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10 Attorneys for the POST-CONFIRMATION
11 CREDITORS' COMMITTEE

12
13 **UNITED STATES BANKRUPTCY COURT**
14
15 **NORTHERN DISTRICT OF CALIFORNIA**
16
17 **SAN JOSE DIVISION**

18 In re
19
20 SONICBLUE INCORPORATED,
21 DIAMOND MULTIMEDIA SYSTEMS,
22 INC., REPLAYTV, INC. and SENSORY
23 SCIENCE CORPORATION,
24
25 Debtors.

26 Case Nos. 03-51775 MM through 03-51778 MM
27 (Jointly Administered)
28 Chapter 11
Date: May 5, 2009
Time: 11:30 a.m.
Place: 280 South First Street
Courtroom 3070
San Jose, CA 95113

29
30 **POST-CONFIRMATION CREDITORS' COMMITTEE'S RESPONSE**
31 **TO SECOND SUPPLEMENTAL DECLARATION AND DISCLOSURES**
32 **OF SUZANNE S. UHLAND ON BEHALF OF O'MELVENY & MYERS LLP**

33 The Post-Confirmation Creditors' Committee ("PCC") submits this brief in response to
34 the Second Supplemental Declaration and Disclosures of Suzanne S. Uhlund on behalf of
35 O'Melveny & Myers LLP ("Supplemental Disclosures"), as follows:

36 On April 14, 2009, pursuant to the Court's briefing schedule, O'Melveny filed a
37 supplement to its fee application, among other things putting on record its conditional voluntary

1 reduction in compensation by \$500,000.00, and expressing its willingness to do so in order to
2 “put a regrettable history behind all concerned.” [Docket Entry 3616].

3 O’Melveny’s “voluntary” reduction was not so voluntary. Following the PCC’s
4 investigation into the propriety of awarding additional fees to O’Melveny, it drafted, but did not
5 file, an objection to O’Melveny’s fees. It opted instead to engage in a discourse with
6 O’Melveny’s counsel. Ultimately, based on then known facts and circumstances, the PCC
7 determined that it would not object to O’Melveny’s final fee request provided O’Melveny
8 voluntarily reduced its request by \$500,000.
9

10 However, to the complete surprise of the PCC and the United States Trustee, that same
11 day O’Melveny also filed the Supplemental Disclosures as an attachment to its Notice of Hearing
12 on Fifth and Final Application for Compensation and Reimbursement.¹ The Supplemental
13 Disclosures tell us the following:
14

- 15 1. O’Melveny was employed on July 25, 2003.
- 16 2. In November of 2008, O’Melveny became aware of a connection to JP Morgan
17 Asset Management and Highbridge Capital Management, LLC.
- 18 3. Highbridge and its trading partners, including Smithfield Fiduciary LLC, are
19 among the 2002 Noteholders.
- 20 4. O’Melveny has concluded that these relationships do not present an actual conflict.
21

22 Among the questions before the Court at the May 5, 2009 hearing is the meaning,
23 significance and impact of the Supplemental Disclosures when weighed against the larger
24 circumstances of these cases.
25

26 _____
27 ¹ [Docket Entry 3615]. Docket entries 3619 (Freefall’s reply memorandum), 3620 (Bill McGrane’s letter to Ron
28 Oliner), 3621 (PCC’s response to the fee reduction), and 3625 (Bill McGrane’s letter to Ron Oliner) are now in the
record and each bear on the belated Supplemental Disclosures. In fact, the PCC’s objection was filed by
Mr. McGrane as an exhibit to his April 16, 2009 letter. [Docket Entry 3620].

1 These cases have a long and tortured history, and it was this precise issue – the failure of
2 professionals to make full, candid and **timely** disclosures to the Court – that resulted in the
3 appointment of a trustee and reconstitution of the creditors’ committee. It is against this backdrop
4 that the PCC now finds itself literally slack-jawed at O’Melveny’s last minute Supplemental
5 Disclosures.

6
7 One of the most (if not the most) fundamental duties of a Court-appointed professional is
8 to disclose the professional’s “connections with the debtor, creditors, or any other party in
9 interest, their respective attorneys and accountants, United States Trustee, or any person
10 employed in the Office of the United States Trustee.” Federal Rule of Bankruptcy Procedure
11 2014(a). Although not expressly stated, Rule 2014 absolutely implies an on-going duty to make
12 supplemental and continuing disclosures while representing an estate fiduciary. See, *In re*
13 *Granite Partners, LP*, 219 B.R. 22 (Bankr. S.D.N.Y. 1998).

14
15 The duty to disclose requires complete disclosure of all known connections after a
16 reasonable and diligent inquiry – not merely those which give rise to a conflict of interest. *In re*
17 *Keller Financial Services of Florida Inc.*, 248 B.R. 859 (Bankr. N.D. Fla. 2000). An intentional
18 failure to disclose a previously unknown “connection” may result in denial of a pending fee
19 application, as well as disgorgement of earlier awarded fees, beginning with the period when such
20 disclosure should have been made. *In re Olsen Industries, Inc.*, 222 B.R. 49 (Bankr. D. Del.
21 1997).

22
23 Indeed, it is commonplace for an estate professional to become aware of additional
24 “connections” as a case progresses. That is why it is common practice for professionals to run
25 periodic conflicts checks throughout the course of a case as new entities and interested parties
26 enter the scene and become known to the professional, and to then promptly disclose any new
27 connections when they become known.

1 Under any other circumstances, in any other case, on any other record, it may be
2 conceivable that a court could overlook belated disclosures such as those contained in the
3 Supplemental Disclosures. This is not any other case. This is a case where the Pillsbury firm, the
4 Debtors' other court-approved counsel, has paid \$10 million for its failures to make disclosures.

5
6 Throughout their involvement in these cases, counsel for the Trustee (now Plan
7 Administrator) and RCC (now PCC) have been prompt and assiduous in filing and serving
8 supplemental declarations to augment their previous disclosures under Rule 2014. Counsel to the
9 PCC, for example, has filed no less than nine supplemental declarations after its employment was
10 approved in January of 2008, and in each of the nine supplemental declarations disclosed new
11 connections as soon as they became known, and otherwise fully advised the Court and creditors
12 of these connections. That is what estate professionals are supposed to do.

13
14 In mid-November of 2008, Mr. McGrane brought to the attention of the estate fiduciaries
15 and their counsel, including O'Melveny, the existence of additional potential connections
16 involving the 2002s.² In response, estate professionals other than O'Melveny immediately
17 conducted additional conflicts checks and made additional disclosures.

18 Although it admits that it became aware of the added connections last November,
19 inexplicably, O'Melveny waited five months before disclosing it in connection with noticing its
20 final fee request. O'Melveny evidently concluded that these relationships did not need to be
21 disclosed promptly because, in O'Melveny's estimation, they did not present an actual conflict
22 that would have compelled the withdrawal of O'Melveny as Debtors' special litigation counsel.
23 O'Melveny, however, misinterprets Rule 2014's disclosure obligations, as its position is
24 completely at odds with the plethora of case law interpreting this provision.

25
26 ///

27
28 ² The Court is well aware of the mischief caused in this case by the 2002s when they sat on the initial creditors'
committee before it was reconstituted.

1 **ARGUMENT**

2 Whether these newly disclosed connections create an actual conflict is unknown to the
3 PCC.³ Regardless of whether an actual disqualifying conflict existed or exists, it is
4 unquestionable that O’Melveny’s Supplemental Disclosures were not promptly filed.

5
6 Several courts have recognized that a Bankruptcy Court has broad discretion and inherent
7 authority to deny any and all compensation when an attorney fails to meet the requirements of
8 Section 327 of the Bankruptcy Code and Bankruptcy Rule 2014. See, e.g., *In re Downs*, 103 F.3d
9 472 (6th Cir. 1996), *Matter of Prudhomme*, 43 F.3d 1000, (5th Cir. 1995), *In re Chapel Gate*
10 *Apartments, Ltd.*, 64 B.R. 569 (Bankr. N.D. Tex. 1986), *In re Lewis*, 113 F.3d 1040 (9th Cir.
11 1997).

12 Specifically, “the issues of whether the disclosure requirement was violated and whether
13 the professional was disinterested are distinct questions and separately sanctionable.” *In re*
14 *Condor Systems, Inc.*, 302 B.R. 55, 70 (Bankr. N.D. Cal. 2003) (citing *Neben & Starrett, Inc. v.*
15 *Chartwell Financial Corporation*) *In re Park Helena Corp.*, 63 F.3d 877, 880 (9th Cir. 1995)).

17 Rule 2014(a) is a means by which the court can comply with its responsibilities.
18 “The disclosure rules impose upon [professionals] an independent responsibility.
19 Thus, failure to comply with the disclosure rule is a sanctionable violation, even if
20 proper disclosure would have shown that the [professional] had not actually
21 violated any Bankruptcy Code provision or any Bankruptcy Rule. *In re Park*
Helena Corp., 63 F.3d at 880 (citing *In re Film Ventures International, Inc.*, 75
22 B.R. 250 (9th Cir. BAP 1987)).

23 The requirement of disclosure is applied literally, even if the results are sometimes harsh.
Id., at 881. The disclosure requirements of Rule 2014 do not give the professional the right to
24 withhold information because it is not apparent to the professional that a conflict exists. *Id.* In

25
26
27 ³ On April 20, 2009, after reviewing the Supplemental Disclosures, counsel to the PCC wrote to O’Melveny’s in-
28 house counsel and requested further detail on the newly disclosed connections and the specific matters involved.
O’Melveny responded on April 23, 2009.

1 addition, the disclosure requirement is a continuing one, even after an application for employment
2 is approved. *In re Granite Partners, LP*, 219 B.R. 22, 35 (Bankr. S.D.N.Y. 1998).

3 To put a point on it, in November of 2008, O'Melveny became aware of additional
4 "connections" to creditors and/or interested parties in these cases. Notwithstanding a well
5 recognized duty to promptly supplement the record, O'Melveny elected to wait. O'Melveny has
6 now acknowledged awareness of these connections for five months. Only now, in connection
7 with noticing a final fee application, has it decided to advise the Court, the United States Trustee
8 and creditors of the same.

10 Instead of making prompt, thorough disclosures, O'Melveny entered into discussions with
11 the PCC about how to obviate an objection and thereby avoid a public fight without any mention
12 that Supplemental Disclosures had not been made. Regrettably, these newly discovered facts are
13 significant and warrant a substantial fee reduction or disgorgement. The PCC, which was
14 otherwise prepared to come into Court on May 5 supportive of a \$500,000 fee reduction cannot in
15 good conscience do so now.

17 CONCLUSION

18 The PCC investigated, after the fact, O'Melveny's role in the VIA motion that engendered
19 so much litigation, and negotiated in good faith with O'Melveny to reach an agreed fee reduction
20 which would avoid an objection by the PCC to O'Melveny's fees. O'Melveny at the same time
21 knew of its undisclosed connections to the 2002s – one of the great malefactors in these cases.
22 Only after reaching an agreement with the PCC did O'Melveny make the required disclosures,
23 putting the Supplemental Disclosures into the record as an attachment to its notice of hearing.

25 The record (including the PCC's objection) is now before the Court. [Docket
26 Entries 3606, 3615, 3616, 3617, 3619, 3620, and 3621]. With these docket entries and attendant
27 exhibits, as well as O'Melveny's five sealed fee applications and the Court's long history with
28

1 these Debtors and estate fiduciaries, the PCC believes the Court is in a position to rule on
2 O'Melveny's fee request.

3 Finally, as mentioned above, after the Supplemental Disclosures were filed, the PCC
4 requested a fulsome explanation as to the timing of the Supplemental Disclosures and the nature
5 of each of the so-called Highbridge and Smithfield engagements. O'Melveny provided a written
6 response to the PCC on April 23, 2009. It is attached to the Declaration of Aron M. Oliner
7 submitted herewith. The PCC suggests O'Melveny file a further supplemental statement. Given
8 the history of these cases, answers to these important questions should be put in the record in
9 sworn form before the May 5, 2009 hearing.
10

11
12 Dated: April 24, 2009

DUANE MORRIS LLP

13 By: /s/ Aron M. Oliner (152373)
14 ARON M. OLINER
15 Attorneys for the POST-CONFIRMATION
16 CREDITORS' COMMITTEE
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11 CREDITORS' COMMITTEE

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13 **UNITED STATES BANKRUPTCY COURT**
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15 **NORTHERN DISTRICT OF CALIFORNIA**
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20 SONICBLUE INCORPORATED,
21 DIAMOND MULTIMEDIA SYSTEMS,
22 INC., REPLAYTV, INC. and SENSORY
23 SCIENCE CORPORATION,
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25 Debtors.

26 Case Nos. 03-51775 MM through 03-51778 MM
27 (Jointly Administered)
28 Chapter 11
Date: May 5, 2009
Time: 11:30 a.m.
Place: 280 South First Street
Courtroom 3070
San Jose, CA 95113

29
30 **DECLARATION OF ARON M. OLINER IN SUPPORT OF**
31 **POST-CONFIRMATION CREDITORS' COMMITTEE'S RESPONSE**
32 **TO SECOND SUPPLEMENTAL DECLARATION AND DISCLOSURES**
33 **OF SUZANNE S. UHLAND ON BEHALF OF O'MELVENY & MYERS LLP**

34 I, Aron M. Oliner, declare:

35 1. I am an attorney at law duly licensed to practice before this Court and am a partner
36 in the law firm of Duane Morris LLP, counsel of record to The Post-Confirmation Creditors'
37 Committee in the captioned cases ("PCC"). I make this record based on my own personal
38 knowledge, and could and would testify competently if called upon to do so. As to any matters

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**OLINER DEC ISO PCC'S RESPONSE TO SECOND SUPPLEMENTAL DECLARATION &
DISCLOSURES OF UHLAND ON BEHALF OF O'MELVENY (CASE NOS. 03-51775 - 03-51778)**

1 stated on information and belief, I believe my information to be true and correct and would so
2 testify.

3 2. Following an extraordinarily thorough (and not inexpensive) investigation by then
4 Chapter 11 Trustee Dennis J. Connolly (pre-confirmation, the “Trustee,” and now “Plan
5 Administrator” or “PA”), the Trustee brought various litigations in March of 2008 against estate
6 professionals including the Pillsbury firm, the Levene firm, VIA, SB Claims and others. Notably,
7 the Trustee did not file a lawsuit or otherwise bring claims against O’Melveny following his
8 investigation. In this, neither the PCC or its attorneys second-guess the Trustee’s judgment.
9

10 3. The PCC has recently undertaken the task of objecting to remaining claims,
11 resolving remaining adversary proceedings, and otherwise taking steps to bring this case to
12 conclusion and in order to obtain a final decree. The PA and his counsel continue to work toward
13 the same goal.
14

15 4. Based on my review of the record in the captioned cases, I am aware that
16 O’Melveny filed four prior fee applications, and each of these were filed under seal pursuant to a
17 protective order entered in the captioned cases in 2003. On November 4, 2008, O’Melveny filed
18 under seal its Fifth and Final Application for Compensation and Reimbursement.

19 5. On November 6, 2008, I filed a motion on behalf of the PCC, which was granted,
20 which permitted the PCC access to the sealed filings and other documents identified as
21 “confidential” pursuant to the 2003 protective order. The confidentiality provisions and the
22 sealing of pleadings was ostensibly the result of these pleadings and documents containing certain
23 sensitive or proprietary information related to Intel and VIA.
24

25 6. As a result of this effort, my office obtained and reviewed not only the prior fee
26 applications filed by O’Melveny, but also e-mails and documents that were identified as
27

1 confidential, or otherwise unavailable for review. The purpose of this investigation and review
2 was specifically geared to gauge the propriety of awarding additional fees to O'Melveny.

3 7. Following the investigation, my office drafted an objection to O'Melveny's fee
4 request but did not file it; instead, at the direction of the PCC, opting for discourse with
5 O'Melveny's counsel. Ultimately, based on then known facts and circumstances, the PCC
6 determined that it would not object to O'Melveny's fee request provided O'Melveny voluntarily
7 reduced its request by \$500,000.00.

9 8. On April 7, 2009, I wrote a letter which was filed with the Bankruptcy Court,
10 among other things describing the circumstances surrounding the O'Melveny fee request and
11 urging the Court to hold a brief hearing on April 10, 2009 for interested parties, including creditor
12 Freefall Manager LLC ("Freefall"), to discuss how to proceed most expeditiously on the fee
13 request while allowing parties in interest the chance to brief the matter and to be heard more
14 formally. [Docket No. 3606].

16 9. It is my view that a number of constructive developments occurred during the
17 subsequent April 10, 2009 hearing, which was set in response to my April 7, 2009 letter. Each
18 party proceeded with a goal of resolving, by objection or otherwise, the O'Melveny fee issue
19 expeditiously. The Court also set a briefing schedule, and scheduled a hearing on O'Melveny's
20 fee application for May 5, 2009. As requested during the hearing, I provided a copy of the draft
21 objection to the Court, to Attorney William McGrane, and to the Office of the United States
22 Trustee on the next business day, April 13, 2009.

24 10. On April 14, 2009, pursuant to the Court's briefing schedule, O'Melveny filed a
25 supplement to its fee application, among other things putting on record a tentative voluntary
26 reduction in compensation by \$500,000.00, and expressing its willingness to do so in order to
27 "put a regrettable history behind all concerned." [Docket No. 3616].

EXHIBIT A

RON M. OLINER
DIRECT DIAL: 415.957.3104
E-MAIL: roliner@duanemorris.com

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NEW YORK
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ATLANTA
MIAMI
PITTSBURGH
NEWARK
WILMINGTON
PRINCETON
LAKE TAHOE
HO CHI MINH

April 20, 2009

VIA ELECTRONIC MAIL

Martin S. Checov
O'Melveny & Myers LLP
Two Embarcadero Center, 28th floor
San Francisco, CA 94111-3903

Re: SONICblue, et al. (Chapter 11 Case Nos. 03-51775 through 03-51778-MM)

Dear Martin:

On April 14, 2009, your office filed a document entitled Second Supplemental Declaration and Disclosure of Suzanne S. Uhland on behalf of O'Melveny & Myers LLP ("Supplemental Declaration"). I hadn't expected or contemplated your filing, and in this of all cases it creates a host of questions and issues which I would like you to address. If you ever mentioned that the Supplemental Declaration would be filed together with your other filing last week, it certainly went past my ears.

In the Supplemental Declaration, Ms. Uhland notes your firm has represented JP Morgan Chase in at least 400 matters since 2003, and attests that none relate to the SONICblue bankruptcy case. Ms. Uhland attests that your firm has represented Highbridge International LLC, but also notes that these representations (including affiliates of Highbridge International) do not involve SONICblue.

Generally, why did you wait until now to file the Supplemental Declaration? Ms. Uhland indicates she learned of the so-called "connections" in November of 2008. I am not going to quarrel with you on the timing issue, as I think it is squarely before the Court to decide whether the belated disclosures are accepted and acceptable.

I do, however, have a few specific questions for you and would ask for a written response.

DUANE MORRIS LLP

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DM3978777.1 R1295-00001

PHONE: 415.957.3000 FAX: 415.957.3001

Duane Morris

Martin S. Checov
April 20, 2009
Page 2

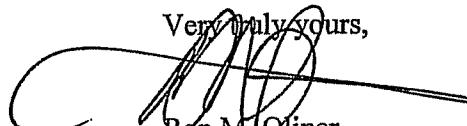
First, does your firm have any connection to Smithfield Fiduciary LLC? If so, please describe the matter or matters, whom you represent and the current status? Please also confirm, if such a relationship or connection exists, that the matter has nothing whatsoever to do with SONICblue (assuming this is true).

Please provide a list of the 19 matters where your firm represented Highbridge International LLC or its affiliates as described in paragraph 5(b) of the Supplemental Declaration. The data we are interested in will include the date the matter was opened, a general description of the services, the name of the client and the date the file was closed.

Finally, Ms. Uhland attests in paragraph 8 that O'Melveny has now concluded that the apparent relationships described in the declaration do not present an actual conflict that would have compel withdrawal of O'Melveny as debtor's special counsel in these bankruptcy cases. Please provide a more fulsome explanation, with citations to the Bankruptcy Code and any authorities you deem appropriate.

Thank you for your prompt attention to these matters, and it would be most useful to receive your written response by no later than April 29, 2009.

Very truly yours,



Ren M. Oliner

RMO:aw
cc: Office of The United States Trustee

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EXHIBIT B



O'MELVENY & MYERS LLP

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April 23, 2009

OUR FILE NUMBER
0637,385-01135

VIA EMAIL

WRITER'S DIRECT DIAL
415-984-8713

Ron M. Oliner, Esq.
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One Market, Spear Tower
Suite 2000
San Francisco, California 94105-1104

WRITER'S E-MAIL ADDRESS
mhecov@omm.com

Re: *In re SONICblue, et al. (N.D. Cal. Bankr. No. 03-51775)*

Dear Ron:

Thank you for your letter of April 20, 2009 and the invitation to explain certain aspects of the Supplemental Declaration of Ms. Umland referred to therein, which we welcome, and to which I am responding in my capacity as General Counsel of O'Melveny & Myers LLP ("O'Melveny").

In response to your general question, O'Melveny has made no filings in this proceeding since the November 4, 2008 filing of the Fifth and Final Application of O'Melveny & Myers LLP for Compensation and Reimbursement of Expenses, dated October 27, 2008 (Docket No. 3384). Our engagement as special litigation counsel to the SONICblue bankruptcy estate had long concluded prior to that date. Even later, in November 2008, Mr. McGrane's comments regarding the relationship between various estate fiduciaries and former estate fiduciaries, on the one hand, and J.P. Morgan Chase & Co., Highbridge Capital Management LLC, and Smithfield Fiduciary LLC, on the other, became known to us. We noted that the Bankruptcy Trustee responded thereto by disclosing all relationships between such entities and its counsel, Alston & Byrd LLP. Although we were no longer special litigation counsel, and the disclosure requirements for special litigation counsel differ from those for trustee counsel, we determined then that we would consider making a similar disclosure of any such relationships if and when we made any subsequent court filing. As it happens, in part because of questions regarding our fee application under consideration by various parties and their counsel, no such filing was called for until April 14, 2009, when we filed (after discussing it with you) the Supplement to Fifth and Final Application of O'Melveny & Myers LLP for Compensation and Reimbursement of Expenses, dated April 14, 2009.

In response to your question regarding the entity Smithfield Fiduciary LLC, I am able to confirm that we can identify no attorney-client or business or other relationship between O'Melveny and that entity. Specifically:

- We have searched the databases that we normally review to determine the existence or possibility of conflicts, and, beyond that, we have searched our knowledge management system, which contains copies of e-mails located in our electronic filing system and documents stored in our document management system firm-wide pertaining to client matters. None of those searches revealed any mention of Smithfield Fiduciary LLC in any capacity.
- As I understand it, Smithfield Fiduciary LLC is a wholly-owned subsidiary of Highbridge International LLC. While O'Melveny has, as disclosed, represented Highbridge International LLC, in none of those engagements was Smithfield Fiduciary LLC involved in any way that we can determine. (Our work for this former client, as noted below, involved solely its Asia investments and activities.)
- Ms. Uhland also correctly disclosed that we have done work for Highbridge/Zwirn Capital Management LLC. I understand that this work concerned a joint venture between Mr. Daniel B. Zwirn and Highbridge. In none of those engagements was Smithfield Fiduciary LLC involved in any way that we can determine.
- In addition, a review of our conflicts and knowledge management databases, as well as personal consultation with the partners in charge of the respective engagements, confirm that none of our engagements for Highbridge International LLC, Highbridge/Zwirn Capital Management LLC, or J.P. Morgan Chase & Co., or affiliates, involved SONICblue.

In the following charts, we provide the specific data you requested in regard to the matters we handled for Highbridge International LLC and Highbridge/Zwirn Capital Management LLC. Because of possible confidentiality obligations to clients and others involved in the transactions, we have described each matter without listing counterparties or other details that could lead to the disclosure of confidential information; if further information is required in particular instances, we will endeavor to determine whether it could be made available after consulting those affected.¹

¹ While Ms. Uhland's declaration cites 19 matters for Highbridge affiliates, two of them were general files (or, in our administrative terminology, "-999" files) opened for the retention of client engagement letters or other such documentation, and not to handle legal work; we have confirmed, as indicated below, that no legal work was performed or time charged under these general files, so the total number of files is actually 17, and another file was opened, as indicated, without work ever having been initiated on the subject matter.

HIGHBRIDGE/ZWIRN CAPITAL MANAGEMENT

O'Melveny Matter No.	Highbridge/Zwirn Capital Management Matter Description	Status	Open Date	Close Date
0381,252-00001	INVESTMENT IN FUND PRIVATE EQUITY FIRM	CLOSED	7/14/2003	3/17/2008
0381,252-00002	INVESTMENT IN ADVISORY FIRM	CLOSED	11/11/2003	8/3/2006
0381,252-00003	NO TIME CHARGED	CLOSED	11/19/2003	4/7/2008
0381,252-00004	INVESTMENT IN JOINT VENTURE FOR REAL ESTATE AND RELATED ASSETS	CLOSED	6/30/2004	3/17/2008
0381,252-00005	LOAN FINANCING FOR RECORD PRODUCTION FIRM	CLOSED	9/9/2004	10/30/2006
0381,252-00006	CO-INVESTMENT WITH PRIVATE EQUITY/REAL ESTATE FIRM	CLOSED	9/15/2004	3/17/2008
0381,252-00007	LOAN FINANCING FOR MOTION PICTURE FIRM	CLOSED	9/28/2004	4/5/2006
0381,252-00008	POST-CLOSING MATTERS WITH RECORD PRODUCTION FIRM	CLOSED	10/20/2004	10/30/2006
0381,252-00009	LOAN FINANCING FOR VENTURE CAPITAL FIRM	CLOSED	12/22/2004	2/6/2007
0381,252-00010	MOTION PICTURE FINANCING	CLOSED	1/25/2005	4/5/2006
0381,252-00011	GR: CREDIT AGREEMENT WITH BROADCASTING HOLDING COMPANY	CLOSED	2/15/2005	4/5/2006
0381,252-00012	MOTION PICTURE FINANCING	CLOSED	7/14/2005	4/5/2006
0381,252-00013	MOTION PICTURE FINANCING	CLOSED	1/24/2006	4/5/2006
0381,252-00014	MOTION PICTURE FINANCING	CLOSED	2/14/2006	5/15/2006
0381,252-00015	INVESTMENT IN ASIA PRIVATE EQUITY FUND	CLOSED	2/28/2006	9/19/2008
0381,252-00999	GENERAL: NO TIME INCURRED	CLOSED	7/14/2003	7/14/2003

HIGHBRIDGE INTERNATIONAL LLC

O'Melveny Matter No.	Highbridge International LLC Matter Description	Status	Open Date	Close Date
0381,250-00001	ADVICE RE ASIAN PORTFOLIO COMPANIES	CLOSED	2/12/2004	12/7/2006
0381,250-00002	ASIA OFFICE SET-UP	CLOSED	2/12/2004	1/30/2007
0381,250-00999	GENERAL: NO TIME INCURRED	CLOSED	2/12/2004	2/12/2004

Finally, we are able to provide the basis for the conclusion stated by Ms. Uhland that the foregoing relationships do not present an actual conflict. Specifically, O'Melveny was appointed as special litigation counsel pursuant to 11 U.S. Code §327(e), which provides:

“The trustee, with the court’s approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and *if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.*” (Emphasis added)

As our responses to your questions amply demonstrate, at no relevant time did O’Melveny “represent or hold” any interest adverse to that of SONICblue “with respect to the matter” on which O’Melveny was employed, as O’Melveny represented none of the clients identified above—on any matter even tangentially related to the present bankruptcy proceeding in general, or the VIA litigation in particular. Hence, even if a court were to ignore all legal distinctions between Smithfield Fiduciary LLC and the various entities actually represented by O’Melveny (which is not the correct legal test²), the lack of any subject matter relationship between O’Melveny’s representations of those clients and our bankruptcy engagement eliminates the possibility that any conflict of interest of any sort, let alone a disqualifying one, ever existed.

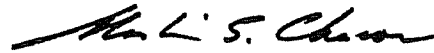
In sum, the information you have inquired about in Ms. Uhland’s Supplemental Declaration was provided voluntarily in the interest of full transparency, demonstrates no attorney-client, business or other relationship between O’Melveny and Smithfield Fiduciary LLC, evidences no misconduct on the part of the firm, and is entirely consistent with the requirements for special litigation counsel under Sec. 327(e).

As you are aware, we have a filing due in this matter. In light of recent correspondence, we must ask whether your clients will stand behind the agreement reached regarding our fee application; otherwise, the lack of such an agreement will place us in the position of seeking the

² See, e.g., *In re Huntco, Inc.*, 288 B.R. 229, 236-37 (Bankr. E.D.Mo. 2002) (mere corporate affiliation between client of debtor’s counsel and party to bankruptcy does not constitute representation of an interest adverse to that of the estate).

full amount of our outstanding fees. I would appreciate your calling me, or otherwise responding, by the close of business tomorrow, April 24, 2009.

Yours very truly,

A handwritten signature in black ink, appearing to read "Martin S. Checov". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Martin S. Checov
of O'MELVENY & MYERS LLP

MSC:bab
SFI:763287.2

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2 Geoffrey A. Heaton (SBN 206990)
3 **DUANE MORRIS LLP**
4 One Market Plaza
5 Spear Street Tower, Suite 2000
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10 Attorneys for the POST-CONFIRMATION
11 CREDITORS' COMMITTEE

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 In re
16 SONICBLUE INCORPORATED,
17 DIAMOND MULTIMEDIA SYSTEMS,
18 INC., REPLAYTV, INC. and SENSORY
19 SCIENCE CORPORATION,
20 Debtors.

21 Case Nos. 03-51775 MM through 03-51778 MM
22 (Jointly Administered)
23 Chapter 11
24 **CERTIFICATE OF SERVICE**

25 I am a citizen of the United States, over the age of 18 years, and not a party to or
26 interested in the within entitled cause. I am an employee of Duane Morris LLP and my business
27 address is One Market, Spear Tower, Suite 2000, San Francisco, California 94105. I am readily
28 familiar with the business practice for collection and processing of correspondence for mailing
and for transmitting documents by FedEx, fax, email, courier and other modes. On April 24,
2009, I served the following document: **(1) POST-CONFIRMATION CREDITORS'
COMMITTEE'S RESPONSE TO SECOND SUPPLEMENTAL DECLARATION AND
DISCLOSURES OF SUZANNE S. UHLAND ON BEHALF OF O'MELVENY & MYERS
LLP; AND (2) DECLARATION OF ARON M. OLINER IN SUPPORT OF POST-**

1 CONFIRMATION CREDITORS' COMMITTEE'S RESPONSE TO SECOND
2 SUPPLEMENTAL DECLARATION AND DISCLOSURES OF SUZANNE S. UHLAND
3 ON BEHALF OF O'MELVENY & MYERS LLP,
4

5 X BY MAIL: by placing (the original) (a true copy) thereof enclosed in a sealed
6 envelope, addressed as set forth below, and placing the envelope for collection and mailing
7 following my firm's ordinary business practices, which are that on the same day
8 correspondence is placed for collection and mailing, it is deposited in the ordinary course
9 of business with the United States Postal Service in San Francisco, California, with
10 postage fully prepaid.

11 PERSONAL DELIVERY: by causing a courier to hand deliver (the original) (a
12 true copy) thereof to the person at the address set forth below on this day during normal
13 business hours.

14 BY OVERNIGHT DELIVERY: by placing (the original) (a true copy) thereof
15 enclosed in a sealed FedEx envelope addressed as set forth below, and placing the
16 envelope for collection and transmittal by FedEx following my firm's ordinary business
17 practices, which are that on the same day correspondence is placed for collection, it is
18 deposited in the ordinary course of business with FedEx for overnight next business day
19 delivery.

20 FACSIMILE: by telecopying a true copy thereof to the party at the facsimile number as
21 set forth below.

22 United States Trustee, Region 17
23 United States Department of Justice
24 280 First Street, Room 268
25 San Jose, CA 95113-3004

26 Cecily A. Dumas
27 Friedman Dumas & Springwater LLP
28 150 Spear Street, Suite 1600
San Francisco, CA 94105-1541

29 Grant T. Stein
30 Alston & Bird
31 One Atlantic Center
32 1201 West Peachtree Street
33 Atlanta, GA 30309-3424

34 Stephen D. Pahl
35 Catherine Schlomann Robertson
36 Pahl & McCay
37 225 West Santa Clara Street, #1500
38 San Jose, CA 95113-1752

39 William McGrane
40 Bernard S. Greenfield
41 McGrane Greenfield LLP
42 One Ferry Building, Suite 220
43 San Francisco, CA 94111-4213

44 Martin S. Checov
45 O'Melveny & Myers LLP
46 Two Embarcadero Center, 28th floor
47 San Francisco, CA 94111-3903

48 I declare under penalty of perjury under the laws of the State of California that the
49 foregoing is true and correct and that this declaration was executed on April 24, 2009, in San
50 Francisco, California.

51 /s/ Aristela Wise (xxx-xx-2624)

52 ARISTELA WISE