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April 16, 2009

(Via Hand Delivery)
Aron Oliner
Duane Morris LLP
One Market Plaza
Spear Street Tower, Suite 2000
San Francisco, CA 94105

Re: In re SONICBlue, Inc.

Dear Ron:

Confirming our telephone discussion of this morning, I note the following:

- We are both now in full agreement that O'Melveny & Myers has absolutely no excuse for its knowing participation in the earlier fraud on the court respecting the VIA Senior Indebtedness language. Compare your draft objection (Exhibit 1 hereto, at FN. 1 at 1:27-28) with Docket No. 3619 at 4:12-5:12.
- Where we apparently continue to disagree is the appropriate remedy for O'Melveny & Myers' obvious misconduct in this case.
- There you persist in being satisfied with a mere \$500,000 reduction in O'Melveny & Myers' fee application down from \$1,863,183.42 to \$1,363,183.42.

April 16, 2009

➤ In contrast, Freefall does not think O'Melveny & Myers should be paid anything at all given (i) what we both know they did here and (ii) what we both think the truly monumental impact was of what they did here.

➤ You also refused to withdraw your \$500,000 compromise with O'Melveny & Myers despite that law firm's latest revelations (at Docket No. 3615-1) concerning its hitherto undisclosed connections with 2002 Noteholder Smithfield Fiduciary LLC and the fact your compromise agreement (which has never been approved by the Bankruptcy Court) was made in ignorance of those hitherto undisclosed connections.¹

I can only repeat my extreme disappointment at the half-hearted approach to challenging O'Melveny & Myers' role in the fraud on the court which the Post Confirmation Committee (and their predecessor) has adopted throughout this case. Exhibit 1 fully demonstrates that your law firm, as counsel to the Post Confirmation Committee, fully 'gets it' in terms of what Ms. Uhland and her other partners and associates did to advance Mr. Bennett's insidious campaign to corrupt the administration of this bankruptcy case. Given the fact you so clearly 'get it', all I am left to do is assume a national law firm like O'Melveny & Myers is considered too powerful a target for your equally national law firm to want to take on, despite the fact that you personally know as

¹ Please note that, while O'Melveny & Myers was hired pursuant to Section 327(e) and not Section 327(a), once it inserted itself into all the issues surrounding the meaning of the VIA Senior Indebtedness language (as recognized by you in Exhibit 1 at pp. 4-6) O'Melveny & Myers then obviously became obligated to make a full Rule 2014 disclosure regarding its connections to the 2002 Noteholders.

April 16, 2009

well as I do that O'Melveny & Myers helped Mr. Bennett pull the strings leading up to the fraud on the court.

Despite your national law firm's reluctance to pursue another national law firm like O'Melveny & Myers, I am personally quite sure Judge Morgan will now do the right thing since she has been presented with a full record. That record includes your fulsome exposé of O'Melveny & Myers' misconduct in this case.

Very truly yours,

McGRANE, GREENFIELD LLP



William McGrane

Enclosures

cc: Hon. Marilyn Morgan (via hand delivery w/enclosures.)
Grant Stein, Esq. (via e-mail w/enclosures.)
Stephen Pahl, Esq. (via e-mail w/enclosures.)
Martin Chekov, Esq. (via e-mail w/enclosures.)
Bruce Bennett, Esq. (via e-mail w/enclosures.)

EXHIBIT 1

1 Aron M. Oliner (SBN 152373)
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6 San Francisco, CA 94105-1104
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10 Attorneys for POST-CONFIRMATION CREDITORS' COMMITTEE

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

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

20 Case Nos. 03-51775 MM through 03-51778 MM
21 (Jointly Administered)
22 Chapter 11

23 **OBJECTION OF POST-CONFIRMATION**
24 **CREDITORS' COMMITTEE TO FIFTH**
25 **AND FINAL APPLICATION OF**
26 **O'MELVENY & MYERS LLP FOR**
27 **COMPENSATION AND**
28 **REIMBURSEMENT OF EXPENSES**

29 The Post-Confirmation Creditors Committee ("PCC") respectfully submits this objection
30 to the Fifth and Final Application of O'Melveny & Myers LLP ("O'Melveny") for Compensation
31 and Reimbursement of Expenses as follows:

32 **I. INTRODUCTION**

33 O'Melveny was hired by the estates as special counsel in connection with a dispute among
34 VIA Technologies, Inc. ("VIA"), Intel Corporation ("Intel") and debtor SONICblue Incorporated
35 ("SONICblue"). For these services, O'Melveny seeks total compensation in the amount of

1 \$1,782,994.00, and expenses in the amount of \$80,189.42. To date, pursuant to four interim fee
2 requests, O'Melveny has received \$1,111,682.80.

3 O'Melveny last requested interim fees in November of 2005, before the explosive events
4 surrounding the VIA settlement were exposed and led to what this Court has described as a
5 "complete breakdown of creditor confidence." Since then, the O'Melveny lawyers involved in
6 the captioned debtors' ("Debtors") cases have done nothing more than serve as percipient
7 witnesses. The PCC submits that O'Melveny has already been well paid (perhaps overpaid) for
8 its services given the significant administrative expenses incurred by the estates in the aftermath
9 of the Via settlement. Accordingly, the PCC objects to payment of O'Melveny's remaining fees
10 and requests that they be denied.

11
12 **II. SUMMARY OF ARGUMENT**

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14 Sadly, in the minds of many involved in this case, and in those of many more observers of
15 bankruptcy practice, the hallmark of the SONICblue bankruptcy cases will always be the material
16 failures of estate professionals to make adequate and appropriate disclosures, resulting in millions
17 of dollars of otherwise needless administrative expenses for the estates. It is beyond dispute that
18 O'Melveny was deeply involved in the events leading up to the VIA settlement and Court
19 approval of the same – including, in particular, the circumstances surrounding waiver of the Via
20 "Senior Indebtedness" provision in the 2002 indenture, as well as the glaring omission of this key
21 deal point from the motion to approve the Via settlement.

22
23 After performing a detailed and laborious investigation, Dennis J. Connolly ("Connolly"),
24 then court appointed Trustee and now Plan Administrator, concluded in his reasonable business
25 judgment that it was not appropriate to bring an affirmative lawsuit against O'Melveny for its
26 involvement in the tainted settlement. The PCC does not, by this objection, second guess
27 Connolly to that extent.

1 However, the PCC believes adamantly that O'Melveny's remaining fees should be
2 disallowed inasmuch as the singular event that turned a relatively simple bankruptcy case into a
3 sad saga occurred on O'Melveny's watch, with O'Melveny's knowledge, and with O'Melveny's
4 involvement. Moreover, apart from the Via settlement itself, O'Melveny, together with Pillsbury
5 Winthrop ("Pillsbury"), was responsible for the preparation and submission of settlement
6 pleadings which omitted any mention of the Via Senior Indebtedness waiver. Following its own
7 investigation into this issue, the PCC still cannot fathom why this important settlement term, with
8 its obvious implications on general unsecured creditors, was never even mentioned, let alone
9 discussed in a substantive fashion, in the pleadings.¹ The omission is all the more shocking when
10 contrasted against the extensive detail that O'Melveny and Pillsbury devoted to the settlement's
11 other deal points.
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13
14 O'Melveny's first interim fee application states that it was hired by the Debtors for its
15 bankruptcy expertise, among other qualifications. As such, it is not enough to say, as O'Melveny
16 has said repeatedly in pleadings and in depositions, that "we didn't know." Simply put,
17 O'Melveny should have known.

18 The PCC respectfully submits that the appropriate remedy is disallowance of any further
19 fees to O'Melveny. Having received seventy percent (70%) of its requested fees and one hundred
20 percent (100%) of its costs on its first four interim applications for compensations, the PCC
21 submits this compensation is more than adequate; all remaining fees, as well as all fees sought in
22 connection with its Fifth and Final Application, should be disallowed.
23

24 **III. FACTUAL SUMMARY**

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26

27 ¹ As will be shown later in this brief and accompanying declaration, O'Melveny's Suzanne Uhland and counsel to
28 the 2002s, Bruce Bennett, were in constant communication when the Via deal, colorfully described as the "fraud on
the court," was put before the Court.

1 The Debtors' bankruptcy cases were filed on March 21, 2003. O'Melveny was hired as
2 special counsel to represent the Debtors in connection with Via and Intel related disputes,
3 including a motion for relief from stay filed by Intel to terminate its patent cross license with
4 SONICblue. Pursuant to its first four applications for compensation, O'Melveny received
5 payments totaling \$1,111,682.80. O'Melveny's first interim fee application states that
6 "O'Melveny was selected not only for its general knowledge and expertise in intellectual property
7 and bankruptcy matters, but also because it had represented debtor SONICblue in the original
8 negotiation and documentation of the Cross License Agreement and therefore possessed a
9 significant degree of institutional knowledge."²
10

11 O'Melveny rendered services to the estates beginning June 20, 2003 through August 31,
12 2007. Throughout this period, O'Melveny (in particular Suzanne Uhland) communicated on a
13 regular basis with Bruce Bennett ("Bennett"), counsel for the 2002 noteholders (the "2002s")
14 concerning the Via/Intel settlement discussions. Documents produced by O'Melveny, Bennett
15 and others confirm that these communications involved, among other things, the Via Senior
16 Indebtedness waiver, including evolution of the waiver language from the settlement "term sheet"
17 through the finalized settlement agreement presented to the Court. Moreover, in addition to
18 Bennett, Uhland discussed matters related to the Via Senior Indebtedness waiver with various
19 attorneys at Pillsbury, analyzed Bennett's asserted grounds for the waiver, and reviewed
20 documents related thereto.
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23 There can be no doubt that the O'Melveny attorneys were intimately familiar with the Via
24 Senior Indebtedness waiver. As experienced bankruptcy professionals, the O'Melveny attorneys
25 knew or should have known (1) the economic benefit the waiver conferred on the 2002s; (2) the
26 impact the waiver would have on general unsecured creditors; (3) the necessity of disclosing the
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28 ² First Interim Application of O'Melveny & Myers LLP for Compensation and Reimbursement at p. 2.

1 waiver in the 9019 pleadings, including an explanation of the waiver’s impact on creditors and
2 and how the waiver should factor into the Court’s evaluation of the settlement under the A&C
3 Properties standard.

4 In October of 2006, O’Melveny, together with Pillsbury, brought an *ex parte* motion to
5 seal pleadings in connection with an anticipated motion to approve the estates’ settlement with
6 VIA and Intel (the “VIA Settlement”), which the Court granted. On or about October 10, 2006,
7 Pillsbury and O’Melveny filed under seal a motion for approval of the VIA Settlement, together
8 with a supporting declaration and memorandum of points and authorities, which the Court
9 approved on October 31, 2006. A redacted version of the memorandum of points and authorities
10 was later filed on December 22, 2006.

11 Documents produced by O’Melveny confirm that it had extensive involvement in
12 preparing the 23 page Memorandum of Points and Authorities (the “Points and Authorities”) in
13 support of the settlement motion. The Points and Authorities go into rather elaborate detail
14 explaining the history of the Via/Intel dispute and all facets of the settlement – save and except
15 for the Via Senior Indebtedness waiver and the effect of this waiver on the estates and their
16 creditors. Given the email traffic and exchange of redline documents, there is absolutely no doubt
17 that O’Melveny was an actual drafter of these pleadings; this was not a situation where Pillsbury
18 drafted the pleadings and O’Melveny simply reviewed and signed off as a co-proponent.

19 Finally, in 2007, facts and circumstances came to light regarding the VIA Settlement, the
20 undisclosed waiver of Via’s Senior Indebtedness status, and the direct pecuniary benefit this
21 waiver conferred on the 2002s. This, together with other related disclosures and non-disclosures,
22 ultimately resulted in Pillsbury’s disqualification, the appointment of a trustee, the appointment of
23 a reconstituted committee, and a host of expensive litigations and contested matters.

1 On March 26, 2007, the Court issued its Memorandum Decision and Order on Motion to
2 Appoint a Chapter 11 Trustee, Motion to Convert Case, and Motion to Disqualify Pillsbury
3 Winthrop Shaw Pittman LLP and for Disgorgement of Attorneys' Fees ("Memorandum
4 Decision"). A significant portion of the Memorandum Decision was devoted to the VIA
5 Settlement, the undisclosed waiver of the Senior Indebtedness provision, and its impact on the
6 estates and Court appointed counsel in these cases. Among other things, inclusion of the waiver
7 arguably could have given the 2002s millions of dollars in distributions to which they otherwise
8 were not entitled, all at the expense of general unsecured creditors. See Memorandum Decision
9 at 2. In the wake of the Memorandum Decision, O'Melveny understandably has taken no further
10 action on behalf of the estates, save in connection with responding to certain document requests
11 and providing deposition testimony.
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13 The PCC has reviewed a large quantity of documents produced by, among others,
14 O'Melveny, counsel for the 2002s and Pillsbury. Based upon this review, as well as upon the
15 transcript of Uhland's deposition, the PCC believes that O'Melveny's actions and omissions in
16 connection with the Via Settlement, and the resulting economic harm brought upon the estates,
17 warrant denial of the balance of O'Melveny's requested fees.
18

19 **IV. ARGUMENT**

20 There is substantial evidence of acts and omissions on the part of O'Melveny which bears
21 directly upon the "reasonableness" of O'Melveny's fee request and, the PCC believes, warrants
22 disallowance of O'Melveny's remaining unpaid fees.
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24 O'Melveny, principally through attorneys Suzanne Uhland and Austin Barron ("Barron"),
25 served as special counsel to the Debtors in connection with negotiation of the
26 Via/Intel/SONICblue settlement, whereby, among other things, Via received an allowed \$12.5
27 million claim in the Debtors' cases. Bennett, counsel for the 2002s, with full knowledge of
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1 Pillsbury, O'Melveny and Via, caused language to be added to the Via Settlement ensuring that
2 Via's claim could not qualify as Senior Indebtedness under the 2002 indenture. As the Court is
3 well aware, this waiver conferred a substantial and material benefit on the 2002s, arguably at the
4 expense of general unsecured creditors. And all of this was done secretly, without disclosure to
5 this Court, who was asked to, and indeed did, approve the deal.

7 **A. O'Melveny And Bruce Bennett Were In Constant Communications
Concerning SONICblue/Via Related Matters.**

8 The Court is now painfully aware of the unseemly events which ultimately gave rise to
9 Pillsbury's disqualification, the reconstituting of a creditors' committee, and the appointment of a
10 trustee. Key among these was the Via settlement agreement, with its secret benefit to the 2002s.
11 Following the involuntary disclosure of this benefit, each of the professionals in these cases has
12 sought to blame the others. While O'Melveny's culpability may not be as great as others', it is
13 certainly not without blame, and undeniably played a key role in both inclusion of the waiver in
14 the settlement agreement and omission of this important deal term from the settlement motion and
15 supporting documents.

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18 O'Melveny lead counsel Suzanne Uhland ("Uhland") was deposed in January of 2008.
19 As a starting point, it is now in the record that, despite a conflict which should have prevented
20 Pillsbury's involvement in the year plus negotiations to resolve the VIA dispute, Pillsbury very
21 much had a hand in the deal. See Transcript of 2004 Examination of Suzanne Uhland ("Uhland
22 Transcript") at _____. True and correct copies of relevant portions of the Uhland
23 Transcript as cited herein are attached as Exhibit "A" to the Declaration of Aron M. Oliner
24 ("Oliner Declaration") in support of the PCC's objection, filed concurrently herewith.

25
26 Throughout the Via settlement negotiations, Uhland was in regular contact with lawyers at
27 Pillsbury, Levene Neale and Hennigan Bennett. See Uhland Transcript at page 127, *et seq.*)
28 Moreover, Uhland describes in detail the numerous instances of her one on one communications

1 with none other than Bennett. See Uhland Transcript at page 108. Numerous print outs of email
2 exchanges between Bennett and Uhland likewise confirm that the two frequently made
3 arrangements to discuss SONICblue and the Via settlement. A sampling of these emails is
4 attached as Exhibit “B” to the Oliner Declaration.

5
6 **B. O’Melveny Was Deeply Involved In The VIA Settlement, Including Addition
of the Via “Senior Indebtedness” Waiver.**

7 The Memorandum Decision relates that in September of 2005 SONICblue and Via
8 reached a tentative settlement figure of \$12.5 million. See Memorandum Decision at 7. On
9 September 20, 2005, Bennett confirmed that the 2002s accepted this settlement figure, provided
10 that the claim would “be neither senior nor junior to other general unsecured claims.” See
11 Memorandum Decision at 7-8.

12
13 Emails exchanged during this time between Uhland and Bennett confirm that Uhland (1)
14 was aware that the 2002s’ consent to the settlement was contingent upon inclusion of the “neither
15 senior nor junior” provision; (2) had investigated into the Senior Indebtedness issue and consulted
16 with Pillsbury attorneys about it; and (3) knew why the 2002s wanted the waiver language and
17 the benefit it conferred on them. Beginning September 17, 2005, these email exchanges provide
18 as follows:

- 19
20 • **September 17, 2005:** Email from Uhland to Bennett:

21 Subject: “one side bar comment”

22 I got a weird call from Al Boro Friday morning say [sic] that he wondered
23 if you realized that the full Via settlement was senior debt. I explained to
24 Al that we had been through that with David Gershon a year ago and that
25 there was no borrowed money from Via (at one time there were
26 discussions) the carve out didn’t apply. Pillsbury’s (or Houlihan’s) claims
analysis at the beginning of the case always had this wrong. I walked Al
through the language and I think he understands.

- 27 • **September 18, 2005:** Reply email from Bennett to Uhland:

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Subject: "one side bar comment"

Its [sic] nice to know that Pillsbury thinks that the bondholders are represented by a moron!

- **September 18, 2005**: Reply email from Bennett to Uhland:

Subject: "one side bar comment"

I have consulted with clients and have direction. Call me when you get in.

- **September 19, 2005**: Email from Bennett to Uhland:

Subject: "Suzanne Uhland, 4:24 pm, needs to speak to you today or find out a firm time that she can reach you (310) 560-7616 cell"

Now tied up until about 7 PDT.

We will be supportive of your direction. 12.5 okay if clear that claim is not for borrowed money or anything else that might constitute senior debt.

Still need to know why Via needs release for past two years.

Have specific ideas for dealing with Intel.

- **September 20, 2005**: Email from Uhland to Bennett:

Subject: "another quick redline"

redlined against via's last proposal

we couldn't find the indenture last night

- **September 20, 2005**: Reply email from Bennett to Uhland:

Subject: "another quick redline"

Call me: 212-672-1967.

Copies of printouts of the foregoing emails are attached as Exhibit "C" to the Oliner Declaration.

Removing any ambiguity from the foregoing email exchanges, notes produced by O'Melveny of a September 19, 2005 telephone call between Uhland and Barron provide as follows:

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Bruce is fine with the 12.5mm

There is language in indenture that identifies VIA debt as senior debt
-Bruce wants clarity that the claim is a claim for damages and not borrowed money

Bruce wants the offer to be enforceable, subject to certain conditions

See Oliner Declaration, Exhibit "D"

The Memorandum Decision also describes how, according to a declaration submitted by Pillsbury attorney Al Boro, in April or early May of 2006 the waiver language morphed from the "neither senior nor junior" language of the initial term sheet to a specific reference to the defined term "Senior Indebtedness" in the 2002 indenture. This change, according to Boro, was an attempt to avoid potential litigation over the intent and effect of the waiver. See Memorandum Decision at 9.

On May 12, 2006, O'Melveny circulated a revised draft of the (now) settlement agreement with the new waiver language. Id. Coincidentally or not, during April and early May of 2006, email exchanges "heat up" between Bennett and Uhland whereby the two (with some urgency) make arrangements for phone calls to discuss SONICblue. See Oliner Declaration, Exhibit "E."

While the PCC has not deposed Uhland concerning the topics of these calls, Uhland has testified that the Senior Indebtedness issue had been a topic of conversation between Bennett and Uhland.³ Moreover, based upon the email exchanges and other documents discussed above, it is beyond dispute that O'Melveny was well aware of the Senior Indebtedness waiver, why the 2002s wanted it in the agreement and what benefit the waiver conferred on the 2002s. O'Melveny has no grounds upon which to plead ignorance.

³ Uhland testified that in October of 2005 she and Bennett were communicating about the subordination issue. See Uhland Transcript at p. 199.

1 **C. O'Melveny Was Deeply Involved in Preparation of the Substantive Pleadings**
2 **for Approval of the Via Settlement.**

3 In addition to being integrally involved with negotiation of the Via Settlement (and
4 inclusion of the Senior Indebtedness waiver), O'Melveny, together with Pillsbury, jointly
5 prepared the substantive pleadings for approval of the Via Settlement, which were filed under seal
6 in October of 2005. A review of certain O'Melveny produced documents – mainly email
7 exchanges between O'Melveny and Pillsbury lawyers, together with draft and redline pleadings
8 attached to these emails – supports the following timeline:
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10 • October 5, 2006: Thomas Loran (“Loran”) of Pillsbury emails drafts of the motion
11 for approval of the settlement, notice, supporting declaration and proposed order to Uhland and
12 Barron for review. Barron responds to Uhland that “we cannot file this” because “it has no law.
13 no recitation of facts.” See Oliner Declaration, Exhibit “F.”

14 • October 5, 2006: Loran subsequently emails a draft of the Points and Authorities
15 to Uhland and Barron for review. See Oliner Declaration, Exhibit “G.”

16 • October 5, 2006: Barron emails back to Loran and states that O'Melveny would
17 “like to run a few edits – putting in more detailed background...” before the draft pleadings are
18 circulated to “a wider group.” See Oliner Declaration, Exhibit “H.”

19 • October 6, 2006: Barron emails Uhland a redline of the Points and Authorities,
20 reflecting Barron’s changes and additions to Loran’s draft. A casual perusal of this redline
21 reflects that Barron’s changes were extensive and substantial – essentially re-writing half of the
22 Points and Authorities, if not more. See Oliner Declaration, Exhibit “I.”

23 • October 6, 2006: Pillsbury attorney Matthew Walker (“Walker”) emails Barron
24 and Uhland a revised Points and Authorities, reflecting Barron’s additions and changes. See
25 Oliner Declaration, Exhibit “J.” Apart from the addition of a table of contents and table
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1 authorities, the draft document from Walker essentially reflects the final form of the Points and
2 Authorities as filed with the Court under seal.

3 The Points and Authorities is long (23 pages) and goes into great detail explaining the
4 underlying disputes, various aspects of the settlement, and justification for approval of the
5 settlement under the A&C Properties standard. However, the Points and Authorities makes
6 absolutely no mention whatsoever of the Via Senior Indebtedness waiver. The pleading merely
7 recites that under the settlement “VIA and JV will be permitted a single, general unsecured
8 claim.” That’s it.

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10 The pleading is deceptive in another respect as well: it makes absolutely no mention of
11 Bennett’s active participation in the settlement on behalf of the 2002s, or of the 2002s’ insistence
12 on the Senior Indebtedness waiver as a prerequisite to their approval of the deal. Rather, the
13 pleading states simply that “[c]ounsel to the Creditors’ Committee and other representative
14 constituencies, including Bruce Bennett ... have all been kept on notice by counsel for the Debtors
15 of the progress of the negotiations between the Debtors, VIA, and Intel.” Given Uhland and
16 Bennett’s communications concerning the Senior Indebtedness Waiver, and Bennett’s overall
17 involvement in the settlement process on matters related to the \$12.5 million Via claim, use of the
18 phrase “kept on notice” is, to put it kindly, misleading.

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21 **D. The Balance of O’Melveny’s Fees Should Be Denied In Reflection of the
22 Otherwise Unnecessary Administrative Fees Incurred By the Estates.**

23 As court appointed counsel to an estate fiduciary, O’Melveny had a duty to disclose all
24 material components of the settlement, especially the Senior Indebtedness waiver – a topic with
25 which it was intimately familiar and closely involved. In addition to merely disclosing,
26 O’Melveny had a further duty to explain how the waiver materially benefitted the 2002s to the
27 potential detriment of general unsecured creditors, and why the waiver was nonetheless in the
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1 best interest of creditors and the estates. O'Melveny inexplicably and unreasonably failed to do
2 any of these things.

3 O'Melveny's actions and omissions contributed to, as this Court described it, "the
4 complete breakdown of creditor confidence," which in turn led to significant investigation and
5 discovery by Connolly at great expense to the estates. O'Melveny helped make an already very
6 bad situation worse, thereby causing the estates to incur significant legal fees for investigation,
7 document discovery, depositions and the like.
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9 While O'Melveny is not solely to blame, it must not be permitted to emerge from these
10 cases unscathed. The PCC believes that the expense the estates have incurred as a result of
11 OMM's acts and omissions, as detailed above, directly impacts the overall "reasonableness" of
12 OMM's fee request, and warrants disallowance – or at least a significant reduction – of its
13 remaining fees.
14

15 **V. CONCLUSION**

16 For all the foregoing and proper reasons, the PCC respectfully requests that the Court
17 deny the balance of the fees requested by O'Melveny in its Fifth and Final Application.
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20 Dated: March ___, 2009

DUANE MORRIS LLP

21 By: _____

22 ARON M. OLINER
23 Attorneys for POST-CONFIRMATION
24 CREDITORS' COMMITTEE
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