTAINTIES, AND THE DEBTOR
4 CAN PROVIDE NO ASSURANCE THAT DISTRIBUTIONS TO HOLDERS OF CLAIMS OR EQUITY INTERESTS
5 WILL FALL WITHIN THIS RANGE.

6 The Plan provides that no distributions shall be made on account of Disputed Claims. The Disputed Claims, as
7 set forth in Exhibit D, involve substantial amounts that are contingent or unliquidated, or both, and that are subject to a
8 wide range of potential outcomes. The Reorganized Debtor intends to object to or compromise each of the Claims
9 identified on Exhibit D based upon any defenses, counterclaims, and rights of offset or recoupment available under
10 section 502 and 553 of the Bankruptcy Code, including on the grounds that the identified Disputed Claims are asserted in
11 amounts in excess of the amounts reflected in the books and records of the Debtor. In addition, in those circumstances
12 where a claimant has received a transfer that is avoidable under sections 544, 545, 546, 547, 548, 549, 550 or 553 of the
13 Bankruptcy Code, the Reorganized Debtor intends to assert a defense to allowance of the claimant's Claims under
14 section 502(d) of the Code. In voting on the Plan, all creditors listed on Exhibit D hereto should assume that the
15 Reorganized Debtor will assert whatever defenses it may have to their Claims, including defenses based upon section
16 502(d) of the Bankruptcy Code.

17
18 **f) Class 5 (Equity Interests)**

19 Class 5 consists of all Equity Interests in the Debtor arising from the ownership of common stock in the Debtor.
20 Class 5 is impaired under the Plan. The holders of any Allowed Class 5 Interests are entitled to vote to accept or reject
21 the Plan. There shall be no distribution under the Plan to holders of Class 5 Interests unless and until all Allowed
22 Administrative Claims, Allowed Priority Tax Claims, Post-Effective Date Claims, and Allowed Claims in Classes 1, 2,
23 and 3 are paid in full, including the payment of interest at the federal judgment rate from the Petition Date thereon, and
24 Allowed Claims in Class 4 are paid eighty percent of the Allowed amounts of their Claims. At such time, holders of
25 Class 5 Interests shall receive a Pro Rata distribution of any remaining Cash that they would have otherwise received
26 under applicable law in the event of a liquidation of the Debtor. The Debtor estimates that distributions on behalf of
27 Allowed Class 5 Interests may be in the range of \$0 to approximately \$2.99 per share, based upon, among other things,
28 the successful defense of Disputed Claims, the collection of the Debtor's accounts receivable, and the value of the
Creative Stock. ALL OF THESE VARIABLES ARE INHERENTLY SUBJECT TO UNCERTAINTIES, AND THE
DEBTOR CAN PROVIDE NO ASSURANCE THAT DISTRIBUTIONS TO HOLDERS OF EQUITY INTERESTS
WILL EXCEED \$0 PER SHARE.

B. Treatment Of Executory Contracts

1. Generally

The Bankruptcy Code empowers a debtor in possession, subject to the approval of the Bankruptcy Court, to
assume or reject the debtor's executory contracts and unexpired leases. An "executory contract" generally means a
contract under which performance other than the payment of money is due by the parties. If an executory contract or
unexpired lease is rejected by the debtor in possession, the rejection operates as a prepetition breach of such agreement.
If an executory contract or unexpired lease is assumed by the debtor in possession, the assumption obligates the debtor in
possession to perform under the agreement, and damages arising from any subsequent breach of the agreement are
treated as administrative expenses of the bankruptcy estate.

The Debtor assumed a number of its executory contracts and assigned such contracts to Creative in connection
with the consummation of the sale of substantially all of the Debtor's assets. A portion of these executory contracts were
assumed by the Debtor and assigned to Creative pursuant to the Bankruptcy Court's order approving the Sale Motion,
which was entered on or about September 20, 2000. Pursuant to the Asset Purchase Agreement, Creative had the right to
amend the list of executory contracts that it sought to have assigned to it after the order approving the Sale Motion was
granted. Based on Creative's amended list of executory contracts to be assigned, the Debtor also filed a motion to
assume and assign to Creative additional executory contracts, which motion was approved by the Bankruptcy Court on
December 13, 2000. All cure amounts for the executory contracts assigned to Creative have been paid or will be paid in
full as of the Effective Date.

1 Section 3.1 of the Plan provides that all remaining executory contracts of the Debtor, with the exception of the
2 executory contracts identified on Exhibit 1 to the Plan, will be rejected as of the Effective Date. Section 3.2 of the Plan
3 in turn provides that the Debtor will assume the executory contracts identified on Exhibit 1 to the Plan. At this time
4 Exhibit 1 does not contain any Executory Contracts.

5
6
7
8
9 **2. Deadline For The Assertion Of Rejection Damage Claims And For The Objection To
10 Such Claims; Treatment Of Rejection Damage Claims**

11 Section 3.1 of the Plan also provides that Claims arising from the rejection of executory contracts or unexpired
12 leases under the Plan must be filed with the Bankruptcy Court and served on the Debtor no later than thirty (30) days
13 after the mailing of the Notice of the Effective Date. Any such Claims for which a proof of Claim is not filed and served
14 within such time will be forever barred from assertion and shall not be enforceable against the Debtor or its estate, assets,
15 properties, or interests in property. Any party in interest wishing to object to the rejection an executory contract or
16 unexpired lease under Section 3.1 of the Plan must file and serve an objection within the same deadline and in the same
17 manner established for filing objections to the confirmation of the Plan. Failure to file any such objection within such
18 time frame shall constitute consent to the rejection.

19
20
21 **3. Proposed Cure Amounts For Assumed Executory Contracts And The Deadline For
22 Objection To Such Cure Amounts And To The Proposed Assumption**

23 With respect to each such executory contract or unexpired lease assumed by the Debtor, if any, any monetary
24 amounts required as cure payments shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment
25 of the cure amount, as listed on Exhibit 1 to the Plan, in Cash on the Effective Date or upon such other terms as the
26 parties to such executory contracts or unexpired leases otherwise may agree. In the event of a dispute regarding: (a) the
27 amount of any cure payment; (b) the ability of the Debtor or any assignee to provide "adequate assurance of future
28 performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or
29 (c) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code
30 shall be made following the entry of a Final Order resolving such dispute.

31 Any party to an executory contract or unexpired lease to be assumed under the Plan who contends that the
32 proposed cure amount specified in Exhibit 1 to the Plan is incorrect, or who otherwise objects to the assumption or
33 assumption and assignment of such contract or lease, must file with Bankruptcy Court and serve upon the Debtor,
34 Reorganization Counsel, the United States Trustee, and Committee Counsel a written statement and accompanying
35 declaration in support thereof specifying the basis for the objection within the same deadline and in the manner
36 established for filing objections to confirmation of the Plan. Failure to timely file and serve such a statement shall waive
37 any and all objections to the proposed assumption and cure amount. In the event of a dispute regarding: (a) the cure
38 amount; (b) the provisions of adequate assurance of future performance under the contract or lease to be assumed; or (c)
39 any other matter pertaining to assumption or assumption and assignment, the cure payments required by section
40 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving
41 assumption.

42 **C. Means For Execution And Implementation Of The Plan**

43 **1. Revesting of Assets**

44 On the Effective Date, all assets of the Estate (except for those assets delivered to the Disbursing Agent on the
45 Effective Date for immediate distribution to holders of Allowed Claims) shall be vested in the Reorganized Debtor.
46 Except as otherwise provided in the Plan, the Reorganized Debtor shall sell and reduce to Cash all remaining assets of
47 the Estate and distribute such Cash in the manner provided in the Plan.

48 **2. The Reorganized Debtor's Board of Directors and Management**

a. Composition of the Board of Directors.

As of the Effective Date, the initial Board of Directors of the Reorganized Debtor shall consist of three (3)
members, including Richard Masson, Kenneth Liang, and Gloria Noh. Each of these Directors is currently a director of

1 the Debtor. After the Effective Date, the terms and manner of selection of the Board of Directors of the Reorganized
2 Debtor shall be as provided in the Amended and Restated Articles of Incorporation and the Amended and Restated
3 Bylaws.

4 **b. Identity of Officers.**

5 Steve Mitchell, the Debtor's Chief Operating Officer, shall continue in his position for the Reorganized Debtor
6 as of the Effective Date. Mr. Mitchell currently is paid at a rate of \$150 per hour for his services as Chief Operating
7 Officer, and he will continue to be paid at that rate following the Effective Date.

8 **3. Rights, Powers and Duties of the Reorganized Debtor and the Committee**

9 The Reorganized Debtor shall become, on the Effective Date of the Plan, the exclusive representative of the
10 Estate under section 1123(a)(5) of the Bankruptcy Code and other applicable law. Except as otherwise provided in this
11 Plan, and without prior or further authorization of the Bankruptcy Court, the Reorganized Debtor shall possess all rights
12 and powers possessed by a trustee appointed under the Bankruptcy Code. The following is a general summary of the
13 rights, powers and duties of the Reorganized Debtor:

14 a. On or after the Effective Date, the Reorganized Debtor shall retain and may enforce any and all rights,
15 causes of action, powers, privileges, licenses, and franchises of the Debtor or the Estate, including, but not limited to, all
16 tax determinations under section 505 of the Code, and all causes of action arising under the Plan and the Bankruptcy
17 Code, including avoiding powers and defenses to Disputed Claims arising under applicable non-bankruptcy law or under
18 sections 502(d), 544, 545, 547, 548, 549, 550, 553, and 558 of the Bankruptcy Code; provided, however, that the
19 Reorganized Debtor may not retain or enforce any right that is waived, relinquished, released, compromised or settled in
20 accordance with this Plan. In the event that the Committee requests that the Reorganized Debtor pursue a Cause of
21 Action and the Reorganized Debtor refuses to do so, the Committee shall be entitled to pursue such Cause of Action and
22 shall have the same rights as those granted to the Reorganized Debtor herein, provided, however, that the Reorganized
23 Debtor shall have the right to seek an order from the Bankruptcy Court to prevent the Committee from pursuing such
24 Cause of Action. Notwithstanding the other provisions of this Subsection 4.3.b, in the event that there are not sufficient
25 funds to pay Class 4 Claims in full, with Interest, the Committee shall be entitled to analyze whether to pursue Causes of
26 Action under 11 U.S.C. § 547 and, if warranted, to commence such Causes of Action without further order of the Court.
27 The proceeds of any Causes of Action shall inure to the benefit of the Estate and be delivered to the Disbursing Agent.

28 b. From time to time after the Effective Date, the Reorganized Debtor and the Committee may employ,
engage the services of, and compensate other Persons (which may include employees, temporary employees or
independent contractors) and Professional Persons (which may include professionals previously or concurrently
employed by the Committee or the Debtor in Possession), reasonably necessary to assist the Reorganized Debtor and the
Committee in performing their duties under this Plan without the necessity of further authorization or allowances of fees
and expenses by the Bankruptcy Court. In the event that the Reorganized Debtor does not serve as the Disbursing Agent,
the Disbursing Agent is not entitled to retain Professional Persons, provided, however, if the Disbursing Agent is a
corporation or partnership, the Disbursing Agent shall be entitled to rely upon its employees or independent contractors
in performing its duties under this Plan without the necessity of further authorization or allowances of fees and expenses
by the Bankruptcy Court. The amount of any reasonable fees and expenses ("Professional Fees") incurred by the
Reorganized Debtor or the Committee on account of the employment of such Persons or Professional Persons on or after
the Effective Date shall be paid in Cash by the Disbursing Agent from the Professional Fee Reserve without further order
of the Bankruptcy Court, provided that the Reorganized Debtor or the Committee shall be provided with statements of
any fees and expenses ("Fee Statement") incurred by such Persons or Professional Persons and shall have fifteen (15)
days after receiving a Fee Statement, to notify the Person or Professional Person of any objection, in whole or in part,
to any fees and expenses that are not reasonable. To the extent the objection relates only to part of the Fee Statement, the
balance of the amount requested in the Fee Statement shall be paid. With respect to any portion of the Fee Statement that
is subject to a timely filed objection, the Bankruptcy Court shall retain jurisdiction to determine whether the fees and
expenses subject to such objection are reasonable.

c. The Reorganized Debtor may, in its sole and absolute discretion, sell or dispose of any asset or
compromise any Claim against the Estate or defense or cause of action by the Estate or Reorganized Debtor without
notice and without a hearing if the Reorganized Debtor determines, in the exercise of its reasonable judgment, that such

1 asset has a value of \$50,000 or less, or such Claim has been Filed or Scheduled in the amount of \$50,000 or less;
2 provided, however, that if the intended transaction involves a specific lien upon or interest in the subject matter of the
3 Claim or asset, twenty (20) days written notice of the contemplated action shall be Filed with the Bankruptcy Court and
4 served on the Persons claiming such an interest and Committee Counsel.

5 d. As to any transaction (other than the sale of the Creative Stock, which is discussed in Section C.4
6 herein) involving an asset that the Reorganized Debtor determines, in the exercise of its reasonable judgment, has a value
7 of, or any Claim Filed or Scheduled in the amount of, more than \$50,000 (or, with respect to any settlement of any
8 Causes of Action regardless of the value of such Causes of Action), the Reorganized Debtor: (a) shall consult with, and
9 seek the approval of, the Committee at least ten (10) days prior to Filing a notice of such transaction; and (b) shall File
10 and give twenty (20) days written notice of the intended transaction to the Committee Counsel and to those Persons with
11 a specific interest in or lien upon the subject of the claim or asset; provided, however, that consultation with and approval
12 by the Committee as to any such transaction shall not be required in the event the Cash in the Reserve (after payment in
13 full of Administrative Claims, Priority Tax Claims, Effective Date Claims, Class 1 Claims and Class 2 Claims) exceeds
14 the aggregate amount of the outstanding Claims of the Class 3 and Class 4 claimants plus Interest. If no objection is
15 timely Filed and served upon the Reorganized Debtor, then the Reorganized Debtor may proceed to consummate the
16 intended transaction without further notice upon entry of an order by the Bankruptcy Court. If an objection is timely
17 filed by the Committee or by those Persons with a specific interest in a lien upon the subject of the claim or asset, then
18 the Reorganized Debtor shall seek approval by the Bankruptcy Court of the intended transaction.

19 e. Consistent with the Plan, the Reorganized Debtor may pay or otherwise compromise any debts, claims,
20 costs, liabilities, expenses and other obligations and charges of the Estate, including, without limitation, interest, taxes,
21 assessments, and other charges, public or private, of every kind and nature, including the claims, costs, charges, expenses
22 and liabilities arising out of, and associated with, the execution, administration or operation of the Estate.

23 f. The Reorganized Debtor shall, subject to the limitation set forth in the Asset Purchase Agreement, sell,
24 transfer, assign, vote and give proxies to vote any securities that are Estate assets.

25 4. Sale of Creative Stock

26 The Confirmation Order shall constitute an authorization by the Court for the Reorganized Debtor to sell the
27 Creative Stock without further Order of the Court, subject to otherwise applicable securities laws. After the Effective
28 Date, to the extent that the Examiner has not sold any or all of the Creative Stock, the Reorganized Debtor shall sell the
Creative Stock in one or more transactions. The timing and amount of any such sales shall be determined by the
Reorganized Debtor in the exercise of its reasonable business judgment, except that to the extent that shares of the
Creative Stock remain unsold as of the dates set forth below, the Committee shall be entitled to direct the sale of shares
of the Creative Stock, pursuant to the following timetable and limitations:

Fifteen percent (15%) – on the Confirmation Date

Twenty percent (20%) – on the Effective Date

Fifteen percent (15%) – three (3) months after the Effective Date

Twenty-five percent (25%) – five (5) months after the Effective Date

Twenty-five percent (25%) – ten (10) months after the Effective Date.

By way of illustration, as of the Effective Date, if the Examiner and the Reorganized Debtor have sold only
twenty-five percent (25%) of the Creative Stock, equal to approximately 52,020 shares), the Committee would be
entitled to direct the sale of an additional ten percent (10%) of the Creative Stock, equal to approximately 20,808
shares).

A hearing on the Trustee Motion was held on April 30, 2001. At that hearing, the Court ruled that the proceeds
of the sale of the Creative Stock shall be held by the Reorganized Debtor for distribution in accordance with the terms of
the Plan and for no other purpose.

1 The value of the Creative Stock has fluctuated substantially during this Chapter 11 Case. At the time the bid of
2 Creative for substantially all of the Debtor's assets was accepted in August 2000, the Creative Stock had a value of
3 approximately \$22 per share. By December 18, 2000, the price had declined to \$9.875 per share. As of May 9, 2001, the
4 Creative Stock had a value of approximately \$9.50 per share.

5 The Creative Stock that is owned by the Estate became registered on February 20, 2001. To the extent that any
6 of the Creative Stock remains unsold by the Examiner as of the Effective Date, and subject to the timetable under which
7 the Committee can direct the sale of blocks of the Creative Stock, the Debtor (or Reorganized Debtor) will sell the
8 Creative Stock in one or more transactions, at the discretion of the Board of Directors of the Debtor (or Reorganized
9 Debtor) in the exercise of its reasonable business judgment. Accordingly, no assurance can be given concerning the
10 value of the Creative Stock and the amount that will be realized by the Debtor from the Creative Stock for distribution to
11 creditors and, potentially, shareholders.

12 **5. Records and Reporting**

13 The Reorganized Debtor shall maintain good and sufficient books and records of account relating to the Estate
14 assets, all transactions undertaken by the Reorganized Debtor, all expenses incurred by or on behalf of the Estate, and all
15 distributions either contemplated or effectuated under the Plan. Not more than twenty (20) days after each month
16 following the Effective Date, the Reorganized Debtor shall send to Committee Counsel and Reorganization Counsel a
17 written report showing the receipts and disbursements of the Estate for such prior month and, subject to any
18 confidentiality requirements, any significant activities, changes, and transactions affecting the Estate assets that occurred
19 in such prior month or that are expected to occur in the near future. The Reorganized Debtor shall also file and serve on
20 the United States Trustee post-confirmation quarterly reports in the format prescribed by the United States Trustee.

21 **6. Indemnification**

22 Under certain circumstances as set forth in detail in the Plan, *see* Section 4.6 of the Plan, the Estate will defend,
23 hold harmless and indemnify the Reorganized Debtor, the Committee and the employees, professionals and agents
24 engaged by the Reorganized Debtor and the Committee with respect to losses claims, costs, expenses and liabilities
25 (including legal fees and expenses) arising out of their respective acts or omissions related to the performance of their
26 duties under the Plan or on behalf of the Estate, so long as their acts do not constitute willful misconduct or gross
27 negligence. The provisions of this Subsection shall also apply with respect to any employees or independent contractors
28 retained by the Disbursing Agent.

29 **7. Continued Role of the Creditor's Committee**

30 The Committee shall survive confirmation of the Plan and the Effective Date, and shall continue to exist until
31 the earlier of: (a) the payment in full with Interest of the Allowed Claims in Class 4; or (b) the date the Bankruptcy Case
32 is closed.

33 **8. United States Trustee Fees**

34 All unpaid fees due to the United States Trustee from the Petition Date through the calendar quarter in which
35 the Effective Date occurs shall be paid on the Effective Date by the Estate and shall be based upon all distributions by
36 the Estate on or prior to the Effective Date, including the transfers on the Effective Date of funds to the Disbursing Agent
37 for distribution to holders of Allowed Claims. Commencing with the calendar quarter following the quarter in which the
38 Effective Date occurs and continuing until the entry of a final decree or order converting or dismissing the case, the
39 Disbursing Agent shall pay to the United States Trustee, from the assets of the Estate, such amounts as are required to be
40 paid under 28 U.S.C. Section 1930(a)(6). The Reorganized Debtor shall, however, remain liable for the payment of any
41 such fees, which are not paid by the Disbursing Agent.

42 **9. Limitation on Liability**

43 The Plan provides that on or after the Effective Date, none of the Debtor, the Debtor in Possession, the Estate,
44 the Reorganized Debtor, or the Committee, nor any of their employees, officers, members, directors, agents, or
45 representatives, nor any Professional Persons employed by any of them, shall have or incur any liability to any Person for

1 any act taken or omission made in good faith in connection with or related to the administration of the Estate, objections
2 to or estimations of claims, dispositions of assets, and/or formulating, soliciting acceptances to or confirming the Plan or
3 the Disclosure Statement. Any of the foregoing parties in all respects shall be entitled to rely upon the advice of counsel
4 with respect to their duties and responsibilities under the Plan.

10. Execution of Documents and Corporate Action

4 Under the Plan, the Debtor, the Debtor in Possession, the Reorganized Debtor and/or the Disbursing Agent
5 without being required to obtain any directors' or shareholders' approval or action whatsoever, shall execute such
6 documents and take such other actions as are necessary to effectuate the transactions provided for in this Plan. Following
7 the Effective Date, the Reorganized Debtor, and its officers and directors, shall be authorized to execute all required
8 documents and conveyances on behalf of the Estate.

11. Material Default

8 If there is a material default under the terms of the Plan and upon a successful post-confirmation motion to
9 convert this case to a case under Chapter 7 of the Bankruptcy Code, this Plan shall terminate, and the chapter 7 estate
10 shall consist of all remaining property not already administered. Such remaining property shall be administered by the
11 chapter 7 trustee as prescribed in Chapter 7 of the Bankruptcy Code.

D. Objections to Claims and Distributions

1. Claims Objection Deadline

12 After the Effective Date, the Reorganized Debtor shall have the right to object to the allowance of Claims or
13 Equity Interests filed with the Bankruptcy Court with respect to which liability or allowance in whole or in part is
14 disputed, except that the Committee also shall have the right to object to the allowance of Claims if: (a) the objections
15 are asserted against the Lenders as provided below; or (b) the Reorganized Debtor has not, within thirty (30) days
16 following the Effective Date, Filed an objection to such Claim; or (c) no objection to the allowance of such Claims or
17 Equity Interests has been filed within fifteen (15) days prior to the deadline to object to Claims under Section 5.1.a of the
18 Plan. The hearing shall be scheduled as soon as is reasonably practicable, subject to the Bankruptcy Court's calendar.
19 Any objection to any Claim or Equity Interest must be Filed and served upon the holder of such Claim within 120 days
20 after the Effective Date or such later date as may be provided in the Confirmation Order or pursuant to an Order of the
21 Bankruptcy Court; however, objections may be Filed after the aforementioned deadline if circumstances warrant.

18 The Committee shall have the right to assert, on behalf of the Estate, any objection to the prepetition Claim of
19 the Lenders, or any affirmative claims against the Lenders arising from the prepetition Claim that has not been waived or
20 released, including any objection to the prepetition Claim amount, as provided in the "Stipulation Authorizing Payment
21 of Prepetition Secured Claim By Debtor and Debtor in Possession," which Stipulation was approved by the Bankruptcy
22 Court on an interim basis on November 29, 2000, and on a final basis on or about December 18, 2000. The Committee
23 shall also have the right to assert, on behalf of the Estate, all Causes of Action (as defined in Section 4.3.a) against the
24 Lenders arising during the period from the Petition Date to the Effective Date, except any Causes of Action that relate to
25 the stipulation dated September 6, 2000, authorizing the Debtor to borrow up to \$500,000 from the Lenders. The
26 Committee shall file and serve all such objections and assertions of Causes of Action against the Lenders, if any, by no
27 later than 240 days after the Effective Date, or such later date as may be provided in the Confirmation Order or pursuant
28 to an Order of the Bankruptcy Court.

2. Reserves for Disputed Claims

25 Prior to making any distributions, the Disbursing Agent shall establish reserves for Disputed Claims, unpaid
26 Administrative Claims (including the Professional Fee Reserve) and Priority Tax Claims, and for Post-Effective Date
27 Claims. Except to the extent that the Bankruptcy Court shall determine that a good and sufficient reserve for Disputed
28 Claims is less than the full amount thereof, the reserve for a Disputed Claim shall be based on the Filed amount of the
Disputed Claim or the deemed filed amount of the Scheduled Claim. All Cash held in the reserve shall be invested in
investments authorized by the Bankruptcy Code or by the Bankruptcy Court in its Order Approving Centralized Cash
Management Systems, Use of Existing Bank Accounts and Business Forms, and Current Investment Practices entered on

1 April 7, 2000. The Plan provides that any interest earned on reserves established by the Reorganized Debtor for
2 Disputed Claims, Post-Effective Date Claims, or for any other purpose shall be earned for the account of, and retained
3 by, the Estate, and shall be distributed only in the manner provided for in the Plan.

4 Under the Plan, the Reorganized Debtor may request that the Committee consent to, or the Committee may
5 request the Reorganized Debtor to, increase or decrease the reserve amounts. Such increase or decrease may be
6 authorized by a majority vote of the Committee and consent of the Reorganized Debtor. If the Reorganized Debtor does
7 not consent or the Committee does not vote to consent, either the Reorganized Debtor or the Committee, pursuant to a
8 Committee vote, may file a motion requesting the Bankruptcy Court to authorize such increase or decrease, which motion
9 shall be served on the Reorganized Debtor, Reorganization Counsel, Committee Counsel and the All Notices List at least
10 twenty (20) days prior to any hearing.

7 3. Estimation of Claims

8 Under the Plan, either the Committee or the Debtor in Possession prior to the Effective Date, or, after the
9 Effective Date, the Reorganized Debtor (or, with respect to objections to the prepetition Claims of the Lenders, the
10 Committee) may commence or continue such actions and proceedings in the Bankruptcy Court as are appropriate to
11 estimate any Disputed Claim as permitted or required under section 502(c) of the Bankruptcy Code. The "Estimated
12 Amount" with respect to such Disputed Claim shall be in an amount established by the Bankruptcy Court pursuant to
13 section 502(c) of the Bankruptcy Code after notice and an opportunity for hearing to the holder of the Disputed Claim
14 and the All Notices List. If the Bankruptcy Court estimates a Disputed Claim for purposes of voting, such estimation
15 shall constitute and represent the dollar amount of the Claim for voting purposes only.

12 As provided in the Plan, the Bankruptcy Court shall have exclusive jurisdiction to determine or estimate the
13 appropriate amount of funds the Reorganized Debtor shall hold as a reserve for Post-Effective Date Claims,
14 Administrative Claims, Priority Tax Claims or Disputed Claims pending objections to or estimations of such Disputed
15 Claims. The Reorganized Debtor shall reduce any reserve for Disputed Claims to the amount determined or estimated by
16 the Bankruptcy Court as reasonably necessary to cover Disputed Claims for purposes of making any interim distributions
17 under the Plan. Notwithstanding any such determination or estimation, the Disbursing Agent shall not make any
18 distribution on account of a Disputed Claim until such Claim becomes an Allowed Claim.

16 4. Distributions

17 Under the Plan, the Reorganized Debtor and the Committee shall attempt to agree on the appointment of the
18 Disbursing Agent. In the event that the Reorganized Debtor and the Committee are unable to reach agreement as to the
19 appointment of the Disbursing Agent, the Bankruptcy Court shall have exclusive jurisdiction to determine who shall be
20 appointed as the Disbursing Agent. The Reorganized Debtor, the Committee and the Disbursing Agent shall use their
21 reasonable efforts to dispose of Estate assets, to make prompt and timely distributions, and to avoid undue prolongation
22 of the duration of the Estate and the Bankruptcy Case.

21 On the Effective Date, reasonable reserves acceptable to the Reorganized Debtor and the Committee shall be
22 established for: (1) unpaid Administrative Claims and Priority Tax Claims (including a Professional Fee Reserve for
23 professional fees that accrued but remained unpaid prior to the Effective Date); (2) estimated Post-Effective Date
24 Claims; and (3) Disputed Claims in Classes 1, 2, 3 and 4. Following the establishment of the foregoing reserves, on the
25 Effective Date the holders of Allowed Class 1 Claims will be paid in accordance with Section 2.3.a of the Plan, holders
26 of Allowed Class 2 Claims will be paid in accordance with Section 2.3.b of the Plan, holders of Class 3 Claims will be
27 paid in accordance with Section 2.3.c of the Plan, and the balance of the Cash assets of the Estate will be distributed Pro
28 Rata to holders of Allowed Class 4 Claims until they have received full payment of their claims, plus interest at the
federal judgment rate from the Petition Date through the date of payment.

25 Except to the extent that the Bankruptcy Court shall determine that a good and sufficient reserve for Disputed
26 Claims is less than the full amount thereof, in determining the amount of the distributions due to holders of Allowed
27 Claims, the Pro Rata calculations required by Article V of the Plan shall be made as if all Disputed Claims (including
28 Disputed Administrative Claims and Priority Tax Claims) were Allowed in the full amount claimed by the holders
thereof.

1 Pursuant to the Plan, as additional assets are liquidated and Disputed Claims are resolved, the Reorganized
2 Debtor shall make distributions as promptly as possible in the exercise of its reasonable judgment after review and
3 adjustment of the amounts of appropriate reserves for Disputed Claims, including Disputed Administrative Claims and
4 Priority Tax Claims. The Estate shall not retain Cash or cash equivalents in excess of a reasonable amount to meet
5 Claims and contingent liabilities or to maintain the value of assets during the orderly liquidation. If, after taking into
6 account reserves for Disputed Claims, including disputed or unpaid Administrative Claims, disputed or unpaid Priority
7 Tax Claims and Post-Effective Date Claims, \$1,000,000 is available for general distributions to holders of Allowed
8 Claims, then the Disbursing Agent shall cause an interim distribution to be made. In addition, the Disbursing Agent may,
9 in the exercise of its reasonable judgment after consultation with the Committee, declare any additional interim
10 distributions so long as appropriate reserves for Disputed Claims, including disputed or unpaid Administrative Claims,
11 disputed or unpaid Priority Tax Claims and Post-Effective Date Claims, have been established.

12 At such time as all non-cash assets of the Estate have been liquidated or abandoned, all Disputed Claims have
13 been resolved by Final Order or disallowed, all Post-Effective Date Claims have been paid in full and the Bankruptcy
14 Case has been fully administered, the Disbursing Agent shall make a final Pro Rata distribution and request that the
15 Bankruptcy Court enter a final decree closing the Bankruptcy Case.

16 **E. Continuing Jurisdiction Of The Bankruptcy Court**

17 The Plan also provides for the Bankruptcy Court to retain jurisdiction over a broad range of matters relating to
18 the Bankruptcy Case, the Plan, and other related items. Readers are encouraged to review Section 4.11 of the Plan to
19 ascertain the nature of the Bankruptcy Court's Post-Effective Date jurisdiction.

20 **IV. CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

21 Because the law with respect to confirmation of a plan of reorganization is very complex, creditors concerned
22 with issues regarding confirmation of the Plan should consult with their own attorneys. The following discussion is
23 intended solely for the purpose of providing basic information concerning certain confirmation issues. The Debtor
24 cannot and does not represent that the discussion contained below is a complete summary of the law on this topic.

25 Many requirements must be met before the Bankruptcy Court may confirm the Plan. Some of the requirements
26 discussed in this Disclosure Statement include acceptance of the Plan by the requisite number of holders of Claims and
27 Equity Interests, and whether the Plan pays such holders at least as much as they would receive in a liquidation of the
28 Debtor under chapter 7 of the Bankruptcy Code. These requirements, however, are not the only requirements for
confirmation, and the Bankruptcy Code will not confirm the Plan unless and until it determines that the Plan satisfies all
applicable requirements, including requirements not referenced in this Disclosure Statement.

A. Voting And Right To Be Heard At Confirmation

1. Who May Support Or Object To Confirmation Of The Plan?

Any party in interest may support or object to the confirmation of the Plan. Even entities that may not have a
right to vote (e.g., entities whose Claims are classified into an unimpaired Class) may still have a right to support or
object to confirmation of the Plan. (See Section I.C.2 for information regarding the applicable deadlines for objecting to
confirmation of the Plan).

2. Who May Vote To Accept Or Reject The Plan?

A holder of a Claim generally has a right to vote for or against the Plan if their Claim or Equity Interest is both
"allowed" for purposes of voting and classified into an impaired Class.

a) What Is An Allowed Claim Or Equity Interest For Voting Purposes?

As noted above, a creditor's Claim must be "allowed" for purposes of voting in order for such claim or equity
interest to have the right to vote on the Plan. Generally, for voting purposes, a Claim is deemed "allowed" if: (a) a proof
of Claim or Equity Interest was timely filed; or (b) if no proof of Claim or Equity Interest was filed, the holder of the

1 Claim or Equity Interest is identified in the Schedules as other than "disputed," "contingent," or "unliquidated." In either
2 case, when an objection to a Claim or Equity Interest has been filed, the claim or equity interest holder cannot vote
3 unless the Bankruptcy Court, after notice and hearing, either overrules the objection or allows the claim or equity interest
4 for voting purposes.

5 The definitions of "Allowed Claim" and "Allowed Equity Interest" used in the Plan for purposes of determining
6 whether Claim or Equity Interest holders are entitled to receive distributions thereunder may differ materially from those
7 used by the Bankruptcy Court to determine whether a particular Claim or Equity Interest is "allowed" for purposes of
8 voting. Holders of Claims and Equity Interests are advised to review the definitions of "Allowed," "Claim," "Disputed,"
9 and "Equity Interest" set forth in Article I of the Plan to determine whether they may be entitled to receive distributions
10 under the Plan.

11 **b) What Is An Impaired Claim Or Equity Interest?**

12 As noted above, the holder of a Claim or Equity Interest has the right to vote on the Plan if that Claim or Equity
13 Interest is allowed and classified into a Class that is *impaired* under the Plan. A Class is impaired if the Plan alters the
14 legal, equitable, or contractual rights of the members of that Class with respect to their claims or equity interests. The
15 Debtor believes that Classes 3, 4 and 5 are impaired under the Plan. Any party that disputes such characterization,
16 however, may request that the Bankruptcy Court find that its Claim or Equity Interest is impaired in order to obtain the
17 right to vote on the Plan.

18 **B. Who Is Not Entitled To Vote?**

19 The holders of the following five types of Claims or Equity Interests are not entitled to vote on the Plan:
20 (a) Claims or Equity Interests that have been disallowed; (b) Claims or Equity Interests that are subject to an order
21 disallowing such claim or Equity Interest entered prior to the Confirmation Hearing or Scheduled as disputed, contingent
22 or unliquidated and that have not been allowed for voting purposes; (c) Claims in unimpaired Classes (*i.e.*, Classes 1 and
23 2); (d) Claims in impaired Classes that do not receive or retain any interest, property, or other consideration under the
24 Plan; and (e) Claims entitled to priority pursuant to sections 507(a)(1), (a)(2), and (a)(7) of the Bankruptcy Code.
25 Holders of Claims and Equity Interests in unimpaired Classes are not entitled to vote because such Classes are deemed to
26 have accepted the Plan. Holders of Claims entitled to priority pursuant to sections 507(a)(1), (a)(2), and (a)(7) of the
27 Bankruptcy Code are not entitled to vote because such Claims are not placed in Classes and they are required to receive
28 certain treatment specified by the Bankruptcy Code. Holders of Claims or Equity Interests of the type described above,
however, nevertheless may have the right to support or object to the confirmation of the Plan.

18 **C. Votes Necessary To Confirm The Plan**

19 The Bankruptcy Court cannot confirm the Plan unless, among other things: (a) at least one (1) impaired Class
20 of Claims has accepted the Plan without counting the votes of any insiders within that Class; and (b) either all impaired
21 Classes have voted to accept the Plan, or the Plan is eligible to be confirmed by "cramdown" with respect to any
22 dissenting impaired Class, as discussed in Section I.B herein.

22 **1. Votes Necessary For A Class To Accept The Plan**

23 A Class of Claims is considered to have accepted the Plan when more than one-half (1/2) in number and at least
24 two-thirds (2/3) in dollar amount of the Claims that actually voted in that Class have voted in favor of the Plan.

24 **2. Treatment Of Nonaccepting Classes**

25 As noted above, even if certain impaired Classes do not accept the proposed Plan, the Bankruptcy Court may
26 nonetheless confirm the Plan if the nonaccepting Classes are treated in the manner required by the Bankruptcy Code.
27 The process by which nonaccepting Classes are forced to be bound by the terms of a plan is commonly referred to as a
28 "cramdown." Specifically, the Bankruptcy Code allows the Plan to be "crammed down" on nonaccepting Classes of
Claims or Equity Interests if the Plan meets the requirements of section 1129(a)(1) through (a)(7) and 1129(a)(9) through
(a)(13) of the Bankruptcy Code and if the Plan does not "discriminate unfairly" and is "fair and equitable" as those terms
are defined in section 1129(b) of the Bankruptcy Code.

1 3. **Request For Confirmation Despite Nonacceptance By One or More Impaired Classes**

2 The Debtor has requested that the Bankruptcy Court confirm the Plan by cramdown on any impaired Class that
3 does not vote to accept the Plan, and the Debtor believes that cramdown is appropriate under the circumstances.

4 **D. Liquidation Analysis**

5 Another confirmation requirement is the so-called "Best Interests Test" created by section 1129(a)(7) of the
6 Bankruptcy Code. The Best Interests Test requires that, if a holder of a Claim or Equity Interest is in an impaired Class
7 and does not vote to accept the Plan, such holder receives or retains an amount under the Plan not less than the amount
8 that such holder would receive or retain if the Debtor was to be liquidated under chapter 7 of the Bankruptcy Code.

9 In a chapter 7 case, a trustee or trustees would be elected or appointed to liquidate the Debtor's assets for
10 distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Under those priorities,
11 secured creditors generally are paid first from the sales proceeds of properties securing their liens. Administrative
12 expenses generally are next to receive payment. Unsecured creditors then are paid from any remaining sales proceeds,
13 according to their statutory and contractual rights to priority. Unsecured creditors with the same priority share in
14 proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally,
15 shareholders receive the balance, if any that remains after all creditors are paid.

16 For the Bankruptcy Court to be able to confirm the Plan, it must find that holders of Claims and Equity Interests
17 who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a
18 hypothetical chapter 7 liquidation with respect to the Debtor. The Debtor submits that this requirement is met here
19 because, among other things, the Plan provides for the liquidation of the Debtor in a manner that is at least as efficient as
20 would occur in the event that the Bankruptcy Case was converted to a case under chapter 7 of the Bankruptcy Code. In
21 fact, there are a number of reasons why the Plan will result in greater recoveries to holders of Allowed Claims than
22 would result under a chapter 7 liquidation case with respect to the Debtor.

23 First, the Debtor plans on making an initial distribution to creditors on the Effective Date, which is scheduled to
24 occur as early as July 2000, and on making interim distributions thereafter as appropriate. The Debtor also will endeavor
25 to liquidate the remaining assets of the Estate, fully administer the Bankruptcy Case, and make a final distribution within
26 the next six (6) to twelve (12) months under the Plan. In a chapter 7 case, however, creditors likely would not receive a
27 chapter 7 dividend until a considerably greater amount of time, possibly as much as two (2) years after the Effective
28 Date. This delay would likely result in higher administrative fees incurred by the Estate, which in turn would reduce the
29 distribution to unsecured creditors.

30 Second, in a chapter 7 case, a chapter 7 trustee (or trustees) with no familiarity with the Bankruptcy Case would
31 be appointed to complete the liquidation and distribution process. The trustee(s) likely would retain new professionals,
32 who also would be unfamiliar with the Bankruptcy Case, to assist with the liquidation of the Estate (including the pursuit
33 of claims and causes of action and the objection to disputed claims and equity interests), and the trustee(s) would have to
34 expend considerable time and effort to "get up to speed" on the issues implicated by such liquidation and litigation
35 (thereby duplicating the substantial efforts made to date by the Debtor, the Committee, and their professionals). Given
36 the lack of familiarity with the factual and legal issues involved, and the complexity of those issues, the Debtor believes
37 that Allowed Claims will be lower and the percentage of receivables recovered will be higher under the Plan than in a
38 liquidation under chapter 7.

39 Finally, in the event of a conversion to chapter 7, creditors of the Estate also would have to bear an additional
40 layer of administrative expenses in the form of the chapter 7 trustee statutory fees which, as calculated in accordance
41 with section 326 of the Bankruptcy Code, could approximate at least \$275,000 or more.

42 **E. Feasibility**

43 Because the Plan contemplates a liquidation of the assets of the Debtor, the Debtor submits that the feasibility
44 requirement set forth in section 1129(a)(11) is not applicable to the Plan.

1 **F. Effective Date**

2 **1. Conditions To The Occurrence Of The Effective Date**

3 The Plan will not become effective and operative unless and until the Effective Date occurs. Section 9.1 of the
4 Plan sets forth certain conditions to the occurrence of the Effective Date, which conditions are not waivable by the
5 Debtor. The conditions to the occurrence of the Effective Date are: (a) the Confirmation Order shall be in full force and
6 effect; and (b) at least twenty (20) calendar days have passed since the Confirmation Order was entered.

7 **2. Non-Occurrence Of The Effective Date**

8 If Confirmation occurs, but the Effective Date does not occur within the time period authorized by the Plan,
9 then the Plan provides that: (a) the Confirmation Order shall be vacated; (b) no distributions under the Plan shall be
10 made; (c) the Debtor and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day
11 immediately preceding the Confirmation Date as though the Confirmation Date never occurred; and (d) all the Debtor's
12 obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained herein shall be
13 deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Entity or to prejudice in any
14 manner the rights of the Debtor, the Committee, or any Entity in any further proceedings involving the Debtor.

15 **G. Channeling of Claims and Injunction**

16 Because the Plan provides for the liquidation of all or substantially all of the property of the Estate,
17 confirmation of the Plan will not discharge the Debtor from Claims that arose prior to confirmation. The Plan, however,
18 provides that the treatment of all Claims and Equity Interests (including Post-Effective Date Claims) thereunder shall be
19 the sole and exclusive remedy on account of such Claims and Equity Interests with respect the Estate, including any
20 interest accrued from and after the Petition Date or interest that would have accrued but for the commencement of the
21 Bankruptcy Case.

22 As a consequence, except as otherwise provided in the Plan, on or after the Effective Date, all Persons who have
23 held, currently hold or may hold a Claim or Equity Interest treated or provided for pursuant to the Plan will be
24 permanently enjoined from taking any of the following actions on account of any such Claim or Equity Interest:
25 (a) commencing or continuing, in any manner and any place, any action or other proceeding against the Estate without
26 leave of the Bankruptcy Court; (b) enforcing, attaching, collecting or recovering in any manner any judgment award,
27 decree, or order against any property without leave of the Bankruptcy Court; (c) creating, perfecting or enforcing any lien
28 against property of the Estate without leave of the Bankruptcy Court; (d) taking any action to obtain possession of
29 property of the Estate or to obtain possession of property from the Estate; and (e) commencing or continuing any action
30 or proceeding, in any manner and in any place, that does not comply with or is inconsistent with the provisions of the
31 Plan. Any claim or cause of action asserted against the Estate, the Reorganized Debtor, Professional Persons or the
32 Committee arising out of or related to the conduct of their duties in the Bankruptcy Case, whether before or after the
33 Effective Date, shall be commenced only in the Bankruptcy Court. Except as provided for in the Plan, all property dealt
34 with in the Plan (including property of the Estate) is free and clear of all Claims and Equity Interests (including Post-
35 Effective Date Claims). Any Person injured by any willful violation of such injunction will be entitled to recover actual
36 damages, including costs and professional fees, and, where appropriate, punitive damages from the willful violator.

37 **H. Plan Controls**

38 In the event there are inconsistencies between the Disclosure Statement and the Plan, the terms of the Plan shall
39 control.

40 **V. CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

41 **A. Introduction**

42 Implementation of the Plan may have federal, state, and local tax consequences to the Debtor and its estate as
43 well as to the creditors and shareholders of the Debtor. No tax opinion has been sought or will be obtained with respect
44 to any tax consequences of the Plan, and the following disclosure does not constitute and is not intended to constitute
45 either a tax opinion or tax advice to any person.

1 This disclosure is provided for informational purposes only. Moreover, this disclosure summarizes only certain
2 of the federal income tax consequences associated with the Plan's confirmation and implementation and does not attempt
3 to comment on all such aspects. Similarly, this disclosure does not attempt to consider any facts or limitations applicable
4 to any particular creditor or shareholder which may modify or alter the consequences described below. This disclosure
5 also does not address state, local, or foreign tax consequences or the consequences of any federal tax other than the
6 federal income tax.

7 This disclosure is based upon the provisions of the Internal Revenue Code of 1986, as amended, the regulations
8 promulgated thereunder, existing judicial decisions, and administrative rulings. In light of the numerous recent
9 amendments to the Internal Revenue Code, there can be no assurance that legislative, judicial, or administrative changes
10 will not be forthcoming that would affect the accuracy of the discussion below. Any such changes could be material and
11 could be retroactive with respect to the transactions entered into or completed prior to the enactment or promulgation
12 thereof. Finally, the tax consequences of certain aspects of the Plan are uncertain due to a lack of applicable legal
13 authority and may be subject to judicial or administrative interpretations that differ from the discussion below.

14 Creditors and shareholders therefore are advised to consult with their own tax advisors regarding the tax
15 consequences to them and to the Debtors of the transactions contemplated by the Plan, including federal, state, local, and
16 foreign tax consequences.

17 **B. Federal Income Tax Consequence To The Debtor**

18 **1. Sales Of Assets In Liquidation**

19 As discussed above, the Debtor has sold substantially all of its operating assets and will distribute the proceeds
20 of such assets to creditors pursuant to the terms of the Plan. In the event that, as anticipated, the asset sales generate a net
21 gain for federal income tax purposes, the Debtor will incur tax on such gain to the extent that the net gain exceed the
22 Debtor's net operating loss ("NOL") or to the extent of any Alternative Minimum Tax liability ("AMT") which may not
23 be fully offset by net operating loss carryforwards (as re-computed for AMT purposes).

24 **2. Reduction Of Indebtedness**

25 Because the Debtor will not recommence any business operations under the Plan, but will instead liquidate its
26 remaining assets, the Debtor will be denied a discharge with respect to its outstanding indebtedness. Nevertheless, the
27 modification of the terms of the Debtor's indebtedness that occurs (or may be deemed to occur) as a result of the
28 confirmation and consummation of the Plan may create actual or constructive debt cancellation for tax purposes. Such
actual or constructive debt cancellation hereinafter is referred to as a "Debt Discharge Amount."

In general, the Internal Revenue Code provides that a taxpayer who realizes a cancellation or discharge of
indebtedness must include the Debt Discharge Amount in its gross income in the taxable year of discharge to the extent
that the Debt Discharge Amount exceeds any consideration given for such discharge. No income from the discharge of
indebtedness is realized to the extent that payment of the liability being discharged would have given rise to a deduction.

If a taxpayer is in a case under the Bankruptcy Code and a cancellation of indebtedness occurs pursuant to a
confirmed plan, however, such discharge of indebtedness is specifically excluded from gross income pursuant to an
exception commonly referred to as the "Bankruptcy Exception." Although it is unclear whether the constructive
cancellation of indebtedness that may occur as a result of the Plan's implementation qualifies for exclusion from income
under the Bankruptcy Exception, the Debtor intends to take the position that the Bankruptcy Exception in fact does
apply, such that the Debt Discharge Amount is excluded from income.

A Debt Discharge Amount is also excluded from income, pursuant to an exception commonly referred to as the
"Insolvency Exception," if and to the extent that the Debtor is insolvent at the time of the cancellation of indebtedness.
The Debtor believes that it is and has for some time been insolvent within the meaning of this exception. Accordingly,
even if the Debtor was unable to exclude constructive debt cancellation from income under the Bankruptcy Exception,
the Debtor believes that the Debtor likely qualifies to exclude such cancellation under the Insolvency Exception.

1 Accordingly, the Debtor believes that the Debtor will not be required to include in income any Debt Discharge
2 Amount as a result of confirmation and consummation of the Plan. The Internal Revenue Code, however, requires
3 certain tax attributes of the Debtor to be reduced by the Debt Discharge Amount that is excluded from income.
4 Specifically, tax attributes are reduced in the following order of priority: (a) net operating losses and net operating loss
5 carryovers; (b) general business credits; (c) minimum tax credits; (d) capital loss carryovers; (e) basis of property of the
6 taxpayer; (f) passive activity loss or credit carryovers; and (g) foreign tax credit carryovers. Tax attributes generally are
7 reduced by one dollar for each dollar excluded from gross income, except that general tax credits, minimum tax credits,
8 and foreign tax credits are reduced by 33.3 cents for each dollar excluded from gross income.

9 C. Federal Income Tax Consequences To Creditors

10 The tax consequences of the Plan's confirmation and implementation to a creditor will depend on the type of
11 consideration received by the creditor in exchange for its Claim, whether the creditor reports income on the cash or
12 accrual method, whether the creditor receives consideration in more than one tax year of the creditor, and whether all the
13 consideration received by the creditor is deemed to be received by that creditor in an integrated transaction.

14 1. In General

15 a) Gain/Loss on Exchange

16 A creditor will recognize gain or loss on the actual or constructive exchange of such creditor's existing Claims
17 (other than Claims for accrued interest) for rights under the Plan, cash and any other consideration received pursuant to
18 the Plan in an amount equal to the difference between: (i) the "amount realized" in respect of such Claims; and (ii) the
19 creditor's tax basis in such Claims. The "amount realized" will be equal to the sum of the cash and: (i) as to a cash-basis
20 taxpayer, the fair market value of all other consideration received (or, possibly, in the case of debt instruments, the issue
21 price of such debt instruments); and (ii) as to an accrual-basis taxpayer, the fair market value of consideration received,
22 less any amounts allocable to interest, unstated interest, or original issue discount.

23 2. Receipt Of Interest

24 Income attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether the
25 creditor's existing Claims are capital assets in its hands. A creditor who, under its accounting method, was not
26 previously required to include in income accrued but unpaid interest attributable to existing Claims and who exchanges
27 its interest Claim for cash or other property pursuant to the Plan will be treated as receiving ordinary interest income to
28 the extent of any consideration so received allocable to such interest, regardless of whether that creditor realizes an
overall gain or loss as a result of the exchange of its existing Claims. A creditor who previously had included in income
accrued but unpaid interest attributable to its existing Claims will recognize a loss to the extent that such accrued but
unpaid interest is not satisfied in full. For purposes of the above discussion, "accrued" interest means interest, which was
accrued while the underlying claim was held by the creditor.

29 3. Other Tax Considerations

30 a) Market Discount

31 If a creditor has a lower tax basis in an obligation than its face amount, the difference may constitute market
32 discount under section 1276 of the Internal Revenue Code. (Certain obligations are excluded from the operation of this
33 rule, such as obligations with a fixed maturity date not exceeding one year from the date of issue, installment obligations
34 to which section 453B of the Internal Revenue Code applies and, probably, demand instruments). Holders in whose
35 hands obligations are market discount bonds will be required to treat as ordinary income any gain recognized upon the
36 exchange of such obligations to the extent of the market discount accrued during the holder's period of ownership, unless
37 the holder has elected to include such market discount in income as it accrued.

38 b) Taxation Of Certain Reserves

Section 468B(g) of the Internal Revenue Code provides that escrow accounts, settlement funds or similar funds
are subject to current taxation. That section also provides that the Internal Revenue Service will prescribe regulations for

1 the taxation of any such account or fund, whether as a grantor trust or otherwise, and the Internal Revenue Service issued
2 final regulations regarding settlement funds on December 18, 1992 and proposed additional regulations on February 1,
3 1999. However, the final regulations specifically reserve the tax treatment of settlement funds in bankruptcy, and the
4 proposed additional regulations do not address such funds. Thus, issues regarding who is responsible for reporting
5 income generated by the funds in any unclaimed property or in the Disputed Claims Reserve established pursuant to the
6 Plan are uncertain. If the reserves are treated as a grantor trust for which the creditor beneficiaries are treated as
7 grantors, the creditor beneficiaries would be subject to current taxation on the income generated by such reserves.

8 **c) Withholding**

9 The Disbursing Agent appointed under the Plan will withhold from payments made to creditors pursuant to the
10 Plan any amounts required by law to be withheld. In order to assist that withholding process, creditors may be required
11 to provide general tax information to the Disbursing Agent prior to receiving their distributions under the Plan.

12 **D. General Disclaimer**

13 PERSONS CONCERNED WITH THE TAX CONSEQUENCES OF THE PLAN SHOULD CONSULT
14 THEIR OWN ACCOUNTANTS, ATTORNEYS AND/OR ADVISORS. THE DEBTOR MAKES THE ABOVE-
15 NOTED DISCLOSURE OF POSSIBLE TAX CONSEQUENCES FOR THE SOLE PURPOSE OF ALERTING
16 READERS TO TAX ISSUES THEY MAY WISH TO CONSIDER. THE DEBTOR CANNOT AND DOES NOT
17 REPRESENT THAT THE TAX CONSEQUENCES MENTIONED ABOVE ARE COMPLETELY ACCURATE
18 BECAUSE, AMONG OTHER THINGS, THE TAX LAW EMBODIES MANY COMPLICATED RULES THAT
19 MAKE IT DIFFICULT TO PROVIDE ANY ASSURANCE AS TO THE POTENTIAL TAX IMPLICATIONS OF
20 THE PLAN.

21 **VI. RECOMMENDATION AND CONCLUSION**

22 The Debtor believes that confirmation and implementation of the Plan are preferable to all other available and
23 feasible alternatives because under the Plan the Reorganized Debtor -- which is familiar with the Debtor's business
24 operations, the Disputed Claims and remaining assets -- will complete the liquidation. Accordingly, the Debtor believes
25 that confirmation of the Plan will provide for a more favorable liquidation of assets and an earlier distribution to holders
26 of Claims than would the appointment of a chapter 7 trustee who is unfamiliar with the Bankruptcy Case. The Debtor
27 thus urges holders of impaired Claims and Equity Interests to vote to accept the Plan by so indicating on their ballots and
28 returning them as specified in this Disclosure Statement and on their ballots.

DATED: June 13, 2001

AUREAL INC.

/s/ Steve Mitchell

Steve Mitchell
Chief Operating Officer

Presented by:

HENNIGAN, BENNETT & DORMAN

/s/ Sidney P. Levinson

Sidney P. Levinson
Reorganization Counsel for Debtor
And Debtor in Possession

EXHIBIT A

PLAN OF REORGANIZATION

1 BRUCE BENNETT (SBN 105430)
MICHAEL MORRIS (SBN 89842)
2 SIDNEY P. LEVINSON (SBN 139419)
HENNIGAN, BENNETT & DORMAN
3 601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
4 Telephone (213) 694-1200
Facsimile (213) 694-1234

5
6 Reorganization Counsel for
Debtor and Debtor in Possession

7 UNITED STATES BANKRUPTCY COURT
8
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10
11 OAKLAND DIVISION

11 In re AUREAL INC.,) Case No.00-42104-T11
d/b/a SILO.COM, f/k/a AUREAL SEMICONDUCTOR,)
12 INC., f/k/a MEDIA VISION TECHNOLOGY, INC.,) (Chapter 11)
a Delaware corporation,)
13) **DEBTOR'S SECOND AMENDED PLAN OF**
14) **REORGANIZATION**
15 Debtor.) Confirmation Hearing
16) Date: July 19, 2001
17) Time: 3:00 p.m.
18) Place: Courtroom 201
19) 1300 Clay Street
20) Oakland, CA 94612
21)
22)
23)
24)
25)
26)
27)
28)

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DESIGNATION AND TREATMENT OF CLASSES OF CLAIMS AND EQUITY INTERESTS

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Exhibit 1A-1

1 This Second Amended Plan of Reorganization (the "Plan") is proposed by Aural Inc., d/b/a Silo.com, f/k/a
2 Aural Semiconductor, Inc., f/k/a Media Vision Technology, Inc. ("Aural" or the "Debtor"), pursuant to section 1121 of
3 title 11 of the Bankruptcy Code. The Disclosure Statement for this Plan discusses the Debtor's history, business,
4 properties, and results of operations, and contains a summary of this Plan. All holders of Claims and Equity Interests are
5 encouraged to read this Plan and the Disclosure Statement in their entirety before voting to accept or reject this Plan.
6 Capitalized terms not otherwise defined herein shall have the definitions set forth below.

4 **ARTICLE I**
5 **DEFINITIONS AND RULES OF CONSTRUCTION**

6 1.1 **Definitions.** In addition to such other terms as are defined in other Articles of this Plan, the following
7 terms have the respective meanings specified below, unless the context otherwise requires:

8 1. "**Administrative Claim**" means any Claim under sections 503(b) and 507(a)(1) of the Bankruptcy
9 Code, including, without limitation, any actual and necessary expenses of preserving the estate of the Debtor, any actual
10 and necessary expenses of operating the business of the Debtor, all compensation and reimbursement of expenses
11 allowed by the Bankruptcy Court under section 330 of the Bankruptcy Code, and any fees or charges assessed against the
12 estate of the Debtor under section 1930 of title 28 of the United States Code.

13 2. "**Administrative Tax Claim**" means an Administrative Claim held by a governmental unit for
14 taxes (and for interest and/or penalties related to such taxes) for any tax year or period from, or any portion of which
15 occurs or falls within the period from, the Petition Date through and including the Effective Date.

16 3. "**Affiliate**" means an affiliate as defined in section 101(2) of the Bankruptcy Code. The Debtor's
17 Affiliates include Aural Limited and Crystal Rivers Engineering, Inc.

18 4. "**All Notices List**" means the Persons who have, following the mailing of the Notice of Effective
19 Date, Filed and served on the Reorganized Debtor and Reorganization Counsel a request for special notice requesting
20 service of all notices in the Bankruptcy Case required by the Plan to be served on parties in interest following the
21 Effective Date. For a period of thirty (30) days following the mailing of the Notice of Effective Date, the All Notices
22 List shall also include those Persons who previously had Filed and served a request for special notice pursuant to the
23 Bankruptcy Rules. Thereafter, those Persons who have not affirmatively requested that they be continued on the All
24 Notices List after the Effective Date shall be deleted from the All Notices List.

25 5. "**Allowed Claim**" means any Claim against the Debtor to the extent that: (a)(i) a proof of such
26 claim was timely Filed, or (ii) is deemed timely Filed under applicable law or by reason of an order of the Bankruptcy
27 Court; and (b)(i) a Claim as to which no objection to the allowance thereof has been interposed within the applicable
28 period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Confirmation Order, or (ii) as
to which an objection has been interposed and such Claim has been allowed in whole or in part by a Final Order. An
"Allowed _____ Claim" means an Allowed Claim of a particular type or class, such as an Allowed Class 1 Claim or an
Allowed Unsecured Claim.

6. "**Asset Purchase Agreement**" means that certain Asset Purchase Agreement, dated October 31,
2000, between the Debtor and Creative Technology, Ltd., and all of the documents and instruments relating thereto as
amended from time to time.

7. "**Available Cash**" means all Cash of the Estate, other than amounts contained, pursuant to
Sections 4.3.c, 5.3 and 5.4 of this Plan, in reserve on account of Disputed Claims, unpaid Administrative Claims
(including amounts in the Professional Fee Reserve), Priority Tax Claims, and Post-Effective Date Claims, whether
deposited in an account of the Debtor pursuant to the Order Approving Centralized Cash Management Systems, Use of
Existing Bank Accounts and Business Forms, and Current Investment Practices, entered by the Bankruptcy Court on
April 7, 2000, or otherwise, including, without limitation, any interest earned on all Cash held by the Estate.

8. "**Ballot**" means the form or forms on which is to be indicated the acceptance or rejection of the
Plan and which are distributed to holders of impaired Claims and impaired Equity Interests entitled to vote on the Plan.

1 9. “Ballot Date” means the date set by the Bankruptcy Court by which all completed Ballots must be
2 received.

3 10. “Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as
4 applicable to the Chapter 11 Case.

5 11. “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of
6 California, Oakland Division, or such other court having jurisdiction over the Chapter 11 Case.

7 12. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as amended from time
8 to time, as applicable to the Chapter 11 Case, including the Local Rules of the Bankruptcy Court.

9 13. “Business Day” means any day other than a Saturday, Sunday or a “legal holiday” as defined in
10 Bankruptcy Rule 9006(a).

11 14. “Cash” means lawful currency of the United States of America.

12 15. “Chapter 11 Case” means the case under chapter 11 of the Bankruptcy Code commenced by the
13 Debtor, entitled In re Aureal Inc., d/b/a Silo.com, f/k/a Aureal Semiconductor, Inc., f/k/a Media Vision Technology, Inc.,
14 Case No. 00-42104-T11 currently pending in the Bankruptcy Court.

15 16. “Claim” means: (a) any right to payment from the Debtor, whether or not such right is reduced
16 to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,
17 secured, or unsecured, known or unknown; or (b) any right to an equitable remedy for breach of performance if such
18 breach gives rise to a right of payment from the Debtor, whether or not such right to an equitable remedy is reduced to
19 judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

20 17. “Class” means one of the classes of Claims or Equity Interests established under Article II
21 pursuant to section 1122 of the Bankruptcy Code.

22 18. “Committee” means the statutory committee of unsecured creditors appointed by the United
23 States Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code.

24 19. “Committee Counsel” means McCutchen, Doyle, Brown & Enersen, LLP, Three Embarcadero
25 Center, Suite 1800, San Francisco, California 94111, Attn: Randy Michelson, Esq., or its successors.

26 20. “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the
27 Confirmation Order on the docket.

28 21. “Confirmation Hearing” means the hearing held pursuant to Bankruptcy Rule 3020(b), including
any continuances thereof, at which the Bankruptcy Court will consider confirmation of the Plan.

 22. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to
section 1129 of the Bankruptcy Code.

 23. “Convenience Claim” means all general Unsecured Claims in an amount of \$10,000 or less,
after aggregation of all of the Allowed Unsecured Claims asserted by the holder of such Claims (other than Claims
acquired by assignment, which Claims shall be aggregated as if still held by the original claimant). Notwithstanding the
foregoing, a Claim that would otherwise be excluded from the definition of a Convenience Claim may, by the timely
election of the holder of such claim as set forth on the Ballot.

 24. “Creative” means Creative Technology Ltd., or its successor.

 25. “Creative Stock” means the 208,079 shares of common stock, par value \$0.25 Singapore dollars
per share, that were issued to the Debtor by Creative in accordance with the Asset Purchase Agreement.

1 26. "Debtor" means Aural Inc., a Delaware corporation, formerly known as Aural Semiconductor, Inc., formerly known as Media Vision Technology, Inc., and doing business as Silo.com.

2 27. "Debtor in Possession" means the Debtor, when acting in its capacity as debtor in possession
3 prior to the Effective Date pursuant to section 1107(a) of the Bankruptcy Code.

4 28. "Disbursing Agent" means any entity acting in its capacity as a disbursing agent or successor
5 disbursing agent under Section 5.5 of the Plan.

6 29. "Disclosure Statement" means the disclosure statement relating to the Plan, including all exhibits
7 and schedules thereto, as may be amended, modified or superceded that is approved by the Bankruptcy Court pursuant to
8 section 1125 of the Bankruptcy Code.

9 30. "Disputed Claim" means any Claim, including, without limitation, an Administrative Claim and
10 Priority Tax Claim, against the Debtor, to the extent the allowance of which is the subject of a timely objection or request
11 for estimation (with respect to voting) in accordance with the Bankruptcy Code, the Plan, the Bankruptcy Rules, and/or
12 the Confirmation Order, or is otherwise disputed in accordance with applicable law, which objection, request for
13 estimation (with respect to voting) or dispute has not been withdrawn or determined by a Final Order.

14 31. "Effective Date" means the first Business Day: (i) that is at least twenty (20) Business Days after
15 the Confirmation Date; and (ii) on which no stay of the Confirmation Order is in effect.

16 32. "Entity" means an individual, a corporation, a general partnership, a limited partnership, a
17 limited liability company, a limited liability partnership, an association, a joint stock company, a joint venture, an estate,
18 a trust, an unincorporated organization, a government or any subdivision thereof, or any other entity.

19 33. "Equity Interest" means any equity interest in the Debtor of any kind or nature, including,
20 without limitation, all common stock interests and membership interests, and any option, warrant or other agreement
21 requiring the issuance of or granting the right to acquire any such equity interest.

22 34. "Estate" means the estate created in the Bankruptcy Case on the Petition Date pursuant to
23 section 541 of the Code, and includes all the property, proceeds, profits, and rents resulting or derived therefrom that are
24 acquired (a) by the Estate or by the Debtor from the Petition Date to the Effective Date, and (b) by the Estate or the
25 Reorganized Debtor on or after the Effective Date.

26 35. "Examiner" means the person appointed by the Office of the United States Trustee pursuant to
27 the Court's order entered on May 8, 2001, to determine the timing and manner of the sale of the Creative Stock.

28 36. "Filed" means properly filed with the Bankruptcy Court in the Bankruptcy Case, as reflected on
the official docket of the Bankruptcy Court.

 37. "Final Distribution Date" means the first Business Day after the date on which (i) all non-Cash
assets of the Estate have been liquidated or abandoned, (ii) all Disputed Claims (including disputed Administrative
Claims and Priority Tax Claims) have been resolved by Final Order or disallowed, (iii) all Post-Effective Date Claims
have been paid in full, and (iv) the Bankruptcy Case has been fully administered.

 38. "Final Fee Applications" shall have the meaning described in Section 2.2.c.ii hereof.

 39. "Final Order" means an order or judgment of the Bankruptcy Court that has not been reversed,
stayed, modified or amended, that is in full force and effect, and as to which: (a) the time to appeal, petition for
certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other
proceedings for reargument or rehearing shall then be pending; or (b) in the event that an appeal, *writ of certiorari*, or
reargument or rehearing thereof has been sought, such order shall have been determined by the highest court to which
such order was appealed, or *certiorari*, reargument or rehearing shall have been denied, and the time to take any further
appeal, petition for *certiorari* or move for reargument or rehearing shall have expired; provided, however, that the
possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the

1 Bankruptcy Rules, may be but has not then been filed with respect to such order shall not cause such order not to be a
2 Final Order.

3 40. "First Omnibus Objection" means the "First Omnibus Objection to Claims (Duplicate Claims,
4 Cured Claims, Reclassified Claims, No Basis Claims, Equity Claims, Amended Claims, and Late Claims)" originally
5 filed by the Debtor in the Bankruptcy Court on or about December 7, 2000, as amended on December 11, 2000, as re-
6 noticed on February 2, 2001.

7 41. "Interest" means the interest accrued at the legal rate, meaning the federal judgment rate, on the
8 applicable Claim from the Petition Date to the date of payment of the Claim.

9 42. "Lenders" means various entities related to, affiliated with, or managed by Oaktree Capital
10 Management LLC, specifically OCM Opportunities Fund II, L.P., TCW Special Credits Fund IIIb, TCW Special Credits
11 Trust, TCW Special Credits Trust IIIb, The Board of Trustees of the Delaware State Employees' Retirement Fund,
12 Weyerhaeuser Company Master Retirement Trust, and Columbia/HCA Master Retirement Trust, or their successors
13 and/or assigns.

14 43. "Lenders' Claims" means all Claims asserted by the Lenders, including, without limitation, all
15 Administrative Claims, Secured Claims, Priority Claims, and Unsecured Claims asserted against the Debtor.

16 44. "Lien" means any charge against, encumbrance upon or other interest in property, the purpose of
17 which is to secure payment of a debt or performance of an obligation.

18 45. "Notice of Effective Date" means the notice to be mailed by the Reorganized Debtor to the All
19 Notices List and all holders of Claims against and Equity Interests in the Debtor pursuant to Section 9.4 hereof, notifying
20 them of: (a) entry of the Confirmation Order; (b) the occurrence of the Effective Date; (c) the assumption and rejection
21 of executory contracts and unexpired leases as provided in this Plan and the related bar date for Claims relating to any
22 rejected executory contracts and unexpired leases; (d) the bar date for filing Administrative Claims arising from and after
23 the Petition Date through the Effective Date as provided in Section 2.2.c hereof; and (e) the procedure to be included on
24 the All Notices List.

25 46. "Other Secured Claim" means any Secured Claim, other than the Lenders' Secured Claim.

26 47. "Other Priority Claims" means Claims entitled to priority under section 507(a) of the
27 Bankruptcy Code, except for Administrative Claims and Priority Tax Claims.

28 48. "Person" means any individual, corporation, general partnership, limited partnership,
association, joint stock company, joint venture, estate, trust, government or any political subdivision, governmental unit,
official committee appointed by the United States Trustee, unofficial committee of creditors, or other entity.

49. "Petition Date" means April 5, 2000.

50. "Plan" means this chapter 11 plan of reorganization (including all exhibits annexed hereto),
either in its present form or as it may be altered, amended, or modified from time to time in accordance with the Plan, the
Bankruptcy Code and the Bankruptcy Rules.

51. "Post-Effective Date Claims" mean: (a) the actual and necessary expenses including, without
limitation, wages, salaries, fees, payroll-related taxes, and other costs accrued on or after the Effective Date with respect
to employees, temporary employees, independent contractors, the Disbursing Agent, and Professional Persons engaged
by the Reorganized Debtor, the Committee, or the Disbursing Agent to administer the Estate and conclude the
Bankruptcy Case; (b) the actual and necessary expenses of the Committee and Committee Counsel accrued on or after
the Effective Date; (c) any sales taxes attributable to the Estate and accrued on or after the Effective Date; and (d) all fees
that accrue after the Effective Date that are payable pursuant to Section 4.8 hereof to the United States Trustee under 28
U.S.C. § 1930(a)(6).

52. "Priority Tax Claim" means a Claim entitled to priority under section 507(a)(8) of the
Bankruptcy Code.

1 53. “Professional Fee Reserve” means a Cash reserve to be used for the payment of unpaid
2 professional fees incurred by the Estate prior to the Effective Date, and payment of professional fees incurred by the
3 Reorganized Debtor or the Committee after the Effective Date.

4 54. “Professional Person” means (a) a Person retained or to be compensated pursuant to sections
5 326, 327, 328, 330, 331, 503(b)(2), 1103 and/or 1107(b) of the Bankruptcy Code, or (b) an accountant, attorney,
6 appraiser or other professional employed by the Reorganized Debtor or the Committee on or after the Effective Date.

7 55. “Pro Rata” means proportionately so that the ratio of (a) cumulative amount of all funds
8 distributed or to be distributed on account of a particular Allowed Claim to (b) the amount of such Allowed Claim is the
9 same as the ratio of (x) the cumulative amount of all funds distributed or to be distributed on account of all Allowed
10 Claims in a particular Class to (y) the amount of all Allowed Claims of that Class.

11 56. “Reorganized Debtor” means the Debtor as reorganized pursuant to the Plan on and after the
12 Effective Date.

13 57. “Reorganization Counsel” means Hennigan, Bennett & Dorman, 601 S. Figueroa Street, Suite
14 3300, Los Angeles, California 90017, Attn: Sidney P. Levinson, or its successors.

15 58. “Schedules” means the schedules of assets and liabilities and the statement of financial affairs
16 filed by the Debtor as required by section 521 of the Bankruptcy Code, and all amendments and supplements thereto.

17 59. “Secured Claim” means (unless otherwise provided herein) a Claim against the Debtor to the
18 extent of the value, as determined in accordance with section 506(a) of the Bankruptcy Code, of any interest in property
19 of the Estate securing such Claim.

20 60. “Secured Tax Claim” means every Claim of a governmental unit for taxes which, by operation
21 of applicable non-bankruptcy law, is a Secured Claim.

22 61. “Unsecured Claim” means any Claim that is not a Secured Claim, Administrative Claim, Priority
23 Tax Claim, Other Priority Claim, Post-Effective Date Claim or Other Secured Claim.

24 1.2 Interpretation, Rules of Construction, and Computation of Time.

25 a. Any term used in this Plan that is not defined in this Plan, either in this Article I or elsewhere, but that
26 is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code
27 or the Bankruptcy Rules, as applicable, unless the context requires otherwise;

28 b. Whenever from the context it is appropriate, each term, whether stated in the singular or the plural,
shall include both the singular and the plural;

 c. Any reference in the Plan to a contract, instrument, release or other agreement or document being in a
particular form or on particular terms and conditions means that such document shall be substantially in such form or
substantially on such terms and conditions, but if there exists any inconsistency between a summary of or reference to
any document in the Plan or Confirmation Order and the document itself, the terms of the document as of the Effective
Date shall control;

 d. Any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document
or exhibit as it may have been or may be amended, modified or supplemented through and including the Confirmation
Date;

 e. Unless otherwise specified in a particular reference, all references in the Plan to “Section,” “Articles,”
and “Exhibits” are references to Sections, Articles, and Exhibits of or to the Plan;

 f. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the
Plan in its entirety rather than to only a particular portion of the Plan;

- 1 g. All exhibits to this Plan are incorporated herein, regardless of when those exhibits are Filed;
- 2 h. Wherever the terms of the Confirmation Order or the Plan contain a specific clause regarding a
3 particular provision, such specific clause shall control over any general provision; provided, however, that the whole of
4 each of the Confirmation Order and the Plan shall be taken together to give effect to every part thereof, if reasonably
5 practicable;
- 6 i. The rules of construction set forth in Bankruptcy Code § 102 shall apply; and
- 7 j. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy
8 Rule 9006(a) shall apply. Any reference to "day" or "days" shall mean calendar days.

9 **ARTICLE II**
10 **DESIGNATION AND TREATMENT OF CLASSES**
11 **OF CLAIMS AND EQUITY INTERESTS**

12 2.1 General Provisions. The following is a designation of the Classes of Claims and Equity Interests under
13 this Plan. Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following
14 Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest is classified in a
15 particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is
16 classified in a different Class to the extent that any remainder of the Claim or Equity Interest qualifies within the
17 description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that the Claim or
18 Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released, or
19 otherwise satisfied before the Effective Date.

20 2.2 Unclassified Claims.

21 a. Administrative Claims. Subject to the bar date provisions of Section 2.2.c hereof, and except
22 to the extent that the holder of an Allowed Administrative Claim agrees to a different treatment, the Disbursing Agent
23 shall pay to each holder of an Allowed Administrative Claim, on account of and in full satisfaction of the Allowed
24 Administrative Claim, Cash in an amount equal to such Allowed Administrative Claim on the later of: (i) the Effective
25 Date; and (ii) the date such Administrative Claim becomes an Allowed Administrative Claim (or as soon thereafter as is
26 practicable).

27 (i) Compensation and Reimbursement Claims. Notwithstanding the foregoing, all
28 Entities that are awarded compensation or reimbursement of expenses by the Bankruptcy Court in accordance
with section 330 or 331 of the Bankruptcy Code or that are entitled to the priorities established pursuant to
section 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code, shall be paid in full, in Cash, the
amounts allowed by the Bankruptcy Court: (a) on or as soon as reasonably practicable following the later to
occur of (i) the Effective Date, and (ii) the date on which the Bankruptcy Court order allowing such Claim
becomes a Final Order; or (b) upon such other terms as may be mutually agreed upon between such holder of an
Allowed Administrative Claim and the Debtor.

(ii) Payment of Statutory Fees. On or before the Effective Date, all fees payable
pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be
paid in full, in Cash in the amount of such Allowed Administrative Claim.

b. Priority Tax Claims. Except to the extent that the holder of an Allowed Priority Tax Claim
agrees to a different treatment, the Disbursing Agent shall pay to each holder of an Allowed Priority Tax Claim, on
account of and in full satisfaction of such Allowed Priority Tax Claim, Cash in an amount equal to such Allowed Priority
Tax Claim, including the payment of interest at the applicable legal rate from the Petition Date, on the later of: (i) the
Effective Date; and (ii) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim (or as soon thereafter
as is practicable).

1 c. Bar Date for Administrative Claims.

2 (i) General Provisions. All requests for payment of Administrative Claims, other than
3 Claims by Professional Persons, must be filed with the Bankruptcy Court and served upon the Reorganized
4 Debtor, Reorganization Counsel and Committee Counsel no later than thirty (30) days after the mailing of
5 Notice of the Effective Date. Holders of Administrative Claims that do not file such requests by such bar date
6 shall be forever barred from asserting such Claims against the Debtor or any of its property. Notwithstanding
7 the foregoing, nothing provided herein shall prevent the Disbursing Agent, with the consent of the Reorganized
8 Debtor and the Committee, from paying any Administrative Claim that was not timely Filed but that was
9 incurred in the ordinary course of business by the Debtor and is not disputed as to amount or liability.

10 (ii) Professional Persons. All Professional Persons or other Persons requesting
11 compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the
12 Bankruptcy Code for services rendered before the Effective Date (including, without limitation, any
13 compensation requested by any Professional Persons or other Persons or any other entity for making a
14 substantial contribution in the Chapter 11 Case) shall File with the Bankruptcy Court and serve on the
15 Reorganized Debtor, Reorganization Counsel, the United States Trustee, and Committee Counsel an application
16 for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the
17 mailing of the Notice of the Effective Date. Objections to such applications of Professional Persons or other
18 Persons for compensation or reimbursement of expenses must be filed and served on the Professional Person or
19 other Person that is the subject of the objection, the Reorganized Debtor, Reorganization Counsel, the U.S.
20 Trustee, and Committee Counsel no later than sixty (60) days after the mailing of the Notice of the Effective
21 Date, unless the Professional Person or other Person that is the subject of the objection agrees in writing to
22 extend the objection deadline. The Bankruptcy Court shall disallow any request for payment of an
23 Administrative Claim filed by any Professional Person not employed pursuant to an order of the Bankruptcy
24 Court.

25 2.3 Classified Claims and Equity Interests.

26 a. Class 1: Secured Claims. Class 1 consists of all Allowed Secured Claims against the Debtor
27 that have not been paid, released, or otherwise satisfied prior to the Effective Date. Each Secured Claim in Class 1 shall
28 be considered to be its own separate sub-class within Class 1 as set forth below. To the extent that any Class 1 Claim is
allowed by Final Order of the Bankruptcy Court, such Claim shall be paid in Cash and in full by the Disbursing Agent on
the later of: (a) the Effective Date; and (b) the date on which a Class 1 Claim becomes an Allowed Class 1 Claim (or as
soon thereafter as is practicable). Notwithstanding the foregoing, the Debtor believes that, as of the date hereof, there are
no Allowed Class 1 Claims because such Claims have been paid in full. Class 1 Claims, if any, are unimpaired under the
Plan, and the holders of such Claims are conclusively presumed to have accepted the Plan and are not entitled to vote to
accept or reject the Plan.

29 i. Class 1A (the Lenders' Secured Claim). Class 1A is comprised of the Lenders'
30 Claim arising from the Debtor's obligations under the Prepetition Credit Agreement, to the extent such
31 obligations are secured by substantially all of the Debtor's assets.

32 ii. Class 1B (Imperial A.I. Credit Companies' Secured Claim). Class 1B is comprised
33 of Imperial A.I. Credit Companies' Claim arising from the Debtor's obligations under an insurance premium
34 finance agreement, to the extent such obligations are secured by the unearned premiums, if any, that would be
35 payable in the event of cancellation of the Debtor's insurance coverage in the event of non-payment.

36 iii. Class 1C (AFCO Credit Corporation's Secured Claim). Class 1C is comprised of
37 AFCO Credit Corporation's Claim arising from the Debtor's obligations under an insurance premium finance
38 agreement, to the extent such obligations are secured by the unearned premiums, if any, that would be payable
39 in the event of cancellation of the Debtor's insurance coverage in the event of non-payment.

40 iv. Class 1D (Telogy, Inc.'s Secured Claim). Class 1D is comprised of Telogy Inc.'s
41 Claim arising from the Debtor's obligations under a Master Lease Agreement for the lease of certain
42 engineering and testing equipment (the "Equipment"), to the extent such obligations are secured by the
43 Equipment.

1 v. Class 1E (Minolta Business Systems' Secured Claim). Class 1E is comprised of
2 Minolta Business Systems' Claim arising from the Debtor's obligations under two equipment lease agreements,
3 to the extent such obligations are secured by the equipment that is the subject of the agreements.

4 b. Class 2: Other Priority Claims. Class 2 consists of all Other Priority Claims. Allowed Class 2
5 Claims will be paid in Cash and in full (less tax withholdings where appropriate) by the Disbursing Agent on the later of:
6 (a) the Effective Date; and (b) the date on which a Class 2 Claim becomes an Allowed Class 2 Claim (or as soon
7 thereafter as is practicable). Class 2 is unimpaired under the Plan, and thus holders of such Claims are conclusively
8 presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

9 c. Class 3: Convenience Claims. Class 3 consists of all Convenience Claims other than
10 Convenience Claims with respect to which the holders thereof have elected to opt out of Class 3 and into Class 4 by
11 making such election on their Ballots and returning said Ballots within the time fixed by the Bankruptcy Court. Any
12 other holder of an Allowed Unsecured Claim which limits and reduces its Allowed Unsecured Claim to only such portion
13 of its Claim as meets the criteria to be a Convenience Claim may elect to opt out of Class 4 and into Class 3 by electing
14 and so reducing its Claim on the Ballot within the time fixed by the Bankruptcy Court for completing and returning
15 Ballots. A creditor participating in Class 3 shall not be entitled to any distribution under Class 4. Class 3 is impaired
16 under the Plan. Allowed Class 3 Claims shall be paid in Cash eighty percent (80%) of the amount of such Allowed Class
17 3 Claims by the Disbursing Agent on the later of: (a) the Effective Date; and (b) the date on which a Class 3 Claim
18 becomes an Allowed Class 3 Claim.

19 d. Class 4: General Unsecured Claims. Class 4 consists of all other Unsecured Claims against
20 the Debtor not otherwise classified in any other Class hereof, including Claims arising from the rejection of executory
21 contracts and unexpired leases pursuant to Article III hereof. Class 4 is impaired under the Plan. Subject to the
22 limitations contained in Article V hereof, holders of Allowed Class 4 Claims will share Pro Rata in distributions of
23 Available Cash from the Estate after payment in full, or reserve for the payment in full, of Post-Effective Date Claims,
24 Administrative Claims, Priority Tax Claims and Allowed Claims in Classes 1, 2 and 3. Pro Rata distributions shall
25 include Interest on each Allowed Class 4 Claim.

26 e. Class 5: Interests in the Debtor. Class 5 consists of all Equity Interests in the Debtor arising
27 from the ownership of common stock in the Debtor. Class 5 is impaired under the Plan, and the holder of any Allowed
28 Class 5 Interest is entitled to vote to accept or reject the Plan. There shall be no distribution under the Plan to holders of
Class 5 Interest unless and until all Allowed Administrative Claims, Allowed Priority Tax Claims, Post-Effective Date
Claims, and Allowed Claims in Classes 1, 2, 3 and 4 are paid in full, including with respect to Class 4, the payment of
Interest. At such time, holders of Equity Interests shall receive a Pro Rata distribution of any remaining Available Cash
that they would have otherwise received under applicable law in the event of a liquidation of the Debtor.

19 ARTICLE III 20 TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

21 3.1 Rejection of Executory Contracts and Unexpired Leases.

22 a. Rejections Generally. As of the Effective Date, the following executory contracts and
23 unexpired leases shall be rejected to the extent, if any, they constitute executory contracts or unexpired leases of the
24 Debtor: (i) each executory contract or unexpired lease of the Debtor that has not previously been assumed, assumed and
25 assigned or rejected by Final Order of the Bankruptcy Court; (ii) each executory contract or unexpired lease of the
26 Debtor that is not the subject of a motion Filed by the Debtor prior to the Effective Date to assume or assume and assign
27 or reject; (iii) each executory contract or unexpired lease of the Debtor that has not expired by its own terms on or prior
28 to the Effective Date; and (iv) each executory contract or unexpired lease of the Debtor that is not assumed under Section
3.2 hereof.

29 b. Approval of Rejections. The Confirmation Order shall constitute an order of the Bankruptcy
30 Court approving the rejection of the executory contracts and unexpired leases as provided herein pursuant to sections
31 365(a) and 1123(b)(2) of the Bankruptcy Code, as of the Effective Date. The Confirmation Order also shall constitute a
32 finding by the Bankruptcy Court that each such rejected executory contract or unexpired lease is burdensome and that the
33 rejection thereof is in the best interests of the Debtor, its estate, and all parties in interest in the Chapter 11 Case.

1 c. Objections to Rejection of Executory Contracts and Unexpired Leases. Any party in interest
2 wishing to object to the rejection of an executory contract or unexpired lease identified for rejection as provided for
3 herein shall, within the same deadline and in the same manner established for Filing objections to confirmation of the
4 Plan, File and serve on the Debtor, Reorganization Counsel, the U.S. Trustee, and Committee Counsel any objection to
5 such rejection. Failure to File any such objection within the foregoing time period shall constitute consent to the
6 rejection to the extent that such contract or lease is an executory contract or unexpired lease. Failure to File a timely
7 objection shall not constitute a waiver of any claims, rights or damages that a party may hold as a result of any such
8 rejection, so long as such claims are asserted timely under Section 3.1.d hereof.

9 d. Bar Date for Rejection Damages. If the rejection of an executory contract or unexpired lease
10 pursuant to this Article III gives rise to a Claim by the other party or parties to such contract or lease, such Claim, to the
11 extent that it is timely Filed and is an Allowed Claim, shall be classified in Class 3 or Class 4 pursuant to Section 2.3
12 hereof. A proof of Claim arising from the rejection of executory contracts or unexpired leases as provided herein must
13 be filed with the Bankruptcy Court and served on the Reorganized Debtor and Reorganization Counsel no later than
14 thirty (30) days after the mailing of the Notice of Effective Date; provided, however, that in the event a claimant has
15 previously filed a proof of Claim based on the rejection of an executory contract or unexpired lease, no further proof of
16 Claim needs to be Filed. Any Claims for which a proof of Claim has not been Filed and served within such time will be
17 forever barred from assertion, and shall not be enforceable against the Debtor or its estate, assets, properties, or interests
18 in property.

19 3.2 Assumption of Executory Contracts and Unexpired Leases.

20 a. Assumption Generally. Except as otherwise provided in the Plan or any Final Order of the
21 Bankruptcy Court, on the Effective Date, any executory contracts or unexpired leases of the Debtor set forth on Exhibit 1
22 of the Plan shall be deemed to have been assumed by the Debtor as of the Effective Date pursuant to sections 365 and
23 1123(b)(2) of the Bankruptcy Code. Each executory contract and unexpired lease identified on Exhibit 1 shall be
24 assumed only to the extent, if any, that it constitutes an executory contract or unexpired lease on the Effective Date, and
25 the listing of such contract or lease on Exhibit 1 shall not constitute an admission by the Debtor, Debtor in Possession,
26 the Estate or the Reorganized Debtor that such contract or lease is an executory contract or unexpired lease or that the
27 Debtor, the Debtor in Possession, the Reorganized Debtor or the Estate has any liability thereunder.

28 b. Approval of Assumptions and Assignments. The Confirmation Order shall constitute an order
of the Bankruptcy Court approving the assumption or assumption and assignment of the executory contracts and
unexpired leases as provided for herein, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. With
respect to each such executory contract or unexpired lease assumed by the Debtor, any monetary amounts required as
cure payments shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount,
as listed on Exhibit 1, in Available Cash on the Effective Date or upon such other terms as the parties to such executory
contracts or unexpired leases otherwise may agree. In the event of a dispute regarding (i) the amount of any cure
payment, (ii) the ability of the Debtor or any assignee to provide "adequate assurance of future performance" (within the
meaning of section 365 of the Bankruptcy Code), or (iii) any other matter pertaining to assumption, the cure payments
required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such
dispute.

 c. Objections to Assumption. Any party in interest wishing to object to the assumption or
assumption and assignment of an executory contract or unexpired lease identified herein shall, within the same deadline
and in the same manner established for Filing objections to confirmation of the Plan, File and serve on the Debtor,
Reorganization Counsel, the United States Trustee and Committee Counsel any objection to such assumption or
assumption and assignment. Failure to file an objection within the time period set forth above by a party to such
executory contract or unexpired lease shall constitute consent to the assumption or assumption and assignment, an
acknowledgement that there are no defaults under the executory contract or unexpired lease identified for assumption,
except as set forth in Exhibit 1, and that the Debtor or its assignee has provided adequate assurance of future
performance in connection with the proposed assumption or assumption and assignment.

 3.3 Limitation on Liability. Except as provided for herein, nothing in the Plan creates an obligation or
liability on the part of the Estate, the Reorganized Debtor, or any other Person that is not currently liable on such
obligation, with respect to any executory contract or unexpired lease.

ARTICLE IV
MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN

1
2 4.1 Revesting of Assets. On the Effective Date all assets of the Estate shall be vested in the Reorganized
3 Debtor. Except as otherwise provided by this Plan, the Reorganized Debtor shall sell and reduce to Cash all non-Cash
assets of the Estate and deliver such Cash to the Disbursing Agent.

4 4.2 Corporate Governance and Management of the Reorganized Debtor.

5 a. General. On the Effective Date, except as provided herein, the management, control and
6 operation of the Reorganized Debtor shall become the general responsibility of the Board of Directors of the
7 Reorganized Debtor. The Reorganized Debtor shall conduct no business operations, and shall engage in no other
activities, other than those set forth in the Plan, unless the Committee consents to such business operations or activities.

8 b. Directors. As of the Effective Date, the Board of Directors of the Reorganized Debtor shall
9 consist of the Debtor's three (3) current board members, including Richard Masson, Kenneth Liang, and Gloria Noh.
Thereafter, the terms and manner of selection of the Board of Directors of the Reorganized Debtor shall be as provided
in the Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws.

10 c. Amendment of Articles of Incorporation. On the Effective Date, the articles of incorporation
11 of the Debtor shall be amended and restated to prohibit the issuance of nonvoting equity securities as required by section
12 1123(a)(6) of the Bankruptcy Code, which amendment and restatement shall be deemed authorized and approved as of
the Effective Date without further action under applicable law, regulation, order or rule, including, without limitation,
any action by the stockholders of the Debtor or Reorganized Debtor.

13 4.3 Rights, Powers and Duties of the Reorganized Debtor and the Committee.

14 a. The Reorganized Debtor shall become, on the Effective Date of the Plan, the successor to the
15 Debtor under section 1123(a)(5) of the Bankruptcy Code and other applicable law. Except as otherwise provided in this
16 Plan, and without prior or further authorization of the Bankruptcy Court, the Reorganized Debtor shall possess all rights
and powers possessed by a trustee appointed under the Bankruptcy Code and the Committee shall possess all rights and
powers possessed by a Committee appointed under the Bankruptcy Code.

17 b. On or after the Effective Date, the Reorganized Debtor shall retain and may enforce any and
18 all rights, causes of action, powers, privileges, licenses, and franchises of the Debtor or the Estate, including, but not
19 limited to, all tax determinations under section 505 of the Code, and all causes of action arising under the Plan and the
20 Bankruptcy Code, including avoiding powers and defenses to Disputed Claims arising under applicable non-bankruptcy
21 law or under sections 502(d), 544, 545, 547, 548, 549, 550, 553, and 558 of the Bankruptcy Code (collectively, the
22 "Causes of Action"), provided, however, that the Reorganized Debtor may not retain or enforce any right that is waived,
23 relinquished, released, compromised or settled in accordance with this Plan. In the event that the Committee requests
that the Reorganized Debtor pursue a Cause of Action and the Reorganized Debtor refuses to do so, the Committee shall
24 be entitled to pursue such Cause of Action and shall have the same rights as those granted to the Reorganized Debtor
herein, provided, however, that the Reorganized Debtor shall have the right to seek an order from the Bankruptcy Court
to prevent the Committee from pursuing such Cause of Action. Notwithstanding the other provisions of this Subsection
4.3.b, in the event that there are not sufficient funds to pay Class 3 Claims and Class 4 Claims in full, with Interest, the
Committee shall be entitled to analyze whether to pursue Causes of Action under 11 U.S.C. § 547 and, if warranted, to
commence such Causes of Action without further order of the Court. The proceeds of any Causes of Action shall inure
to the benefit of the Estate and be delivered to the Disbursing Agent.

25 c. From time to time after the Effective Date, the Reorganized Debtor and the Committee may
26 employ, engage the services of, and compensate other Persons (which may include employees, temporary employees or
27 independent contractors) and Professional Persons (which may include professionals previously or concurrently
28 employed by the Committee or the Debtor in Possession), reasonably necessary to assist the Reorganized Debtor and the
Committee in performing their duties under this Plan without the necessity of further authorization or allowances of fees
and expenses by the Bankruptcy Court. In the event that the Reorganized Debtor does not serve as the Disbursing Agent,
the Disbursing Agent is not entitled to retain Professional Persons, provided, however, if the Disbursing Agent is a
corporation or partnership, the Disbursing Agent shall be entitled to rely upon its employees or independent contractors

1 in performing its duties under this Plan without the necessity of further authorization or allowances of fees and expenses
2 by the Bankruptcy Court. The amount of any reasonable fees and expenses ("Professional Fees") incurred by the
3 Reorganized Debtor or the Committee on account of the employment of such Persons or Professional Persons on or after
4 the Effective Date shall be paid in Cash by the Disbursing Agent from the Professional Fee Reserve without further order
5 of the Bankruptcy Court, provided that the Reorganized Debtor or the Committee shall be provided with statements of
6 any fees and expenses ("Fee Statement") incurred by such Persons or Professional Persons and shall have fifteen (15)
7 days after receiving a Fee Statement, to notify the Person or Professional Person of any objection, in whole or in part, to
8 any fees and expenses that are not reasonable. To the extent the objection relates only to part of the Fee Statement, the
9 balance of the amount requested in the Fee Statement shall be paid. With respect to any portion of the Fee Statement that
10 is subject to a timely filed objection, the Bankruptcy Court shall retain jurisdiction to determine whether the fees and
11 expenses subject to such objection are reasonable.

12
13 d. Notwithstanding any provision of the Bankruptcy Code, the Reorganized Debtor, and the
14 Committee where indicated, shall have the following powers and duties with respect to the sale, lease or other disposition
15 of assets, the compromises and settlements of Claims, causes of action and controversies and other activities and
16 transactions undertaken in connection with the administration of the Estate:

17 i. The Reorganized Debtor may, in its sole and absolute discretion, sell or dispose of
18 any asset or compromise any Claim against the Estate or defense or cause of action by the Estate or
19 Reorganized Debtor without notice and without a hearing if the Reorganized Debtor determines, in the exercise
20 of its reasonable judgment, that such asset has a value of \$50,000 or less, or such Claim has been Filed or
21 Scheduled in the amount of \$50,000 or less; provided, however, that if the intended transaction involves a
22 specific lien upon or interest in the subject matter of the Claim or asset, twenty (20) days written notice of the
23 contemplated action shall be Filed with the Bankruptcy Court and served on the Persons claiming such an
24 interest and Committee Counsel.

25 ii. As to any transaction (other than the sale of the Creative Stock, which is addressed in
26 Section 4.4 herein) involving an asset that the Reorganized Debtor determines, in the exercise of its reasonable
27 judgment, has a value of, or any Claim Filed or Scheduled in the amount of, more than \$50,000 (or, with respect
28 to any settlement of any Causes of Action regardless of the value of such Causes of Action), the Reorganized
Debtor: (a) shall consult with, and seek the approval of, the Committee at least ten (10) days prior to Filing a
notice of such transaction; and (b) shall File and give twenty (20) days written notice of the intended transaction
to the Committee Counsel and to those Persons with a specific interest in or lien upon the subject of the claim or
asset; provided, however, that consultation with and approval by the Committee as to any such transaction shall
not be required in the event the Cash in the Reserve (after payment in full of Administrative Claims, Priority
Tax Claims, Effective Date Claims, Class 1 Claims, Class 2 Claims and Class 3 Claims) exceeds the aggregate
amount of the outstanding Claims of the Class 4 claimants plus Interest. If no objection is timely Filed and
served upon the Reorganized Debtor, then the Reorganized Debtor may proceed to consummate the intended
transaction without further notice upon entry of an order by the Bankruptcy Court. If an objection is timely
filed by the Committee or by those Persons with a specific interest in a lien upon the subject of the claim or
asset, then the Reorganized Debtor shall seek approval by the Bankruptcy Court of the intended transaction.

29 e. Except as otherwise provided in the Plan, the Reorganized Debtor (or, if, pursuant to Section
30 4.2, the Committee is so authorized) may pursue or decline to pursue or settle and compromise, as appropriate, any and
31 all rights of action, causes of action, counterclaims and defenses to Claims held by the Estate. The Estate may, but shall
32 not be required to, set off or recoup against any Claim and distributions to be made pursuant to the Plan in respect of
33 such Claim, any counterclaims, setoffs or recoupments of any nature whatsoever the Estate may have against the
34 claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by
35 the Estate, the Committee or the Reorganized Debtor of any such cause of action, setoff or recoupment.

36 f. Consistent with the Plan, the Reorganized Debtor may pay or otherwise compromise any
37 debts, claims, costs, liabilities, expenses and other obligations and charges of the Estate, including, without limitation,
38 interest, taxes, assessments, and other charges, public or private, of every kind and nature, including the claims, costs,
charges, expenses and liabilities arising out of, and associated with, the execution, administration or operation of the
Estate.

1 g. The Reorganized Debtor shall carry insurance of the kinds and in the amounts that the
2 Reorganized Debtor, in its reasonable business judgment, considers advisable or appropriate, at the expense of the
3 Estate, to protect the Estate assets and the Reorganized Debtor against any liability, fixed or contingent, of whatever kind
4 and nature whatsoever.

5 h. The Reorganized Debtor shall, subject to the limitation set forth in the Asset Purchase
6 Agreement, sell, transfer, assign, vote and give proxies to vote any securities that are Estate assets.

7 i. The Reorganized Debtor, consistent with the Plan, may litigate, defend, object to, implead,
8 compromise, submit to arbitration, interplead or discharge and release, with or without consideration, at the expense of
9 the Estate, any claims against the Debtor, the Estate, the Estate assets, and the Reorganized Debtor, including Claims and
10 Disputed Claims provided for in the Plan, and any other claims, suits or other actions, whether at law or in equity,
11 relating to the Reorganized Debtor, the Estate, or the Debtor, or the operation or administration thereof, or any interest
12 thereof that the Reorganized Debtor (or the Committee to the extent provided under the Plan), in its reasonable business
13 judgment, considers advisable. In the event the Committee is authorized to pursue the Causes of Action pursuant to the
14 Plan, then the Committee shall have the authority to undertake the actions set forth in this Subsection.

15 j. The Reorganized Debtor shall determine which books and records of the Estate should be
16 permanently or temporarily preserved and make appropriate provision for the temporary or permanent preservation of
17 such records, and the disposal or abandonment of books and records when, in the Reorganized Debtor's reasonable
18 business judgment, abandonment or disposal is in the best interest of the Estate.

19 k. The Reorganized Debtor shall prepare, review, approve, consent to, or refuse to consent to
20 any tax return for the Debtor or the Estate.

21 4.4 Sale of Creative Stock.

22 a. Authorization to Sell Creative Stock. The Confirmation Order shall constitute an
23 authorization by the Court for the Reorganized Debtor to sell the Creative Stock, to the extent not sold by the Examiner
24 prior to the Effective Date, without further Order of the Court, subject to otherwise applicable securities laws.

25 b. Sale of Stock. After the Effective Date, the Reorganized Debtor shall sell the Creative Stock
26 in one (1) or more transactions subject to applicable securities laws. The timing and amount of any such sales shall be
27 determined by the Reorganized Debtor in the exercise of its reasonable business judgment, provided, however, that the
28 Committee, after the approval of the Bankruptcy Court, may direct the timing and sale price of a percentage of the
Creative Stock, if not sold by the Reorganized Debtor or the Examiner, consistent with the following schedule: (i)
Confirmation Date - fifteen percent (15%) of the Creative Stock; (ii) Effective Date - twenty percent (20%) of the
Creative Stock; (iii) three (3) months after the Effective Date - fifteen percent (15%) of the Creative Stock; (iv) five (5)
months after the Effective Date - twenty-five percent (25%) of the Creative Stock; (v) ten (10) months after the Effective
Date - twenty-five percent (25%) of the Creative Stock.

29 c. Retention of Proceeds. The proceeds of the sale of the Creative Stock shall be delivered to
30 the Disbursing Agent for distribution in accordance with the terms of this Plan and for no other purpose.

31 4.5 Records and Reporting. The Reorganized Debtor shall maintain good and sufficient books and records
32 of account relating to the Estate assets, all transactions undertaken by the Reorganized Debtor, all expenses incurred by
33 or on behalf of the Estate, and all distributions either contemplated or effectuated under the Plan. Not more than
34 twenty (20) days after each month following the Effective Date, the Reorganized Debtor shall send to Committee
35 Counsel and Reorganization Counsel a written report showing the receipts and disbursements of the Estate for such prior
36 month and, subject to any confidentiality requirements, any significant activities, changes, and transactions affecting the
37 Estate assets that occurred in such prior month or that are expected to occur in the near future. The Reorganized Debtor
38 shall also file and serve on the United States Trustee post-confirmation quarterly reports in the format prescribed by the
United States Trustee.

1 4.6 Liability.

2 a. Except in the case of willful misconduct or gross negligence, neither the Reorganized Debtor,
3 the Committee nor the Disbursing Agent shall be liable for any loss or damage by reason of any action taken or omitted
4 by any of them pursuant to the discretion, power, and authority conferred under this Plan or the Confirmation Order.

5 b. Except as provided in the Plan or under applicable law, neither the Reorganized Debtor, the
6 Committee nor the Disbursing Agent, nor any of the officers, employees, or Professional Persons or Agents engaged by
7 any of them shall be liable for the acts or omissions of the Debtor's prior officers, directors, employees, agents, or
8 Professional Persons engaged before the Effective Date, or the acts or omissions of any Creditor or the Committee.

9 c. Neither the Committee nor any Committee member shall be liable for the acts or omissions of
10 the Reorganized Debtor, any person employed by the Reorganized Debtor, the Debtor, the Disbursing Agent, any
11 creditor, or the acts or omissions of the Debtor's officers, directors, employees, agents, or Professional Persons.

12 d. In the exercise or administration of any powers granted under this Plan, or in the performance
13 of any of the Reorganized Debtor's or the Committee's duties and obligations, the Reorganized Debtor or the Committee
14 may consult with and act directly or through any Professional Persons or Agents. Neither the Reorganized Debtor nor
15 the Committee shall be liable for anything done, suffered or omitted in good faith in accordance with the advice or
16 opinion of any Professional Persons or Agents, so long as such advice or opinion pertains to matters that the Reorganized
17 Debtor or the Committee may reasonably presume to be within the scope of such Professional Person's or Agent's
18 expertise. The provisions of this Subsection shall also apply with respect to any employees or independent contractors
19 retained by the Disbursing Agent.

20 e. None of the officers, employees, or Professional Persons or agents engaged by the
21 Reorganized Debtor shall be liable to any individual creditor, and shall be liable only to the Estate for acts or omissions
22 related to performance of their duties for the Estate. Officers and employees employed by the Reorganized Debtor shall
23 be liable to the Estate only for such of their own acts as shall constitute willful misconduct or gross negligence. Except
24 as aforesaid, the officers, employees, and Professional Persons or agents engaged by the Reorganized Debtor or the
25 Committee, or the employees or independent contractors retained by the Disbursing Agent shall be defended, held
26 harmless, and indemnified by the Estate against any and all losses, claims, costs, expenses, and liabilities (including legal
27 fees and expenses) asserted by any Person other than the Estate and any costs of defending any action brought by any
28 Person other than the Estate to which they may be subject by reason of their execution in good faith of their duties under
the Plan and in a manner such Person reasonably believes to be in the best interests of the Estate. This indemnity is
intended to be and shall be interpreted as providing indemnity to the fullest extent permissible under California law.

29 f. Neither the Committee nor any Committee member nor any Professional Person engaged by
30 either of them shall be liable to any individual creditor, and shall be liable only to the Estate for acts or omissions related
31 to performance of their duties for the Estate. The Committee, each Committee member and Professional Persons or
32 agents engaged by either of them shall be liable to the Estate only for such of their own acts as shall constitute willful
33 misconduct or gross negligence. Except as aforesaid, the Committee, each Committee member and Professional Persons
34 or agents engaged by either of them shall be defended, held harmless, and indemnified by the Estate against any and all
35 losses, claims, costs, expenses, and liabilities (including legal fees and expenses) asserted by any Person other than the
36 Estate and any costs of defending any action brought by any Person other than the Estate to which they may be subject by
37 reason of their execution in good faith of their duties under the Plan and in a manner the Committee or such Committee
38 member reasonably believes to be in the best interests of the Estate. This indemnity is intended to be and shall be
interpreted as providing indemnity to the fullest extent permissible under California law.

39 g. Notwithstanding the foregoing provisions, the Committee shall have the right to assert, on
40 behalf of the Estate and as the successor to the Debtor under section 1129(a)(5) of the Bankruptcy Code and other
41 applicable law, any of the Causes of Action (as defined in Section 4.3.a hereof), which have not been waived, against the
42 Debtor's Board of Directors, officers, managers and other employees arising prior to the Petition Date.

43 4.7 Survival of the Committee. The Committee shall survive confirmation of the Plan and the Effective
44 Date, and shall continue to exist until the earlier of: (a) the payment in full of the Allowed Claims in Class 4 with
45 Interest; or (b) the date the Bankruptcy Case is closed in accordance with Sections 5.6.b.iv and 10.4.

1 4.8 United States Trustee Fees. All unpaid fees due to the United States Trustee from the Petition Date
2 through the calendar quarter in which the Effective Date occurs shall be paid on the Effective Date by the Estate and
3 shall be based upon all distributions by the Estate on or prior to the Effective Date, including the transfers on the
4 Effective Date of funds to the Disbursing Agent for distribution to holders of Allowed Claims. Commencing with the
5 calendar quarter following the quarter in which the Effective Date occurs and continuing until the entry of a final decree
6 or order converting or dismissing the case, the Disbursing Agent shall pay to the United States Trustee, from the assets of
7 the Estate, such amounts as are required to be paid under 28 U.S.C. Section 1930(a)(6). The Reorganized Debtor shall,
8 however, remain liable for the payment of any such fees, which are not paid by the Disbursing Agent.

9 4.9 Limitation Of Liability. On or after the Effective Date, none of the Debtor, the Debtor in Possession,
10 the Estate, the Reorganized Debtor, the Committee or the Disbursing Agent, nor any of their employees, officers,
11 members, directors, agents, or representatives, nor any Professional Persons employed by any of them, shall have or
12 incur any liability to any Person for any act taken or omission made in good faith in connection with or related to the
13 administration of the Estate, objections to or estimations of Claims, dispositions of assets, and/or formulating, soliciting
14 acceptances to or confirming the Plan or the Disclosure Statement.

15 4.10 Execution of Documents and Corporate Action. The Debtor, the Debtor in Possession, the
16 Reorganized Debtor, and/or the Disbursing Agent, without being required to obtain any directors' or shareholders'
17 approval or action whatsoever, shall execute such documents and take such other actions as are necessary to effectuate
18 the transactions provided for in this Plan. Following the Effective Date, the Reorganized Debtor, and its directors and
19 officers, the Committee and the Disbursing Agent shall be authorized to execute, deliver, file, or record such contracts,
20 instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or
21 appropriate to effectuate and further evidence the terms and provisions of the Plan.

22 4.11 Material Default. If there is a material default under the terms of the Plan and upon a successful post-
23 confirmation motion to convert this case to a case under Chapter 7 of the Bankruptcy Code, this Plan shall terminate, and
24 the chapter 7 estate shall consist of all remaining property not already administered. Such remaining property shall be
25 administered by the chapter 7 trustee as prescribed in Chapter 7 of the Bankruptcy Code.

26 4.12 Retention of Jurisdiction. After the Confirmation Date and before and after the Effective Date, the
27 Bankruptcy Court shall retain all jurisdiction as is legally permissible and have exclusive jurisdiction over any matter
28 arising under the Bankruptcy Code, arising in or related to the Chapter 11 Case or the Plan, or relating to the following:

1 a. To hear and determine all disputes or controversies arising in connection with or relating to
the Plan or the interpretation, implementation, or enforcement of the Plan or the extent of any Entity's obligations
incurred in connection with or released under the Plan;

2 b. To determine or estimate the allowance, classification or priority of any Claims or Equity
Interests, or any groups of Claims or Equity Interests, upon objection or motion by the Reorganized Debtor, the
Committee or other parties in interest with standing to bring such objection or proceeding, and to estimate the amount
reasonably necessary to reserve on account of any Disputed Claim or group of Disputed Claims;

3 c. To determine the extent, validity, and priority of any Lien asserted against the property of the
Estate;

4 d. To resolve any matters related to the assumption, assumption and assignment, or rejection of
any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be
liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;

5 e. To enter such orders as may be necessary or appropriate to implement or consummate the
provisions of the Plan and all contracts, instruments, releases, and other agreements or documents related to the Plan;

6 f. To determine any and all motions, adversary proceedings, applications and contested or
litigated matters that may be pending on the Effective Date, or that, pursuant to the Plan, may be instituted by the
Reorganized Debtor after the Effective Date;

1 g. To ensure that distributions on account of Allowed Claims are accomplished as provided
2 herein:

3 h. To hear and determine any objections to Claims or Equity Interests or to proofs of Claim
4 filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity
5 Interest, and to allow, disallow, determine, liquidate, classify, estimate or establish the priority of or secured or unsecured
6 status of any Claim, in whole or in part;

7 i. To enter and implement such orders as may be appropriate in the event the Confirmation
8 Order is for any reason stayed, revoked, modified, reversed or vacated;

9 j. To issue such orders in aid of execution of the Plan, to the extent authorized by section 1142
10 of the Bankruptcy Code;

11 k. To consider any modifications of the Plan, to cure any defect or omission, or reconcile any
12 inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

13 l. To hear and determine all applications for awards of compensation for services rendered and
14 reimbursement of expenses incurred prior to the Effective Date;

15 m. To issue injunctions, enter and implement other orders or take such other actions as may be
16 necessary or appropriate to restrain interference by any Entity with consummation or enforcement of the Plan or any
17 provision thereof;

18 n. To determine any other matters that may arise in connection with or related to the Plan, the
19 Disclosure Statement, the Asset Purchase Agreement, the Confirmation Order, or any contract, instrument, release or
20 other agreement or document related to the Plan or the Disclosure Statement;

21 o. To hear and determine matters concerning state, local and federal taxes in accordance with
22 sections 346, 505, and 1146 of the Bankruptcy Code;

23 p. To hear any other matter or for any purpose that is not inconsistent with the Bankruptcy Code;
24 and

25 q. To enter a final decree closing the Chapter 11 Case.

26 The Bankruptcy Court shall retain and may exercise jurisdiction over the Estate and actions of the Reorganized
27 Debtor to the same extent as it could assert jurisdiction over a chapter 7 trustee and the property of a chapter 7 estate.

28 4.13 Successors and Assigns. The rights, benefits, and obligations of any Person named or referred to in
this Plan are binding on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors or
assigns of such Person, including any successor to the Equity Interest in the Debtor, successor to the Estate or the
Reorganized Debtor, or successor to the Committee.

ARTICLE V OBJECTIONS AND DISTRIBUTIONS

5.1 Objections to Claims.

a. Claims Objection Deadline. After the Effective Date, the Reorganized Debtor shall have the
right to object to the allowance of Claims or Equity Interests Filed with the Bankruptcy Court with respect to which
liability or allowance in whole or in part is disputed, except that the Committee also shall have the right to object to the
allowance of Claims if: (i) the objections are asserted against the Lenders as provided below; or (ii) the Reorganized
Debtor has not, within thirty (30) days following the Effective Date, Filed an objection to such Claims; or (iii) no
objection to the allowance of such Claims has been filed within forty-five (45) days prior to the deadline to object to
Claims under this Section 5.1.a. The hearing shall be scheduled as soon as is reasonably practicable, subject to the
Bankruptcy Court's calendar. All objections shall be litigated to Final Order or compromised and settled or otherwise

1 resolved, subject to approval by the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the
2 Reorganized Debtor (or the Committee, if applicable) shall file and serve all objections to Claims and Equity Interests as
3 soon as practicable, but in no event later than 120 days after the Effective Date or such later date as may be provided in
4 the Confirmation Order or pursuant to an Order of the Bankruptcy Court; provided, however, that the foregoing Claims
objection deadline shall not prohibit or bar the Reorganized Debtor from objecting to late-filed Claims or amendments to
Claims, raising new objections to Disputed Claims based upon newly discovered facts, or seeking reconsideration of any
Claim that has been allowed.

5 The Committee shall have the right to assert, on behalf of the Estate, any objection to the prepetition
6 Claim of the Lenders, or any affirmative claims against the Lenders arising from the prepetition Claim that has not been
7 waived or released, including any objection to the prepetition Claim amount, as provided in the "Stipulation Authorizing
8 Payment of Prepetition Secured Claim By Debtor and Debtor in Possession," which Stipulation was approved by the
9 Bankruptcy Court on an interim basis on November 29, 2000, and on a final basis on or about December 18, 2000. The
10 Committee shall also have the right to assert, on behalf of the Estate, all Causes of Action (as defined in Section 4.3.a)
11 against the Lenders arising during the period from the Petition Date to the Effective Date, except any Causes of Action
12 that relate to the stipulation dated September 6, 2000, authorizing the Debtor to borrow up to \$500,000 from the
13 Lenders. The Committee shall file and serve all such objections and assertions of Causes of Action against the Lenders,
14 if any, by no later than 240 days after the Effective Date, or such later date as may be provided in the Confirmation Order
15 or pursuant to an Order of the Bankruptcy Court.

16 b. Authority. The Reorganized Debtor (and as to any claim which the Reorganized Debtor shall
17 fail to object within thirty (30) days following the Effective Date, the Committee) shall have the authority to examine
18 Claims and to file and resolve objections to Disputed Claims in all instances in which objections have not been filed by
19 the Debtor in Possession or the Committee prior to the Effective Date. The party filing such objections shall be vested
20 on the Effective Date with all authority with respect to such objections and any defenses or counterclaims or other relief
21 related thereto.

22 c. Standing. Nothing in this Plan shall deprive the Estate, the Reorganized Debtor, the
23 Committee or any creditor of any standing that it may have to object to Disputed Claims, subject to the provision of
24 Section 5.1.a. The Estate, the Reorganized Debtor and the Committee shall be vested with the right to intervene as a
25 matter of right in any contested matter or adversary proceeding concerning an objection to any Disputed Claim.

26 5.2 Disputed Claims. No payment or distribution will be made with respect to all or any portion of a
27 Disputed Claim until such Claim is an Allowed Claim. Distributions to each holder of a Disputed Claim (but only to the
28 extent that it ultimately becomes an Allowed Claim) will be made in accordance with this Plan.

29 5.3 Reserves For Disputed Claims. Prior to making any distributions, the Disbursing Agent shall establish
30 reserves for Disputed Claims, unpaid Administrative Claims (including the Professional Fee Reserve) and Priority Tax
31 Claims, and for Post-Effective Date Claims. Except to the extent that the Bankruptcy Court shall determine that a good
32 and sufficient reserve for Disputed Claims is less than the full amount thereof, the reserve for a Disputed Claim shall be
33 based on the Filed amount of the Disputed Claim or the deemed filed amount of the Scheduled Claim plus Interest.
34 Except as provided in the Plan, any interest earned on reserves established by the Disbursing Agent for Disputed Claims,
35 Post-Effective Date Claims, or for any other purpose shall be earned for the account of the Estate, retained by the
36 Disbursing Agent, and distributed only in the manner provided for in this Plan.

37 Subject to the provisions of the Plan and the Confirmation Order, the Reorganized Debtor may request that the
38 Committee consent to, or the Committee may request that the Reorganized Debtor consent to, increase or decrease the
39 reserves required or permitted by the Plan. Such increase or decrease may be authorized by the Committee and the
40 Reorganized Debtor jointly. If the Reorganized Debtor or the Committee does not consent, either the Reorganized
41 Debtor or the Committee may file a motion requesting the Bankruptcy Court to authorize such increase or decrease,
42 which motion shall be served on the Reorganized Debtor, Reorganization Counsel, Committee Counsel, the Disbursing
43 Agent, and the All Notices List at least twenty (20) days prior to any hearing.

44 All Cash held in the reserve shall be invested in investments authorized by the Bankruptcy Code or by the
45 Bankruptcy Court in its Order Approving Centralized Cash Management Systems, Use of Existing Bank Accounts and
46 Business Forms, and Current Investment Practices entered by the Bankruptcy Court on April 7, 2000.

1 5.4 Estimation of Claims. After the Effective Date, the Reorganized Debtor may commence or continue
2 such actions and proceedings in the Bankruptcy Court as are appropriate under section 502(c) of the Bankruptcy Code to
3 estimate any Disputed Claim. The "Estimated Amount" with respect to such Disputed Claim shall be in an amount
4 established by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code after notice and an opportunity
5 for hearing to the holder of the Disputed Claim and the All Notices List. If the Bankruptcy Court estimates a Disputed
6 Claim for purposes of voting, then the amount so estimated shall establish the dollar amount to be used for purposes of
7 calculating the vote of the creditors asserting such Disputed Claim.

8 The amount of the Reserves for the Post-Effective Date Claims, Administrative Claims (including the
9 Professional Fee Reserve), Priority Tax Claims or Disputed Claims from time to time shall be determined jointly by the
10 Reorganized Debtor and the Committee in the exercise of reasonable business judgment. In case the Reorganized Debtor
11 and the Committee do not agree on issues regarding reserve amounts, the Bankruptcy Court shall have exclusive
12 jurisdiction to determine or estimate the appropriate amount of funds the Disbursing Agent shall hold for Post-Effective
13 Date Claims, Administrative Claims (including the Professional Fee Reserve), Priority Tax Claims or Disputed Claims
14 pending objections to or estimations of such Disputed Claims. The Disbursing Agent shall reduce any reserve for
15 Disputed Claims to the amount determined or estimated by the Bankruptcy Court as reasonably necessary to cover
16 Disputed Claims, including Interest, for purposes of making any interim distributions under this Plan. Notwithstanding
17 any such determination or estimation, the Disbursing Agent shall not make any distribution on account of a Disputed
18 Claim until such Claim becomes an Allowed Claim.

19 5.5 The Disbursing Agent.

20 a. Appointment of the Disbursing Agent. The Reorganized Debtor and the Committee shall
21 attempt to agree on the appointment of the Disbursing Agent. In the event that the Reorganized Debtor and the
22 Committee are unable to reach agreement as to the appointment of the Disbursing Agent, the Bankruptcy Court shall
23 have exclusive jurisdiction to determine who shall be appointed as the Disbursing Agent. The Reorganized Debtor, the
24 Committee and the Disbursing Agent shall use their reasonable efforts to dispose of Estate assets, to make prompt and
25 timely distributions, and to avoid undue prolongation of the duration of the Estate and the Bankruptcy Case.

26 b. No Bond. In the event that the Reorganized Debtor serves as the Disbursing Agent, the
27 Disbursing Agent shall not be required to give a bond or surety or other security for the performance of its duties unless
28 otherwise ordered by the Bankruptcy Court, and in the event that the Disbursing Agent is so otherwise ordered, all costs
and expenses of procuring any such bond or surety shall be borne by the Estate.

 c. Powers of the Disbursing Agent. The Disbursing Agent shall be empowered to: (i) make all
distributions contemplated by the Plan; and (ii) to maintain appropriate reserves for Disputed Claims and Post-Effective
Date Claims in accordance with this Plan.

 d. Expenses Incurred On or After the Effective Date. Except as otherwise ordered by the
Bankruptcy Court, the amount of any fees payable to the Disbursing Agent, and any reimbursement of expenses (other
than Professional Fees) incurred by the Disbursing Agent in the performance of its duties (including, without limitation,
taxes) shall be paid in Cash by the Disbursing Agent from the Reserves other than the Professional Fee Reserve.

 5.6 Procedures for Distributions.

 a. Surrender or Cancellation of Instruments. Except as otherwise provided by order of the
Bankruptcy Court, the Claim of any holder that is based upon a promissory note or trade acceptance must be
accompanied by a surrender or cancellation of such note or trade acceptance as a precondition to any distribution to the
holder thereof.

 b. Reserves and Initial, Interim and Final Distributions.

 i. On the Effective Date, the reserves shall be established in accordance with Section
5.3. On the Effective Date, the holders of Allowed Class 1 Claims will be paid in accordance with Section 2.3.a
hereof, holders of Allowed Class 2 Claims will be paid in accordance with Section 2.3.b hereof, the holders of
Allowed Class 3 Claims will be paid in accordance with Section 2.3.c hereof, and the balance of the Cash will
be distributed Pro Rata to holders of Allowed Class 4 Claims.

1 ii. Except to the extent that the Bankruptcy Court shall determine that a good and
2 sufficient reserve for Disputed Claims is less than the full amount thereof, in determining the amount of the
3 distributions due to holders of Allowed Claims, the Pro Rata calculations required by Article V of the Plan shall
4 be made as if all Disputed Claims (including Disputed Administrative Claims) were Allowed in the full amount
5 claimed by the holders thereof plus Interest.

6 iii. As additional assets are liquidated and Disputed Claims are resolved, the Disbursing
7 Agent shall make distributions as promptly as possible in the exercise of its reasonable judgment after review
8 and adjustment of the amounts of appropriate reserves for Disputed Claims, including Disputed Administrative
9 Claims. The Disbursing Agent shall not retain Cash or cash equivalents in excess of a reasonable amount to
10 meet Claims and contingent liabilities or to maintain the value of assets during the orderly liquidation. If, after
11 taking into account reserves for Disputed Claims, including disputed or unpaid Administrative Claims, disputed
12 or unpaid Priority Tax Claims, disputed or unpaid Unsecured Claims and Post-Effective Date Claims,
13 \$1,000,000 is available for general distributions to holders of Allowed Claims, then the Disbursing Agent shall
14 cause an interim distribution to be made. In addition, the Disbursing Agent may, in the exercise of its
15 reasonable judgment after consultation with the Committee and the Reorganized Debtor, declare any additional
16 interim distributions so long as appropriate reserves are maintained, pursuant to Section 5.3, for disputed or
17 unpaid Administrative Claims, disputed or unpaid Priority Tax Claims, disputed or unpaid Unsecured Claims
18 and Post-Effective Date Claims.

19 iv. Immediately after the Final Distribution Date has occurred, the Disbursing Agent
20 shall make a final Pro Rata distribution and the Reorganized Debtor shall request that the Bankruptcy Court
21 enter a final decree closing the Bankruptcy Case in accordance with Section 10.4 hereof.

22 v. Each Pro Rata distribution made by the Reorganized Debtor shall be calculated on
23 such a cumulative basis, after giving effect to all prior interim distributions, including distributions by the
24 Disbursing Agent as a result of transfers made by the Estate on the Effective Date.

25 c. Unclaimed Distributions. If any distribution to any holder of an Allowed Claim is returned to
26 the Disbursing Agent as undeliverable, no further distributions shall be made to such holder unless and until the
27 Disbursing Agent is notified, in writing, of such holder's then-current address. Undeliverable distributions shall be
28 deposited into the reserve until such time as a distribution becomes deliverable. No Entity ultimately receiving initially
undeliverable Cash shall be entitled to any interest or other accruals thereon of any kind after the date the initially
undeliverable Cash is returned to the Disbursing Agent as undeliverable. Nothing contained in the Plan shall require the
Disbursing Agent, Reorganized Debtor or Committee to attempt to locate any holder of an Allowed Claim. Any
unclaimed distributions as of the Final Distribution Date shall be distributed Pro Rata to holders of Allowed Claims as
provided for in the Plan.

Any holder of an Allowed Claim that does not assert its rights pursuant to the Plan to receive an
undeliverable distribution before the earlier of (a) the Final Distribution Date, and (b) ten (10) days before the first
anniversary of the Effective Date shall have no right to receive such undeliverable distribution. Upon the final
distribution, any consideration held for distribution on account of such Claim shall be redistributed first on a Pro Rata
basis to the holders of Allowed Class 4 Claims including Interest and then to Allowed Class 5 Interests as provided for in
the Plan.

29 d. Time Bar to Cash Payments. Checks issued by the Disbursing Agent on account of Allowed
30 Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof.
31 Requests for reissuance of any check shall be made directly to the Disbursing Agent or the Reorganized Debtor by the
32 holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in respect of such a
33 voided check shall be made on or before ten (10) days before the first anniversary of the Effective Date. After such date,
34 all Claims in respect of voided checks shall be discharged and forever barred and the monies related thereto shall be
35 distributed as an undeliverable distribution pursuant to Section 5.6.c of the Plan.

36 e. De Minimis Distributions. Notwithstanding anything to the contrary contained in the Plan,
37 the Disbursing Agent shall not be required to disburse Cash as an interim dividend to the holder of an Allowed Class 3
38 Claim, an Allowed Class 4 Claim, or an Allowed Class 5 Interest if the amount of Cash otherwise due is less than Twenty
Dollars (\$20.00). Cash not so distributed shall be deposited in the unclaimed distributions reserve and distributed in the

1 same manner as unclaimed distributions under Section 5.6.c hereof. For purposes of the final distribution, the Disbursing
Agent may, but shall not be required to, disburse Cash to a holder of an Allowed Claim in Class 3, Class 4 or Class 5 if
2 the Cash due is less than Twenty Dollars (\$20.00).

3 5.7 Manner of Payment Under the Plan. Cash payments made pursuant to the Plan shall be in United
States Dollars by checks drawn on the domestic bank selected by the Disbursing Agent or by wire transfer from a
4 domestic bank, at Disbursing Agent's option.

5 5.8 Delivery of Distributions/Address of Holder. For purposes of all notices and distributions under this
Plan, the Reorganized Debtor, the Disbursing Agent, and the Committee shall be entitled to rely on the name and address
6 of the holder of each Claim as shown on the proof of Claim, and distributions to holders of Allowed Claims shall be
made by regular U.S. first class mail to the following addresses: (i) the address set forth in the respective proof of Claim
7 of such holder; (ii) the address set forth in any written notice of address change delivered by the holder to the Disbursing
Agent or Reorganized Debtor after the date of any related proof of Claim; or (iii) the address reflected on the Schedules
8 if no proof of Claim or proof of Interest is Filed and the Disbursing Agent or Reorganized Debtor has not received a
written notice of a change of address. The Reorganized Debtor, the Disbursing Agent, and the Committee shall be under
9 no duty to attempt to locate holders of Allowed Claims that are entitled to unclaimed distributions.

10 5.9 Cancellation and Surrender of Existing Securities and Instruments. Except as otherwise provided in
the Plan, on the Final Distribution Date, all promissory notes, share certificates and other instruments evidencing any
11 Claim or Equity Interest shall be deemed cancelled and null and void without further act or action under any applicable
agreement, law, regulation, order, or rule, and the obligations of the Debtor under the agreements and certificates of
12 designations governing such Claims and Equity Interests, as the case may be, shall be discharged.

13 5.10 Allocations of Distributions to Allowed Claims. For the purpose of determining the amount of an
Allowed Claim, any distributions received by a holder of an Allowed Claim shall be allocated first to the principal
14 portion of such Claim to the extent thereof, and thereafter to the portion of such Claim, if any, representing Interest.

15 5.11 Compliance With Tax Requirements. In connection with the Plan, to the extent applicable, the
Reorganized Debtor and Disbursing Agent shall comply with all withholding and reporting requirements imposed on it
16 by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting
requirements.

17 ARTICLE VI CRAMDOWN REQUEST

18 6.1 The Debtor hereby requests that the Bankruptcy Court confirm the Plan - pursuant to section 1129(b)
19 of the Bankruptcy Code - by cramdown on any impaired Class that does not vote to accept the Plan. The Debtor believes
that cramdown is appropriate under the circumstances.

20 ARTICLE VII EFFECT OF CONFIRMATION AND INJUNCTION

21 7.1 Channeling of Claims. The rights provided in the Plan and its treatment of all Claims and Equity
22 Interests (including Post-Effective Date Claims) shall be in exchange for and in complete satisfaction and release of all
23 Claims, Equity Interests, Post-Effective Date claims and Administrative Claims of any kind whatsoever (including any
interest accrued thereon before or after the Petition Date) against the Estate and the Reorganized Debtor, and any of its
24 assets or properties, regardless of whether a proof of Claim or Equity Interest or request for Administrative Claim was
filed, whether the Claim or Equity Interest, Post-Effective Date Claim or Administrative Claim is Allowed, or whether
25 the holder thereof votes to accept the Plan or is entitled to receive a distribution thereunder. No holder of any Claim,
Equity Interest, or Administrative Claim may receive any payment from or seek recourse against any assets that are to be
26 distributed under this Plan, except for those assets required to be distributed to such holder, if any, as expressly provided
in this Plan. As of the Effective Date, all Entities are precluded from asserting against the Estate and the Reorganized
27 Debtor, any of its assets and properties, or any property that is to be distributed under this Plan, any Claims, rights,
causes of action, liabilities or Equity Interests based upon any document, instrument, act, omission, transaction or other
28 activity of any kind or nature that occurred prior to the Effective Date, other than as expressly provided in this Plan or
the Confirmation Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim or Equity

1 Interest and regardless of whether such entity has voted to accept this Plan. Any claim or cause of action asserted against
2 the Estate, the Reorganized Debtor, Professional Persons, the Committee or the Disbursing Agent arising out of or
3 related to the conduct of their duties in the Bankruptcy Case, whether before or after the Effective Date, shall be
4 commenced only in the Bankruptcy Court. Except as provided for in the Plan, all property dealt with in the Plan
(including property of the Estate) is free and clear of all Claims and Equity Interests (including Post-Effective Date
Claims). Notwithstanding the foregoing, nothing provided in this Plan shall be deemed to have granted a discharge to
the Debtor.

5 7.2 Injunction. Except as otherwise provided in the Plan or the Confirmation Order, on and after the
6 Effective Date, all Entities that have held, currently hold, or may hold a debt, Claim, other liability or Equity Interest
7 (including Post-Effective Date Claims) against or in the Debtor are permanently enjoined from taking any of the
8 following actions on account of such debt, Claim, liability, Equity Interest or right: (a) commencing or continuing, in
9 any manner and in any place, any action or other proceeding on account of such debt, Claim, liability, Equity Interest or
10 right against the Estate, the Reorganized Debtor, Professional Persons, the Committee or the Disbursing Agent without
11 leave of the Bankruptcy Court; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award,
12 decree, or order against any property to be distributed to creditors under this Plan; (c) creating, perfecting or enforcing
13 any lien against property of the Estate without leave of the Bankruptcy Court; (d) taking any action to obtain possession
14 of property of or from the Estate; and (e) commencing or continuing any action or proceeding, in any manner and in any
15 place, that does not comply with or is inconsistent with the provisions of the Plan. Any Person injured by any willful
16 violation of such injunction shall recover actual damages, including costs and professional fees, and where appropriate,
17 punitive damages from the willful violator.

18 7.3 Term of Existing Injunctions or Stays. Unless otherwise provided, all injunctions or stays provided for
19 in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence as of the
20 Confirmation Date, shall remain in full force and effect until the Effective Date.

21 7.4 Reservation of Rights if the Plan is not Substantially Consummated. In the event that the Plan is not
22 substantially consummated, the Lenders, the Reorganized Debtor, the Debtor and the Committee shall not have waived,
23 and shall not be deemed to have waived, any right or legal argument with respect to payment of the Lenders' prepetition
24 Claim, as provided for in the Stipulation and Order Authorizing Payment of Prepetition Secured Claim dated November
25 29, 2000 (the "Stipulation"), or any issue or matter in connection therewith, arising therefrom or relating thereto, and the
26 Lenders, the Committee, the Reorganized Debtor, the Debtor and other parties in interest expressly reserve all of such
27 rights and legal arguments, including, without limitation, the right to contest such payment, in whole or in part, and to
28 submit different or alternative allocations to the Lenders or valuations of such Claim in any successor plan or in litigation
regarding the Estate. If Allowed Class 4 Claims are paid in full with Interest, then the payment to the Lenders on account
of their Claim shall be binding on all parties in interest, including the Lenders and the Committee.

ARTICLE VIII MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

29 8.1 Modification of the Plan. The Debtor reserves the right, in accordance with the Bankruptcy Code and
30 the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. After the
31 entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify the Plan in
32 accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any
33 inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A holder of
34 a Claim or Equity Interest that has accepted the Plan shall be deemed to have accepted the Plan as modified if the
35 proposed modification does not materially and adversely change the treatment of the Claim or Equity Interest of such
36 holder.

8.2 Revocation or Withdrawal.

37 a. The Plan may be revoked or withdrawn prior to the Confirmation Date by the Debtor for any
38 reason whatsoever.

b. If the Plan is revoked or withdrawn prior to the Confirmation Date, then the Plan shall be
deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any

1 claims by the Debtor or any other Entity or to prejudice in any manner the rights of the Debtor or any other Entity in any
2 further proceedings involving the Debtor.

3 **ARTICLE IX**
4 **CONDITIONS TO EFFECTIVE DATE**

5 9.1 **Conditions Precedent to Effective Date.** The "effective date of the plan." as used in section 1129 of
6 the Bankruptcy Code, shall not occur, and the Plan shall be of no force and effect, until the Effective Date. The
7 occurrence of the Effective Date is subject to the satisfaction of the following conditions precedent or concurrent:

8 a. **Confirmation Order.** The Clerk of the Bankruptcy Court shall have entered the Confirmation
9 Order, which shall be in form and substance satisfactory to the Debtor and consistent with this Plan. The Confirmation
10 Order shall be in full force and effect and shall have become a Final Order.

11 b. **Timing.** Except as may be otherwise ordered by the Bankruptcy Court, the eleventh (11th)
12 calendar day following the entry of the Confirmation Order on the official docket of the Bankruptcy Court shall have
13 occurred and there shall not have been in existence any stay or injunction against enforcement and execution of the
14 Confirmation Order.

15 9.2 **Effect of Failure of Conditions.** In the event that the foregoing conditions have not been timely
16 satisfied, and upon notification submitted by the Debtor to the Bankruptcy Court and Committee Counsel, (a) the
17 Confirmation Order shall be vacated, (b) no distributions under the Plan shall be made, (c) the Debtor and all holders of
18 Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation
19 Date as though the Confirmation Date never occurred, and (d) all the Debtor's obligations with respect to the Claims and
20 Equity Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of
21 any Claims by or against the Debtor or any other Entity or to prejudice in any manner the rights of the Debtor, the
22 Committee, or any Entity in any further proceedings involving the Debtor. Notwithstanding the foregoing, the failure of
23 the Effective Date to occur within the time period required by this Plan, and the consequences thereof as set forth above,
24 shall not affect the validity of any order entered by the Bankruptcy Case other than the Confirmation Order.

25 9.3 **Waiver of Conditions.** The foregoing conditions are not waivable absent modification of the Plan
26 pursuant to section 1127 of the Bankruptcy Code.

27 9.4 **Notice of Effective Date.** As promptly as practicable following the occurrence of the Effective Date,
28 the Reorganized Debtor shall cause to be served the Notice of Effective Date on the All Notices List and on all holders
of Claims against and Equity Interests in the Debtor.

19 **ARTICLE X**
20 **MISCELLANEOUS PROVISIONS**

21 10.1 **Severability.** If, prior to the Confirmation Date, any term or provision of the Plan is held by the
22 Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall, upon the request of the Debtor, have
23 the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable,
24 consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or
25 provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or
26 interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no
27 way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall
28 constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered
or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

10.2 **Governing Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable, or to
the extent that an Exhibit hereto provides otherwise, the rights, duties and obligations arising under this Plan shall be
governed by, and construed and enforced in accordance with the laws of the State of California, without giving effect to
principles of conflicts of laws.

1 10.3 Notices. All notices, requests, and demands to or upon the Debtor and the Reorganized Debtor to be
2 effective shall be in writing, including by facsimile transmission, and, unless otherwise expressly provided herein, shall
3 be deemed to have been duly given or made when actually delivered, or in the case of notice by facsimile transmission,
4 when received and telephonically confirmed, addressed as follows: Sidney P. Levinson, Esq., Hennigan, Bennett &
5 Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017, Facsimile: (213) 694-1234.

6 10.4 Closing of the Chapter 11 Case. Immediately following the Final Distribution Date, the Reorganized
7 Debtor shall file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of
8 the Bankruptcy Court.

9 10.5 Section Headings. The section headings contained in this Plan are for reference purposes only and
10 shall not affect in any way the meaning or interpretation of the Plan.

11 10.6 Exemption from Transfer Taxes. Pursuant to section 1146(c) of the Bankruptcy Code, the issuance,
12 transfer or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other
13 security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other
14 instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real
15 estate transfer, mortgage recording, or other similar tax.

16 10.7 Exhibits. All Exhibits to the Plan are incorporated into and are a part of the Plan as set forth in full
17 herein.

18 DATED: June 13, 2001

AUREAL INC.

19 _____
20 /s/ Steve Mitchell

21 Steve Mitchell
22 Chief Operating Officer

23 Presented by:

HENNIGAN, BENNETT & DORMAN

24 _____
25 /s/ Sidney P. Levinson

26 Sidney P. Levinson
27 Reorganization Counsel for Debtor
28 And Debtor in Possession

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EXHIBIT 1

**Schedule of Executory Contracts and Unexpired Leases
to be Assumed or Assumed and Assigned**

[None]

EXHIBIT B

COMPENSATION OF PROFESSIONALS

(Estimated and Actual as of May 7, 2001)

PROFESSIONAL	FEES & EXPENSES REQUESTED	DATE FEE APPLICATION SUBMITTED	PERIOD OF COMPENSATION	DATE OF ORDER APPROVING FEES	AMOUNT PAID BY DEBTOR
Hennigan, Bennett & Dorman	\$664,188.51	08/30/2000	04/05 - 06/30/2000	11/15/2000	\$542,800.91
	\$489,086.27	12/01/2000	07/01 - 09/30/2000	02/16/2001	\$399,155.63
	\$115,774.81	12/27/2000	10/01 - 10/31/2000	02/21/2001	\$92,570.71
	\$113,754.65	02/16/2001	11/01 - 12/31/2000	04/04/2001	\$108,657.85
	\$69,933.70	04/20/2001	01/01 - 01/31/2001	pending	
McCutchen, Doyle, Brown & Enersen	\$156,705.82	09/25/2000	06/19 - 08/31/2000	11/13/2000	\$126,055.62
	\$36,688.35	01/25/2001	9/01 - 12/31/2000	03/13/2001**	\$24,996.80
Pricewaterhouse Coopers	\$286,003.25	08/25/2000	04/05/ - 07/31/2000	pending	
Ernst & Young	\$275,000.00*		08/09/ - 12/31/2000		
Ritter, Van Pelt & YI	\$44,402.32	04/20/2001	05/01 - 09/30/2000	pending	
Mohler, Nixon & Williams	\$11,538.00	03/15/2001	06/25 - 10/31/2000	04/11/2001	\$9,330.40
Gallagher & Lathrop	\$7,492.23	03/15/2001	05/02 - 11/01/2000	04/02/2001	\$7,418.56
Neilsen, Elggren LLP	To be determined				
CB Richard Ellis	\$50,000.00	03/27/2001	10/25 - 12/18/2000	pending	
Sidley & Austin	To be determined***				
Sall & Smolowitz	To be determined****				

(*) Estimated amounts

(**) Order denied fees requested by Committee of \$5,442.35

(***) Fees shall not exceed \$6,000.00

(****) Fees shall not exceed \$5,000.00

EXHIBIT C
ESTIMATED ALLOWED CLAIMS
(AS OF MAY 7, 2001)

Claim #	Claimant	Claim Amount	Estimated Allowed Amount
1	Takeout Taxi	\$271.27	\$271.27
2	PC World Communications	\$88,595.69	\$88,595.69
3	The Flying Logo Sisters	\$1,489.36	\$1,489.36
5	Custom Coffee Plan	\$86.80	\$86.80
7	Ritter Van Pelt & Yi LLP	\$19,254.37	\$19,254.37
8	IT&E Corporation	\$81,200.00	\$76,800.00*
9	Alterflex Corporation	\$1,995.00	\$1,995.00*
10	Fitzgerald Communications	\$3,265.89	\$3,265.89
12	Ziff Davis	\$70,821.35	\$70,821.35
13	Avnet Electronics Marketing	\$170,467.35	\$170,467.35
14	DRA Laboratories	\$5,700.00	\$5,700.00
15	National Bag	\$75.60	\$75.60
16	Ficus N Fern	\$575.00	\$575.00
19	David F. Mainland	\$500.00	\$500.00
20	Ilsi America	\$112.00	\$112.00
21	Jacobs Weeds & Pest Control	\$825.00	\$825.00
22	Luce Press Clippings, Inc.	\$1,547.86	\$1,547.86
23	Telogy Test Equipment	\$70,059.60	\$3,502.98*
24	Pacific Gas and Electric	\$14,334.46	\$14,334.46
25	Eagle Management Group, Inc.	\$3,049.28	\$3,049.28
26	Tiburon, Inc.	\$1,153.62	\$1,153.62
27	Digi-Key	\$69.78	\$69.78
28	Blazer Exhibit Graphics	\$2,282.58	\$2,382.58
29	3DSL	\$72,852.67	\$72,852.67
30	Recall Total Info Mgmt, Inc.	\$1,324.12	\$837.42*
31	Post Studios Photographic	\$72.85	\$72.85
36	Cadence Design Systems, Inc.	\$172,539.58	\$172,539.58
37	PR Newsire	\$4,618.10	\$3,911.75*
38	Earl Vickers	\$768.11	768.11
39	MarTech Sales Company	\$2,826.54	\$2,826.54
41	Oculux, Inc.	\$139.50	\$139.50
42	Psinet, Inc.	\$8,160.94	\$8,160.94
43	Vifa/Scan Speak USA, Inc.	\$25,616.00	\$25,616.00
44	Minolta Business Solutions	\$117,157.35	\$4,444.46*
45	Trial Analysis Group	\$2,400.00	\$2,400.00
47	Comp USA	\$2,921.67	\$2,921.67
48	Wishnow Tearney & Killion	\$628.45	\$628.45
49	Artwork Conversion Software, Inc.	\$6,126.42	\$6,126.42
51	Credence Systems, Corp.	\$135,000.00	\$135,000.00
52	State of Washington Dept. of Revenue	\$2,266.17	\$2,266.17
53	Heller Ehrman White & McAulliffe	\$5,427.00	\$5,247.00*
54	Brooks Technical Group, Inc.	\$6,580.85	\$6,580.85*
55	Herman-Miles	\$61.50	\$61.50
56	Synopsys, Inc.	\$31,581.00	\$31,581.00

Claim #	Claimant	Claim Amount	Estimated Allowed Amount
57	General Electric Capital Corp.	\$270,399.07	\$270,399.07
58	Advantel, Inc.	\$37,749.79	\$37,749.79
59	Q-The Sports Club/Sports an Fitness Club	\$317.12	\$317.12
60	Trans World Airlines	\$9,613.42	\$9,613.42
61	Kent H. Landsberg Co.	\$29,124.84	\$29,124.84
63	Chasemellon Shareholder Svc.	\$880.48	\$880.48
65	Allied Electronics, Inc.	\$914.96	\$914.96
66	Pacific Bell	\$2,304.06	\$2,304.06
68	AT&T Corp.	\$9,319.82	\$9,319.82
69	Innominds Software, Inc.	\$26,010.55	\$24,840.00*
70	Video Solutions	\$2,563.75	\$2,563.75*
71	Combs Greenley	\$6,465.46	\$6,465.46*
72	Gray, Cary, Ware & Freidenrich	\$27,632.56	\$27,632.56*
73	State Board of Equalization	\$729.12	\$729.12
76	Interim Personnel	\$35,541.44	\$35,541.44
80	Gary Catlin	\$5,000.00	\$5,000.00
83	Flatland Online, Inc.	\$200,000.00	\$200,000.00
84	Finova Capital Corporation	\$351,788.81	\$332,646.48*
85	United Parcel Service	\$8,977.53	\$8,977.53
86	Lexington Insurance Co., et al	\$0.00	\$0.00
87	Emery Worldwide	\$14,458.48	\$14,458.48
90	Gallagher Lathrop	\$1,100.21	\$1,100.21
97	Alan Yee	\$5,000.00	\$5,000.00
99	Mark Pereira	\$4,000.00	\$4,000.00
102	Highsoft, Inc.	\$41,457.59	\$41,457.59
105	Thomson Consumer Electronics Sales GmbH	\$26,073.35	\$25,000.00*
106	Fraunhofer-Gesellschaft	\$75,000.00	\$75,000.00
114	Imperial A.I.Credit Companies	\$0.00	\$0.00
119	Lexis Publishing	\$50.10	\$50.10
124	Network Guys, Inc.	\$8,502.43	\$8,502.43
126	The Martin Agencies, Inc.	\$37,647.47	\$37,647.47
127	AON Consulting, Inc.	\$6,150.00	\$6,150.00
146	Nelda Wells Spears, Travis County Tax Collector	\$613.73	\$613.73
Claims Included in Schedules Where No Proof of Claim Filed			\$280,811.68
Adjustment for Anticipated Amendments to Schedules			\$381,759.81
Adjustment for Anticipated Deletions to Schedules			(\$363,913.68)
Adjustment for Employee Benefits			\$189,758.00
TOTAL PROJECTION OF CLAIMS ALLOWED			\$2,664,273.84

(*) Represents allowed claim amounts remaining after Debtor's First Omnibus Objection to Claims

EXHIBIT D
ESTIMATED DISPUTED CLAIMS
(AS OF MAY 7, 2001)

Claim #	Claimant
6	Wall Street Interviewers, Inc.
18	UMC Group (USA)
40	Alameda County Water District
46	New York State Corporation Tax (Bankruptcy Unit)
62	KPMG LLP
64	AFCO Credit Corporation
79	Creative Technology, Ltd.
81	Delaware Secretary of State
88	Orrick, Herrington and Sutcliffe
91	Infogrames North America
95	Integra-Dyne Corp.
96	World Peace Industrial Co.
98	Voyetra Turtle Beach
111	Momentum Data Systems
129	Krystaltech Semiconductors, Inc.
131	Supercom Canada Ltd.
132	Id Software, Inc.
144	Lim Boon Seng
145	Ocean Data Products

**EXHIBIT E
ASSERTED PRIORITY TAX CLAIMS**

Claim #	Claimant	Amount Asserted by Claimant
32	Commonwealth of Massachusetts	\$11,503.69
46	New York State Dept. of Taxation & Finance	\$7,277.48
50	Commonwealth of Massachusetts	\$11,503.69
52	State of Washington Dept. of Revenue	\$2,266.17
81	Delaware Secretary of State, Division of Corp.	\$184,911.15
92	Nelda Wells Spears, Travis County Tax Collector	\$318.86
100	Department of the Treasury	\$10,000.00
146	Nelda Wells Spears, Travis County Tax Collector	\$613.73
TOTAL	ASSERTED PRIORITY TAX CLAIMS	\$228,394.77

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CONFORMED SUBMISSION TYPE: NTN 10K

PUBLIC DOCUMENT COUNT: 1

CONFORMED PERIOD OF REPORT: 20000102

FILED AS OF DATE: 20000427

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME: AUREAL SEMICONDUCTOR INC

CENTRAL INDEX KEY: 0000892433

STANDARD INDUSTRIAL CLASSIFICATION: PRINTED CIRCUIT BOARDS [3672]

IRS NUMBER: 943117385

STATE OF INCORPORATION: DE

FISCAL YEAR END: 0103

FILING VALUES:

FORM TYPE: NTN 10K

SEC ACT:

SEC FILE NUMBER: 000-22626

FILM NUMBER: 610099

BUSINESS ADDRESS:

STREET 1: 4245 TECHNOLOGY DR

CITY: FREMONT

STATE: CA

ZIP: 94538-6339

BUSINESS PHONE: 5102524245

MAIL ADDRESS:

STREET 1: 4245 TECHNOLOGY DR

CITY: FREMONT

STATE: CA

ZIP: 94538-6339

FORMER COMPANY:

FORMER CONFORMED NAME: MEDIA VISION TECHNOLOGY INC

DATE OF NAME CHANGE: 19931210

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 12b-25

NOTIFICATION OF LATE FILING

Commission File Number 0-20684

(Check one)

State below in reasonable detail the reasons why Form 10-K, 10-KSB, 11-K, 20-F, 10-Q, 10-QSB, N-SAR, or the transition report portion thereof could not be filed within the prescribed time period. (Attach extra sheets if needed.)

SEE ATTACHED.

PART IV
OTHER INFORMATION

(1) Name and telephone number of person to contact in regard to this notification.

Steve Mitchell (510) 252-4245

(Name) (Area Code) (Telephone Number)

(2) Have all other periodic reports under Section 13 or 15(d) or the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 during the preceding 12 months or for such shorter period that the registrant was required to file such report(s) been filed? If the answer is no, identify report(s).

[X] Yes [] No

(3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?

[] Yes [X] No

If so: attach an explanation of the anticipate change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

Aureal, Inc.

(Name of Registrant as Specified in Charter)

Has caused this notification to be signed on its behalf by the undersigned thereunto duly authorized.

Date April 3, 2000 By

Steve Mitchell, Director of Human Resources

Instruction. The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on

12b25-2

<PAGE> 3

behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. 1001).

GENERAL INSTRUCTIONS

1. This form is required by Rule 12b-25 of the General Rules and Regulations under the Securities Exchange Act of 1934.
2. One signed original and four conformed copies of this form and amendments thereto must be completed and filed with the Securities and Exchange Commission, Washington, DC 20549, in accordance with Rule 0-3 of the General Rules and Regulations under the Act. The information contained in or filed with the form will be made a matter of the public record in the Commission files.
3. A manually signed copy of the form and amendments thereto shall be filed with each national securities exchange on which any class of securities of the registrant is registered.
4. Amendments to the notifications must also be filed on Form 12b-25 but need not restate information that has been correctly furnished. The form shall be clearly identified as an amended notification.
5. Electronic Filers. This form shall not be used by electronic filers unable to timely file a report solely due to electronic difficulties. Filers unable to submit a report within the time period prescribed due to difficulties in electronic filing should comply with either Rule 201 or Rule 202 of Regulation S-T or apply for an adjustment in filing date pursuant to Rule 13(b) of Regulation S-T.

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<PAGE> 4

ATTACHMENT
PART III
NARRATIVE

Aureal, Inc. (the "Company") hereby requests an extension of time to file its annual 10-K report (the "Report") due to recent unforeseen events. On March 24, 2000, all of the executive officers and senior staff members of the Company announced their immediate resignation from the Company. The loss of such key personnel has forced the Company to seek replacement or turnaround management. In addition, the Company is considering various options for the continuation of its business, including actions to either sell the Company or its assets or to wind down the Company.

In light of the loss of senior management, the Company has been required to focus its limited remaining resources on continuing the operations of the Company. In order to file the Report in a timely fashion, the Company would need to divert scarce resources and personnel from critical operational duties and responsibilities. Such diversion would require unreasonable effort and expense during this time of transition.

The Company anticipates that it will be able to file the Report within fifteen days from the date originally prescribed for the filing of the Report, absent further relief from the Commission.

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CONFORMED SUBMISSION TYPE: NT 10-Q
PUBLIC DOCUMENT COUNT: 1
CONFORMED PERIOD OF REPORT: 20000402
FILED AS OF DATE: 20000517

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME: AUREAL SEMICONDUCTOR INC
CENTRAL INDEX KEY: 0000892433
STANDARD INDUSTRIAL CLASSIFICATION: PRINTED CIRCUIT BOARDS [3672]
IRS NUMBER: 943117385
STATE OF INCORPORATION: DE
FISCAL YEAR END: 0103

FILING VALUES:

FORM TYPE: NT 10-Q
SEC ACT:
SEC FILE NUMBER: 000-22626
FILM NUMBER: 638310

BUSINESS ADDRESS:

STREET 1: 4245 TECHNOLOGY DR
CITY: FREMONT
STATE: CA
ZIP: 94538-6339
BUSINESS PHONE: 5102524245

MAIL ADDRESS:

STREET 1: 4245 TECHNOLOGY DR
CITY: FREMONT
STATE: CA
ZIP: 94538-6339

FORMER COMPANY:

FORMER CONFORMED NAME: MEDIA VISION TECHNOLOGY INC
DATE OF NAME CHANGE: 19931210

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 12b-25

NOTIFICATION OF LATE FILING

Commission File Number 0-20684

(Check one)

NARRATIVE

STATE BELOW IN REASONABLE DETAIL THE REASONS WHY FORM 10-K, 10-KSB, 11-K, 20-F, 10-Q, 10-QSB, N-SAR, OR THE TRANSITION REPORT PORTION THEREOF COULD NOT BE FILED WITHIN THE PRESCRIBED TIME PERIOD. (ATTACH EXTRA SHEETS IF NEEDED.)

On April 5, 2000 (the "Petition Date"), Aural Inc. (the "Company") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California, Oakland Division, Case No. 00-42104-T11. Since the Petition Date, the Company has continued to operate its business as a debtor-in-possession while the chapter 11 case is pending. Specifically, the Company has spent considerable time and resources addressing the many pressing issues associated with the bankruptcy filing, including, without limitation, addressing immediate business issues, transitioning to operating as a debtor in possession, negotiating the use of cash collateral, assembling documents and information to prepare Schedules and enable due diligence by potential purchasers, and negotiating a potential sale of the Company's assets. In addition, prior to the Petition Date, on March 24, 2000, all of the executive officers and senior staff members of the Company resigned from their employment. Thus, along with the difficult transition into bankruptcy, the Company also has been faced with replacing its key management personnel.

In light of the recent bankruptcy filing, as well as the loss of its senior management, a diversion of the Company's scarce resources and personnel from critical operational duties and responsibilities in order to timely file the Quarterly Report on Form 10-Q (the "Report") would require unreasonable effort and expense. As described above, since the Petition Date, the Company has been required to focus its limited remaining resources on continuing the operations of the Company. Moreover, the Company, which at its peak employed over 144 people, presently has approximately 32 full-time employees, only 1 of whom performs senior executive management functions. The size of the Company's finance and accounting staff also has been reduced, and the remaining staff must devote substantially all of its time to the maintenance of the remaining operations, preparation for the potential sale of the Company's assets, and the administrative burdens of the chapter 11 case. Furthermore, the drastic reduction in personnel has required the remaining members of the Company's management team and finance and accounting staff to assume tasks and responsibilities previously handled by others. As a result, the Company is unable to allocate the personnel necessary to prepare and properly review the Report in the time prescribed.

The Company is submitting a letter to the Securities and Exchange Commission (the "Commission") requesting confirmation that the Commission, or any member of its staff,

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will not recommend enforcement action against the Company if the Company implements, in lieu of the periodic reports required under the Exchange Act, a modified reporting procedure. Absent such relief from the Commission, the Company will endeavor to file the Report within the fifth calendar day following the prescribed due date.

PART IV
OTHER INFORMATION

(1) Name and telephone number of person to contact in regard to this notification.

Steve Mitchell

(510) 252-4245

(Name)

(Area Code) (Telephone Number)

(2) Have all other periodic reports under Section 13 or 15(d) or the Securities Exchange Act of 1934 or Section 30 of the Investment Company Act of 1940 during the preceding 12 months or for such shorter period that the

registrant was required to file such report(s) been filed? If the answer is no, identify report(s).

[] Yes [X] No

The Annual Report on Form 10-K was due to be filed on April 3, 2000, but Aureal Inc. submitted a Notification of Late Filing on Form 12b-25 for that Report on April 4, 2000 in paper form, and on April 27, 2000 in electronic form.

(3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?

[] Yes [X] No

If so: attach an explanation of the anticipated change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

Aureal Inc.

(Name of Registrant as Specified in Charter)

Has caused this notification to be signed on its behalf by the undersigned thereunto duly authorized.

Date May 16, 2000 By /s/ Steve Mitchell

Steve Mitchell, Chief Operating Officer

Instruction. The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations (see 18 U.S.C. 1001).

GENERAL INSTRUCTIONS

1. This form is required by Rule 12b-25 of the General Rules and Regulations under the Securities Exchange Act of 1934.

2. One signed original and four conformed copies of this form and amendments thereto must be completed and filed with the Securities and Exchange Commission, Washington, DC 20549, in accordance with Rule 0-3 of the General Rules and Regulations

12b25-3

<PAGE> 4

under the Act. The information contained in or filed with the form will be made a matter of the public record in the Commission files.

3. A manually signed copy of the form and amendments thereto shall be filed with each national securities exchange on which any class of securities of the registrant is registered.

4. Amendments to the notifications must also be filed on Form 12b-25 but need not restate information that has been correctly furnished. The form shall be clearly identified as an amended notification.

5. Electronic Filers. This form shall not be used by electronic filers unable to timely file a report solely due to electronic difficulties. Filers unable to submit a report within the time period prescribed due to difficulties in electronic filing should comply with either Rule 201 or Rule 202 of Regulation S-T or apply for an adjustment in filing date pursuant to Rule 13(b) of Regulation S-T.

12b25-4

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-----END PRIVACY-ENHANCED MESSAGE-----

Exhibit H

to filing under California Rules of Court 9.13 (d), (e), and (f)

Subject: RE: Conference Call and Requested Documents Re: 06-O-15523 thru 06-O-15529
From: "Graham, William" <William.Graham@calbar.ca.gov>
Date: Wed, 8 Aug 2007 08:25:14 -0700
To: "dodonnell" <dodonnell@bankruptcymisconduct.com>

Good Morning Mr. O'Donnell..after reveiwing all court documents the State Bar has decided that we do not have standing and/or jursidiction over this matter to move forward with your complaint and our investigation. The State Bar will mail a closing letter to you providing addtional information as to why we are closing your complaint. It should be noted, that the State Bar attempted to call you this morning and discuss this matter but left a message instead. If you have any questions please feel free to either email me and/or call. Thank You..Investigator William Graham.

-----Original Message-----

From: dodonnell [<mailto:dodonnell@bankruptcymisconduct.com>]
Sent: Tuesday, August 07, 2007 3:21 PM
To: Graham, William
Subject: Re: Conference Call and Requested Documents Re: 06-O-15523 thru 06-O-1552□

Hi William,

Thanks for the note. I appreciate being thorough. Talk to you soon

- David O'Donnell

Graham, William wrote:

Mr. O'Donnell ..just wanted to advise you that I have not forgotten about our conference today. I have decided to review your newly received documents again with my supervisors and we are in the process of making a determination in the direction that we should proceed with your complaint. As soon as the State Bar addresses all the legal concerns regarding your complaint, we will contact you. It is my hope to call you no later than friday if not sooner. Again, I apologize for not calling you today as promise. You should know, that it is the intent of the State Bar to be very thorough in it in investigation and often times in doing so can cause a slight delay in proceeding with your complaint. This is not necessary viewed as a set back, but merely covering all aspects of your complaint. Thank You...Investigator Graham

-----Original Message-----

From: dodonnell [<mailto:dodonnell@bankruptcymisconduct.com>]
Sent: Tuesday, August 07, 2007 12:18 PM
To: Graham, William
Subject: Re: Conference Call and Requested Documents Re: 06-O-15523 thru 06-O-1552□

Hi William,

OK. And can you confirm your receipt of the documents you requested along with my narrative?

<http://www.bankruptcymisconduct.com/files/CABAURHBDreq1.pdf>

Your office was certainly on target having anticipated that those documents would be relevant to your investigation. I just want to make sure that you received them. If necessary I could go through the extra expnese to send them by snail mail. However, the electronic version should be more usefull to you as you can search the text and view on your computer.

- Dave

Graham, William wrote:

I will give you a call around 2PM...

-----Original Message-----

From: dodonnell [<mailto:dodonnell@bankruptcymisconduct.com>]

Sent: Monday, August 06, 2007 2:43 PM

To: dodonnell

Cc: Graham, William

Subject: Conference Call and Requested Documents Re: 06-O-15523 thru 06-O-1552□

Hi William,

Looking forward to your confirmation of the conference call you suggested for tomorrow, as well as your receipt of the Requested Documents with my Narrative:

<http://www.bankruptcymisconduct.com/files/CABAUHBDreq1.pdf>

Certainly, you and any Trial Counsel should be familiar with their content in advance of our call.

Below are ten questions I have related to the Revised Complaint and in relation to the CA Bar authority and investigative process. Of course, I will be happy to answer any questions as well. I might have an attorney on the line to help with questions that need legal interpretation.

1. Why, and by whom, was the Original Complaint 05-20211 reopened, and forwarded? Specifically, for which reasons, as described on the CA Bar web site, was the Revised Complaint forwarded to the Enforcement Division: i) "repeat offender"; ii) "likelihood that discipline will be administered".

2. We should clear up exactly who are the Respondents and the resulting case numbers that have been opened. CA Bar letters of 12/20/06 and 12/28/06 mention different individuals by name. Further, the 12/28/06 letter appears to include at least one case number error. Also, both letters do not include the complained of law firm HBD. In addition, subsequent to the delivery of the Revised Complaint, four specifically named attorneys were identified and reported to the CA Bar as having represented at least one of the conflicted clients in related to the alleged misconduct.

3. If the CA Bar discovers ethical misconduct not specifically mentioned in a complaint:
A) must the CA Bar institute proceedings against lawyers for misconduct not specifically referred?
B) must the CA Bar institute proceedings against previously unnamed lawyers if at the same law firm?
C) must the CA Bar institute proceedings against previously unnamed lawyers at a any firm?

4. If the CA Bar discovers criminal misconduct or statutory violations by lawyers:
A) must the CA Bar institute proceedings against the lawyers?
B) must the CA Bar refer the conduct to an appropriate prosecution authority?
C) Will the CA Bar refer conduct, when appropriate, to the SEC, FBI, DOJ, DOJ's OPR?
D) At what point of the investigation will such referral(s) be made?
E) What parties are notified of the referral(s)?

5. Does an investigation by the CA Bar subject responding parties, and their agents, to the penalties of perjury and obstruction of justice? If so, must the CA Bar institute proceedings against repoding parties who are deceptive, fraudulent, nonresponsive, or otherwise obstruct an investigation?

6. How does the CA Bar factor the following circumstances when deciding the appropriateness and severity of discipline:

- i) Failures in subject proceedings by opposing counsel and the judiciary to refer misconduct
- ii) Conduct in furtherance of attorney misconduct
- iii) Retaliation against complainant of the attorney misconduct
- iv) The dollar amount related to the attorney misconduct
- v) The public policy implications. (i.e. protection of a hedge fund)
- vi) Conspiracy by one or more CA attorneys with respect to misconduct

7. What has been done since 12/28/06?

8. Has the CA Bar received any response by Respondents or their agents?

If attorney / client privilege impeded any aspect of your investigation, who asserted such privilege? Has David Bradlow confirmed his waiver, as sole holder, of Aureal's attorney / client privilege?

10. Is the CA Bar intending to establish variations in the applicability of CRPC 3-310 with respect to bankruptcy attorneys or counsel for hedge fund conglomerates?

Sincerely,
David O'Donnell
president
Next, Factors, Inc.

dodonnell wrote:

Hi William,

I recieved notice that my attempt earlier today to eMail you the documents you requested failed, probably because they were too large after being scanned.

The requested documents are exhibits A and B to the narrative. I have loaded the file on my website which you can download here:

<http://www.bankruptcymisconduct.com/files/CABAUHBDreq1.pdf>

Please let me know whether you are able to retrieve the documents. I have not created a direct link to the file so ordinary web site viewers will not know it is there, and you can only retrieve it by either clicking on the link, or retying it into a web browser.

Also, I left a voice mail message for both you and Katherine Kinsey on July 6th and am looking forward to speak with you. As I previously mentioned, I would like to stop by your offices in Los Angeles in order to answer questions and cover the complex history of events, and hope to schedule so that I might visit others in academia and politics on the same trip.

sincerely,
David O'Donnell
7 553-78 cell

postmaster@calbar.ca.gov wrote:

This is an automatically generated Delivery Status Notification.

Delivery to the following recipients failed.

William.Graham@calbar.ca.gov

Final-Recipient: rfc822;William.Graham@calbar.ca.gov
Action: failed
Status: 5.2.3
X-Display-Name: Graham, William

From: doodnine <doodnine@aol.com>
To: "Graham, William" <William.Graham@calbar.ca.gov>
Message-ID: <46AFD5A7.50300@aol.com>
Subject: Requested Documents and narrative Re: 06-O-15523 thru

06-O-1552□

Exhibit i

to filing under California Rules of Court 9.13 (d), (e), and (f)



THE STATE BAR
OF CALIFORNIA

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

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ENFORCEMENT

Scott J. Drexel, Chief Trial Counsel

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<http://www.calbar.ca.gov>

August 15, 2007

Kevin F. O'Donnell
O'Donnell IP Law, PLLC
75 Gilcreast Road, Suite 200
Londonderry, NH 03053

David P. O'Donnell
72 Van Reipen Avenue, Suite 37
Jersey City, New Jersey 07306

Re: 06-0-15523 et al.

Dear Messers O'Donnell:

David O' Donnell is the President of Next Factors, Inc. an unsecured creditor in the Chapter 11 Bankruptcy case of *Aureal Inc., dba Silo.com fka Semiconductor, Inc. fka Media Vision Technology, a Delaware Corporation.*

I have reviewed the complaint against the following:

Hennigan, Bennett and Dorman, LLP ("H and B")
Joshua Mester
Sidney Levinson
Steve Mitchell
James Johnston
Linda Kontos
Joshua Morse
Karen Kupetz
Michael Morris

In your e-mail to William Graham of June 25, 2007, you added three additional lawyers

Bruce Bennett
Roderick Dorman
Thomas Watson

In our conference call conversation on August 12, I read you the list of attorneys named in this complaint, as well as the three you wished to be added, in addition to the entire firm of Hennigan, Bennett and Dorman. You advised that this was not all of those you believed were involved in the

misconduct. However, I am not clear who these others are and I am not adding more individuals to the complaint based on the mere fact that they were involved in this litigation or worked for HB and D.

Your original complaint relates to the failure of the attorneys to comply with rule 3-310 with their clients, Aural, Oaktree Capital, Oaktree Funds. Your revised complaint reiterates that allegation, adding another entity to the mix, specifically, Argo Partners, but also alleges misrepresentation and fraud upon the court in delaying their notifications of the conflicting representations. Neither you nor Next were represented by these attorneys. I thank you for your offer to provide further information; however, I believe we have sufficient information to evaluate the revised complaint. I have personally pulled off your web site all 700 plus pages of your revised complaint as well as to review some additional documents from the Bankruptcy Court web site which, in our view, provide necessary context.

The bottom line is that it is our analysis (the legal advisor's and mine based upon our prosecutorial expertise and discretion) that given the totality of the circumstances related to this multi-years bankruptcy litigation, we would not succeed in obtaining a finding of misconduct against any attorneys, nor would any discipline be imposed.

In order to seek review of this decision, you must file a verified accusation against the attorney with the California Supreme Court, pursuant to rule 9.13, subsections (d) through (f), California Rules of Court, within **60** days of the date of this letter.

The Clerk of the Supreme Court has instructed us to advise you that no specific form is used by the Supreme Court for the filing of a verified accusation against an attorney. You may obtain specific information by contacting the Clerk's office in Los Angeles or in San Francisco. The addresses and phone numbers of the respective offices are listed below.

California Supreme Court
Clerk's Office
300 South Spring Street
Second Floor, Room 2752
Los Angeles, CA 90013
(213) 830-7570

California Supreme Court
Clerk's Office
350 McAllister Street
San Francisco, CA 94102
(415) 865-7000

Please be aware that if you file a verified accusation against the attorney, the Office of the Chief Trial Counsel will only reopen its file in this matter if the California Supreme Court issues an order granting your request.

Very truly yours,


Dina M. Gochis
Assistant Chief Trial Counsel

DG/