

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC

Before The Honorable E. James Gildea  
Administrative Law Judge

IN THE MATTER OF  
CERTAIN WIRELESS CONSUMER  
ELECTRONICS DEVICES AND  
COMPONENTS THEREOF

Investigation No. 337-TA-853

**MOVING RESPONDENTS' MOTION TO STAY THE  
INVESTIGATION PENDING RESOLUTION OF CURRENT  
LITIGATION OVER OWNERSHIP OF THE '336 PATENT**

Pursuant to 19 C.F.R. § 210.15, Ground Rule 2.1, and the Administrative Law Judge's authority to stay an investigation, Respondents ZTE Corp., ZTE (USA) Inc., Barnes & Noble, Inc., Kyocera Corporation, Kyocera Communications, Inc., Acer, Inc., Acer America Corporation, Amazon.com Inc., Novatel Wireless, Inc., LG Electronics, Inc., and LG Electronics U.S.A., Inc. (collectively "Moving Respondents" or "Movants") respectfully submit that this Investigation should be stayed because Complainant Technology Properties Limited, LLC ("TPL") is a named defendant in a California state court litigation in which ownership of the patent asserted here is challenged. The Complainants themselves have admitted that the California court litigation "could impact the ownership and/or [their] right to assert the '336 [P]atent". (Motion to Amend at 2.)

Complainants will lack standing in this investigation if the California court determines that the agreement between inventor Moore and TPL is invalid and that TPL is not the owner or exclusive licensee of all of Moore's rights to the '336 Patent. *See* 19 C.F.R. § 210.12(a)(7). The

California court is the proper forum to determine TPL's rights in the '336 Patent and resolve the threshold issue of whether Complainants have standing to maintain its complaint here. Proceeding with the investigation at this juncture would unfairly prejudice Movants and unnecessarily waste the Commission's resources. As set forth in detail in the attached Memorandum of Points and Authorities, Movants respectfully request that the present Investigation should be stayed pending the California state court's resolution of the ownership of the '336 Patent.

### **GROUND RULE 2.2 CERTIFICATION**

Pursuant to Ground Rule 2.2, Movants certify that at least two days prior to filing the instant motion, Movants made reasonable, good faith efforts to resolve the matter with the other parties. On October 10, 2012, Movants provided notice to Complainants, the Commission Investigative Staff and all other parties that Movants intended to file this motion to stay and made a good faith effort to resolve the matter. The parties discussed the motion telephonically on October 11, 2012, and the matter was not resolved. Complainants oppose this motion. The Commission Investigative Staff reserves its position pending review of the papers filed.

Respondents Garmin Ltd., Garmin International, Inc., Garmin USA, Inc., Nintendo Co., Ltd., Nintendo of America, Inc., HTC Corporation, HTC America Inc., Samsung Electronics Co., Ltd, Samsung Electronics America, Inc., Sierra Wireless, Inc., Sierra Wireless America, Inc., Huawei Technologies Co., Ltd., and Huawei North America also reserve their positions pending review of the filed papers.

Dated: October 16, 2012

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**MOVING RESPONDENTS' MEMORANDUM IN SUPPORT OF MOTION TO STAY  
THE INVESTIGATION PENDING RESOLUTION OF CURRENT  
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## I. INTRODUCTION

Respondents ZTE Corp., ZTE (USA) Inc., Barnes & Noble, Inc., Kyocera Corporation, Kyocera Communications, Inc., Acer, Inc., Acer America Corporation, Amazon.com Inc., Novatel Wireless, Inc., LG Electronics, Inc., and LG Electronics U.S.A., Inc. (collectively “Movants” or “Moving Respondents”) respectfully submit that this Investigation should be stayed because Complainant Technology Properties Limited, LLC (“TPL”) is a named defendant in a state court litigation in which ownership of the patent asserted here is challenged. The Complainants<sup>1</sup> themselves have admitted that the California Action “could impact the ownership and/or [their] right to assert the ’336 [P]atent”. (Motion to Amend, 2.)

In the California litigation, one of the inventors, Mr. Moore, alleges that TPL and its executives fraudulently procured rights to the ownership of U.S. Patent No. 5,809,336 (the “’336 Patent”) and filed an assignment with the USPTO without the inventor’s knowledge or permission. *See Ex. 1, Moore v. Technology Properties Limited, LLC, et al., Case No. 110-cv-183613, Complaint (Santa Clara Super. Ct. Sep. 27, 2010) (“California Action”).*

The California Action will resolve the contractual dispute between Moore and TPL over TPL’s rights in the ’336 Patent and thus resolve the threshold issue in this investigation of whether Complainants even have standing to assert the ’336 Patent. Until inventor Moore’s challenge of TPL’s patent rights is resolved in the state court action, this investigation should be stayed.

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<sup>1</sup>The Complaint was filed by three Complainants: TPL, Patriot Scientific Corp. (PTSC), and Phoenix Digital Solutions (PDS). Complainants, however, allege that “all substantial rights to the MMP Portfolio are held in the aggregate by Complainant TPL”. (Complaint ¶ 5). Therefore, if TPL does not have standing to assert the ’336 Patent, Complainants as a whole do not have standing.

## II. STATEMENT OF FACTS

Charles H. Moore (“Moore”) is a named inventor on the ’336 Patent. Complainants allege that Moore granted TPL an exclusive license to “all of Moore’s substantial rights in the MMP Portfolio”, including the ’336 Patent, and “gave TPL the right to manage, license, and enforce the MMP Portfolio, as well as a 45% ownership interest”. (Complaint ¶ 7.)

In September 2010, Moore filed a complaint in the Superior Court of California, Santa Clara County alleging that TPL and its executive, Attorney D. Leckrone, had essentially stolen his patent portfolio including the ’336 Patent. Ex 1, California Action Complaint ¶¶ 55-59. Moore alleges that TPL was granted only a limited assignment of minority rights through a 2002 Commercialization Agreement (“ComAg”). Ex. 1, ¶¶ 25, 55-59; *see also* Ex. 2, ComAg.<sup>2</sup> He further contends that TPL and Leckrone intentionally and falsely represented the terms of the ComAg and thereby wrongfully appropriated rights to the ’336 Patent by deceit. Ex. 1, ¶ 63-77. Specifically, Moore alleges that he received verbal assurance from Leckrone that the agreement only granted to TPL (Leckrone’s Company) “*the right to license the MMP Portfolio*” and *nothing more*. Ex. 1, ¶ 25 (emphasis added).

Moore alleges that TPL then wrongfully converted “all right, title and interest in the most valuable of the MMP Portfolio” to its own possession through filings with the USPTO. Ex. 1, ¶¶ 47(a), 53-62. TPL and Leckrone allegedly filed this assignment without Moore’s knowledge or permission and Moore remained unaware of the filing until August 2008 when he independently reviewed USPTO records. Ex.1, ¶ 55. Moore alleges that this fraudulent conduct

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<sup>2</sup>By its express terms, the ComAg reserved to Moore significant rights, in particular a veto power over “any transaction involving the totality of the Licensed Technology on an exclusive basis...”. Ex. 2, ComAg ¶ 5.1. The ComAg was a mere commercialization agreement that failed to convey *all* of Moore’s ownership interest or *all* of his license and enforcement rights in the ’336 Patent to TPL.

renders the ComAg invalid and subject to cancellation. Ex. 1, ¶ 59. The California Action is currently pending.

### III. ARGUMENT

#### A. THE PENDING CALIFORNIA ACTION AFFECTS COMPLAINANTS' STANDING IN THIS INVESTIGATION

A party may bring an action to the Commission only if it is the owner or exclusive licensee of all of the intellectual property rights at issue. 19 C.F.R. § 210.12(a)(7). The party bringing the action bears the burden of establishing that it has standing. *Fieldturf, Inc. v. Southwest Rec. Indus., Inc.*, 357 F.3d 1266, 1268 (Fed. Cir. 2004). Standing is a threshold jurisdictional issue that must be satisfied before the merits of a case may be reached. *Id.* at 1270 (“[Plaintiff] simply cannot maintain a suit for infringement unless all such concerns about the completeness of its standing are resolved in its favor.”).

Complainants assert that their right to enforce Moore’s patents derives from an agreement with Mr. Moore. (Complaint ¶ 7.) Moore, however, claims that the ComAg was obtained fraudulently and was recorded with the USPTO without his knowledge or permission. Ex. 1, ¶ 47(a). Moore also disputes TPL’s claim to license rights, and seeks rescission of the ComAg and all amendments thereto. Ex. 1, ¶ 83. It cannot be disputed that Complainants will lack standing in this investigation if the California court determines that the ComAg is invalid and that TPL is not the owner or exclusive licensee of all of Moore’s rights to the ’336 Patent. *See* 19 C.F.R. § 210.12(a)(7); *see also Certain Catalyst Components and Catalysts for the Polymerization of Olefins*, Inv. No. 337-TA-307, 1990 WL 710614, Order No. 23 at \*6, 8 (June 7, 1990)(“Catalyst Components”) (noting that “infringement actions may only be brought by, or in the name of, all of the owners of the patent in suit or the exclusive licensee of all of the rights covered by the patent” because the Commission “strictly read[s] the federal standing precedent”

into its rules). Indeed, it is a matter of substantive patent law that all co-owners of a patent must consent to join in an infringement suit. *Ethicon, Inc., et al, v. U.S. Surgical Corp.*, 135 F.3d 1456, 1468 (Fed. Cir. 1998); *see also Israel Bio-Engineering v. Amgen*, 475 F.3d 1256, 1264-1265 (Fed. Cir. 2007) (“Absent the voluntary joinder of all co-owners of a patent, a co-owner acting alone will lack standing.”).

Regardless of what rights TPL claims by assignment, there is strong evidence to the contrary that Moore retained at least partial ownership of the patent. *See* Ex. 1, ¶¶ 25, 55-59; Ex. 2, ComAg, ¶ 5.1 .

## **B. THE ALJ HAS DISCRETION TO STAY THIS INVESTIGATION**

The Administrative Law Judge has the authority pursuant to Commission Rule 210.15(a)(1) to stay an investigation pending resolution of a related litigation or administrative proceeding. *See Certain Semiconductor Chips and Products Containing Same*, Inv. No. 337-TA-753, Order 22, 2011 WL 2287535 at \*2-3 (May 9, 2011) (“Semiconductor Chips”). In deciding whether to stay an investigation, the ALJ typically considers the following five factors:

- 1) The state of discovery and the hearing date;
- 2) Whether a stay will simplify the issues and hearing of the case;
- 3) The undue prejudice or clear tactical disadvantage to any party;
- 4) The stage of the parallel proceedings; and
- 5) The efficient use of Commission resources.

*Id.* The ALJ in *Certain Digital Cameras and Components Thereof* considered these factors in addressing the exact same issue raised in this motion: whether a stay should be granted when the issue of patent ownership is being litigated in another forum. *See, generally*, Inv. No. 337-TA-593, Order No. 7 (June 15, 2007) (“*Digital Cameras*”). In *Digital Cameras*, the presiding ALJ determined that a stay pending a determination of patent ownership in a California state court action was both appropriate and necessary. *Id.*; *see also* Order 8 (Aug. 16, 2007) (denying motion to dissolve stay) and Order 9 (Sept. 19, 2007) (denying motion to certify orders granting

stay and denying dissolution of stay for interlocutory review). In so holding, the ALJ stressed that California was the most appropriate forum for deciding the ownership of the patent because the plaintiff was a California corporation, the events giving rise to the ownership dispute occurred in California, and the contracts at issue were governed by California law. *Id.* at 6; *see also* Order 8 at 4 (Aug. 16, 2007). The facts are strikingly similar to those in this Investigation. The decision also emphasized that a determination by the Commission of the underlying contractual issues would be a waste of resources, as the Commission's determination of these fundamental issues would not be binding in the California suit. A California state court's decision, however, would be binding on the Commission and could negate the entire investigation. *Id.* at 6. Likewise, the balance of factors weighs heavily in favor of a stay of this Investigation.

### **C. THE COMMISSION SHOULD STAY THE PENDING INVESTIGATION**

#### **1. The Early Stage Of This Investigation Weighs In Favor Of A Stay**

The instant investigation is in its earliest stages: discovery has just begun, no depositions have been taken, expert reports have not been prepared and the hearing is eight months away. As such, the investment in the Investigation to date has been relatively small and weighs in favor of a stay.

#### **2. A Stay Will Simplify The Issues Because The California Court Is The Proper Jurisdiction To Determine Ownership Of The '336 Patent**

The California court is the proper jurisdiction to determine what rights, if any, TPL has in the '336 Patent. First, similar to the facts in *Digital Cameras*, all parties and all events giving rise to the ownership dispute are connected to California; the underlying agreement affecting ownership (the ComAg) is governed by California state law, and the ownership analysis will

involve consideration of California state law principles. *See* Ex. 2, ComAg, Sec. 14.5 (“All rights and obligations under this Agreement shall be resolved as if all persons and all transactions related to this Agreement had their legal residence, situs, and employment in Santa Clara County, California.”). In the face of similar facts, the ALJ in *Digital Cameras* held that “[a] California court is clearly in a better position to rule on California state law issues.” *Digital Cameras*, Order No. 7 at 5; *see also* Order 8 at 4 (Aug. 16, 2007) (finding the reasons for granting a stay enumerated in Order 7 were sound). Indeed, the U.S. District Court for the Northern District of California remanded the California Action to state court for this very reason. Ex. 3, *Moore v. Technology Properties Limited, LLC, et al.*, No. 5:10-cv-04747-JW, Order Granting Plaintiff’s Motion to Remand (N.D. Cal. Jan. 20, 2011) at 5 (“...to the extent there is a conflict regarding ownership of the [MMP] patent portfolio, that too is a matter for the state court...”). Thus, the California state court is the only proper forum to resolve the ownership dispute.

Second, a Commission determination regarding TPL’s rights in the ’336 Patent would not be binding on the California court. *See Digital Cameras*, Order No. 7 at 6 (staying investigation pending state court decision on ownership because “a determination by the Commission would not be binding.”); *see also Catalyst Components*, 1990 WL 710614 at \*7 (“...Commission patent determinations do not have res judicata or collateral estoppel effects on the subsequent relitigation of issues in federal court...”). The Commission should not be used as a forum where potential owners can “float trial-balloon theories without apprehension of tethering titleholders to the consequences thereof.” *Id.* at \*7. Moreover, a California court ruling that the ComAg is invalid and that TPL does not own rights in the ’336 Patent would be binding on the Commission and could negate the investigation for lack of standing. *See Digital Cameras*, Order No. 7 at 6.

Forcing the parties to litigate the same ownership issue here as the California Action continues would force the parties to engage in wasteful, duplicative discovery and litigation. In addition, the California lawsuit will simplify the issues in this Investigation by resolving many of the factual issues underlying Complainants' alleged standing to bring its infringement claims. If the California court rules in favor of Moore, the Commission would be compelled to dismiss this Investigation for lack of standing. On the other hand, if the California court rules in favor of TPL, it will provide certainty for the Commission regarding certain critical issues underlying the standing inquiry. Either way, waiting for resolution of the California state action will clarify and simplify the issues in this Investigation. This factor weighs heavily in favor of Movants.

### **3. Movants May Be Prejudiced If A Stay Is Denied**

In determining whether a stay is appropriate, the Commission generally balances any prejudice to the complainant if a stay is issued with the prejudice to a respondent if it is not. *See Semiconductor Chips*, Inv. 337-TA-753, Order 22, 2011 WL 2287535 at \*3-4. Movants may be severely prejudiced if a stay is not issued and the Commission and California court issue inconsistent rulings on TPL's rights in the '336 Patent. If the Commission issues an exclusion order against Movants and the California court later determines the ComAg is invalid and TPL is not the owner or exclusive licensee of Moore's rights—a finding that is binding on the Commission—Movants will have no recourse to remedy the irreparable harm caused by the improper exclusion from the U.S. market. The harm to Movants that would result from being wrongfully excluded from the U.S. market cannot be overstated. Collectively, the harm to all Respondents under such circumstances would be staggering.

Complainants, however, will not be prejudiced by a stay. Complainants are not competitors of Movants; rather, they are a substantially non-practicing patent assertion entity using the threat of an ITC exclusion order to force Movants to take licenses under the asserted

patent. Complainants have filed concurrent district court actions against Movants and will be able to obtain monetary relief for any infringement held to occur during the stay. (Complaint ¶¶ 134-136, 151-152.) Moreover, TPL is a party to the California Action and is in the best position to expedite the action there to resolve the question of its ownership and rights in the '336 Patent. To the extent that Complainants are prejudiced by any delay, it is of their own doing. They should not have brought this action before resolving the fundamental question of their standing to do so. This factor weighs heavily in favor of Movants.

#### **4. The California Action Is Now Active And Progressing Toward Adjudication**

Moore filed the California Action in September 2010. On October 20, 2010, TPL and other defendants removed the Superior Court action to the U.S. District Court for the Northern District of California, alleging original jurisdiction under 28 U.S.C. §§ 1331 and 1338. Ex. 3, California Action, Motion to Remand, 3. The District Court granted Moore's motion to remand the action to state court on the ground that none of his eight causes of action arises under federal patent law. *Id.* at 4. Defendants then filed a demurrer to the State Court Complaint on February 5, 2011. An amended complaint was filed and was answered with both a demurrer and cross-claims. *See* Exs. 4-5, *Moore v. Technology Properties Limited, LLC, et al.*, Case No. 110-cv-183613, Defendant's Demurrer to First Amended Complaint (Santa Clara Super. Ct. July 29, 2011); *and* Defendant's Answer to First Amended Complaint (Santa Clara Super. Ct. Jan. 17, 2012).

The California Action is now active and steadily progressing toward adjudication. The parties in that action have attended numerous Case Management Conferences, the next of which is scheduled for November 6, 2012. The latest statistics issued by the Administrative Office of the California courts indicate a goal of 24 months to process and dispose of civil matters with



unlimited monetary issues, such as the California Action. *See* Ex. 6, Excerpts from the 2011 Judicial Council of California, Court Statistics Report, Statewide Caseload Trends, 2000-2001, at 38 (“CA Statistics Report”)<sup>3</sup>. To be sure, the CA Statistics Report further indicates that in 2009-2010, 93% of civil cases in California Superior Courts with unlimited monetary issues were disposed of within 24 months, 87% within 18 months and 72% within 12 months. *Id.* at xiv. While this case is clearly beyond the 24 month goal because of TPL’s removal to federal court and Moore’s subsequent remand to state court, the case is now steadily progressing. Moreover, in his Case Management Statements, Moore has invoked California Code Civil Procedure Section 36(a) which gives preference to any civil litigant who is over 70 years of age. *See* Ex. 7, Sec. 9. Therefore, not only is the case steadily progressing, but also there are mechanisms at work to expedite the California Action.

As noted above, Complainants are in the best position to expedite the California state action and remove the uncertainty regarding their rights to the ’336 Patent.

##### **5. A Stay Would Preserve Commission Resources**

A stay would promote efficient use of the Commission’s resources by avoiding a potentially inconsistent ruling that may negate the Investigation. If the California court determines that TPL is not the owner or exclusive licensee of the ’336 Patent, then the stay may conserve public and private resources by enabling the Commission to avoid duplicative work and obviate the need for the Investigation. It would be a waste of the Commission’s resources to conduct this multi-party Investigation when the California court’s decision will be binding on the Commission. The Commission could end up conducting an entirely pointless Section 337 investigation. Even if the California court determines TPL has the rights it claims in the ’336

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<sup>3</sup>Full report publically available at [www.courts.ca.gov/documents/2011CourtStatisticsReport.pdf](http://www.courts.ca.gov/documents/2011CourtStatisticsReport.pdf).

Patent, the Commission and parties will benefit from the California discovery and fact-finding. At a minimum, the stay would conserve the Commission's resources because the Commission would not expend time and effort determining the ownership and standing issues. *See Digital Cameras*, Order No. 7 at 6 (“[A] determination by this Commission of the underlying contractual issues would be a waste of resources.”). This factor weighs in favor of a stay.

#### **IV. CONCLUSION**

The California Action is the appropriate forum to determine TPL's rights in the '336 Patent and resolve the threshold issue of whether Complainants have standing to maintain their complaint here. Proceeding with the Investigation at this juncture would unfairly prejudice Movants and unnecessarily waste the Commission's resources. Accordingly, the present Investigation should be stayed pending the California state court's resolution of the ownership of the '336 Patent.

Dated: October 16, 2012

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## EXHIBIT LIST

<b>Exhibit 1</b>	Moore v. Technology Properties Limited, LLC, et al., Case No. 110-cv-183613 --Complaint
<b>Exhibit 2</b>	2002 Commercialization Agreement
<b>Exhibit 3</b>	Moore v. Technology Properties Limited, LLC, et al., No. 5:10-cv-04747-JW---California Action Motion to Remand
<b>Exhibit 4</b>	Moore v. Technology Properties Limited, LLC, et al., Case No. 110-cv-183613- Defendant's Demurrer to First Amended Complaint (Santa Clara Super. Ct. July 29, 2011)
<b>Exhibit 5</b>	Moore v. Technology Properties Limited, LLC, et al., Case No. 110-cv-183613- Answer to First Amended Complaint
<b>Exhibit 6</b>	Excerpts from the 2011 Judicial Council of California Court Statistics Report- Statewide Caseload Trends 2000-2001 <i>through</i> 2009-2010
<b>Exhibit 7</b>	Moore v. Technology Properties Limited, LLC, et al., Case No. 110-cv-183613- Case Management Statement

# EXHIBIT 1

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5 Attorneys for Charles H. Moore

ENDORSED

2010 SEP 27 PM 4: 09

David H. Flores, Judge, Superior Court  
County of Santa Clara, California

By: \_\_\_\_\_  
J. GARCIA FLORES

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA CLARA  
10 UNLIMITED JURISDICTION

11  
12 Charles H. Moore

13 Plaintiff,

14 vs.

15 Technology Properties Limited, LLC, a  
California limited liability company; Alliacense  
16 LLC, a Delaware limited liability company;  
Daniel Edwin Leckrone, an individual; Daniel  
17 McNary Leckrone, an individual; Michael  
Davis, an individual, and DOES 1 through 100,  
18 inclusive,

19 Defendants.

Case No.

110CV183613

**Complaint for Cancellation of Instrument; for  
Rescission and Restitution; for Damages for  
Fraudulent Promise; for Contractual  
Damages; for Conspiracy; for Breach of  
Contract; for Constructive Trust and  
Accounting; and for Preliminary and  
Permanent Injunction**

20  
21 Plaintiff Charles H. Moore ("Plaintiff Moore") complains and alleges as follows:

22 1. Defendant Technology Properties Limited, LLC, is a California limited liability  
23 company (and is the successor to, and was formerly known as, Technology Properties Limited, a  
24 California corporation (individually and collectively, "TPL")). At all pertinent times TPL has had  
25 its principal place of business in Santa Clara County, California.

26 2. Defendant Alliacense LLC ("Alliacense") is a Delaware limited liability company  
27 which has at all pertinent times been located at and within the TPL corporate offices in Santa  
28 Clara County, California. Upon information and belief, Defendant Alliacense is and at all pertinent



1 times has been a wholly owned subsidiary of Defendant TPL.

2 3. Defendant Daniel Edwin Leckrone (“Attorney Leckrone”) is a licensed California  
3 attorney who has at all pertinent times resided in Santa Clara County, California. At all pertinent  
4 times, Attorney Leckrone was the Chairman of the Board of TPL.

5 4. Defendant Daniel McNary Leckrone (sometimes known as “DML”; “Defendant  
6 Mac Leckrone”) is the son of Attorney Leckrone, and was at pertinent times the President of  
7 Defendant Alliacense. Attorney Leckrone and Defendant Mac Leckrone have at all pertinent times  
8 controlled the affairs and business of Defendant Alliacense. Defendant Mac Leckrone is a licensed  
9 California attorney who has at all pertinent times resided in Santa Clara County, California.

10 5. Defendant Michael Davis (“Defendant Davis”) is an individual resident of Santa  
11 Clara County, California. At all pertinent times, Defendant Davis was the Executive Vice-  
12 President of Licensing for Defendant Alliacense.

13 6. Plaintiff Moore is ignorant of the names and capacities of defendants sued as  
14 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.  
15 Plaintiff Moore will amend this complaint to allege their true names and capacities when  
16 ascertained.

17 7. Prior to October 2002, Attorney Leckrone formed a continuing attorney-client  
18 relationship with Plaintiff Moore.

19 8. Specifically, prior to 2002, Plaintiff Moore was working on the development of  
20 computer chips he had developed, and whose design he had patented, with a French company,  
21 “TRIO S.A.” or a subsidiary of the TRIO S.A. company (individually and collectively, “TRIO”).

22 9. Plaintiff Moore was, during this period, receiving a monthly payment from TRIO.  
23 As time went on, Plaintiff Moore determined that other entities, with other approaches, might be  
24 more effective in developing and exploiting the commercial potential of his patents. Plaintiff  
25 Moore began exploring the possibility of working with “iTV,” a US company.

26 10. TRIO objected to Plaintiff Moore working with iTV, on the asserted ground that  
27 TRIO had some type of exclusive relationship with Plaintiff Moore concerning his patents. TRIO  
28 began withholding the monthly payments it had previously been making to Plaintiff Moore.

1           11.     Plaintiff Moore had, by this time, met Attorney Leckrone. When Plaintiff Moore  
2 explained the difficulty he was having with TRIO, and the relationship Plaintiff Moore wished to  
3 build with iTV, Attorney Leckrone offered legal assistance. Specifically, Attorney Leckrone told  
4 Plaintiff Moore that he had already planned a trip to Europe on unrelated matters, and that he was  
5 willing to go to Paris to meet with TRIO and to negotiate a settlement that would permit Plaintiff  
6 Moore to pursue his opportunities with iTV.

7           12.     On Plaintiff Moore's behalf, Attorney Leckrone went to Paris and negotiated a  
8 successful resolution of the dispute with TRIO – a settlement that permitted Plaintiff Moore to  
9 move forward with development of certain of his patents with iTV.

10          13.     When iTV proposed an employment agreement to Plaintiff Moore, Plaintiff Moore  
11 gave a copy of the agreement to Attorney Leckrone, who Plaintiff Moore now viewed as his  
12 attorney. Attorney Leckrone pronounced the proposed agreement "terrible," and said that he could  
13 negotiate a better one. Plaintiff Moore authorized Attorney Leckrone to negotiate a better  
14 agreement on Plaintiff Moore's behalf.

15          14.     Attorney Leckrone, acting as Plaintiff Moore's attorney, proceeded to negotiate an  
16 employment agreement for Plaintiff Moore with iTV. Under the agreement that Attorney  
17 Leckrone negotiated, Plaintiff Moore assigned two of his patents to iTV, and iTV agreed to make  
18 regular monthly payments to Plaintiff Moore. For his legal services, Plaintiff Moore agreed to give  
19 to Attorney Leckrone a designated percentage (21.25%, more or less) of the payments that  
20 Plaintiff Moore received from iTV.

21          15.     For a number of months, iTV made regular payments to Plaintiff Moore, pursuant  
22 to the employment contract that Attorney Leckrone had negotiated for him. In turn, Plaintiff  
23 Moore duly forwarded to Attorney Leckrone his designated share of the contract proceeds, in  
24 payment for the legal services that Attorney Leckrone had rendered.

25          16.     By early 2002, iTV had largely ceased operations, and was not actively developing  
26 or commercializing the two patents that Plaintiff Moore had assigned to iTV. At or about that  
27 same time, Attorney Leckrone and Plaintiff Moore had begun their own discussions of possible  
28 licensing activities that Attorney Leckrone might be able to carry out for Plaintiff Moore's patent

1 portfolio.

2 17. Plaintiff Moore was concerned that potentially valuable rights and revenues might  
3 be lost if the two patents he had assigned to iTV remained with that company, as iTV ceased  
4 operations, became insolvent and was subject to the claims and liens of creditors. Attorney  
5 Leckrone agreed to represent Plaintiff Moore in retrieving the patents he had assigned to iTV.

6 18. Attorney Leckrone, on Plaintiff Moore's behalf, successfully located and  
7 negotiated with the iTV chairman, finding that officer at his residence in Menlo Park, California.  
8 Attorney Leckrone prepared and presented the iTV chairman with a document that Attorney  
9 Leckrone had prepared on Plaintiff Moore's behalf. In or about February 2002, the iTV chairman  
10 signed Attorney Leckrone's assignment document, with Attorney Leckrone standing by as  
11 witness, and the two patents were restored to Plaintiff Moore's ownership.

12 19. With the two patents restored to the Moore Microprocessor ("MMP") technology  
13 that Plaintiff Moore had invented, the entire portfolio of patents were thereafter referred to as  
14 Plaintiff Moore's "MMP Portfolio." Plaintiff Moore and Attorney Leckrone began negotiation of  
15 an agreement whereby Attorney Leckrone, through TPL, which was then a largely inactive and  
16 moribund corporation, would undertake the commercialization of the MMP Portfolio through  
17 licensing of the patents in the MMP Portfolio to third parties.

18 20. By October 2002, Defendant Leckrone had completed his drafting of a  
19 "Commercialization Agreement" (hereafter, the "ComAg"), between Plaintiff Moore and Attorney  
20 Leckrone's company TPL.

21 21. On the day before the ComAg was signed in or about October 2002, Attorney  
22 Leckrone met with Plaintiff Moore in the offices of Attorney Leckrone's company TPL in Santa  
23 Clara County, California, for the purpose of review and explanation of the ComAg that Attorney  
24 Leckrone had drafted.

25 22. Before and at the time of this meeting, Plaintiff Moore viewed Attorney Leckrone  
26 as his attorney and legal counsel. Plaintiff Moore had no other legal counsel or representation in  
27 the negotiation and execution of the ComAg. At no time before, or after, the execution of the  
28 ComAg did Attorney Leckrone terminate the attorney-client relationship that existed between

1 Attorney Leckrone and Plaintiff Moore.

2 23. At the meeting between Attorney Leckrone and Plaintiff Moore, Attorney  
3 Leckrone went through the ComAg with Plaintiff Moore page-by-page and line-by-line. Attorney  
4 Leckrone and Plaintiff Moore put their respective initials at the bottom of each page of the ComAg  
5 that they reviewed, with Attorney Leckrone giving an explanation of each of the provisions of the  
6 ComAg, and of the then-available exhibits to the ComAg. The available exhibits included ComAg  
7 Exhibits A (“License”) and B (“Assignment”); the exhibits did not then include, and have never  
8 included, any Exhibit H, which by its description in the ComAg table of contents was apparently  
9 to have been a document “prohibiting” an attorney-client relationship between Attorney Leckrone  
10 and Plaintiff Moore.

11 24. In undertaking his review of the ComAg with Plaintiff Moore, Attorney Leckrone  
12 stated that no modifications or changes to the ComAg would be allowed; the document he drafted  
13 was in “take it or leave it” form.

14 25. Because Plaintiff Moore had only earlier that year retrieved the two patents that had  
15 been assigned to iTV – and because he was concerned that there be no question that he was  
16 retaining ownership of the MMP Portfolio, granting to Attorney Leckrone’s company TPL only  
17 the right to license the MMP Portfolio – Plaintiff Moore asked for and received oral assurance  
18 from Attorney Leckrone that the agreement that Attorney Leckrone was presenting was a licensing  
19 agreement only, and that the only right being assigned to Attorney Leckrone’s company TPL  
20 under the ComAg was the right to license the MMP Portfolio.

21 26. In addition, one section of the ComAg stated that Plaintiff Moore had retained  
22 independent counsel in connection with the ComAg, and that such independent counsel had  
23 reviewed and approved the ComAg on Plaintiff Moore’s behalf. When Attorney Leckrone  
24 described this language – which he had drafted before meeting with Plaintiff Moore and without  
25 consultation with him – Plaintiff Moore told Attorney Leckrone that he lacked the resources to  
26 retain independent counsel to review the ComAg, had not retained independent counsel for that  
27 purpose, and would not retain independent counsel.

28 27. Plaintiff Moore initialed all pages of the ComAg that were put before him during

1 Attorney Leckrone's review of the document with him, which included the ComAg itself, Exhibits  
2 A, B, C, E, F, and G, and an unsigned copy of a UCC-1 form as Exhibit D. He took an execution  
3 copy of the ComAg with him to his home in the Lake Tahoe area, to review the ComAg with his  
4 wife.

5 28. On or about the next day, having discussed the document with his wife, and having  
6 repeated to her Attorney Leckrone's assurance that the ComAg was a transfer to TPL of the right  
7 to license the MMP Portfolio only, with all other ownership rights remaining with Plaintiff Moore  
8 as the inventor, Plaintiff Moore signed the ComAg, as prepared and drafted by Attorney Leckrone,  
9 without any modification to the terms Attorney Leckrone specified and drafted.

10 29. Upon information and belief, the original of the ComAg remains in existence, in  
11 the custody and control of Defendant TPL. Upon information and belief, the ComAg does not  
12 include and has never included signed copies of Exhibit D (the UCC-1), no copy of which was  
13 ever signed by Plaintiff Moore, or of the agreement suggested by the ComAg table of contents as  
14 "Exhibit H."

15 30. By its terms, the ComAg does not terminate or sever the pre-existing attorney-  
16 client relationship between Attorney Leckrone and Plaintiff Moore; in the time since the ComAg  
17 was executed, Attorney Leckrone has taken no separate or independent steps to sever or terminate  
18 that relationship.

19 31. The substantive terms of the ComAg that Attorney Leckrone drafted for the  
20 signature of Plaintiff Moore were, in pertinent part, as follows-

21 - Plaintiff Moore granted to TPL a license for the purpose of permitting TPL to commercialize the  
22 MMP technology (ComAg, p. 2 & Sec. 1. & 2. thereof; Exhibit A to the ComAg);

23 - Plaintiff Moore granted to TPL a limited assignment of certain rights with respect to the licensed  
24 MMP technology (ComAg, p. 2, Sec. 1.2); specifically, under Exhibit B to the ComAg, Plaintiff  
25 Moore assigned to Defendant TPL a minority share (45%) of Plaintiff Moore's right, title and  
26 interest to the MMP technology, with Plaintiff Moore retaining a majority share (55%) of the  
27 MMP technology.

28 - TPL agreed to exert reasonable efforts to "commercialize" the MMP technology, with the nature,

1 scope and extent of TPL's anticipated efforts spelled out in the ComAg (ComAg Sec. 2);  
2 - certain "Project Expenses" reasonably incurred by TPL were to be charged against the  
3 commercialization project (ComAg Sec. 3.);  
4 - The parties agreed that "...decisions to license, exchange, encumber, transfer, sell, affiliate, or  
5 settle any rights or claim with respect to the Licensed [MMP] Technology shall be evaluated and  
6 discussed by the parties, but shall be the province of TPL." (ComAg Sec. 5.1);  
7 - TPL agreed to pay to Plaintiff Moore a royalty under the licenses granted to TPL, in an amount  
8 equal to Fifty-Five Percent (55%) of a defined "Net Recovery" realized from the revenues  
9 generated by such licenses (ComAg Sec. 6.1.);  
10 - TPL further agreed that within 60 days of the close of each calendar quarter, TPL would deliver  
11 to Plaintiff Moore (1) an operating statement and balance sheet reflecting the Project's financial  
12 activity over that quarter; (2) a calculation of the Net Recovery resulting from the Project  
13 operations and the royalty due thereon; and (3) payment to Plaintiff Moore of the calculated  
14 royalty amount due (ComAg Sec. 6.2.);  
15 - TPL was to disburse the gross proceeds of the Project in accordance with a schedule of priorities,  
16 with those priorities set out in the ComAg (ComAg Sec. 7.); and  
17 - each party was to have a security interest in the Licensed [MMP] Technology and the proceeds  
18 thereto, with that security interest reflected in a UCC-1 in the form of Exhibit D to the ComAg  
19 (ComAg Sec. 7.3).

20       32. TPL's initial efforts at commercializing Plaintiff Moore's MMP technology met  
21 with substantial initial success; upon information and belief, TPL's commercialization efforts for  
22 the MMP technology yielded some \$20 million in 2005; some \$100 million in 2006; and an  
23 additional \$100 million in 2007. At no time, however, did TPL furnish the quarterly reports  
24 mandated by Section 6.2. of the ComAg (leaving Plaintiff Moore unaware of and unable to  
25 comment upon or object to the expenses Defendant TPL might choose to charge against the  
26 royalty payments due to him); rather, TPL made occasional royalty payments to Plaintiff Moore in  
27 the years after 2002, with those payments eventually totaling some \$11 million.

28       33. TPL has never accounted to Plaintiff Moore for its gross revenues and expenses for

1 TPL's commercialization of the MMP Portfolio.

2 34. In or about 2005, TPL and Patriot Scientific Corporation ("PTSC") settled certain  
3 litigation over 50% of the MMP Portfolio as to which ownership had been disputed. As a result of  
4 this settlement of the MMP Portfolio litigation between TPL and PTSC, another  
5 Commercialization Agreement was created, this one between and among TPL, Plaintiff Moore and  
6 PTSC. Under this three-party Commercialization Agreement, TPL assumed full licensing  
7 responsibility for the entirety of all MMP technology (including the MMP Portfolio it had  
8 previously been licensing under the above-described ComAg). In light of the settlement between  
9 TPL and PTSC, and pursuant to the three-party Commercialization Agreement, Plaintiff Moore's  
10 royalty rights were adjusted: TPL gained the right to deduct a flat 15% for its licensing expenses  
11 for the entire MMP Portfolio, with Plaintiff Moore's royalty then to be calculated at 55% of one-  
12 half of the remaining 85% of licensing revenue. TPL's newly gained entitlement to a 15% flat fee  
13 of gross revenues from licensing of the entire MMP Portfolio should have eliminated all further  
14 claim for expenses of the commercialization of the MMP Portfolio. In fact, such expenses have  
15 not only continued to be claimed as offsets against the royalty revenues under the ComAg to  
16 which Plaintiff Moore is entitled, but have purportedly increased – and increased dramatically.

17 35. In or about December 2006, and thereafter, TPL systematically expanded its  
18 licensing arm, Defendant Alliacense. Between 2006 and 2008, TPL added three patent portfolios  
19 to the MMP Portfolio that it was previously licensing, and TPL then began marketing and  
20 commingling its marketing efforts, for all four portfolios.

21 36. Upon information and belief, revenues generated by the MMP Portfolio were  
22 diverted by TPL to support its business expansion into these other, non-related patent portfolios.  
23 Employees at Defendant Alliacense grew from approximately 20 employees (a number more than  
24 sufficient to serve the TPL/Defendant Alliacense MMP Portfolio licensing effort) to over 50  
25 employees. TPL leased additional, more elaborate and more expensive office space. TPL hired  
26 expensive business development personnel to seek additional portfolio opportunities (thus  
27 expanding TPL business into areas that would detract from and decrease the MMP Portfolio  
28 licensing effort). Upon information and belief, all or substantially all of such expenses were borne

1 by the MMP Portfolio and the revenues it continued to generate.

2 37. While TPL expanded its business into non-MMP portfolios, it increasingly  
3 departed from the realm of prudent and reasonable business expenses. Private jets and first-class  
4 travel, for Attorney Leckrone, Defendant Mac Leckrone, Defendant Davis and other TPL and  
5 Defendant Alliacense personnel, became the norm. TPL not only provided chauffeured limousine  
6 service for the use of Attorney Leckrone and others, but actually purchased such limousines at  
7 company expense (charged through to Plaintiff Moore). A San Diego financial analyst was hired,  
8 thus incurring additional unnecessary commute, room and board, and travel expenses. TPL  
9 retained an Executive Vice-President for Administration, a woman who lives in London, England  
10 and who, on information and belief, has and had a close personal relationship with Attorney  
11 Leckrone. Expensive video conferencing equipment was provided for her use, to permit her  
12 attendance, via videoconference, at TPL board and executive meetings. Attorney Leckrone made  
13 visits to this TPL employee in London - via first-class air travel or private jet - once or twice a  
14 month (upon information and belief, there was no TPL or Alliacense business in London).  
15 Substantial meal, entertainment and travel expenses were incurred and passed through to Plaintiff  
16 Moore, including without limitation, travel to Japan, Korea, France and throughout the United  
17 States.

18 38. In addition, Plaintiff Moore is informed and believes that TPL made excessive and  
19 exorbitant expenditures for legal fees, and charged Plaintiff Moore excessive and inappropriate  
20 amounts for such fees, in an excessive and unnecessary amount according to proof at trial. Upon  
21 information and belief, TPL and Attorney Leckrone made secret and undisclosed profits and  
22 returns by reason of such legal fees, again in an amount according to proof at trial.

23 39. The result of TPL and Attorney Leckrone's uncontrolled and unknown binge  
24 spending was the supposed creation of Project Expenses and other expenses at a level that  
25 purportedly precludes any royalty payments to Plaintiff Moore.

26 40. As TPL expanded the scope of Defendant Alliacense's licensing activities, its focus  
27 on the MMP Portfolio was lost. Marketing efforts became diffuse and disorganized; TPL engaged  
28 in cross-licensing and commingling of licenses between and among its patent portfolios,



1 permitting it to create licensing arrangements and to direct revenues as it saw fit; too often, upon  
2 information and belief, in the direction of technologies TPL owned or controlled, and away from  
3 the MMP Portfolio, to the detriment of Plaintiff Moore and of PTSC.

4 41. In or about 2005 and 2006, TPL ceased making regular royalty payments to  
5 Plaintiff Moore, while continuing its prior failure to provide the periodic operating reports of  
6 results and expenses.

7 42. Following dispute and disagreement between TPL and Plaintiff Moore concerning  
8 TPL's failure to make royalty payments to Plaintiff Moore pursuant to the ComAG, TPL and  
9 plaintiff Moore negotiated and agreed, on or about March 20, 2007, to a written "Amendment  
10 Number One To the CHM-TPL Commercialization Agreement" ("ComAg Amendment No.1").  
11 Plaintiff Moore was not represented by counsel during the negotiation of ComAg Amendment No.  
12 1. The only attorney providing nominal guidance to both parties in the negotiation of ComAg  
13 Amendment No. 1 was Roger Cook, Esq., whose firm represented TPL in patent infringement  
14 litigation and whose firm had been paid (and would continue to be paid) by TPL and subject to  
15 Attorney Leckrone's direction and approval, many millions of dollars in legal fees.

16 43. The material terms of ComAg Amendment No. 1 were, in pertinent part, as  
17 follows-

- 18 - TPL's right to charge Project Expenses before distribution to Plaintiff Moore was eliminated as  
19 of January 1, 2006 (ComAg Amendment No. 1, Sec. 1);  
20 - Section 6 of Exhibit C to the ComAg was to be eliminated in its entirety (ComAg Amendment  
21 No. 1, Sec. 2.); in its place was a section devoted to description of TPL's development of certain  
22 Commercialization Activities (ComAg Amendment No. 1, Sec. 2);  
23 - A new provision for payment to Plaintiff Moore provided as follows: "TPL shall use its best  
24 efforts to distribute, within 30 days of receipt, a minimum of Ten Percent (10%) of any gross  
25 proceeds (excluding the Fifteen Percent (15%) fee received pursuant to 6.1(a)(iv)(b) of the  
26 Operating Agreement entered into with Patriot Scientific Corporation and dated June 7, 2005 with  
27 respect to the MMP Portfolio)(Minimum Distribution). Such Minimum Distribution shall be paid  
28 Fifty-Five [Percent] (55%) to [Plaintiff Moore] and Forty-Five [Percent] (45%) to TPL.

1 The latter provision was intended by the parties to provide Plaintiff Moore with prompt payment –  
2 upon any receipt of MMP Portfolio licensing fees – of a portion of the royalty payment to which  
3 Plaintiff Moore was entitled under the ComAg.

4 44. ComAg Amendment No. 1 is and at all times been a separate and severable  
5 agreement from the ComAg.

6 45. Defendant TPL has at all pertinent times since March 20, 2007, been in breach of  
7 ComAg Amendment No. 1, in that Defendant TPL has failed at any time to pay to Plaintiff Moore  
8 his share of the Minimum Distribution specified in paragraph 3 of ComAg Amendment No. 1;  
9 instead, Defendant TPL and Attorney Leckrone offered to pay an advance on such payments to  
10 Moore, consisting of a payment to Plaintiff Moore of \$30,000.00 per month, including \$15,000.00  
11 per month to cover the Plaintiff Moore's anticipated mortgage payment on certain property  
12 purchased and developed by Plaintiff Moore. Defendant TPL made such payments for several  
13 months only; and then ceased making those or any other payments, without notice, leaving  
14 Plaintiff Moore with a substantial mortgage obligation and no revenues to make the mortgage  
15 payments assumed in reliance on Defendants' promise of payment.

16 46. Further, Defendant TPL has breached its obligation, in paragraph 2 of ComAg  
17 Amendment No. 1, carry out the "design, development and commercialization of Array-Processor  
18 Technology and other products based thereon as appear to be economically viable or otherwise  
19 desirable (Array Program)." Instead, after devoting an initial apparent effort to commercialize the  
20 Array Program, Defendant TPL without notice abruptly ended that commercialization effort in or  
21 about January 2009, terminating all employees of the entity devoted to commercialization except  
22 for a single individual.

23 47. Defendant TPL has breached, and has continually been in breach of its obligations  
24 under the ComAg, in that -  
25 - (a) Defendant TPL, having been granted a limited assignment of minority rights (a 45% share) to  
26 and in the licensed MMP technology (ComAg, p. 2, Sec. 1.2), in or about October 2003,  
27 wrongfully converted to its own possession and use all right, title and interest in the most valuable  
28 of the MMP Portfolio, failing at any time to advise or inform Plaintiff Moore of its actions in

1 effecting such conversion through filings with the United States Patent and Trademark Office  
2 (“PTO”). Plaintiff Moore was unaware of Defendant TPL’s wrongful appropriation of the most  
3 valuable patents in the MMP Portfolio until August 2008, when his review of PTO records  
4 revealed that Attorney Leckrone had filed assignment papers with the PTO assigning all rights to  
5 the most valuable patents of the MMP Portfolio to Attorney Leckrone’s company TPL;

6 - (b) Defendant TPL has continually failed to make the 55% of Net Recovery payments due to  
7 Plaintiff Moore under paragraph 6 of the ComAg, (“6. Royalty, Par. 1”);

8 - (c) Defendant TPL has continually failed to provide to Plaintiff Moore the quarterly operating  
9 statement and balance sheet called for in “6.Royalty, Par. 2”, leaving Plaintiff Moore unable to  
10 ascertain what if any licensing revenues were being realized by Defendant TPL and what Project  
11 Expenses and other expenses might be reasonably deducted from those revenues;

12 - (d) In violation of its obligations under ComAg Sec 2, Defendant TPL has failed, since  
13 September 16, 2006, to exert reasonable efforts to “commercialize” the MMP technology, instead  
14 devoting substantial effort, at Plaintiff Moore’s expense and to his detriment, to the development  
15 and commercialization of other patented technologies either owned by Defendant TPL or as to  
16 which TPL had acquired licensing rights; in addition, upon information and belief, Defendant TPL  
17 has commingled its licensing efforts and licenses to third parties, assigning to the MMP  
18 technologies a disproportionately small share of total license revenues, all without Plaintiff  
19 Moore’s knowledge or consent;

20 - (e) Defendant TPL has at no time consulted with Plaintiff Moore with regard to any decision  
21 “... to license, exchange, encumber, transfer, sell, affiliate, or settle any rights or claim with  
22 respect to the Licensed [MMP] Technology ... (ComAg Sec. 5.1); instead, Defendant TPL has  
23 unilaterally made all decisions concerning licensing, and has compounded its failure to consult in  
24 advance by failing, since September 26, 2006, to advise Plaintiff Moore as to any licenses  
25 Defendant TPL has in fact written or of any revenues it has realized by reason of such licenses;

26 - (f) Despite provision for a security interest in the Licensed [MMP] Technology and the proceeds  
27 thereof (ComAg Sec. 7.3), Defendant TPL and Attorney Leckrone have at no time prepared or  
28 delivered up to Plaintiff Moore an executed UCC-1 that would afford Plaintiff Moore his

1 contractually mandated security interest in the MMP Technology.

2 48. Further, Defendant TPL's unchecked, unmonitored, unbudgeted and undisclosed  
3 expenses, and TPL's involvement with other portfolios, also created the basis, upon information  
4 and belief, for similar charges of excess expense, and no supposed profit, net recovery, revenue or  
5 return, for others with patent portfolios which Defendant TPL, Defendant Alliacense and/or  
6 Attorney Leckrone, were to commercialize.

7 49. In particular, Plaintiff Moore is informed and believes that

8 (a) Attorney Leckrone obtained the rights to the so-called "Chipscale" patent portfolio, through  
9 purchase of Chipscale, Inc., the entity that owned those rights. Upon information and belief, the  
10 purchase of Chipscale, Inc., was contracted for by Attorney Leckrone individually; with Attorney  
11 Leckrone obligating himself to pay an agreed-upon amount, over time, for his purchase of the  
12 corporation and its patent rights. Upon information and belief, on or shortly after the date that  
13 Attorney Leckrone closed on his purchase of Chipscale, Inc., he immediately licensed or otherwise  
14 transferred his newly acquired Chipscale portfolio rights to TPL, with TPL supposedly authorized,  
15 under the terms of this transfer, to deduct project expenses and other expenses, allowing for just  
16 the sort of excess expense and abuse that would permit a claim of nothing owed to the Chipscale  
17 seller (just as TPL and the other Defendants have here used such improper and excessive expenses  
18 to deny Plaintiff Moore his royalty payments due for licensing of the MMP Portfolio). Defendant  
19 TPL's manipulation of rights under the Chipscale portfolio have led to litigation by and between  
20 Defendants TPL and Attorney Leckrone, on the one hand, and the Chipscale portfolio seller, with  
21 that litigation presently pending before this Court and known as *Daniel Leckrone v. Phil Marcoux,*  
22 *et al.* (and related cross-action), No. 1-09-CV-159593. Plaintiff Moore requests judicial notice of  
23 the files, records and proceedings of the *Leckrone v Marcoux* action pending before this Court.

24 (b) upon information and belief, a related dispute exists between TPL and the defendants, on the  
25 one hand, and the so-called "Schott group" in Germany, concerning rights to the Chipscale  
26 portfolio in Europe. Upon information and belief, TPL and the defendants herein claim and  
27 contend that their expenses outstrip any revenues received in connection with the Chipscale  
28 portfolio in Europe, and that the Schott group is therefore entitled to no royalty or licensing

1 payments for that reason.

2 (c) Upon information and belief, TPL and the Defendants have made similar charges and claims of  
3 expenses in excess of revenues, to defeat or diminish the rights of the so-called "Thunderbird  
4 group" to payments in connection with licensing of the "FastLogic" portfolio.

5 (d) Upon information and belief, TPL and the Defendants have failed to honor their purchase  
6 agreement with the "OnSpec" company, in connection with TPL's purchase of its affiliated  
7 patents, including the "CoreFlash" portfolio.

8         50. In addition, an individual, Chet Brown, was on information and belief, an investor  
9 in TPL; Mr. Brown's agreement, on information and belief, provided for payments to him based  
10 upon a percentage of the gross of TPL revenues. Upon information and belief, Attorney Leckrone  
11 and TPL deny Mr. Brown's right to payment from gross revenues; again, following the pattern and  
12 practice applied to Plaintiff Moore and others by TPL and the Defendants, Attorney Leckrone is  
13 now claiming the right to deduct his uncontrolled, unmonitored and previously undisclosed  
14 expenses from amounts otherwise due to Mr. Brown. This dispute has produced yet another civil  
15 action before this Court, known as *Brown vs. Technology Properties Limited, LLC, et al.*, and  
16 assigned file no. 1-09-CV-159452 by the clerk of this Court. Plaintiff requests judicial notice of  
17 the files, records and proceedings of this pending *Brown v. TPL* action pending before this Court.

18         51. Defendant TPL has further breached the ComAg and ComAg Amendment No. 1 by  
19 failing to report its results and licensing activities to Plaintiff Moore, thus permitting TPL to avoid  
20 its responsibilities to pay the percentage of the gross (a 55% share of 10% of gross licensing  
21 revenues) mandated by ComAg Amendment No. 1, and the royalties due under the ComAg.

22         52. In addition, in or about April 2010, PTSC became aware that TPL, without notice  
23 or authorization, had commingled an MMP Portfolio license with other portfolios, including, upon  
24 information and belief, the "Chipscale" portfolio in which TPL by then had no rights, and other  
25 portfolios owned by TPL, and licensed the result to a major Silicon Valley electronics and cell  
26 phone firm. The major component, by any measure, of that license was a license of the MMP  
27 Portfolio. TPL and the Defendants, without notice or authorization, upon information and belief,  
28 elected to attribute only five percent (5%) of what was upon information and belief a multimillion-

1 dollar licensing fee to the MMP Portfolio. PTSC filed action against TPL and Defendant  
2 Alliacense for its deception. That action – *Patriot Scientific Corporation v. Technology Properties*  
3 *Limited LLC* – was assigned file no 1-10-CIV-169836 by the clerk of this Court, where it remains  
4 pending, with Plaintiff PTSC upon information and belief having obtained a temporary restraining  
5 order and preliminary injunction against TPL and Alliacense, barring their further licensing of the  
6 MMP Portfolio without express consent of the Plaintiff PTSC. Plaintiff Moore has received no  
7 notice from TPL of this license of the MMP portfolio, its result has not been reported to him, and  
8 he has not received the share of the Minimum Distribution due to him under ComAg Amendment  
9 No. 1. Plaintiff Moore requests judicial notice of the files, records and proceedings of the *Patriot*  
10 *Scientific Corporation v. Technology Properties Limited LLC* action.

11 **FIRST CAUSE OF ACTION**

12 **[Cancellation of Instrument (Fraud of Attorney Leckrone and TPL)**  
13 **– Against All Defendants]**

14 53. Plaintiff Moore repeats and realleges paragraphs 1 through 52 hereof as if the same  
15 were fully set forth herein.

16 54. The ComAg and ComAg Amendment No. 1 are in existence; originals of both  
17 documents, upon information and belief, are in the possession of Defendant TPL or Attorney  
18 Leckrone.

19 55. Plaintiff Moore was, until August 2008, unaware that Defendant TPL, through  
20 Attorney Leckrone, had in October 2003 recorded a purported assignment of all right, title and  
21 interest in the most valuable of the patents underlying the MMP Portfolio, from Plaintiff Moore  
22 (and from the entity iTV that had earlier held an interest in two of those valuable patents), to  
23 Defendant TPL.

24 56. Plaintiff Moore has at no time agreed to assign, transfer or otherwise yield up all or  
25 any part of his rights to the MMP Portfolio as a whole, or to any specific patents, to Attorney  
26 Leckrone's company TPL. Had Plaintiff Moore known, at the time he executed the ComAg, that  
27 Defendant TPL and Attorney Leckrone thereby intended to deprive him of all right, title and  
28 interest in any of his MMP Portfolio patents, Plaintiff Moore would not have entered into the

1 ComAg, or to any of the subsequent amendments thereto.

2 57. Defendant TPL and Attorney Leckrone made the representation that the ComAg  
3 was a licensing agreement, and a licensing agreement alone, to Plaintiff Moore, with the intent of  
4 causing Plaintiff Moore to rely upon that representation. Such reliance by Plaintiff Moore, on a  
5 representation from his attorney who had just recently retrieved rights for him in two of the MMP  
6 Portfolio patents, was reasonable under the circumstances, and Defendant TPL and Attorney  
7 Leckrone's secret intent to deprive Plaintiff Moore of all ownership rights to the most valuable of  
8 his MMP Portfolio patents, were unknown to Plaintiff Moore and could not, in the exercise of  
9 reasonable diligence, have been known to him in or about October 2002, when Attorney Leckrone  
10 submitted the ComAg to Plaintiff Moore on a "take it or leave it" basis.

11 58. Defendants TPL and Leckrone had no intention, at the time they prepared and  
12 promulgated the ComAg, and procured Plaintiff Moore's signature on it, of carrying out its  
13 provisions and in particular, of reserving to Plaintiff Moore his right to own and control the  
14 patents that make up his MMP Portfolio.

15 59. Defendants' fraudulent conduct renders the ComAg and each and all of the  
16 Amendments thereto invalid, and subject to cancellation by this Court.

17 60. Attorney Leckrone and TPL have given Plaintiff Moore no quarterly reports or  
18 regular reports of licensing activities and expense, despite contractual and fiduciary obligations to  
19 do so; Defendant TPL has neither consulted with nor advised Plaintiff Moore of, any licenses of  
20 the MMP Portfolio that TPL (or Alliacense) has issued; TPL and Attorney Leckrone, through  
21 Alliacense, have entered into at least one commingled license of dubious worth and misallocated  
22 proceeds, as described in Paragraph 52 above and in the *Patriot Scientific Corporation v.*  
23 *Technology Properties Limited, LLC* litigation described in Paragraph 52 above. In light of such  
24 facts and circumstances, if the ComAg and its Amendments remain outstanding, Defendant TPL  
25 and Attorney Leckrone will continue to engage in licensing the MMP Portfolio to third parties  
26 without consultation, report of result, concern for proper allocation, and payment of royalties. In  
27 addition, upon information and belief, Defendant TPL is and has been experiencing losses and  
28 cash flow problems; it may in fact be insolvent, or nearly so. Even if Plaintiff Moore were to

1 obtain a judgment for damages against Defendant TPL, such damages would in all likelihood be  
2 uncollectible in substantial part due to the financial condition of Defendant TPL and the  
3 irresponsible behavior of Attorney Leckrone.

4 61. Plaintiff Moore is entitled to general and special damages, in an amount according  
5 to proof, for the unpaid license fees and royalties to which he is entitled, less deduction for  
6 legitimate expenses, if any, that Defendant TPL might be able to demonstrate.

7 62. As alleged above, the actions of Defendant TPL and Attorney Leckrone were made  
8 with the intent to defraud Plaintiff Moore into entering into the ComAg, and Plaintiff Moore is  
9 entitled to an award of punitive and exemplary damages against Attorney Leckrone and Defendant  
10 TPL, in an amount according to proof at trial.

11 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

12 **SECOND CAUSE OF ACTION**

13 **[Cancellation of Instrument (Mistake – Misrepresentations as to Content of Document by**  
14 **Fiduciaries Attorney Leckrone and TPL) – Against All Defendants]**

15 63. Plaintiff Moore repeats and realleges paragraphs 1 through 62 hereof as if the same  
16 were fully set forth herein.

17 64. The ComAg and ComAg Amendment No. 1 are in existence; originals of both  
18 documents, upon information and belief, are in the possession of Defendant TPL or Attorney  
19 Leckrone.

20 65. As alleged above, during 2002, there at all times existed an attorney-client  
21 relationship between, on the one hand, Attorney Leckrone and his company TPL, and on the other  
22 hand, Attorney Leckrone's client Plaintiff Moore.

23 66. During 2002, and at all times since then, Attorney Leckrone and TPL have had and  
24 maintained a close and confidential relationship with Plaintiff Moore,

25 67. At the time that Attorney Leckrone explained the terms of the ComAG he had  
26 drafted to his client Plaintiff Moore, Attorney Leckrone falsely represented that the document gave  
27 to Attorney Leckrone's company TPL only the right and authority to license Plaintiff Moore's  
28 MMP Portfolio. Instead, hidden in the text of an Exhibit B to the ComAg was a provision



1 assigning to TPL all right, title and interest to that percentage of the MMP Portfolio that  
2 corresponded with the percentage of TPL's assigned licensing revenues (45%).

3 68. In addition, in or about October 2003, after execution of the ComAg, Attorney  
4 Leckrone, without notice to Plaintiff Moore and without Plaintiff Moore's knowledge, assigned to  
5 his company TPL all right, title and interest to the most valuable of the MMP Portfolio (including  
6 without limitation the so-called 336, 584, 749 and 890 patents.

7 69. Plaintiff Moore was, until August 2008, unaware that Defendant TPL, through  
8 Attorney Leckrone, had in October 2003 recorded a purported assignment of all right, title and  
9 interest in the most valuable of MMP Portfolio patents.

10 70. Plaintiff Moore has at no time agreed to assign, transfer or otherwise yield up all or  
11 any part of his rights to the MMP Portfolio to Defendant TPL. Had Plaintiff Moore known, at the  
12 time he executed the ComAg, that Defendant TPL and Attorney Leckrone thereby intended to  
13 deprive him of any or all of his right, title and interest to the MMP Portfolio, Plaintiff Moore  
14 would not have entered into the ComAg, or to any of the subsequent amendments thereto.

15 71. Defendant TPL's and Attorney Leckrone's false representation to Plaintiff Moore  
16 that the ComAg and its exhibits constituted a licensing agreement, and a licensing agreement  
17 alone, was made in violation of such defendants' fiduciary obligations to Plaintiff Moore, who  
18 was at all times in a close and confidential relationship with Attorney Leckrone (Plaintiff Moore's  
19 counsel and attorney) and with TPL, Attorney Leckrone's company.

20 72. Plaintiff Moore's mistake in his understanding of what was being transferred in the  
21 ComAg (a mistake arising from the false and misleading summary of the ComAg by his  
22 fiduciary), and Plaintiff Moore's ignorance of Attorney Leckrone's intent to secure for himself and  
23 his company TPL the most valuable of the MMP Portfolio's patents, are grounds for cancellation  
24 of the ComAg and its subsequent amendments.

25 73. Defendants TPL and Leckrone had no intention, at the time they prepared and  
26 promulgated the ComAg, and procured Plaintiff Moore's signature on it, of carrying out its  
27 provisions and in particular, of reserving to Plaintiff Moore his right to own and control his MMP  
28 Portfolio.

1 74. On grounds of mistake, the ComAg and each and all of the Amendments thereto  
2 are invalid, and subject to cancellation by this Court.

3 75. Attorney Leckrone and TPL have given Plaintiff Moore no quarterly reports or  
4 regular reports of licensing activities and expense, despite contractual and fiduciary obligations to  
5 do so; Defendant TPL has neither consulted with nor advised Plaintiff Moore of, any licenses of  
6 the MMP Portfolio that TPL (or Alliacense) has issued; TPL and Attorney Leckrone, through  
7 Alliacense, have entered into at least one commingled license of dubious worth and misallocated  
8 proceeds, as described in Paragraph 52 above and in the *Patriot Scientific Corporation v.*  
9 *Technology Properties Limited, LLC* litigation described in Paragraph 52 above. In light of such  
10 facts and circumstances, if the ComAg and its Amendments remain outstanding, Defendant TPL  
11 and Attorney Leckrone will continue to engage in licensing the MMP Portfolio to third parties  
12 without consultation, report of result, concern for proper allocation, and payment of royalties. In  
13 addition, upon information and belief, Defendant TPL is and has been experiencing losses and  
14 cashflow problems; it may in fact be insolvent, or nearly so. Even if Plaintiff Moore were to obtain  
15 a judgment for damages against Defendant TPL, such damages would in all likelihood be  
16 uncollectible in substantial part due to the financial condition of Defendant TPL and the  
17 irresponsible behavior of Attorney Leckrone.

18 76. Plaintiff Moore is entitled to general and special damages, in an amount according  
19 to proof, for the unpaid license fees and royalties to which he is entitled, less deduction for  
20 legitimate expenses, if any, that Defendant TPL might be able to demonstrate.

21 77. As alleged above, the actions of Defendant TPL and Attorney Leckrone were made  
22 with the intent to defraud Plaintiff Moore into entering into the ComAg, and Plaintiff Moore is  
23 entitled to an award of exemplary and punitive damages against Defendant TPL and Attorney  
24 Leckrone, in an amount according to proof at trial.

25 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

26 **THIRD CAUSE OF ACTION**

27 **[For Rescission of ComAg -- Against Defendant TPL and Attorney Leckrone]**

28 78. Plaintiff Moore repeats and realleges paragraphs 1 through 77 hereof as if the same

1 were fully set forth herein

2 79. The attorney-client relationship between, on the one hand, Attorney Leckrone and  
3 his company TPL, and on the other hand, Plaintiff Moore, was of the highest fiduciary character.

4 80. In imposing the ComAg on his client, Attorney Leckrone and his company TPL  
5 assumed the burden of burden of establishing by clear and satisfactory evidence that the  
6 transaction was fair and equitable, and that Plaintiff Moore was fully informed as to all matters  
7 relative to the transaction.

8 81. Instead, the ComAg is the product of insufficient consideration from Attorney  
9 Leckrone and his company TPL, and undue influence of both on Plaintiff Moore.

10 82. As alleged above, Plaintiff Moore did not discover the true facts concerning  
11 Attorney Leckrone and TPL's conversion of the most valuable of the MMP Portfolio patents to  
12 TPL's purported ownership and use until August 2008. The fact of such conversion were  
13 discovered by Plaintiff Moore through his own investigation, and without disclosure by Attorney  
14 Leckrone or his company TPL, despite their obligation to keep Plaintiff Moore informed as to all  
15 matters relative to the transaction.

16 83. Plaintiff Moore has suffered substantial financial injury and loss, and will continue  
17 to suffer such injury, unless and until the ComAg and its subsequent amendments are rescinded.

18 84. Plaintiff Moore intends service of the summons and complaint in this action to  
19 constitute his notice of rescission of the ComAg and its subsequent amendments. Plaintiff Moore  
20 hereby offers to restore to Attorney Leckrone and TPL all consideration received by Plaintiff  
21 Moore, subject to offset of such amount in its entirety by the amounts found to be due and owing  
22 to Plaintiff Moore from Attorney Leckrone and TPL, all in amounts subject to accounting and  
23 proof at trial.

24 85. In performing the acts hereinbefore alleged, Attorney Leckrone and his company  
25 TPL intentionally misrepresented that the ComAg was a licensing agreement only, that ownership  
26 of the MMP Portfolio would remain with Plaintiff Moore, and that TPL would pay to Plaintiff  
27 Moore as a royalty his specified percentage of revenues (55%), less reasonable Project Expenses,  
28 all with the intent to induce Plaintiff Moore to enter into the ComAg to defendants' benefit; an

1 award of punitive damages against Attorney Leckrone and TPL is thereby justified.

2 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

3 **FOURTH CAUSE OF ACTION**

4 **[In the alternative to Causes of Action One, Two and Three:**  
5 **Against Defendant TPL and Attorney Leckrone, For Rescission of ComAg Amendment 1**  
6 **and Damages as a Promise Made Without Intent To Perform]**

7 86. Plaintiff Moore repeats and realleges paragraphs 1 through 52 hereof as if the same  
8 were fully set forth herein.

9 87. At all times to and through the negotiation of ComAg Amendment No. 1,  
10 Defendant TPL and Attorney Leckrone were in a position of trust and authority with respect to  
11 Plaintiff Moore, having control over licensing activities authorized by the ComAg, having  
12 exclusive knowledge concerning the nature, scope and revenues of such licensing activities,  
13 having the duty to report the results of such licensing activities and having the duty to pay  
14 royalties to Plaintiff Moore based upon revenues received less Project Expenses incurred, both  
15 amounts known only to Defendant TPL and Attorney Leckrone.

16 88. TPL and Attorney Leckrone made no regular or periodic reports of their licensing  
17 activities to Plaintiff Moore, leaving him completely dependent upon their honest and faithful  
18 reporting of revenues received, and allowable expenses that might be offset against such revenues.

19 89. TPL and Attorney Leckrone ceased making payments to Plaintiff Moore months  
20 before March 2007.

21 90. In the negotiations leading up to the March 2007 ComAg Amendment No. 1,  
22 Defendants TPL and Leckrone promised Plaintiff Moore that, to ensure his receipt of some  
23 income from every license they were able to negotiate of Plaintiff Moore's MMP Portfolio, they  
24 would advance to Plaintiff Moore 55% (fifty-five percent) of 10% (ten percent) of the gross  
25 revenues from every such MMP license.

26 91. In addition, Plaintiff Moore had by that point invented the so-called "Array"  
27 Technology, and had obtained patents on that technology, which he wished to have developed to a  
28 point where it might be licensed or commercially exploited. Defendants TPL and Attorney  
Leckrone further promised that if Plaintiff Moore provided them with exclusive licensing rights to

1 Array Technology patents, they would utilize their expertise, and part of revenues otherwise  
2 payable to Plaintiff Moore under the existing ComAg, to develop the Array Technology to the  
3 point where it could be licensed and otherwise commercially exploited.

4 92. At the time defendants made such promises to Plaintiff Moore, they had no  
5 intention of performing them.

6 93. Defendants' promises were made by Defendants TPL and Leckrone with the intent  
7 to induce Plaintiff Moore to refrain from enforcing his rights to revenues under the ComAg, and to  
8 give up his rights to develop and exploit the Array Technology that he had invented.

9 94. Plaintiff Moore, at the time that defendants' promises were made and the ComAg  
10 Amendment No. 1 was negotiated and signed, was ignorant of defendants' secret intention not to  
11 perform and could not, in the exercise of reasonable diligence, have discovered defendants' secret  
12 intentions not to perform. In reasonable and justifiable reliance on defendants' promises, Plaintiff  
13 Moore agreed to ComAg Amendment No. 1. Had Plaintiff Moore known the true facts, he would  
14 not have taken such action, but would have relied upon his existing rights under the ComAg and  
15 taken steps to enforce those rights.

16 95. Defendants failed to abide by their promises. They have at no time paid to Plaintiff  
17 Moore any percentage of gross revenues, concealing the fact and amount of those revenues. They  
18 have provided no regular, periodic or other accounting to Plaintiff Moore of the licenses that TPL  
19 has written, or of the revenues TPL has received from those licenses. Further, defendants  
20 deliberately or recklessly hired employees and paid excessive and unwarranted expenses, some  
21 upon information and belief having nothing to do with development of Array Technology, charged  
22 Plaintiff Moore for those expenses, and then – unilaterally and without notice to Plaintiff Moore –  
23 terminated all effort to develop Array Technology in or about 2009.

24 96. But for defendants' wrongful disavowal of their promised actions and behavior,  
25 Plaintiff Moore would have realized substantial revenues and would by now be in a position to  
26 develop and exploit Array Technology, which defendants to the date hereof refuse to restore to  
27 Plaintiff Moore.

28 97. By reason of defendants' actions, Plaintiff Moore has been damaged in an amount

1 according to proof at trial, but reasonably believed to exceed \$20 million.

2 98. The aforementioned conduct of the defendants was an intentional  
3 misrepresentation, deceit or concealment of a material fact known to the defendants, with the  
4 intention on the part of the defendants of thereby depriving Plaintiff Moore of property or legal  
5 rights or otherwise causing injury, and was despicable conduct that subjected Plaintiff Moore to a  
6 cruel and unjust hardship in conscious disregard of his rights, so as to justify an award of  
7 exemplary and punitive damages.

8 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

9 **FIFTH CAUSE OF ACTION**

10 **[Conspiracy To Commit Fraud – Against All Named Defendants and DOES 1 – 10]**

11 99. Plaintiff Moore repeats and realleges Paragraphs 1 through 52 and 87 through 98  
12 hereof as if the same were fully set forth herein.

13 100. In or about 2007, Defendants and each of them knowingly and willingly conspired  
14 and agreed among themselves to charge exorbitant, unreasonable and illegitimate fees and  
15 expenses to Plaintiff Moore under the ComAg, in amounts that they knew would preclude any  
16 payments of royalties to Plaintiff Moore.

17 101. As hereinbefore alleged, and to lull Plaintiff Moore into acceptance and inaction,  
18 Defendants suggested and thereafter negotiated the supposed “percentage of the gross” payment  
19 modification set out in ComAg Amendment 1, under which Plaintiff Moore was supposedly  
20 assured a payment of 55% of 10% of gross licensing revenues, without regard to the expenses  
21 Defendants had incurred and would continue to incur.

22 102. Defendants did the acts and things alleged herein pursuant to, and in furtherance of,  
23 the conspiracy and the above-alleged agreement.

24 103. ComAg Amendment No. 1 has been honored in its breach; no percentage of gross  
25 licensing revenues has ever been paid to Plaintiff Moore; no disclosure of gross licensing revenues  
26 has ever occurred.

27 104. Plaintiff Moore is informed and believes that the last known overt act in pursuance  
28 of the above-described conspiracy occurred in or about April 2010, when the license described in

1 Paragraph 52 hereof was issued, without notice to Plaintiff Moore, without disclosure, then or  
2 since then, to Plaintiff Moore as to the gross revenues received through such license, and to the  
3 financial injury of Plaintiff Moore and of PTSC, as described in Paragraph 52.

4 105. Plaintiff Moore, deprived of any reporting of gross license revenues, any notice of  
5 licenses negotiated or issued, and any payment of his ComAg Amendment No. 1-specified  
6 percentage of the gross, had no knowledge of Defendants' fraud until learning, from third party  
7 sources, of the issuance of the license described in Paragraph 52 above.

8 106. As a proximate result of the wrongful acts herein alleged, Plaintiff Moore has been  
9 generally damaged, in an amount according to proof.

10 107. As a proximate result of the wrongful acts herein alleged, Plaintiff Moore has been  
11 specially damaged in that he has not been paid the royalties due him under the ComAg, all in an  
12 amount according to proof, plus prejudgment interest thereon at the legal rate.

13 108. In doing the things alleged herein, Defendants acted fraudulently and willfully, and  
14 with the intent to cause injury to Plaintiff Moore, in conscious disregard of Plaintiff Moore's  
15 rights, thereby warranting an assessment of punitive damages in an amount according to proof  
16 appropriate to punish Defendants and deter others from engaging in similar misconduct.

17 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

18 **SIXTH CAUSE OF ACTION**

19 **[Breach of Contract -- Against TPL and Defendant Alliacense]**

20 109. Plaintiff Moore repeats and realleges Paragraphs 1 through 52 hereof as if the same  
21 were fully set forth herein.

22 110. Plaintiff Moore has performed all conditions, covenants and promises required on  
23 his part under the ComAg and the amendments thereto.

24 111. As of September 27, 2006, and continuously since that date, TPL and Defendant  
25 Alliacense have been in breach of the ComAg for, among other things-

26 - failing to advise Plaintiff Moore of license revenues written;

27 - failing to advise Plaintiff Moore of licensing revenues received;

28 - failing to set-off only reasonable, necessary and disclosed expenses against license revenues

1 received, instead using the device of such improper and/or illegitimate expenses to increase the  
2 revenues to Defendants at the expense of royalties due to Plaintiff Moore;  
3 - failing to pay Plaintiff Moore royalties due him under the ComAg;  
4 - failing to pay Plaintiff Moore his specified percentage of gross revenues received under ComAg  
5 Amendment No. 1;  
6 - allowing the submission and recordation at the PTO of documents claiming and supposedly  
7 establishing assignee status and ownership rights in TPL of patents with substantial value that are  
8 and should remain a part of Plaintiff Moore's MMP Portfolio;  
9 - misallocating license proceeds in commingled patents, to decrease the amount of license revenue  
10 due for license of the MMP Portfolio, and increasing the amount of license revenue supposedly  
11 due for license of other patents owned, controlled or misappropriated by TPL.

12 112. As a result of the foregoing breaches of the ComAg and its amendments, Plaintiff  
13 has suffered general and special damages, in an amount according to proof.

14 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

15 **SEVENTH CAUSE OF ACTION**

16 **[For Constructive Trust and Accounting -- Against Defendant TPL and Attorney Leckrone]**

17 113. Plaintiff Moore repeats and realleges paragraphs 1 through 52 hereof as if the same  
18 were set forth in full herein.

19 114. As alleged above, Plaintiff Moore holds an interest in unpaid license proceeds  
20 under the ComAg.

21 115. Defendants TPL and Attorney Leckrone have and hold, and have wrongfully  
22 converted to their own use, substantial license proceeds from licenses of the MMP Portfolio, in  
23 amounts that substantially exceed any right, claim or entitlement to such proceeds.

24 116. By virtue of such defendants' wrongful acts, they hold the converted funds, in an  
25 amount according to proof, in constructive trust for the benefit of Plaintiff Moore.

26 117. Plaintiff Moore has repeatedly requested and demanded the statements of licensing  
27 revenues and expenses that are his right.

28 118. Defendants have refused, and continue to refuse, to provide the requested



1 information concerning licensing revenues and expenses.

2 119. Plaintiff Moore does not know the exact amount of the royalties to which he is  
3 entitled, and an accounting is necessary to determine the amount of the royalties due to him, in  
4 that Plaintiff Moore remains ignorant of the licenses issued on his MMP Portfolio, the gross  
5 revenues received, the amounts paid to PTSC, the amounts received by TPL and Alliacense, and  
6 the legitimate expenses that TPL and Alliacense may be entitled to deduct in determining the  
7 ComAg royalties due to Plaintiff Moore.

8 WHEREFORE, Plaintiff Moore prays judgment as set forth below.

9 **EIGHTH CAUSE OF ACTION**

10 **[Preliminary and Permanent Injunction -- Against All Defendants]**

11 120. Plaintiff Moore repeats and realleges Paragraphs 1 through 52 hereof as if the same  
12 were set forth in full herein.

13 121. Plaintiff Moore has received no information concerning licenses written by TPL  
14 and Alliacense, despite repeated request and demand for such information.

15 122. Plaintiff Moore has received no royalty payments from TPL since July 2008;  
16 Plaintiff Moore has received no payment at all from TPL since November 2009.

17 123. TPL and Alliacense continue to write MMP Portfolio licenses; they wrote a  
18 commingled license, wrongfully diverting license revenue away from PTSC and Plaintiff Moore  
19 in April 2010; they have written a license to Dresser, Inc., with announcement made of such  
20 license not by TPL but by PTSC, on September 24, 2010; they have given no notice of such  
21 licenses to Plaintiff Moore, paid him none of the percentage of gross license revenues due to him  
22 under the ComAg, and paid him none of the royalties due to him under the ComAg.

23 124. Defendants' wrongful withholding of information and financial results, and refusal  
24 to pay licensing royalties or a percentage of the gross to Plaintiff Moore, unless enjoined and  
25 restrained by order of this Court, will cause great and irreparable injury to Plaintiff Moore in that  
26 (a) Plaintiff Moore's right, title and interest in his MMP Portfolio will be clouded or defeated by  
27 transfer, sale, or encumbrance, unless a prohibition against transfer is entered by this Court; and  
28 (b) in view of TPL and Alliacense's shaky financial condition, either or both may collapse

1 financially, leaving Plaintiff Moore unable to collect the money judgment that he will gain in this  
2 action.

3 125. Plaintiff has no adequate remedy at law for such injury.

4 WHEREFORE, Plaintiff Moore prays judgment as follows:

5 **On his First Cause of Action, as to all Defendants:**

6 1. That the ComAg and the Amendments thereto be declared void as fraudulently  
7 induced;

8 2. That Defendant TPL deliver the ComAg and the Amendments thereto to the Clerk of  
9 this Court for cancellation;

10 3. That Plaintiff Moore be awarded damages against Defendant TPL and Attorney  
11 Leckrone, in an amount according to proof at trial, plus interest thereon from the date that such  
12 damages came due to Plaintiff, at the rate of 7 percent per annum or such other rate as the Court  
13 may set;

14 4. For exemplary and punitive damages against Defendant TPL and Attorney Leckrone.

15 **On his Second Cause of Action, as to all Defendants:**

16 5. That the ComAg and the Amendments thereto be declared void as the result of  
17 mistake;

18 6. That Defendant TPL deliver the ComAg and the Amendments thereto to the Clerk of  
19 this Court for cancellation;

20 7. That Plaintiff Moore be awarded damages against Defendant TPL and Attorney  
21 Leckrone, in an amount according to proof at trial, plus interest thereon from the date that such  
22 damages came due to Plaintiff, at the rate of 7 percent per annum or such other rate as the Court  
23 may set;

24 8. For exemplary and punitive damages against Defendant TPL and Attorney Leckrone.

25 **On his Third Cause of Action, as to all Defendants:**

26 9. That this Court declare that the ComAg and the Amendments thereto have been  
27 rescinded;

28 10. That Attorney Leckrone and TPL be directed to pay to Plaintiff Moore 55% of the

1 license fees received for licenses of the MMP Portfolio written by TPL and/or Alliacense, after  
2 deduction of the reasonable, legitimate and appropriate expenses of such licensing activity;

3 11. That Plaintiff Moore be awarded punitive damages against Defendant TPL and  
4 Attorney Leckrone, in an amount according to proof at trial;

5 12. For interest at the legal rate on damages awarded.

6 **On his Fourth Cause of Action, as to Defendant TPL and Attorney Leckrone:**

7 13. That this Court declare that ComAg Amendment No. 1 has been rescinded;

8 14. That Plaintiff Moore restore to Defendant TPL and Attorney Leckrone all benefit  
9 received under ComAg Amendment No. 1, conditioned on Defendant TPL and Attorney Leckrone  
10 restoring to Plaintiff Moore their benefits received, including without limitation, the Array  
11 Technology, plus net damages found to be due and owing;

12 15. That Plaintiff Moore be awarded punitive damages against Defendant TPL and  
13 Attorney Leckrone, in an amount according to proof at trial.

14 **On his Fifth Cause of Action, as to all Defendants:**

15 16. For general damages according to proof;

16 17. For special damages according to proof, plus interest thereon at the legal rate;

17 18. For punitive and exemplary damages, in an amount according to proof at trial.

18 **On his Sixth Cause of Action, as to Defendant TPL and Attorney Leckrone:**

19 19. For general damages according to proof;

20 20. For special damages according to proof, plus interest thereon at the legal rate;

21 **On his Seventh Cause of Action, as to Defendant TPL and Attorney Leckrone:**

22 21. For funds converted and held by Defendant TPL and by Attorney Leckrone, in an  
23 amount according to proof;

24 22. For interest at the legal rate on the funds converted;

25 23. For an order that such defendants hold the converted funds in constructive trust for  
26 Plaintiff Moore;

27 24. For an order declaring Plaintiff Moore to be the legal owner of the converted funds;

28 25. For an order compelling defendants to convey the funds to Plaintiff Moore;

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26. For an accounting of all monies found owing to Plaintiff Moore;

27. For damages in the amount of all monies found owing to Plaintiff Moore.

**On his Eighth Cause of Action, as to all defendants:**

28. For a preliminary injunction and a permanent injunction all enjoining defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them:

(a) From assigning, selling, encumbering or otherwise transferring the whole or any part of any or all of those patents known as the MMP Portfolio that are the subject of that certain agreement known as the "Commercialization Agreement Between Technology Properties Limited and Charles H. Moore," dated as of October 21, 2002 (the "ComAg"); and

(b) From issuing any license of the whole or any part of the MMP Portfolio without first disclosing the prospective terms of such license to Plaintiff Charles H. Moore and obtaining the consent of Plaintiff Moore to such license, which consent shall not be unreasonably withheld;

29. For damages according to proof.

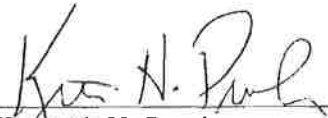
**On all Causes of Action:**

30. For costs of suit incurred in this action; and

31. For such other and further relief as the Court deems proper.

Dated: September 26, 2010

CHILES AND PROCHNOW, LLP

By:   
Kenneth H. Prochnow  
Attorneys for Plaintiff Charles H. Moore

# EXHIBIT 2

COMMERCIALIZATION AGREEMENT

Between

TECHNOLOGY PROPERTIES LIMITED

and

CHARLES H. MOORE

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Exhibit     A

## COMMERCIALIZATION AGREEMENT

This Commercialization Agreement ("ComAg") is entered into by and between Charles H. Moore ("CHM") on the one hand, and Technology Properties Limited, ("TPL") a California corporation on the other hand:

WHEREAS, CHM is the owner of Moore Microprocessor ("MMP") technology; and

WHEREAS, the commercialization of the MMP technology has proven to be a complex and burdensome task; and

WHEREAS, CHM intends to license to TPL the rights with respect to the MMP technology in return for the commitment of TPL to pursue the commercialization thereof.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained as well as of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is covenanted and agreed by and between the parties hereto that:

### 1. License and Assignment.

1.1. CHM shall grant unto TPL a broad license in the form of Exhibit A ("License") with respect to the MMP technology described therein and collectively referred to as the "Licensed Technology".

1.2. CHM shall grant unto TPL a limited assignment in the form of Exhibit B ("Assignment") with respect to the Licensed Technology.

### 2. Commercialization.

2.1. TPL shall exert reasonable efforts to:

2.1.1. Oversee the identification, protection, and enhancement of the Licensed Technology;

2.1.2. Encourage the implementation and use of the Licensed Technology pursuant to sub-licenses or other agreements or relationships;

2.1.3. Discourage the unauthorized use of the Licensed Technology; and,

2.1.4. Turn the Licensed Technology into income-producing, commercially valuable property;

hereinafter collectively referred to as "Commercializing" or

"Commercialization", in accordance with the Project Description attached as Exhibit C as from time to time amended, supplemented, and updated by mutual agreement between the parties ("Project"). TPL shall have no obligation to independently pursue or fund any effort to prosecute, maintain, enforce, or defend any element of the Licensed Technology other than as specifically provided for in Exhibit C.

2.2. By these presents CHM appoints, authorizes, and directs TPL to act for and on behalf of CHM and in its place and stead:

- (i) for the term of this ComAg with respect to all matters related to the Commercialization of the Licensed Technology; and
- (ii) for the duration of any transaction executed during the term of this ComAg with respect to all matters pertaining to such transaction.

Upon request CHM shall promptly execute and deliver all documents, instruments, and things necessary or useful in the conduct of TPL's activities hereunder.

2.3. CHM shall on a continuing basis provide TPL all leads, information, and materials which CHM encounters or discovers which may relate to MMP applications and shall limit direct communication with third parties regarding the MMP technology.

2.4. No provision or element of this ComAg shall for any purpose be deemed to give rise to a relationship of principal and agent or co-venturer between TPL and CHM.

### 3. Licensing Services.

3.1. TPL shall utilize the services of its licensing personnel (who may be lawyers) to manage and implement the Commercialization of the Licensed Technology. Their time shall be charged against the Project as Project Expenses at their respective hourly rates in accordance with Exhibit F. Such services shall for no purpose be deemed to be legal services or to give rise to a lawyer-client relationship between TPL and/or TPL representatives and CHM.

3.2. The additional professional and consulting services necessary to implement and execute the Project shall be procured by TPL and charged against the Project as Project Expenses.



3.3. Stenographic, administrative, and related services and expenses necessary to support the activities of TPL related to the Project shall be charged against the Project as Project Expenses in accordance with billing conventions and SOPs from time to time implemented by TPL and currently reflected at Exhibit F.

3.4. CHM shall make the information, documentation, and expertise it has developed available to TPL and shall exert its best efforts to support the commercialization activities of TPL hereunder. All related CHM time (\$100/hr) and expenses shall likewise be treated as Project Expenses.

#### 4. Development Services

4.1. CHM shall exert its best efforts to structure and complete agreed upon SER Development Programs under Consulting Agreements with TPL protecting both the confidentiality and the ownership of the Program and its results, and assuring payment to CHM for its Development Services pursuant to the terms thereof.

4.2. Unless otherwise provided for, TPL shall hold the title to Development Program results for commercialization pursuant to the terms hereof.

#### 5. Authority.

5.1. Except as otherwise provided for with respect to a given Project, decisions to license, exchange, encumber, transfer, sell, affiliate, or settle any right or claim with respect to the Licensed Technology shall be evaluated and discussed by the parties, but shall be the province of TPL. However, any transaction involving the totality of the Licensed Technology on an exclusive basis shall require the concurrence of CHM.

5.2. TPL shall have full right and authority to pursue in the name of CHM and/or TPL all rights of whatsoever kind or nature arising under this ComAg and Attachments.

#### 6. Royalty.

6.1. Except as otherwise provided for with respect to a given Project, TPL shall pay to CHM as a royalty under the License an amount equal to Fifty-five (55%) of the Net Recovery pursuant to section 7 hereof.

6.2 Within sixty (60) days after the close of each calendar quarter TPL shall deliver to CHM: (i) an operating statement and balance sheet reflecting the Project's financial activity over the

past quarter; (ii) a calculation of the Net Recovery resulting from the Project operations and the royalty due thereon; and (iii) payment of the calculated royalty amount due.

6.3. Within thirty (30) days after receipt thereof, CHM shall deliver to TPL written notice detailing any objections to such materials and calculations on an item by item basis. Otherwise, any objection shall be deemed to be waived.

7. Payments and Priorities.

7.1. TPL shall utilize and disburse the gross receipts of the Project in accordance with the following schedule of priorities:

7.1.1. First, to the ratable payment of all Project disbursements, charges and expenses made or approved by TPL in connection with the Project and/or this ComAg ("Project Expenses"), including specifically ratable payments to TPL and CHM.

7.1.2. Next, to the accumulation and maintenance of a working capital fund in an amount equal to the anticipated budget for the next two quarters, but in no event less than \$500,000.

7.1.3. Except as otherwise provided for with respect to a given Project, the balance or "Net Recovery" shall be utilized for the satisfaction of:

(i) The Royalty due CHM under Section 6 hereof;  
and,

(ii) The Percentage Interest of TPL which is the mathematical complement of the said Royalty, or the balance of the Net Recovery after the payment of the said Royalty.

7.3. Both CHM and TPL shall have a security interest in the Licensed Technology and the proceeds thereof with respect to all rights, entitlements, and claims arising under or in connection with this ComAg and/or its Exhibits, to be reflected in a UCC-1 in the form of Exhibit D and from time to time amended as appropriate.

8. Unused.

9. Term.

9.1. This ComAg shall continue for the useful life of the Licensed Technology. That is, the greater of the period of time

over which the Licensed Technology either (i) produces income, (ii) is susceptible to legal protection, or (iii) is reasonably perceived to have commercial value.

9.2. In the event that facts or events are discovered or occur which materially reduce TPL's evaluation of the useful life or commercial value of the Licensed Technology, TPL may reduce the term of this ComAg accordingly by providing CHM with 90 days written notice.

9.3. After the expiration of the term hereof, the respective interests of the parties in the Licensed Technology shall continue, but neither party shall have any further obligation hereunder other than the administration of all outstanding transactions as under Section 11 below, and the obligations of confidentiality undertaken by the parties in connection herewith.

10. Default. The failure of either party to pay or perform any obligation by it to be paid or performed hereunder within ninety (90) days after receipt of written notice from an Arbitrator under Section 14.5. below shall constitute an event of default hereunder. Such notice shall detail the non-performance and the acceptable corrective action as determined in expedited arbitration under Section 14.5 below.

10.1. An event of default under Section 10.1. above shall entitle the non-defaulting party to:

10.1.1 Suspend all or any portion of its performance due hereunder pending completion of such curative or corrective action;

10.1.2. Arrange for appropriate substitute performance; and/or,

10.1.3. Terminate this ComAg, in which case all claims for loss and/or damages shall be deemed to be liquidated, resolved, and discharged upon the completion of the transfers contemplated by Section 11.

11. Termination.

11.1. On the effective date of a termination of this ComAg under the provisions of Section 10 above:

11.1.1. All rights of TPL in the Licensed Technology shall be transferred to CHM subject to all outstanding rights under licenses, agreements, or awards theretofore made and entered into by or with TPL prior to such effective date which, for all

purposes, shall continue and be administered by TPL as if this ComAg were still in full force and effect.

11.1.2. All Project Expenses due TPL shall be paid first from all available proceeds, with any unpaid portion payable first from all proceeds of the Licensed Technology.

11.1.3. The Royalty portion of any undistributed Net Recovery including that portion of the working capital fund not reasonably necessary to support TPL's ongoing obligations hereunder shall be distributed to CHM.

11.2. Plans, efforts, overtures, and negotiations which had been initiated prior to the termination hereof ("antecedent activities") shall, upon the occurrence of a result, entitle TPL to a ratable share of the interest in such result which TPL would have earned hereunder but for such termination. The ratable share shall be that portion of such interest which bears the same relationship to the entire interest as the amounts paid and payable to TPL with respect to antecedent activities bears to the entire amount expended in obtaining the result, but shall in no event represent less than one-half of TPL's original interest. Such ratable share shall vest in TPL without further action. All proceeds and incidents of any such result shall be transferred directly into an independent escrow resident in Santa Clara County and approved CHM and TPL for distribution pursuant to the joint instructions of CHM and TPL. To the extent that any portion of any such proceeds or incidents is attempted to be transferred to anyone other than such independent escrow, all right and title thereto shall for all purposes be deemed to have vested in TPL absolutely.

11.3. For a period of five years following any termination hereof, the parties shall quarterly provide each other notice of all activities involving the Licensed Technology, including full details with respect to all proceeds or incidents.

## 12. Independent Advisor.

12.1. TPL and its representatives have prepared this ComAg at the request of CHM and neither TPL nor its representatives have for any purpose undertaken the representation of or entered into a lawyer/client relationship with CHM or any of its representatives.

12.2. CHM releases, acquits, and agrees to hold TPL and its representatives harmless with respect to all claims of whatsoever kind or nature related to the preparation, execution, and delivery of this ComAg.

12.3. CHM has sought and received the advice of

independent counsel and is in no way relying on any advice or representations of TPL or its representatives.

13. Representations.

13.1. CHM represents and warrants that: (i) it is the sole owner and for the term of this ComAg will remain the sole owner of all right, title, and interest in and to the Licensed Technology, excepting only the rights reflected at the Schedule of Outstanding Activities/Rights/Claims attached as Exhibit E; and, (ii) that there are no outstanding agreements, rights or interests which are inconsistent with the provisions of this ComAg or could give rise to such rights or interests.

13.2. CHM shall for no purpose be deemed to have made any representation or warranty regarding the validity or non-infringement of the Licensed Technology or any patent related thereto.

14. General.

14.1. In no event shall any right, duty, or privilege arising hereunder be assigned by either party without the prior written consent of the other party, and any attempted or purported assignment without such consent shall be voidable at the option of the non-consenting party.

14.2. Any covenant requiring a party to perform or provide an act or service shall be construed to impose upon such party the burden of the cost thereof unless otherwise provided for herein.

14.3. Section titles are intended only to aid and assist the reader as an index device and are not intended to be descriptive of the contents of the section or to be used for construction or interpretation.

14.4. The failure of any provision of this Agreement by virtue of its being construed as invalid or otherwise unenforceable shall render the entire Agreement cancelable at the option of the party asserting the enforceability of the said provision.

14.5. All rights and obligations under this Agreement shall be resolved as if all persons and all transactions related to this Agreement had their legal residence, situs, and employment in Santa Clara County, California. Members of the most senior management level of the parties shall meet and exercise their best efforts to resolve any dispute under this Agreement, and if unsuccessful, submit such to expedited binding arbitration under the rules of the American Arbitration Association with discovery in general accordance with the Federal Rules of Civil Procedure.

All costs related to the discovery shall be paid in advance by the requesting party. The cost of translating into English all discoverable materials and of providing a contemporaneous translation into English of all live testimony shall be paid in advance by the party which produces or gives the non-English language materials or testimony. All other expenses incurred by the parties in connection with the Arbitration (including reasonable attorney's fees) shall be awarded against the party initiating the Arbitration unless the award is substantially more favorable than the best proposal made by the respondent more than thirty days prior to the scheduled Arbitration proceeding, in which case such expenses shall be equitably apportioned between the parties.

14.6. All notices shall be in writing and effective upon delivery or upon posting by certified mail, return receipt requested, addressed as follows (or such other address as may be hereafter designated):

If to TPL:

Technology Properties Ltd.  
P O Box 20250  
San Jose, CA 95160

Tel: 408-243-9898  
Fax: 408-296-6637

If to CHM:

Charles H. Moore  
40 Cedar Ln  
PO Box 127,  
Sierra City CA 96125  
Tel: 530-862-1282  
Efax: 413-714-5590

14.7. This Agreement together with its exhibits and attachments contains the entire agreement between the parties and supersedes any and all other agreements between them relating to the subject matter hereof.

14.8. All copies of all information and materials obtained or generated by or for TPL in connection with this Project as well as all inventions, developments, and discoveries conceived or reduced to practice in the course of work by or for TPL in connection with this Project shall be the confidential proprietary property of TPL and subject to the right of the Project to the use thereof on a royalty-free basis. No element of any such information or material shall be made available to any person or used for any purpose without the prior written consent of TPL.

## 15. Indemnification.

15.1. TPL shall defend, indemnify, and hold CHM harmless with respect to any liability, loss, or expense arising out of a claim based upon the conduct of TPL and asserted by a third party unrelated to CHM. Provided, however, that TPL shall have been given prompt notice of the claim, and control over the defense and settlement thereof.

15.2. All rights and entitlements of CHM in the Licensed Technology and/or this Agreement may be used and applied by TPL to defend, indemnify, and hold TPL harmless with respect to any liability, loss, or expense arising out of a claim based upon the conduct of CHM and asserted by a third party unrelated to TPL. Provided, however, that CHM shall have been given prompt notice of the claim.

15.3. For purposes of this Section 15, each party shall be responsible for the acts of its officers, directors, shareholders, employees, attorneys, agents, and persons related thereto or affiliated therewith.

16. Attachments.

- 16.1. EXHIBIT A: LICENSE
- 16.2. EXHIBIT B: ASSIGNMENT
- 16.3. EXHIBIT C: PROJECT DESCRIPTION
- 16.4. EXHIBIT D: UCC-1
- 16.5. EXHIBIT E: SCHEDULE OF OUTSTANDING ACTIVITIES / RIGHTS
- 16.6. EXHIBIT F: BILLING CONVENTIONS / SOPs
- 16.7. EXHIBIT G: UNDERTAKING
- 16.8. EXHIBIT H: AGREEMENT PROHIBITING LAWYER-CLIENT RELATIONSHIP

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal as of 21 October 2002.

TECHNOLOGY PROPERTIES LTD.

CHARLES H. MOORE

by   
Daniel E. Leckrone, Chairman



EXHIBIT A

LICENSE

This License ("License") is entered into by and between Charles H. Moore, ("CHM") on the one hand, and Technology Properties Limited ("TPL"), on the other hand.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained as well as of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is covenanted and agreed by and between the parties hereto that:

1. Subject Matter.

1.1. The patents and related materials described at Attachment I, as well as all inventions, improvements, developments, and discoveries conceived, discovered, or reduced to practice by CHM or his affiliates prior to the expiration of the term of the ComAg and which relate to:

1.1.1. Moore Microprocessor ("MMP") technology, including specifically the said patents and materials; and/or

1.1.2. All continuations-in-part, reissues, divisions, re-examinations, or counterparts of such patents, domestic or foreign;

all of which is hereinafter sometimes collectively referred to as the "Licensed Technology".

1.2. Licensed Technology shall also include all rights with respect to patent rights, copyrights, mask work rights, tradenames, trademarks, trade secrets, and know-how of whatsoever kind or nature and in whatever form which relate to the Licensed Technology and in which CHM or its affiliates have an interest to the extent of such said interest.

2. Grant of License.

2.1. CHM hereby grants unto TPL an exclusive, worldwide license to the Licensed Technology for all fields of use and for all applications.

2.2. This License is intended to vest in TPL the exclusive, worldwide right: (i) to regulate and control by license, sublicense, affiliation, or other agreement the practice and/or use of the Licensed Technology; (ii) to otherwise pursue the



Commercialization thereof and the manufacture, sale, and use of products and/or services relying on the Licensed Technology; (iii) to sue and collect for its own use and benefit all claims for damages by reason of past infringement or use of the Licensed Technology; and, (iv) to pursue all remedies of whatsoever kind or nature for its own use and benefit relating to the past, present, or future use of the Licensed Technology.

3. Royalty. CHM shall be entitled to receive as a royalty under this License that certain portion of the Net Recovery realized from the commercialization of the Licensed Technology which is provided for and payable under the terms of the Commercialization Agreement entered into contemporaneously herewith.

4. General.

4.1. In no event shall any right, duty, or privilege arising hereunder be assigned by either party without the prior written consent of the other party, and any attempted or purported assignment without such consent shall be voidable at the option of the non-consenting party.

4.2. Any covenant requiring a party to perform or provide an act or service shall be construed to impose upon such party the burden of the cost thereof unless otherwise provided for herein.

4.3. Section titles are intended only to aid and assist the reader as an index device and are not intended to be descriptive of the contents of the section or to be used for construction or interpretation.

4.4. The failure of any provision of this Agreement by virtue of its being construed as invalid or otherwise unenforceable shall render the entire Agreement cancelable at the option of the party asserting the enforceability of the said provision.

4.5. All rights and obligations under this Agreement shall be resolved as if all persons and all transactions related to this Agreement had their legal residence, situs, and employment in Santa Clara County, California. Members of the most senior management level of the parties shall meet and exercise their best efforts to resolve any dispute under this Agreement, and if unsuccessful, submit such to expedited binding arbitration under the rules of the American Arbitration Association with discovery in general accordance with the Federal Rules of Civil Procedure. All costs related to the discovery shall be paid in advance by the requesting party. The cost of translating into English all discoverable materials and of providing a contemporaneous translation into English of all live testimony shall be paid in

advance by the party which produces or gives the non-English language materials or testimony. All other expenses incurred by the parties in connection with the Arbitration (including reasonable attorney's fees) shall be awarded against the party initiating the Arbitration unless the award is substantially more favorable than the best proposal made by the respondent more than thirty days prior to the scheduled Arbitration proceeding, in which case such expenses shall be equitably apportioned between the parties.

4.6. All notices shall be in writing and effective upon delivery or upon posting by certified mail, return receipt requested, addressed as follows (or such other address as may be hereafter designated):

If to TPL:

Technology Properties Ltd.  
P O Box 20250  
San Jose, CA 95160

Tel: 408-243-9898  
Fax: 408-296-6637

If to CHM:

Charles H. Moore  
4 Cedar Lane  
P O Box 127  
Sierra City, CA 96125  
Tel: 530-862-1282  
Efax: 413-714-5590

4.7. This Agreement together with its exhibits and attachments contains the entire agreement between the parties and supersedes any and all other agreements between them relating to the subject matter hereof.

5. Attachments.


5.1. Attachment I: Schedule of Patents

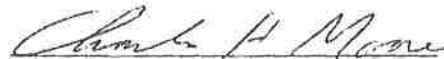
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of 21 October 2002.

TECHNOLOGY PROPERTIES LTD.

CHARLES H. MOORE

by

  
Daniel E. Leckrone, Chmn.



ATTACHMENT - I  
 (For Exhibits A, B, & D of CHM ComAg)  
 SCHEDULE OF PATENTS

<u>COUNTRY</u>	<u>PAT NO</u>	<u>NAME OF PATENT</u>	<u>FILED</u>	<u>ISSUED</u>
US	5440749	High Performance, Low cost Microprocessor Architecture	8/3/89	8/8/95
US	5530890	High Performance, low cost Microprocessor Architecture	6/7/95	6/25/96
US	5659703	Microprocessor System with Hierarchical stack And Method of Operation	6/7/95	8/19/97
US	5809336	High Performance Microprocessor having Variable Speed System Clock	6/7/95	9/15/98
US	5784584	High Performance Microprocessor Using Instructions that Operate within Instruction Groups	6/7/95	7/21/98
US	05070451			
US	05319757			
US	5604915	Data Processing System Having Load Dependent Bus Timing	6/7/95	2/18/97
DE	69033568.7	High Performance, Low Cost Microprocessor	8/2/90	6/14/00
EP	0786730	High Performance, Low Cost Microprocessor	8/2/90	6/14/00
EP	0870226			
FR	0786730	High Performance, Low Cost Microprocessor	8/2/90	7/14/00
WO	9715001			

The Schedule of Patents shall include the items listed above, as well as all progenitors and progeny thereof, and all additions, changes, amendments, modifications, actions, counterparts, continuations, continuations-in-part, extensions, reissues, divisionals and/or renewals of such progenitors and progeny.

*ML*

EXHIBIT B

Assignment

This Assignment ("Assignment") is entered into by and between Charles H. Moore, (the individual technology principal or "CHM") on the one hand, and Technology Properties Limited, ("TPL") on the other hand.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained as well as of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is covenanted and agreed by and between the parties hereto that:

1. Subject Matter

1.1. The patents and related materials described at Attachment I, as well as all inventions, improvements, developments, and discoveries conceived, discovered, or reduced to practice by CHM or its affiliates prior to the expiration of the term of the ComAg and which relate to:

1.1.1. Moore Microprocessor ("MMP") technology including specifically the said patents and materials; and/or

1.1.2. All continuations-in-part, reissues, divisions, re-examinations, or counterparts of such patents, domestic or foreign;

all of which is hereinafter sometimes collectively referred to as the "Licensed Technology".

1.2. Licensed Technology shall also include all rights with respect to patent rights, copyrights, mask work rights, tradenames, trademarks, trade secrets, and know-how of whatsoever kind or nature and in whatever form which relate to the Licensed Technology and in which CHM or its affiliates have an interest to the extent of such said interest.

2. Grant of Assignment.

2.1. CHM hereby grants, sets-over, assigns, transfers, and conveys unto TPL:

2.1.1. The exclusive, worldwide right to:

(i) regulate and control by license, sublicense, affiliation, or other agreement the practice and/or use of the Licensed Technology;

(ii) otherwise pursue the Commercialization thereof and the manufacture, sale, and use of products and/or services relying on the Licensed Technology;

(iii) sue and collect for its own use and benefit all claims for damages by reason of past infringement or use of the Licensed Technology; and,

(iv) pursue all remedies of whatsoever kind or nature for its own use and benefit relating to the past, present, or future use of the Licensed Technology;

all pursuant to the terms of the ComAg entered into by the Parties contemporaneously herewith; and,

2.1.2. That portion of the right, title, and interest in and to the Licensed Technology which quantitatively corresponds to the Percentage Interest and entitlements of TPL under the said ComAg; and/or,

2.1.3. All of CHM's right, title, and interest in and to the Licensed Technology which exists or may arise at the time of any termination of the said ComAg or Exhibit "A" thereof which is not based upon an adjudication of a default and a lawful termination by CHM under Section 10 of the said ComAg.

2.2. With respect to any rights to the Licensed Technology acquired by TPL under Section 2.1.3 above, CHM shall be entitled to receive that certain portion of the Net Recovery realized from the commercialization thereof which would have been otherwise payable to CHM under the terms of the said ComAg.

### 3. General.

3.1. In no event shall any right, duty, or privilege arising hereunder be assigned by either party without the prior written consent of the other party, and any attempted or purported assignment without such consent shall be voidable at the option of the non-consenting party.

3.2. Any covenant requiring a party to perform or provide an act or service shall be construed to impose upon such party the burden of the cost thereof unless otherwise provided for herein.

3.3. Section titles are intended only to aid and assist the reader as an index device and are not intended to be descriptive of the contents of the section or to be used for construction or interpretation.

3.4. The failure of any provision of this Agreement by virtue of its being construed as invalid or otherwise unenforceable shall render the entire Agreement cancelable at the option of the party asserting the enforceability of the said provision.

3.5. All rights and obligations under this Agreement shall be resolved as if all persons and all transactions related to this Agreement had their legal residence, situs, and employment in Santa Clara County, California. Members of the most senior management level of the parties shall meet and exercise their best efforts to resolve any dispute under this Agreement, and if unsuccessful, submit such to expedited binding arbitration under the rules of the American Arbitration Association with discovery in general accordance with the Federal Rules of Civil Procedure. All costs related to the discovery shall be paid in advance by the requesting party. The cost of translating into English all discoverable materials and of providing a contemporaneous translation into English of all live testimony shall be paid in advance by the party which produces or gives the non-English language materials or testimony. All other expenses incurred by the parties in connection with the Arbitration (including reasonable attorney's fees) shall be awarded against the party initiating the Arbitration unless the award is substantially more favorable than the best proposal made by the respondent more than thirty days prior to the scheduled Arbitration proceeding, in which case such expenses shall be equitably apportioned between the parties.

3.6. All notices shall be in writing and effective upon delivery or upon posting by certified mail, return receipt requested, addressed as follows (or such other address as may be hereafter designated):

If to TPL:

Technology Properties Ltd.  
P O Box 20250  
San Jose, CA 95160  
Tel: 408-243-9898  
Fax: 408-296-6637

If to CHM:

Charles H. Moore  
4 Cedar Lane  
P O Box 127  
Sierra City, CA 96125  
Tel: 530-862-1282  
Efax: 413-714-5590

4.7. This Agreement together with its exhibits and attachments contains the entire agreement between the parties and supersedes any and all other agreements between them relating to the subject matter hereof.

5. Attachments.


5.1. Attachment I: Schedule of Patents.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of 21 October 2002.

TECHNOLOGY PROPERTIES LTD.

CHARLES H. MOORE

by

  
Daniel E. Leckrone, Chmn



ATTACHMENT I  
 (For Exhibits A, B, & D of CHM ComAg)  
 SCHEDULE OF PATENTS

<u>COUNTRY</u>	<u>PAT NO</u>	<u>NAME OF PATENT</u>	<u>FILED</u>	<u>ISSUED</u>
US	5440749	High Performance, Low cost Microprocessor Architecture	8/3/89	8/8/95
US	5530890	High Performance, Low cost Microprocessor Architecture	6/7/95	6/25/96
US	5659703	Microprocessor System with Hierarchical stack And Method of Operation	6/7/95	8/19/97
US	5809336	High Performance Microprocessor having Variable Speed System Clock	6/7/95	9/15/98
US	5784584	High Performance Microprocessor Using Instructions that Operate within Instruction Groups	6/7/95	7/21/98
US	05070451			
US	05319757			
US	5604915	Data Processing System Having Load Dependent Bus Timing	6/7/95	2/18/97
DE	69033568.7	High Performance, Low Cost Microprocessor	8/2/90	6/14/00
EP	0786730	High Performance, Low Cost Microprocessor	8/2/90	6/14/00
EP	0870226			
FR	0786730	High Performance, Low Cost Microprocessor	8/2/90	7/14/00
WO	9715001			

The Schedule of Patents shall include the items listed above, as well as all progenitors and progeny thereof, and all additions, changes, amendments, modifications, actions, counterparts, continuations, continuations-in-part, extensions, reissues, divisionals and/or renewals of such progenitors and progeny.



EXHIBIT C

EXHIBIT C  
PROJECT DESCRIPTION  
("Project")

1. Explore CIP and related opportunities to expand scope of Licensed Technology.
2. Pursue acquisition of complementary rights.
3. Pursue licensing discussions with identified prospects.
4. Pursue parallel litigation on a selective strategic basis.
5. Pursue arrangements which can provide financial support for Project activities.
6. Implement the following SER Project:

The Software Emulated Receiver ("SER") Project will be initially organized and operated as a TPL Project under a standard TPL Commercialization Agreement ("ComAg") between Moore ("CHM"), Snively ("LOS"), and TPL pursuant to which:

- a. TPL will pursue the development and commercialization of the SER Technology by establishing a series of strategic relationships which will fund the development of SER Technology by CHM and LOS, as well as the productization and marketing of SER based products;
- b. TPL will operate under exclusive licenses from CHM and LOS covering all SER Technology and Intellectual Property Assets;
- c. Commercialization Partners will operate under agreements and licenses negotiated and structured by TPL for the commercialization of the SER IPA Portfolio;
- d. TPL will provide the commercialization, transactional, and administrative resources for the SER Project, and CHM and LOS will provide the development resources;
- e. Everyone will work on a time and materials basis at their standard rates;
- f. Project proceeds will be used first for the payment of all project expenses, and next for the accumulation of a working capital fund;

- g. Seventy Percent (70%) of the balance will be distributed equally to CHM and LOS, with 35% going to each;
- h. The remaining Thirty Percent (30%) will be retained by TPL as its percentage interest, which will be secured by an assignment of such percentage interest from CHM and LOS.
- i. Decisions relating to technical issues ("Technical Decisions") shall be the province of LOS and CHM, with any difference of opinion being resolved by TPL. Decisions relating to commercialization issues ("Commercialization Decisions") shall be the province of TPL so long as they are within the Commercialization Guideline: IE, that all development projects must be self-funding. Commercialization Decisions not within the said Guideline shall require the concurrence of either LOS or CHM.

As soon as is reasonably practicable, CHM and LOS will organize an entity to hold the legal title to all SER Project Intellectual Property Assets to assure their on-going availability to the Project. TPL shall serve as a "tie breaker" to resolve any deadlock which may arise in any such structure or structures.

CHM

JM

EXHIBIT D  
UCC-1 ( \_\_\_\_\_ )

CHINA

EXHIBIT E

SCHEDULE OF OUTSTANDING ACTIVITIES / RIGHTS

1. Commercialization Agreement with Technology Properties Limited dated      October 2002.
  
2. The following transactions entered into with iTv Corporation:
  - a. Original agreement
  - b. (Amendment)
  - c. (Amendment)
  - d. Assignment dated
  
3. Any rights of Russell Fish Jr as a named inventor and/or his successors in interest.

EXHIBIT F

MEMORANDUM

RE: EXPENSE AND HOURLY BILLING CONVENTIONS / SOPs

DATE: 22 December 1998

- I. In an effort to minimize and where possible avoid administrative expense and resulting Project overhead, TPL and its affiliates have developed and implemented and will continue to evolve a variety of conventions and procedures to simplify the identification and tracking of Project Expenses. They currently include:
- A. Ordinary internal fax and copy charges will be absorbed by TPL and not billed to the Project. Unusual usage levels will be charged to the Project at prevailing rates.
  - B. Expenses which are time consuming or difficult to track will be allocated among various Projects on a logical and fair basis according to estimation methods from time-to-time implemented by TPL which provide for recovery of the expense without upcharge. Accordingly:
    - 1. Travel expenses including air fares, taxis, hotels, food, and the like will be allocated among the Projects involved on the basis of the quantity and nature of the "location sensitive" activity arranged for the trip. That is, activity which is related to being present at that location, as opposed to activity which could have been performed from any location.
    - 2. Telephone tolls and expenses will not be identified by call. Instead, an appropriate portion of TPL's overall telephone service costs will be estimated and charged to the Project based on Project activity.
  - C. Costs related to recording time will be absorbed by TPL. Costs related to calculating and reporting time and expenses for a particular Project will be charged to the Project. Costs related to verifying time and expense charges for the Project must be paid in advance by the Project principal requesting verification.

EXPENSE AND HOURLY CONVENTIONS / SOPs (cont'd)

II. Reporting, Billing and Payment SOPs.

A. Time calculations.

1. No travel time (except C.1. below)
2. No down-time.

B. Expenses.

1. No up charges.
2. Coach class for flights under 2 hrs when available. Upgrades and tickets purchased with mileage will be charged at prevailing prices.

C. Allocate the following based on "location sensitive" activity:

1. Travel overhead and logistics; i.e., time spent making arrangements and getting to and from flights, hotels, etc.
2. Travel expenses.

D. Statement and Payment Cycle.

1. Cycle - 4 weeks.
2. Time and Activity Report ("TAR") and Statement detailing Licensing Exec time and all expenses ASAP after close of cycle (EG, 20 days).
3. Statement amount charged by TPL against Working Capital. Any changes to be implemented by adjustment to subsequent periods as agreed.

III. Current Hourly Rates

- A. Licensing Executives \$200/hr.
- B. Executive Administration \$75/hr.
- C. Stenographic \$45/hr.

EXHIBIT G

UNDERTAKING

By these presents and in consideration of the execution of the ComAg by Charles H. Moore ("CHM") and Technology Properties Ltd, the undersigned spouse of CHM:

1. Consents to the execution and delivery of the ComAg, releasing and waiving all claims or rights with respect to the Licensed Technology in exchange for a corresponding set of claims with respect to the rights of CHM under the ComAg, and adopting and undertaking the covenants of CHM.

2. Sets over, assigns, transfers, and acquits unto TPL all right, title, and interest of whatsoever kind or nature in the Licensed Technology as well as in any other right or interest which CHM may from time to time transfer to TPL pursuant to the terms of the ComAg or otherwise.

The undersigned shall deliver such instruments or documentation as may from time to time be requested by TPL as reasonably appropriate in evidencing and implementing this undertaking.

WILIFRED M MOORE

  
(signature)

date: 21 October 2002



# EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Charles H. Moore,

NO. C 10-04747 JW

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND; DENYING  
DEFENDANTS' MOTIONS AS MOOT**

v.

Technology Properties Limited, LLC, et al.,

Defendants.

**I. INTRODUCTION**

Charles H. Moore ("Plaintiff") brings this action against Defendants<sup>1</sup> alleging, *inter alia*, breach of contract, fraudulent promise and conspiracy to commit fraud. Plaintiff alleges that Defendants retained the licensing proceeds from a portfolio of patents which Plaintiff owned without paying royalties to Plaintiff, in contravention of the parties' agreement.

Presently before the Court are: (1) Defendants' Motion to Compel Arbitration;<sup>2</sup> (2) Defendants' Motion to Dismiss Plaintiff's Complaint;<sup>3</sup> and (3) Plaintiff's Motion to Remand Removed Action.<sup>4</sup> The Court finds it appropriate to take the Motions under submission without oral

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<sup>1</sup> Defendants are Technology Properties Limited, LLC ("TPL"), Alliacense LLC ("Alliacense"), Daniel Edwin Leckrone ("DE Leckrone"), Daniel McNary Leckrone ("DM Leckrone") and Michael Davis ("Davis").

<sup>2</sup> (Docket Item No. 9.)

<sup>3</sup> (Docket Item No. 11.)

<sup>4</sup> (hereafter, "Motion to Remand," Docket Item Nos. 20, 21.)

1 argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court GRANTS  
2 Plaintiff's Motion to Remand and DENIES Defendants' Motions.

3 **II. BACKGROUND**

4 **A. Factual Allegations**

5 In a Complaint filed on September 27, 2010,<sup>5</sup> Plaintiff alleges as follows:

6 TPL is a California limited liability company with its principle place of business in  
7 Santa Clara and Alliacense is a Delaware limited liability company that is a wholly owned  
8 subsidiary of TPL. (Complaint ¶¶ 1-2.) DE Leckrone and DM Leckrone are licensed  
9 California attorneys, and the Chairman of the Board of TPL and the President of Alliacense,  
10 respectively. (Complaint ¶¶ 3-4.) Davis was the Executive Vice President of Licensing for  
11 Alliacense. (Id. ¶ 5.) Plaintiff and DE Leckrone began a continuing attorney-client  
12 relationship sometime prior to October 2002, when DE Leckrone assisted Plaintiff in  
13 reacquiring rights to certain patents Plaintiff owned and negotiating an employment contract  
14 between Plaintiff and a third-party company. (Id. ¶¶ 11-14.) Eventually, Plaintiff began  
15 negotiation of an agreement whereby DE Leckrone, through TPL, would agree to  
16 commercialize Plaintiff's patent portfolio by licensing the patents to third party companies.  
17 (Id. ¶ 19.) Plaintiff believed that the commercialization agreement he signed only granted  
18 TPL the right to license Plaintiff's patent portfolio on Plaintiff's behalf. (Id. ¶ 25.)

19 While the licensing efforts met with substantial initial success, Defendants failed to  
20 make regular royalty payments or to provide Plaintiff with an accounting of revenues and  
21 expenses, in contravention of the commercialization agreement. (Complaint ¶¶ 32-33.)  
22 Revenues generated by the licensing of Plaintiff's patent portfolio were diverted to support  
23 TPL's business expansion into the acquisition and licensing of unrelated patent portfolios.  
24 (Id. ¶¶ 34-38.) Further, Defendants began incurring unreasonable business expenses which  
25 were passed through to Plaintiff. (Id.) Plaintiff eventually re-negotiated with Defendants

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<sup>5</sup> (Notice of Removal, Ex. A at 47-75, hereafter, "Complaint," Docket Item No. 1.)  
28

1 and agreed to a written amendment to the original commercialization agreement which  
2 restructured how expenses and payments were to be distributed between Plaintiff and  
3 Defendants. (Id., ¶¶ 42-43.)

4 On September 27, 2006, Defendants breached the commercialization agreement and  
5 continue to be in breach of the agreement to this day. (Complaint ¶¶ 47, 111.) Defendants'  
6 ongoing breach of the obligations set forth in the commercialization agreement and the  
7 amendment include: (1) wrongful conversion of all right, title and interest in the most  
8 valuable patents in Plaintiff's portfolio through the filing of assignment papers with the  
9 United States Patent and Trademark Office; (2) failure to make royalty payments; (3) failure  
10 to provide quarterly operating statements and balance sheets; (4) failure to exert reasonable  
11 efforts to commercialize Plaintiff's patent portfolio; (5) failure to advise Plaintiff of any  
12 licenses entered into involving Plaintiff's patent portfolio; and (6) failure to provide a  
13 contractually mandated security interest in Plaintiff's patent portfolio. (Id.)

14 On the basis of the allegations outlined above, Plaintiff alleges eight causes of action: (1)  
15 Cancellation of Instrument by Means of Fraud of Attorney as to all Defendants; (2) Cancellation of  
16 Instrument by Means of Mistake or Misrepresentation as to all Defendants; (3) Rescission of the  
17 Commercialization Agreement as to Defendants TPL and DE Leckrone; (4) Rescission of  
18 Amendment One to the Commercialization Agreement as to Defendants TPL and DE Leckrone; (5)  
19 Conspiracy to Commit Fraud as to all Defendants; (6) Breach of Contract as to Defendants TPL and  
20 Alliacense; (7) Constructive Trust and Accounting as to Defendants TPL and DE Leckrone; and (8)  
21 Preliminary and Permanent Injunction as to all Defendants.

22 **B. Procedural History**

23 On September 27, 2010, Plaintiff filed this Complaint in the Superior Court of California for  
24 the County of Santa Clara. (Notice of Removal ¶ 1, Docket Item No. 1.) On October 5, 2010,  
25 Defendants TPL and Alliacense were served. (Id. ¶ 2.) On October 20, 2010, Defendants removed  
26 the action to federal court alleging original jurisdiction under 28 U.S.C. §§ 1331 and 1338. (Id. ¶ 3.)  
27 Specifically, Defendants alleged that the claims asserted in the Complaint arise under federal law,  
28

1 and Plaintiff's right to relief on the claims alleged necessarily depends on the resolution of  
2 substantial questions of federal patent law. (Id.)

3 Presently before the Court are various Motions by the parties. As Plaintiff's Motion to  
4 Remand may be dispositive, the Court will address this Motion first.

### 5 III. STANDARDS

6 If, prior to final judgment, the district court discovers its lack of subject matter jurisdiction, it  
7 must remand the case. 28 U.S.C. § 1447(c). A defendant seeking removal of an action to federal  
8 court bears the burden of establishing grounds for federal jurisdiction. Quinones v. Target Stores,  
9 No. C 05-3570, 2005 U.S. Dist. LEXIS 31915, at \*4 (N.D. Cal. Nov. 23, 2005). Removal statutes  
10 are construed restrictively. Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1393 (9th Cir.  
11 1988). Doubts as to removability are resolved in favor of remanding the case to state court.  
12 Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); Gaus v. Miles, Inc., 980 F.2d  
13 564, 566 (9th Cir. 1992).

### 14 IV. DISCUSSION

#### 15 A. Motion to Remand

16 Plaintiff moves to remand this action to state court on the ground that none of Plaintiff's  
17 eight causes of action arise under federal patent law. (Motion to Remand at 6-7.) Defendants  
18 contend that Plaintiff has alleged claims that require the application and determination of federal  
19 patent law.<sup>6</sup>

20 Title 28 U.S.C. § 1338(a) provides that the district courts shall have original and exclusive  
21 jurisdiction of any civil action arising under any act of Congress relating to patents. Section 1338(a)  
22 jurisdiction extends "only to those cases in which a well pleaded complaint establishes either [(1)]  
23 that federal patent law creates the cause of action or [(2)] that the plaintiff's right to relief  
24 necessarily depends on resolution of a substantial question of federal patent law, in that patent law is  
25 a necessary element of one of the well pleaded claims." Christianson v. Colt Indus. Operating

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27 <sup>6</sup> (Defendants' Opposition to Plaintiff's Motion to Remand Removed Action at 1, hereafter,  
"Opposition," Docket Item No. 26.)

1 Corp., 486 U.S. 800, 808-09 (1988). “If on the face of a well-pleaded complaint there are reasons  
2 completely unrelated to the provisions and purposes of the patent laws why the plaintiff may or may  
3 not be entitled to the relief it seeks, then the claim does not ‘arise under’ those laws.” Id. at 810  
4 (internal citations and quotations omitted). “It is well settled that if the [plaintiff] pleads a cause of  
5 action based on rights created by contract, or on the common law of torts, the case is not one ‘arising  
6 under’ the patent laws.” Jim Arnold Corp. V. Hydrotech Sys., Inc., 109 F.3d 1567, 1572 (Fed. Cir.  
7 1997) (citations omitted).<sup>7</sup>

8 Here, the Court finds that none of Plaintiff’s claims meet the test set forth in Christianson for  
9 jurisdiction under federal patent law. Plaintiff’s claims and the damages Plaintiff seeks are based  
10 solely on state law. For example, Plaintiff seeks relief from the parties’ contract on the grounds of  
11 fraud and mistake<sup>8</sup> or rescission of the agreement.<sup>9</sup> In addition, Plaintiff seeks damages that arise  
12 under state law causes of action including breach of contract<sup>10</sup> and conspiracy to commit fraud.<sup>11</sup>  
13 Further, Plaintiff seeks imposition of a constructive trust<sup>12</sup> and an injunction.<sup>13</sup> Finally, to the extent  
14 there is a conflict regarding ownership of the patent portfolio, that too is a matter for the state court,  
15 as claims concerning patent ownership do not create federal jurisdiction. See Jim Arnold Corp., 109  
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18 <sup>7</sup> See also Prize Frize, Inc. v. Matrix, Inc., 167 F.3d 1261, 1264 (Fed. Cir. 1999), abrogated  
19 by statute on other grounds, (finding allegations that defendant’s unfair, unlawful and collusive  
20 actions deprived the plaintiff of its ownership of four patents did not arise under federal patent law  
21 and thus deprived Federal Circuit of appellate jurisdiction); Tech. Licensing Corp. v. Intersil Corp.,  
22 No. 09-4097, 2009 U.S. Dist. Lexis 129941, at \*1-3 (N.D. Cal. Dec. 18, 2009) (finding that remand  
23 was proper because, although the parties’ dispute arose from a patent license agreement, the  
24 plaintiff’s complaint asserted only breach of contract and related state law claims).

25 <sup>8</sup> See Cal. Civ. Code § 3412

26 <sup>9</sup> See Cal. Civ. Code § 1692.

27 <sup>10</sup> See Cal. Civ. Code § 3300.

28 <sup>11</sup> See Cal. Civ. Code § 3294(a).

<sup>12</sup> See Cal. Civ. Code §§ 2223, 2224; Communist Party v. 522 Valencia, Inc., 35 Cal. App.  
4th 980, 990 (Cal. App. 1995).

<sup>13</sup> See Cal. Civ. Code §§ 3420, *et seq*; Cal. Code. Civ. Proc. § 527(a).

1 F.3d at 1572. Thus, federal patent law does not create any of Plaintiff's causes of action, nor does  
 2 Plaintiff's right to relief necessarily depend on resolution of a substantial question of patent law.

3 Defendants rely on U.S. Valves, Inc. v. Dray<sup>14</sup> and Smith v. Healy<sup>15</sup> as support for the  
 4 contention that Plaintiff's claims are preempted by federal patent law. (Opposition at 7.) The Court  
 5 finds both cases distinguishable. In U.S. Valves, the plaintiff, an exclusive patent licensee, alleged  
 6 the defendant licensor breached the license by selling patented products. 212 F.3d at 1372. The  
 7 Federal Circuit held that the licensee's right to relief required an interpretation of the patents in order  
 8 to determine if the sold products were covered by the licensed patents. Id. Similarly, the plaintiffs  
 9 in Smith, "[sought] general damages for [d]efendants' production of [p]laintiff's product without  
 10 [p]laintiffs' permission rather than seeking enforcement of a royalty agreement." 2010 U.S. Dist.  
 11 LEXIS 107627, at \*22. Here, unlike U.S. Valves or Smith, Plaintiff does not allege that Defendants  
 12 sold any allegedly infringing product, but instead alleges that Defendants were engaged in efforts to  
 13 commercialize Plaintiff's inventions by way of licensing efforts. Plaintiff is seeking relief from a  
 14 contract which he alleges was entered into by means of fraud or mistake, or alternatively, damages  
 15 for Defendants' failure to abide by the terms of that contract. Thus, no analysis or construction of  
 16 the patents is required. Rather, the analysis will involve consideration of state law principles such as  
 17 contract formation and performance.

18 Accordingly, the Court GRANTS Plaintiff's Motion to Remand.

19 **B. Motion to Compel Arbitration and Motion to Dismiss**

20 Defendants move to compel arbitration on the ground that the parties' agreement included a  
 21 provision requiring submission of any dispute arising under the agreement to binding arbitration.<sup>16</sup>  
 22 In addition, Defendants move to dismiss Plaintiff's Complaint on the grounds that Plaintiff fails to  
 23 allege sufficient facts to state any claim against DE Leckrone, DM Leckrone, Davis or Alliacense

24 \_\_\_\_\_  
 25 <sup>14</sup> 212 F.3d 1368 (Fed. Cir. 2000).

26 <sup>15</sup> No. 10-0072, 2010 U.S. Dist. LEXIS 107627 (D. Or. Oct. 7, 2010).

27 <sup>16</sup> (Memorandum of Points and Authorities in Support of Defendants' Motion to Compel  
 28 Arbitration at 1, Docket Item No. 9.)

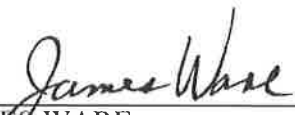
1 and that Plaintiff fails to allege any claim for injunctive relief, cancellation or rescission.<sup>17</sup> In light  
2 of the Court's decision to remand this action to state court, the Court DENIES Defendants' Motions  
3 as moot.

4 **V. CONCLUSION**

5 The Court GRANTS Plaintiff's Motion to Remand and DENIES Defendants' Motion to  
6 Compel Arbitration and Motion to Dismiss as moot.

7 The Clerk shall immediately remand this case to the Superior Court of California, County of  
8 Santa Clara and close this file. Each party shall bear their own fees and costs.

9  
10 Dated: January 20, 2011

  
\_\_\_\_\_  
JAMES WARE  
United States District Chief Judge

United States District Court  
For the Northern District of California

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27 <sup>17</sup> (Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss  
28 Pursuant to F.R.C.P. Rule 12(b)(6) at 1, Docket Item No. 11.)



1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Jon Mark Thacker jthacker@ropers.com  
3 Kenneth Harlin Prochnow kprochnow@chilesprolaw.com  
4 Lita Monique Verrier lverrier@rmkb.com  
5 Michael J. Ioannou mioannou@rmkb.com  
6 Robert Clive Chiles rchiles@chilesprolaw.com

7 **Dated: January 20, 2011**

**Richard W. Wiekling, Clerk**

8 **By:           /s/ JW Chambers**  
9 **Elizabeth Garcia**  
10 **Courtroom Deputy**

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**United States District Court**  
For the Northern District of California

# EXHIBIT 4



1 MICHAEL J. IOANNOU (SBN 95208)  
 2 J. MARK THACKER (SBN 157182)  
 3 ELIZABETH P. SHOEMAKER (SBN 245577)  
 4 ROPERS, MAJESKI, KOHN & BENTLEY  
 5 50 West San Fernando Street, Suite 1400  
 6 San Jose, CA 95113-2429  
 7 Telephone: (408) 287-6262  
 8 Facsimile: (408) 918-4501  
 9 Email: [mioannou@rmkb.com](mailto:mioannou@rmkb.com)  
 10 [jthacker@rmkb.com](mailto:jthacker@rmkb.com)

FILED

2011 JUL 29 PM 3:00

David H. Yarnall, Clerk of the Superior Court  
 County of Santa Clara, California  
 By: L. Talampas

11 Attorneys for Defendants  
 12 TECHNOLOGY PROPERTIES LIMITED LLC, a  
 13 California limited liability company, ALLIACENSE  
 14 LLC, a Delaware limited liability company; DANIEL  
 15 EDWIN LECKRONE, DANIEL MCNARY  
 16 LECKRONE, and MICHAEL DAVIS

17 Attorneys for Defendant  
 18 TECHNOLOGY PROPERTIES LIMITED LLC, a  
 19 California limited liability company

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 21 COUNTY OF SANTA CLARA

22 CHARLES H. MOORE,  
 23 Plaintiff,

24 v.

25 TECHNOLOGY PROPERTIES LIMITED  
 26 LLC, a California limited liability  
 27 company; ALLIACENSE LLC, a Delaware  
 28 limited liability company; DANIEL  
 EDWIN LECKRONE, an individual;  
 DANIEL MCNARY LECKRONE, an  
 individual, MICHAEL DAVIS, an  
 individual; and Does 1 through 100,  
 inclusive,

Defendants.

CASE NO. 1-10-CV-183613

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANTS' DEMURRER TO  
 PLAINTIFF'S FIRST AMENDED  
 COMPLAINT**

**Date:** December 6, 2011  
**Time:** 9:00 a.m.  
**Dept.:** 2  
**Judge:** Hon. Patricia M. Lucas

Ropers Majeski Kohn & Bentley  
 A Professional Corporation  
 San Jose

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I.

INTRODUCTION

Defendants filed a demurrer to the Plaintiff Charles Moore’s initial complaint on February 5, 2011. The hearing was set for the first available date of June 28, 2011. Approximately four days before the hearing date, **and more than four and one-half months after the demurrer was filed**, Plaintiff’s counsel filed a first amended complaint. However, the first amended complaint suffers from the same deficiencies as the initial complaint. It does not allege any facts sufficient to state any claim against Defendants Daniel McNary Leckrone, Michael Davis or Alliacense, LLC, and fails to allege any facts sufficient to state a claim for injunctive relief against any defendant other than TPL. Accordingly, Defendants Daniel McNary Leckrone, Michael Davis or Alliacense, LLC hereby assert this demurrer as to each cause of action alleged against them in Moore’s first amended complaint, and Defendant Daniel Edwin Leckrone asserts this demurrer as to the eighth cause of action alleged against him in Plaintiff’s first amended complaint.

II.

PLAINTIFF’S ALLEGATIONS

Plaintiff’s allegations focus on a purported attorney-client relationship between himself and Defendant Daniel Edwin Leckrone, and a contract and amendment (“Commercialization Agreement” and “Amendment”) Plaintiff entered into with Defendant TPL. Specifically, Moore claims that during the purported attorney-client relationship with Daniel Edwin Leckrone, Mr. Leckrone drafted a contract between Moore and TPL pursuant to which TPL would commercialize a certain portfolio of patents (“MMP Portfolio”) through licensing of these patents to third parties. [First Amended Complaint (“FAC”), ¶¶ 7-20.]

Although Moore does not attach as an exhibit to his first amended complaint a copy of either the Commercialization Agreement or its Amendment, Moore’s allegations clearly establish that the Commercialization Agreement and Amendment are solely between himself and TPL. None of the other named Defendants are alleged to be parties to the contract. [E.g., FAC, ¶¶ 20 and 42.] In alleging some of the terms of the Commercialization Agreement and Amendment,

1 Moore identifies TPL as the only entity owing Moore any obligations under either agreement.  
2 [FAC, ¶¶ 31 and 43.] Further, Moore alleges numerous breaches of the Commercialization  
3 Agreement and Amendment, in each instance identifying TPL as the sole breaching party. [FAC,  
4 ¶¶ 32-42, 45-48, 51.]

5 Additionally, there are no **factual** allegations in the first amended complaint with respect  
6 to any wrongdoing by Defendants Daniel McNary Leckrone, Michael Davis or Alliacense. These  
7 defendants are mentioned in the complaint by name only in generalized, non-specific references.  
8 [E.g., FAC, ¶¶ 35-37, 40, 48, 52, 60, 75, 111, 123, 124.]

9 Based on the allegations set forth in the first amended complaint, Moore has alleged  
10 causes of action for cancellation of the Commercialization Agreement and Amendment against  
11 Defendants Daniel Edwin Leckrone, TPL and Alliacense, (first and second causes of action),  
12 rescission of either the Commercialization Agreement or its Amendment against Defendants TPL  
13 and Daniel Edwin Leckrone (third and fourth causes of action), conspiracy to commit fraud  
14 against all defendants (fifth cause of action), breach of contract against Defendants TPL and  
15 Alliacense (sixth cause of action), a constructive trust and accounting against Defendants TPL  
16 and Daniel Edwin Leckrone (seventh cause of action), and injunctive relief against all defendants  
17 (eighth cause of action).

18 III.

19 LEGAL ARGUMENT

20 A. MOORE HAS FAILED TO ALLEGE FACTS SUFFICIENT TO STATE  
21 ANY CAUSE OF ACTION AGAINST DEFENDANTS DANIEL MCNARY  
LECKRONE, MICHAEL DAVIS OR ALLIACENSE

22 1. **Moore Has Not Stated a Claim for Cancellation (First and Second Causes of**  
23 **Action) against Defendant Alliacense**

24 Moore's amended first and second causes of action are now asserted only against  
25 Defendants Daniel Edwin Leckrone, TPL and Alliacense, rather than all Defendants as in  
26 Plaintiff's initial complaint. However, Moore still has not alleged any contractual relationship  
27 with Alliacense sufficient to constitute a claim against it for cancellation. Not only is Alliacense  
28 not a party to the instrument which Moore seeks to cancel, Moore has not alleged any facts to

1 establish that it was sufficiently involved in any of the alleged acts on which the cancellation  
2 claims are based. [E.g., *Carroll v. Carroll* (1940) 16 Cal.2d 761, 770-771.] Moreover,  
3 Alliacense did not even exist at the time (October 2002) which Moore alleges the  
4 Commercialization Agreement was signed. [FAC, ¶ 21.]

5 Accordingly, because Moore has alleged no facts of involvement by Alliacense in the  
6 fraud or misrepresentations on which the cancellation claims are based, nor any other facts to  
7 allege a contractual relationship with Alliacense, this Demurrer should be sustained as to  
8 Defendant Alliacense with respect to Plaintiff's first and second causes of action.

9 **2. Moore Has Not Stated a Claim for "Conspiracy To Commit Fraud" (Fifth**  
10 **Cause of Action) as against Defendants Daniel McNary Leckrone, Michael**  
11 **Davis or Alliacense**

12 California law mandates that "every element of a cause of action for fraud must be alleged  
13 in full, factually and specifically." [*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186  
14 Cal.App.3<sup>rd</sup> 1324, 1331-1332.] Additionally, specific facts must be alleged establishing "how,  
15 when, where, to whom, and to what means the representations were tendered." [*Lazar v.*  
16 *Superior Court* (1996) 12 Cal.4<sup>th</sup> 631.] Further, the pleading requirements are stricter to state a  
17 fraud claim against a corporate entity, such as Alliacense. Plaintiff must "allege the names of the  
18 persons who made the allegedly fraudulent representations, their authority to speak, to whom they  
19 spoke, what they said or wrote, and when it was said or written." [*Id.* at 645, quoting, *Tarmann v.*  
20 *State Farm Mutual Automobile Insurance Company* (1991) 2 Cal.App.4<sup>th</sup> 153, 157.]

21 In addition to the strict pleading requirements to state sufficiently the underlying wrongful  
22 act on which Plaintiff's conspiracy claim is based, Plaintiff must also specifically allege the  
23 additional elements required under a conspiracy theory. "The elements of an action for civil  
24 conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff  
25 from an act or acts done in furtherance of the common design." [*Mox, Inc. v. Woods* (1927) 202  
26 Cal. 675, 677.] Thus, the allegations of the formation and operation of the conspiracy and the  
27 acts done in furtherance must be specifically alleged. The Court in *Kinney v. Postal Telegraph-*  
28 *Cable Co.* (1932) 123 Cal.App. 70, 75, held, "a complaint which contains nothing more than bare  
allegations that the defendants entered into a conspiracy to defraud plaintiff and committed

1 certain acts in furtherance thereof does not state a cause of action unless those acts are connected  
2 with a showing of facts which, if true, would support the charge that they were wrongful,  
3 inferences, generalities, presumptions and conclusions being insufficient.” (citations omitted)

4 In *117 Sales Corp. v. Olsen*, the court upheld a decision of the lower court to sustain a  
5 demurrer without leave to amend. With regard to the cause of action for conspiracy, the court  
6 held that “[t]he count is defective in that except for the allegation of the filing of the small claims  
7 action, the charges are pure conclusions, bare-faced generalities. No facts spell out the causal  
8 relationship between a charged conspiracy to file a small claims lawsuit and the unspecified,  
9 unjustified interference with business relations. The requisite improper objective of the  
10 ‘conspiracy’ remains undefined by any factual allegations.” [*117 Sales Corp. v. Olsen* (1978), 80  
11 Cal.App.3d 645, 650.]

12 In this case, Moore has undeniably failed to meet this strict pleading standard with respect  
13 to Defendants Daniel McNary Leckrone, Michael Davis or Alliacense. He claims that  
14 “Defendants and each of them knowingly and willingly conspired and agreed among themselves  
15 to charge exorbitant, unreasonable and illegitimate fees and expenses to Plaintiff Moore under the  
16 [Commercialization Agreement].” [FAC, ¶ 100.] However, the Commercialization Agreement  
17 and the Amendment are between Moore and TPL only, and Moore provides no facts to show that  
18 the other Defendants “conspired and agreed” to the fees charged by TPL. Similar to *117 Sales*  
19 *Corp.*, the first amended complaint offers no facts to spell out the causal relationship between the  
20 alleged benefit to the Defendants and the alleged fraud that was committed. No facts are  
21 provided to show how Defendants Daniel McNary Leckrone, Michael Davis or Alliacense did  
22 any act to charge “unreasonable and illegitimate fees and expenses” to Moore or even did  
23 anything to affect Moore’s contract with TPL. The first amended complaint alleges no facts to  
24 establish that those Defendants participated in any way in the negotiation of the Amendment. To  
25 the contrary, Moore’s claim that all Defendants suggested and negotiated the Amendment (FAC,  
26 ¶ 101) contradicts the previous claim that “TPL and plaintiff Moore negotiated and agreed, on or  
27 about March 20, 2007, to [the Amendment].” [FAC, ¶ 42.] Indeed, in March 2007, Alliacense  
28 did not even exist. Thus, Moore has failed to provide facts to show that the other Defendants

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“suggested and thereafter negotiated” the Amendment.

Moore then claims that as a result of the Amendment, the Defendants diverted funds from him by claiming false expenses and fraudulently negotiating licenses. [FAC, ¶ 101.] However, Moore fails to show how the Defendants that were not parties to the original agreement or the Amendment, and, therefore, not in any contractual relationship with him, acted to wrongfully divert funds from the contract away from him. His claims are “pure conclusions” that amount to “nothing more than bare allegations” about any of the Defendants’ roles in the fraudulent negotiation of licenses.

Based on the foregoing, Moore has failed to allege specific facts as to each element of his fifth cause of action, and therefore, this demurrer should be sustained as to Defendants Daniel McNary Leckrone, Michael Davis and Alliacense.

**3. Moore Has Not Stated a Claim for Breach of Contract (Sixth Cause of Action) Against Defendant Alliacense**

Moore’s sixth cause of action is against Defendants TPL and Alliacense only, and it is based on a purported breach of the Commercialization Agreement by those two Defendants. [FAC, ¶¶ 110-112.] However, Moore has failed to allege any facts to establish a contractual relationship between himself and Defendant Alliacense, or that Alliacense assumed any obligation to Moore under the Commercialization Agreement. Moore alleges only the conclusion that as of September 27, 2006, a date before Alliacense came into existence, “TPL had assigned all licensing functions and duties for the MMP Portfolio to Alliacense.” [FAC, ¶ 111.]

To state a cause of action for breach of contract, Moore must allege “the existence of a contract, its terms which establish the obligation in issue, the occurrence of any conditions precedent to enforcement of the obligation, and the breach of that obligation.” [FPI *Development, Inc. v. Nakashima* (1991) 231 Cal.App.3<sup>rd</sup> 367, 383.] As discussed above, Moore has not alleged any of those elements with respect to Defendant Alliacense. Accordingly, this demurrer should be sustained with respect to Plaintiff’s sixth cause of action against Defendant Alliacense.



1 **B. MOORE HAS NOT STATED A CLAIM FOR INJUNCTIVE RELIEF (EIGHTH**  
2 **CAUSE OF ACTION) AGAINST ANY DEFENDANT OTHER THAN TPL.**

3 Moore's eighth cause of action for injunctive relief, although directed against all  
4 Defendants, relies exclusively on the alleged "wrongful withholding of information and financial  
5 results, and refusal to pay licensing royalties or a percentage of the gross to Plaintiff Moore."  
6 [FAC, ¶¶ 121-124.] In essence, Moore seeks to enjoin all defendants from breaching the  
7 Commercialization Agreement and/or Amendment.

8 With respect to Defendants Daniel Edwin Leckrone, Daniel McNary Leckrone, Michael  
9 Davis and Alliacense, Plaintiff has not alleged any facts to establish that any of these Defendants  
10 are parties to the contracts Moore seeks to enforce, or that any of these Defendants have in any  
11 way assumed any obligations to Moore under the Commercialization Agreement or Amendment.  
12 Moreover, Moore has not sufficiently alleged any claim against Defendants Daniel McNary  
13 Leckrone, Michael Davis, and Alliacense. Accordingly, Moore's allegations against these  
14 defendants fail to meet basic pleading requirements, and therefore, this demurrer should be  
15 sustained as to Plaintiff's eighth cause of action as against all named defendants other than  
16 Defendant TPL.

17 **C. THIS DEMURRER SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND.**

18 Denial leave to amend is appropriate where a complaint alleges facts which do not entitle  
19 a plaintiff to relief on any legal theory. [See, e.g., *McDonald v. Superior Court* (1986) 180  
20 Cal.App.3d 297, 303.] This is particularly true where the plaintiff has already had an opportunity  
21 to amend in response to a demurrer. For example, in *Baldwin v. Daniels* (1955) 132 Cal.App.2d  
22 560, 563, the court held that leave to amend was properly denied where the "pleading was  
23 obviously defective and this defect had been clearly pointed out before the pleading was first  
24 amended as of course." [See also, *City of Stockton v. Superior Court* (2007) 42 Cal.4<sup>th</sup> 730, 747  
25 ("If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer,  
26 leave to amend is liberally allowed as a matter of fairness unless the complaint shows on its fact  
27 that it is incapable of amendment.") Moreover, Plaintiff has the burden to demonstrate the  
28 manner in which the complaint can be amended to state a valid cause of action and how the

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amendment will change the legal effect of the complaint. [*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *see also, Hendy v. Losse* (1991) 54 Cal.3d 723, 742.]

In our case, Plaintiff has filed an amended complaint in response to Defendants' demurrer to Plaintiff's initial complaint. Plaintiff had more than four months to consider and analyze Defendants' demurrer. However, Plaintiff has nevertheless failed to cure any of the pleading deficiencies identified in the demurrer. The first amended complaint still fails to allege sufficient facts to state any cause of action against Defendants Daniel McNary Leckrone, Michael Davis or Alliacense, or a claim for injunctive relief against Daniel Edwin Leckrone. Accordingly, this demurrer should be sustained without leave to amend.


IV.

CONCLUSION

Based on the foregoing, Plaintiff Moore has failed to state facts sufficient to allege any cause of action against Defendants Daniel McNary Leckrone, Michael Davis or Alliacense. Additionally, Moore has failed to allege sufficient facts to state a claim for injunctive relief against Defendant Daniel Edwin Leckrone. Accordingly, Defendants respectfully request this Court sustain this demurrer as to all causes of action alleged against Defendants Daniel McNary Leckrone, Michael Davis and Alliacense, and as to the eighth of cause of action as alleged against all Defendants other than TPL, without leave to amend.

Dated: July 29, 2011

ROPERS, MAJESKI, KOHN & BENTLEY

By:   
J. MARK THACKER  
Attorneys for Defendants  
TECHNOLOGY PROPERTIES LIMITED  
LLC, a California limited liability  
company, ALLIACENSE LLC, a Delaware  
limited liability company; DANIEL  
EDWIN LECKRONE, DANIEL  
McNARY LECKRONE and MICHAEL  
DAVIS

# EXHIBIT 5

**FILED**

2012 JAN 17 P 3: 28

David H. Yarras, Clerk of Superior Court  
County of Santa Clara  
Deputy Clerk

1 MICHAEL J. IOANNOU (SBN 95208)  
2 J. MARK THACKER (SBN 157182)  
3 ROPERS, MAJESKI, KOHN & BENTLEY  
4 50 West San Fernando Street, Suite 1400  
5 San Jose, CA 95113-2429  
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Attorneys for Defendant and Cross-Complainant  
TECHNOLOGY PROPERTIES LIMITED LLC and  
Defendants ALLIACENSE LLC; DANIEL EDWIN  
LECKRONE, DANIEL McNARY LECKRONE,  
and MICHAEL DAVIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

Ropers Majeski Kohn & Bentley  
A Professional Corporation  
San Jose

CHARLES H. MOORE,  
Plaintiff,

v.

TECHNOLOGY PROPERTIES  
LIMITED LLC, a California limited  
liability company; ALLIACENSE LLC,  
a Delaware limited liability company;  
DANIEL EDWIN LECKRONE, an  
individual; DANIEL McNARY  
LECKRONE, an individual, MICHAEL  
DAVIS, an individual; and Does 1  
through 100, inclusive,

Defendants.

CASE NO. 1-10-CV-183613

**ANSWER TO FIRST AMENDED  
COMPLAINT**

TECHNOLOGY PROPERTIES  
LIMITED LLC, a California limited  
liability company,

Cross-Complainant,

v.

CHARLES H. MOORE;  
GREENARRAYS, INC. and Roes 1  
through 20, inclusive,

Cross-Defendants.

1 Defendant and Cross-Complainant TECHNOLOGY PROPERTIES LIMITED LLC and  
2 Defendants ALLIACENSE LLC; DANIEL EDWIN LECKRONE, DANIEL McNARY  
3 LECKRONE, and MICHAEL DAVIS, in answer to the unverified First Amended Complaint  
4 herein, herewith deny each and every, all and singular, the allegations of said unverified First  
5 Amended Complaint, and in this connection defendants deny that the plaintiff has been injured or  
6 damaged in any of the sums mentioned in said First Amended Complaint, or in any sum, or at all  
7 as the result of any act or omission of these answering defendants.

8 Further, and in support of each affirmative defense alleged in this answer, defendants  
9 incorporate each and every allegation stated in the Cross-Complaint on file herein by and on  
10 behalf of TECHNOLOGY PROPERTIES LIMITED LLC, as though fully set forth herein.

11 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
12 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
13 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
14 said complaint fails to state facts sufficient to constitute a cause of action against any of these  
15 answering defendants.

16 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
17 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
18 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
19 said First Amended Complaint is barred by the Doctrine of Estoppel.

20 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
21 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
22 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
23 said First Amended Complaint is barred by the Doctrine of Laches.

24 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
25 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
26 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
27 said First Amended Complaint is barred by the Doctrine of Unclean Hands.

28 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST

1 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
2 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
3 plaintiff has waived and is estopped and barred from alleging the matters set forth in the First  
4 Amended Complaint .

5 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
6 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
7 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
8 said First Amended Complaint is barred by the Statute of Frauds.

9 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
10 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
11 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
12 all times and places mentioned in the First Amended Complaint herein, plaintiff failed to perform  
13 certain conditions precedent to the duty of defendants. These conditions precedent were imposed  
14 upon the plaintiff by contract. The non-performance of said conditions excused defendants'  
15 obligations under the contract and has given the defendants the right of disaffirmance, rescission  
16 and release; plaintiff is therefore barred from recovery herein.

17 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
18 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
19 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
20 all times mentioned in the First Amended Complaint, plaintiff was in material default of and  
21 failed to perform obligations that were conditions precedent to and/or concurrent obligations with  
22 defendants' obligations herein. Further, plaintiff's default and failure to perform said obligations  
23 materially affects defendants' performance and/or duty to perform under the agreement alleged in  
24 the First Amended Complaint. Plaintiff is therefore barred from recovery under the First  
25 Amended Complaint.

26 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
27 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
28 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that his

1 or its conduct was justified and/or privileged under the circumstances.

2 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
3 AMENDED COMPLAINT ON FILE HEREIN AND TO EACH ALLEGED CAUSE OF  
4 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
5 all times and places mentioned in the First Amended Complaint herein, plaintiff failed to mitigate  
6 the amount of his damages. The damages claimed by plaintiff could have been mitigated by due  
7 diligence on his part or by one acting under similar circumstances. The plaintiff's failure to  
8 mitigate is a bar to his recovery under the First Amended Complaint.

9 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
10 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
11 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
12 the alleged causes of action set forth in the First Amended Complaint are, and each of them is,  
13 barred by the applicable provisions of the Code of Civil Procedure of the State of California,  
14 including, but not limited to, sections 335.1, 337, 338, 339, 340, and 343.

15 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
16 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
17 ACTION CONTAINED THEREIN, these answering defendants, and each of them, incorporate  
18 each and every allegation of the Cross-Complaint filed herein for cross-complainant  
19 TECHNOLOGY PROPERTIES LIMITED LLC against cross-defendant Charles H. Moore, et al.,  
20 as a set-off against any damages to plaintiff by defendants pursuant to this action.

21 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
22 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
23 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
24 any alleged representations made by defendants which formed the basis of plaintiff's First  
25 Amended Complaint herein, were true and honest at the time made. Said representations were  
26 made, if any there were, without knowledge of any falsity, and were not made with the intent to  
27 deceive the plaintiff. Plaintiff is therefore barred from recovery herein.

28 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST

1 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
2 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege on  
3 information and belief that plaintiff cannot assert any of the contractual claims set forth in his  
4 First Amended Complaint because plaintiff prevented performance of such contract or contracts.

5 AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
6 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
7 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege on  
8 information and belief that plaintiff cannot assert any of the contractual claims contained in his  
9 First Amended Complaint because plaintiff himself materially breached said contract or contracts.

10 AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
11 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
12 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege on  
13 information and belief that the sole and proximate cause of the incident complained of by plaintiff  
14 in his First Amended Complaint was due to the act and/or omissions of persons and entities other  
15 than these answering defendants.

16 AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
17 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
18 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
19 there was a failure of consideration for the alleged agreement plaintiff seeks to enforce, caused by  
20 plaintiff, and that said failure of consideration bars plaintiff's rights to relief.

21 AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
22 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
23 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
24 enforcement of the agreement alleged in plaintiff's First Amended Complaint would work a  
25 forfeiture, and that the alleged agreement should not therefore be enforced in equity.

26 AS A NINTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
27 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
28 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that



1 plaintiff and defendants entered into a written contract, and plaintiff has failed to perform  
2 pursuant to the terms and conditions of that contract, thereby depriving defendants of the benefit  
3 of the bargain.

4 AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
5 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
6 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
7 plaintiff's First Amended Complaint, to the extent that it seeks punitive or exemplary damages  
8 pursuant to section 3294 of the Civil Code, violates defendants' rights to protection from  
9 "excessive fines" as provided in the Eighth Amendment of the United States Constitution and  
10 Article I, Section 17, of the Constitution of the State of California, and violates defendants' rights  
11 to substantive due process as provided in the Fifth and Fourteenth Amendments of the United  
12 States Constitution and the Constitution of the State of California, and therefore fails to state a  
13 cause of action supporting the punitive or exemplary damages claimed.

14 AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST  
15 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
16 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
17 plaintiff should be denied recovery under the First Amended Complaint, and each cause of action  
18 thereof, because plaintiff's conduct was manifestly unreasonable.

19 AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
20 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
21 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that  
22 their conduct was not the cause in fact or the proximate cause of any of the losses alleged by  
23 plaintiff.

24 AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
25 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
26 ACTION CONTAINED THEREIN, these answering defendants, and each of them, allege that at  
27 all times and places mentioned in the First Amended-Complaint herein, plaintiff by his past  
28 conduct, past declarations, past arguments, deeds and judgments, acted with the intent to

1 deliberately lead the defendants into a position of helplessness. Said defendants believed the  
2 representations of plaintiff and acted upon such belief to the detriment of defendants. To permit  
3 plaintiff to prevail would work as injustice and therefore these answering defendants ask the  
4 Court to protect each of them in equity by decreeing that plaintiff has waived his rights, if any.  
5 The conduct of plaintiff acts to bar by estoppel his right to complain at the present time.

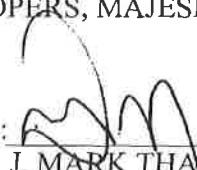
6 AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
7 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF  
8 ACTION CONTAINED THEREIN, these answering defendants, and each of them, presently has  
9 insufficient knowledge and information to form a belief as to whether additional defenses may be  
10 available, and therefore reserves the right to assert any and all additional defenses in the event  
11 discovery and investigation indicate such defenses may be appropriate.

12 WHEREFORE, these answering defendants, and each of them, pray for judgment as  
13 follows:

- 14 1. That plaintiff take nothing by his First Amended Complaint;
- 15 2. For costs of suit incurred herein; and
- 16 3. For such other and further relief as the Court deems proper.

17 Dated: January 17, 2012

ROPERS, MAJESKI, KOHN & BENTLEY

18  
19 By:  For:  
20 J. MARK THACKER  
21 Attorneys for Defendant and Cross-  
22 Complainant TECHNOLOGY  
23 PROPERTIES LIMITED LLC and  
24 Defendants ALLIACENSE LLC; DANIEL  
25 EDWIN LECKRONE, DANIEL  
26 MCNARY LECKRONE, and MICHAEL  
27 DAVIS  
28

1 **CASE NAME:** Moore v. Technology Properties Limited, LLC, et al.

2 **ACTION NO.:** 1-10-CV-183613, Santa Clara County Superior Court

**FILED**

3 **PROOF OF SERVICE** 2012 JAN 17 P 3: 28

4 **METHOD OF SERVICE**

5  First Class Mail  Facsimile

6  Overnight Delivery  E-Mail/Electronic Delivery

David H. Marrasak, Clerk of the Superior Court  
County of Santa Clara, California  
By \_\_\_\_\_ Messenger Service  
Diana Clark  
Diana Clark

- 7 1. At the time of service I was over 18 years of age and not a party to this action.  
8 2. My business address is 50 West San Fernando Street, Suite 1400, San Jose, County of Santa  
9 Clara, CA 95113-2429.  
10 3. On January 17, 2012 I served the following documents:

11 **ANSWER TO FIRST AMENDED COMPLAINT**

- 12 4. I served the documents on the persons at the address below (along with their fax numbers  
and/or email addresses if service was by fax or email):

13 Kenneth H. Prochnow, Esq.  
14 Chiles & Prochnow, LLP  
15 Stanford Financial Square  
16 2600 El Camino Real, Suite 412  
17 Palo Alto, CA 94306-1719

18 Telephone: (650) 812-0400  
19 Facsimile: (650) 812-0404  
20 kprochnow@chilesprolaw.com

21 Attorneys for Plaintiff  
22 Charles H. Moore

- 23 5. I served the documents by the following means:

24 a.  By United States mail: I enclosed the documents in a sealed envelope or package  
25 addressed to the persons at the addresses specified in item 4 and placed the envelope for  
26 collection and mailing, following our ordinary business practices. I am readily familiar with this  
27 business's practice for collecting and processing correspondence for mailing. On the same day  
28 that correspondence is placed for collection and mailing, it is deposited in the ordinary course of  
business with the United States Postal Service, in a sealed envelope with postage fully prepaid at  
the address listed in Paragraph 2 above.

b.  By overnight delivery: I enclosed the documents in an envelope or package  
provided by an overnight delivery carrier and addressed to the persons at the addresses in item 4.  
I placed the envelope or package for collection and overnight delivery at an office or a regularly  
utilized drop box of the overnight delivery carrier.

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c.  By messenger: I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 4 and providing them to a messenger for service. (Separate declaration of personal service to be provided by the messenger.)

d.  By fax transmission: Based on an agreement between the parties and in conformance with Rule 2.306, and/or as a courtesy, I faxed the documents to the persons at the fax numbers listed in item 4. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

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

Date: January 17, 2012

Nancy Batchelder  
Type Name

*Nancy Batchelder*  
Signature

# EXHIBIT 6



2011 COURT STATISTICS REPORT

# Statewide Caseload Trends

*2000-2001 Through 2009-2010*



JUDICIAL COUNCIL  
OF CALIFORNIA

2011 COURT STATISTICS REPORT

# Statewide Caseload Trends

*2000-2001 Through 2009-2010*



JUDICIAL COUNCIL  
OF CALIFORNIA

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# INTRODUCTION

The *Court Statistics Report (CSR)* is published annually by the Judicial Council of California and the Administrative Office of the Courts (AOC). The CSR combines 10-year statewide summaries of superior court filings and dispositions with similar workload indicators for the California Supreme Court and Courts of Appeal. The appendixes to this report provide detailed information on filings and dispositions in the superior courts for the most recent fiscal year, 2009–2010.

The CSR is designed to fulfill the provisions of article VI, section 6 of the California Constitution, which requires the Judicial Council to survey the condition and business of the California courts.

The CSR is published on the California Courts website at [www.courts.ca.gov/13421.htm](http://www.courts.ca.gov/13421.htm).

## Snapshot of Court Caseload

The *Court Statistics Report* contains essential information about the annual caseload of the California judicial branch, with a particular emphasis on the number and types of cases that are filed and disposed of in the courts. This information is submitted to the California Legislature and used in numerous judicial branch reports. As with any published data, the numbers in this report represent a snapshot of the most complete and reliable information available at the time of compilation.

To ensure that the statistics used for making policy decisions are as accurate as possible, courts may amend the data they submit to the AOC should new, more detailed or more complete information become available. For this reason, the data in this report may change slightly over time as courts revise their calculations and submit new caseload estimates.

## Variations in Data Totals

Statewide trends in filings and dispositions may be influenced by a number of factors. For example, changes in the number of filings and dispositions may reflect shifting needs or behavior of residents of a court's service area as well as new policy emphases in the work of justice system partners. The following are some of the more common causes of statistical variations.

### Missing Data

Statewide totals in the CSR may be influenced by missing data for certain courts. Typically, when courts do not report data to the AOC, it is because they have encountered difficulties generating automated reports from their case management systems. Filings data submitted by the courts tend to be more complete than disposition data. (See Appendix A for a list of courts that have not submitted data to the AOC for FY 2009–2010.)

### Incomplete Data

The reporting of incomplete data typically occurs when courts transmit partial data totals for a particular case type because of the limits of their case management systems. It should be noted that incomplete data are more difficult to spot in the tables that follow, but in general they will cause downward shifts in the number of filings and dispositions. (Incomplete data for FY 2009–2010 are also detailed in Appendix A.)



## Variation in Local Business Practices

Data reported in the CSR are compiled in a data warehouse, the Judicial Branch Statistical Information System (JBSIS). Because many different case management systems are used in the courts, data must be “mapped” from local systems into the standard categories used for reporting purposes. One essential function of JBSIS is to standardize the basic definitions of case types and case events across all courts in California. Another important aspect of JBSIS is its role in the extraction of court data through different transmission methods that include manual reports, automated JBSIS reports, and increasingly California Court Case Management System (CCMS) reports. Through this process JBSIS contributes to the warehousing of this data in a structure that is comparable from one court to another.

Maintaining quality control over the data contained in the JBSIS data warehouse involves:

- Training court staff on the standards for the classification, entry, and reporting of data;
- Providing information to the courts for resolving technical questions associated with data definitions, processing, and aggregation;
- Developing and adopting a new case management system infrastructure in the courts; and
- Documenting and disseminating information related to changes in the ways that courts define or report data.

Although a growing number of courts now transmit their data electronically from the case management system to the AOC, there continue to be differences among superior 'courts' case processing and other business practices that reflect the histories of individual courts and the unique needs of the communities they serve. These differences may influence the ways in which superior courts report data to the AOC. On that basis, while the filings and disposition data reported by any one court are largely comparable to data from other courts, some local variations in the classification and reporting of cases still occur.

## Changes to 2011 Court Statistics Report

The 2011 *Court Statistics Report* reflects several design improvements and organizational changes to make the document more user-friendly—primarily a more graphical presentation of the material and more accurate organization of the work of the branch by case type and subject matter. The electronic PDF version of the 2011 CSR also offers access to the raw data underlying many of the graphical charts by clicking the data icon:



Get this data

The major organizational change in the 2011 CSR is to distinguish descriptive caseload indicators such as filings and dispositions, and basic standards and measures of judicial administration. These measures, such as time to disposition and caseload clearance rate, allow the courts to assess case-processing practices and ensure efficient allocation of resources. Engaging in an ongoing assessment of performance measurement furthers many of the branchwide strategic goals—such as access to justice, accountability, and quality of justice and service to the public—that are vital to the effective administration of justice in California.

## Judicial Administration Standards and Measures

Government Code section 77001.5 (Sen. Bill 56 [Dunn]; Stats. 2006, ch. 390) requires the Judicial Council to adopt and annually report on “judicial administration standards and measures that promote the fair and efficient administration of justice, including, but not limited to, the following subjects: (1) providing equal access to courts and respectful treatment for all court participants; (2) case processing, including the efficient

use of judicial resources; and (3) general court administration.” The judicial administration standards and measures included in the 2011 CSR further the branch’s commitment to the goals and measures outlined in Government Code section 77001.5.

## **CalCourTools**

CalCourTools is a set of judicial administration standards and measures linked to technical assistance available from the Administrative Office of the Courts (AOC). The CalCourTools program builds on the CourtTools measures developed by the National Center for State Courts and endorsed by the Conference of Chief Justices and the Conference of State Court Administrators

## **Statistical Overview**

This section contains summaries of filings and dispositions for the California Supreme Court, Courts of Appeal, and superior courts for fiscal year 2009–2010.

### **Supreme Court**

- The Supreme Court issued 96 written opinions during the year.
- 9,652 matters were filed with the court, with 9,439 matters disposed of during the same period.
- The court received 5,131 petitions seeking review from a Court of Appeal decision in an appeal or an original writ proceeding and disposed of 5,141 such petitions.
  - 1,225 of these petitions for review arose from appeals in civil matters, and 3,906 from appeals in criminal matters.
  - The court disposed of 1,244 civil petitions and 3,897 criminal petitions.
- The court received 3,680 petitions seeking original writ relief and disposed of 3,548 of these matters.
  - Of the petitions seeking original writ relief, 323 arose out of civil matters and 3,357 arose out of criminal matters.
  - The court disposed of 314 civil and 3,234 criminal petitions.
- A total of 29 automatic appeals were filed with the court following a judgment of death, and the court disposed of 26 of these appeals by written opinion.
- The court received 34 habeas corpus petitions related to automatic appeals and disposed of 34 such petitions.
- A total of 688 State Bar matters were filed with the court, and 690 such matters were disposed of during the year.
- The Supreme Court ordered four Court of Appeal opinions depublished in this fiscal year.

### **Courts of Appeal**

- Contested matters for the Courts of Appeal totaled 22,515, and dispositions totaled 24,442.
- Contested matters included 13,738 records of appeal and 8,777 original proceedings.
- The 13,738 filings of records of appeal comprised 4,539 civil cases, 6,549 criminal cases, and 2,650 juvenile cases. The 8,777 filings of original proceedings included 2,017 civil, 6,305 criminal, and 455 juvenile cases.

- Filings of notices of appeal in the superior court totaled 15,738: 6,122 civil cases, 6,857 criminal cases, and 2,759 juvenile cases.
- Disposition of notices of appeal included 5,856 civil, 6,821 criminal, and 2,847 juvenile cases.
  - Dispositions of notices of appeal by written opinion totaled 10,270: 3,056 civil cases, 5,399 criminal cases, and 1,815 juvenile cases.
  - Dispositions without written opinion totaled 3,453 cases: 1,338 civil, 1,182 criminal, and 933 juvenile.
  - Dispositions of notices of appeal with no record filed totaled 1,801 cases: 1,462 civil, 240 criminal, and 99 juvenile.
- Disposition of filings of original proceedings is composed of 2,049 civil, 6,393 criminal, and 476 juvenile cases.
  - Disposition of original proceedings decided with written opinion totaled 609 cases: 149 civil cases, 221 criminal cases, and 239 juvenile cases.
  - Disposition of original proceedings without written opinion totaled 8,309 cases: 1,900 civil, 6,172 criminal, and 237 juvenile.
- Of the cases disposed of by written opinion, 8,743 were affirmed, 990 were reversed, and 289 were dismissed.
- Of those cases affirmed by the Courts of Appeal, 7,001 received full affirmance, while 1,742 received affirmance with modification.
- Statewide, 9 percent of Court of Appeal majority opinions were published in this fiscal year.

## Superior Court

Superior court case filings across all case categories totaled 10,074,941 cases, while dispositions numbered 8,782,281. Within these aggregate numbers, the following totals by major case category and case type were recorded:

**Civil Cases.** Civil filings totaled 1,152,926 and civil dispositions totaled 1,113,606, with a caseload clearance rate of 85% attained over all family law case types in this fiscal year.

- **UNLIMITED:** Civil unlimited filings totaled 220,631 cases, while civil unlimited dispositions numbered 195,335.
  - Method of disposition for civil unlimited cases: 138,965 cases disposed of before trial and 32,922 after trial.
  - Caseload clearance rate for civil unlimited cases: 89%.
  - Case processing time for civil unlimited cases was 72% within 12 months, 87% in 18 months, and 93% in 24 months.
- **LIMITED:** Civil limited filings totaled 720,308 cases, while civil limited dispositions numbered 703,350.
  - Method of disposition for civil limited trials: 521,215 cases were disposed of before trial and 47,833 after trial.
  - The caseload clearance rate for civil limited cases was 98%.
  - Case processing time for civil limited was as follows: 88% in 12 months, 97% in 18 months, and 99% in 24 months.

- **SMALL CLAIMS:** Small claims filings reached a total of 211,987 cases, while small claims dispositions numbered 214,921.
  - Method of disposition for small claims cases: 76,067 cases were disposed of before trial and 119,338 after trial.
  - The caseload clearance rate for small claims cases was 101%.
  - Case processing time in small claims cases was as follows: 61% in 70 days, 73% in 90 days.

**Criminal Cases.** Criminal filings totaled 8,270,215 and criminal dispositions numbered 7,116,013, with a caseload clearance rate of 86% attained over all criminal case types in this fiscal year.

- **FELONIES:** Felony filings reached a total of 248,340 cases, while felony dispositions numbered 238,511.
  - Method of disposition: 231,713 felony cases were disposed of before trial and 6,620 after trial.
  - Caseload clearance rate for felony cases was 96%.
  - Case processing time in felony cases resulting in bindovers or certified pleas: 46% in 30 days, 57% in 45 days, 73% in 90 days—with 88% of all felonies disposed of in less than 12 months.
- **MISDEMEANORS:** Misdemeanor filings reached a total of 1,323,154 cases, while misdemeanor dispositions numbered 1,021,428.
  - Method of disposition: 1,008,737 misdemeanor cases were disposed of before trial and 11,984 after trial.
  - Caseload clearance rate for misdemeanor cases ranged from 71% for traffic misdemeanors to 88% for nontraffic misdemeanors.
  - Case processing time for misdemeanors: 62% in 30 days, 78% in 90 days, and 83% in 120 days.
- **INFRACTIONS:** Infraction filings reached a total of 6,698,721 cases, while infraction dispositions numbered 5,856,074.
  - Method of disposition: 5,483,238 infraction cases were disposed of before trial and 369,589 after trial.
  - The caseload clearance rate for infraction cases ranged from 87% for traffic infractions to 92% for nontraffic infractions.

**Family Law.** Family law filings totaled 452,671, and family law dispositions numbered 383,547, with a caseload clearance rate of 85% attained over all family law case types in this fiscal year.

- **FAMILY LAW (MARITAL):** Family law (marital) filings reached a total of 154,534 cases, while this type of family law dispositions numbered 144,628.
  - Method of disposition: 143,212 family law (marital) cases were disposed of before trial and 1,335 after trial.
  - The caseload clearance rate for family law (marital) cases was 94%.
- **FAMILY LAW PETITIONS:** Family law petition filings reached a total of 298,137 cases, while this type of family law dispositions numbered 238,919.
  - Method of disposition: 237,706 family law petition cases were disposed of before trial and 910 after trial.

- The caseload clearance rate for family law petition cases was 80%.

**Juvenile Law.** Juvenile filings totaled 127,387, and juvenile dispositions numbered 109,970.

- **JUVENILE DELINQUENCY:** Juvenile delinquency filings reached a total of 90,303 cases, while juvenile delinquency dispositions numbered 80,121.
  - Method of disposition: 11,848 juvenile delinquency cases were disposed of before hearing and 68,186 after hearing.
  - The caseload clearance rate for juvenile delinquency cases ranged from 86% for original hearings to 95% for subsequent hearings, with an average of 89% for this case type.
- **JUVENILE DEPENDENCY:** Juvenile dependency filings reached a total of 37,084 cases, while juvenile dependency dispositions numbered 29,849.
  - Method of disposition: 6,835 juvenile dependency cases were disposed of before hearing and 22,919 after hearing.
  - The caseload clearance rate for juvenile dependency cases ranged from 90% for original hearings to 33% for subsequent hearings, with an average of 80% for this case type.

**Probate and Mental Health Cases.**

- **PROBATE:** Probate (estate, guardianship, and conservatorship) filings reached a total of 42,220 cases, while probate dispositions numbered 33,349.
  - Method of disposition: 15,901 probate cases were disposed of before hearing and 17,401 after hearing.
  - The caseload clearance rate for all types of probate cases was 79%.
- **MENTAL HEALTH:** Mental health filings reached a total of 15,802 cases, while mental health dispositions numbered 13,938.
  - Method of disposition: 4,359 mental health cases were disposed of before hearing and 9,579 after hearing.
  - The caseload clearance rate for all types of mental health cases was 88%.

**Trials, By Type of Proceeding**

- **JURY TRIALS:** A total of 11,047 jury trials were recorded across all case types. Jury trials held in the superior courts in fiscal year 2009–2010 included 6,016 felony, 3,404 misdemeanor, 1,400 civil unlimited, 190 civil limited, and 37 probate and mental health cases.
- **ALL COURT TRIALS:** A total of 470,529 court trials were recorded across all the case types detailed above (excluding small claims). These included 604 felony, 378,169 misdemeanor and infractions, 25,500 civil unlimited, 47,643 civil limited, and 18,613 probate and mental health cases.
- **SMALL CLAIMS TRIALS:** A total of 119,338 small claims court trials were recorded, which may be distinguished from criminal and civil court trials for their tendency to be resolved in a single hearing.

### **Trial Court Workload and Judicial Resources**

- Authorized judicial positions in the California courts in fiscal year 2009–2010 totaled 2,022: 1,646 judges and 376 subordinate judicial officers.
- The judicial position equivalent (JPE) total for the year was 2,118, while the assessed number of judges needed (AJN) was 2,352.

## **The California Court System**

California's court system serves a population of more than 38 million people—about 12.5 percent of the total U.S. population—and processed more than 10 million cases in fiscal year 2009–2010. The judicial branch budget of \$3.7 billion represents a little more than 3 percent of the California state budget and makes possible the case-processing activity detailed above while also providing the basis of support for approximately 2,000 judicial officers and more than 22,000 court employees statewide.

The vast majority of cases in the California courts begin in one of the 58 superior, or trial, courts, which reside in each of the state's 58 counties. With facilities in some 532 locations, these courts hear both civil and criminal cases as well as family, probate, mental health, and juvenile cases. The equivalent of more than 2,000 judicial positions statewide address the full range of cases heard each year by the superior courts, as reflected in the sheer number of case filings and dispositions reported here. The superior courts report summaries of their case filing counts to the AOC, and the CSR reports those figures here in aggregate form.

The next level of court authority within the state's judicial branch resides with the Courts of Appeal. Most of the cases that come before the Courts of Appeal involve the review of a superior court decision that is being contested by a party to the case. The Legislature has divided the state geographically into six appellate districts, each containing a Court of Appeal. Currently, 105 appellate justices preside in nine locations in the state to hear matters brought for review. Totals of Court of Appeal case filings are forwarded to the AOC; these are summarized in the tables that follow.

The Supreme Court sits at the apex of the state's judicial system, and has discretion to review decisions of the Courts of Appeal in order to settle important questions of law and resolve conflicts among the courts of appeal. Although the Supreme Court generally has considerable discretion in determining in which cases to grant review, it must review the appeal in any case in which a trial court has imposed the death penalty. The Supreme Court sends the AOC its annual case filing figures, which are reported here in summary form.

## **Terminology and Rules for Counting Filings**

Technical definitions of most terms used in this CSR can be found in the appendixes. Some core definitions are presented here in more detail.

### **Appellate Courts**

**APPEAL.** An *appeal* is a proceeding undertaken to have a decision reconsidered by bringing it from a lower to a higher court of authority. A *notice of appeal* is a written notification filed with a superior court and intended to initiate the appeal of a judgment to a higher court. A *fully briefed* appeal is one in which all briefs have been filed with the court. *Dismissal* of an appeal involves the termination of a case for reasons other than its merit. An appeal that is awaiting a final decision is said to be *pending*. **Each notice of appeal is counted as one new filing.**

PETITION FOR REVIEW. A *petition for review* is filed in the California Supreme Court to ask that court to exercise its discretion to review a decision issued by a Court of Appeal in an appeal or an original proceeding. The Supreme Court has a total of 90 days to consider a petition for review, after which it loses jurisdiction.

AUTOMATIC APPEAL. An *automatic appeal* is the appeal of a judgment of guilt in a case involving the death penalty. This type of appeal is unique because it moves directly from a superior court to the Supreme Court without first being reviewed by a Court of Appeal. Like other types of appeals, **an automatic appeal is counted as one new filing.**

ORIGINAL PROCEEDING. An *original proceeding* is an action filed and heard for the first time in an appellate court. This action is not an appeal; rather, it is ordinarily a petition for a writ. Examples of original proceedings include a writ of mandamus, which instructs a lower court to perform mandatory duties correctly; a writ of prohibition, or an order that forbids certain actions; and a writ of habeas corpus, which may be issued to bring a party before the court. **Each original proceeding is counted as one new filing.**

PETITION FOR A WRIT OF HABEAS CORPUS. A petition for the issuance of a *writ of habeas corpus* is typically filed to contest the legality of a party's imprisonment. An original habeas corpus petition may be filed at any level of court. **Each habeas corpus petition is counted as one new filing.**

WRITTEN OPINION. A *written opinion* is a statement issued by an appellate court to explain the terms and reasoning its final judgment in a case. The written opinion includes a statement of the legal facts in the case, relevant points of law, and the rationale for the decision. Written opinions may or may not accompany final judgments and are not counted separately from case filings in tracking workload.

DISPOSITIONS. The appellate court may dispose of a case by affirming or reversing the action of the lower court, or it may send the case back to the lower court for further proceedings if appropriate.

RECORD OF APPEAL. A *record of appeal* is the compilation of documents and transcripts associated with a given superior court case under review by an appellate court. The record is a component of a new appellate case and as such **is not counted separately from the initial appeal.**

REVERSAL OF CASE DECISION. A *reversal* is the overturning of a lower court's decision by an appellate court. For purposes of tracking the court's workload, case reversals are not counted separately from dispositions of these matters.

## Superior Courts

FILING. In the most general sense, a *filing* is the initiation of a legal action with the court through a carefully prescribed legal procedure.

**How Filings Are Counted.** The procedure used to count filings for this report follows a set of rules consistent with national standards for statistical reporting. These rules differ according to case type:

- Each filing in a *civil* case pertains to the complaint or petition that has been submitted to the court for action. A given civil complaint may name one or more individuals or groups as its object. However, **regardless of the number of parties named in a case, each civil case is reported as one filing or one disposition.**
- Each filing in a *criminal* case is associated with a single defendant against whom criminal charges have been filed. Multiple criminal charges may occur in a case where different charges have been brought against the same defendant, but **only the single most severe charge against a defendant in a**

**given case is counted as a new criminal filing. When multiple defendants are charged with a crime, multiple filings are respectively reported.**

- Each filing in a *juvenile* case pertains to a minor who is the subject of a petition made to the court for adjudication. A minor may have an initial filing that brought him or her to the attention of the court, and subsequent filings if new petitions or charges are filed over time. This practice continues until termination of the dependency or delinquency jurisdiction by the court or when the minor has reached the legal definition of adulthood. **In a single case involving multiple minors, each minor is counted as a separate filing.**

DISPOSITION. In a general sense, a *disposition* may be described as a final settlement or determination in a case. A disposition may occur either before or after a civil or criminal case has been scheduled for trial. A final judgment, a dismissal of a case, and the sentencing of a criminal defendant are all examples of dispositions. In certain case types, however, a disposition may merely signal the beginning of the court's authority over a case. For example, after the petition to appoint a conservator is disposed of in conservatorship cases, the court assumes control over that case. Rules for counting and reporting dispositions mirror those for filings, although a case filed in one year may be disposed of by the court in a subsequent year.

## California Judicial Branch: Structure and Duties

### The Courts

#### CALIFORNIA SUPREME COURT

[www.courts.ca.gov/supremecourt.htm](http://www.courts.ca.gov/supremecourt.htm)

- Has discretionary authority to review decisions of the Courts of Appeal; jurisdiction to review original petitions for writ relief; direct responsibility for automatic appeals after death penalty judgments
- Hears oral arguments in San Francisco, Los Angeles, and Sacramento

#### COURTS OF APPEAL

[www.courts.ca.gov/courtsofappeal.htm](http://www.courts.ca.gov/courtsofappeal.htm)

- Review the majority of appealable orders or judgments from the superior courts; jurisdiction to review original petitions for writ relief
- Six districts, 19 divisions, 9 court locations

#### SUPERIOR COURTS

[www.courts.ca.gov/superiorcourts.htm](http://www.courts.ca.gov/superiorcourts.htm)

- Have trial jurisdiction over all criminal and civil cases filed in their respective counties; guided by state and local laws that define crimes and specify punishments, as well as defining civil duties and liabilities
- A total of 58 courts—one for each California county—each operating in 1 to 55 branches depending on county population, total local caseload, and other factors

### Branch and Administration Policy

#### JUDICIAL COUNCIL OF CALIFORNIA

[www.courts.ca.gov/policyadmin-jc.htm](http://www.courts.ca.gov/policyadmin-jc.htm)

The constitutionally created policymaking body of the California courts



ADMINISTRATIVE OFFICE OF THE COURTS (AOC)

[www.courts.ca.gov/policyadmin-aoc.htm](http://www.courts.ca.gov/policyadmin-aoc.htm)

The staff agency to the Judicial Council

### **Branch Agencies**

COMMISSION ON JUDICIAL APPOINTMENTS

[www.courts.ca.gov/5367.htm](http://www.courts.ca.gov/5367.htm)

Confirms gubernatorial appointments to the Supreme Court and appellate courts

COMMISSION ON JUDICIAL PERFORMANCE

<http://cjp.ca.gov>

Responsible for maintaining statewide standards for administration of justice and empowered with disciplinary authority to effect the censure, removal, retirement, or private admonishment of judges and commissioners

Decisions subject to review by the California Supreme Court

HABEAS CORPUS RESOURCE CENTER

[www.courts.ca.gov/5361.htm](http://www.courts.ca.gov/5361.htm)

Handles state and federal habeas corpus proceedings; provides training and support for private attorneys who take these cases

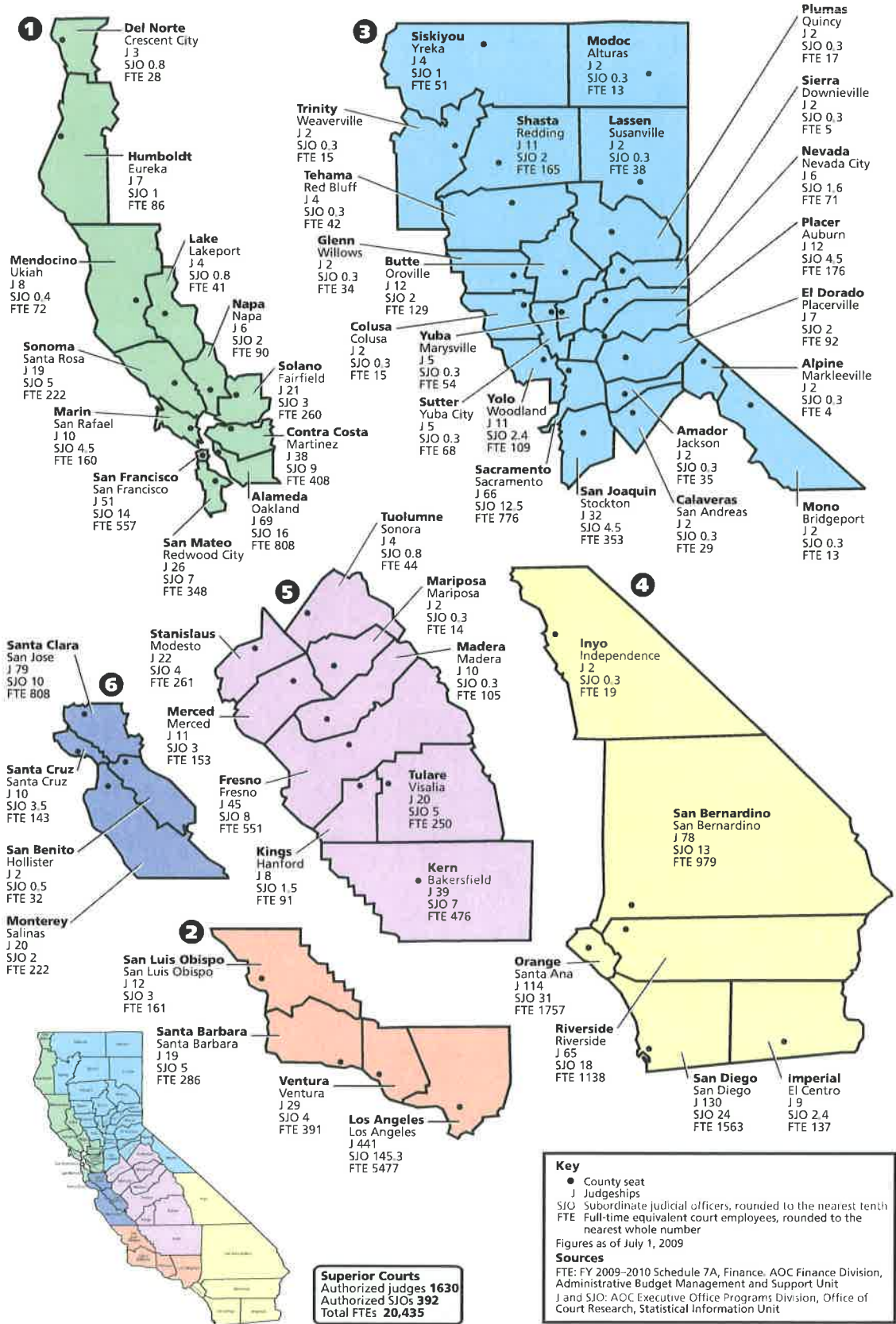
### **Related**

STATE BAR OF CALIFORNIA

[www.calbar.ca.gov](http://www.calbar.ca.gov)

Serves the Supreme Court in administrative and disciplinary matters related to attorneys

# California Judicial Officers and Court Employees



**Supreme Court**  
 Justices 7  
 FTE 140

**First Appellate District**  
 Justices 20  
 FTE 112 **1**

**Second Appellate District**  
 Justices 32  
 FTE 257 **2**

**Third Appellate District**  
 Justices 11  
 FTE 89 **3**

**Fourth Appellate District**  
 Justices 25  
 FTE 184 **4**

**Fifth Appellate District**  
 Justices 10  
 FTE 71 **5**

**Sixth Appellate District**  
 Justices 7  
 FTE 49 **6**

# Superior Courts

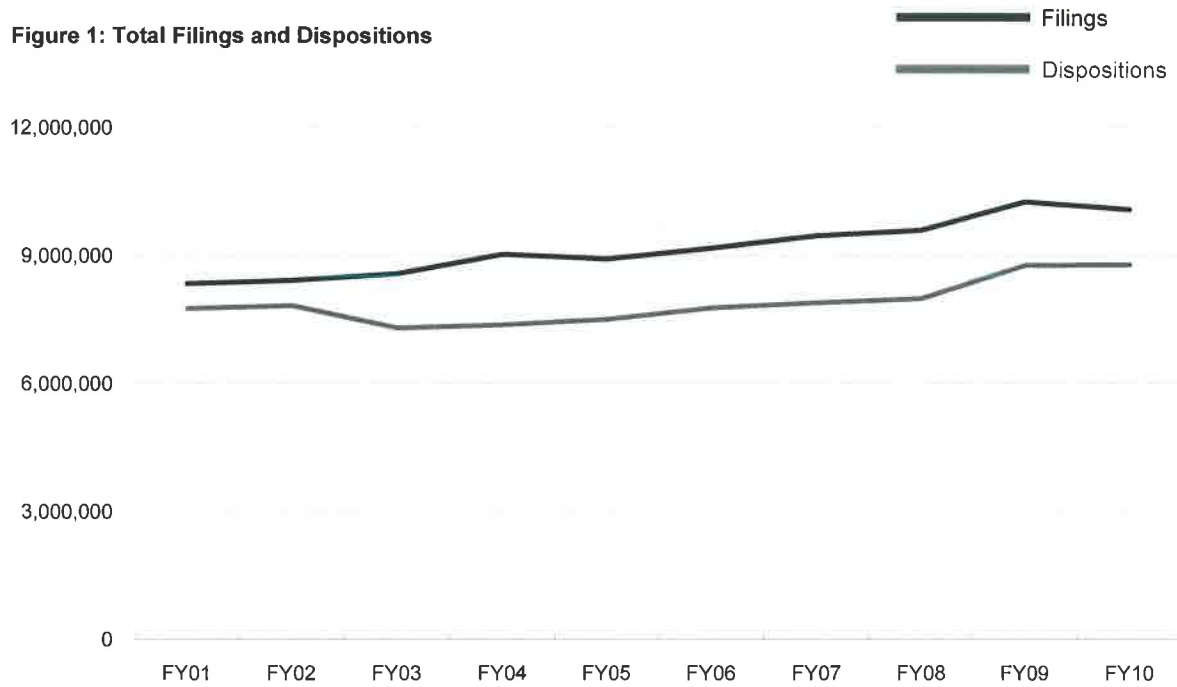


**Caseloads and Authorized Judicial Positions**  
**Fiscal Years 2000–01 through 2009–10**

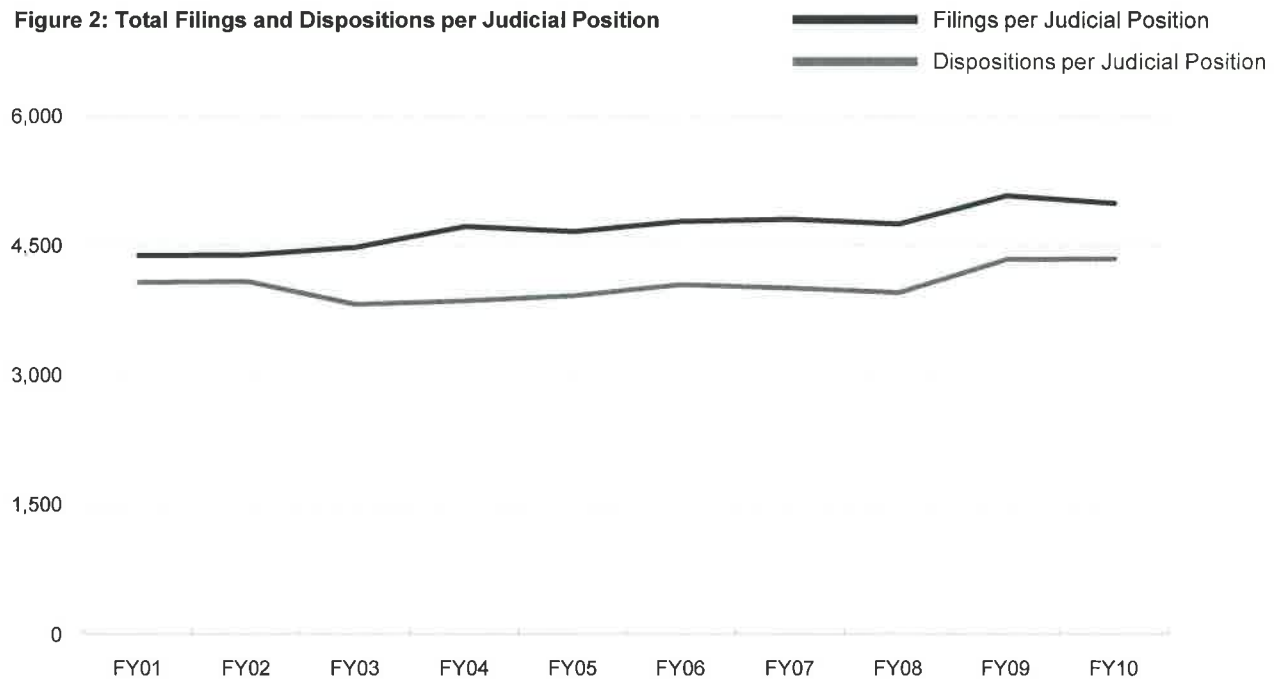
**Superior Courts**  
**Figures 1–2**



**Figure 1: Total Filings and Dispositions**

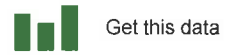


**Figure 2: Total Filings and Dispositions per Judicial Position**

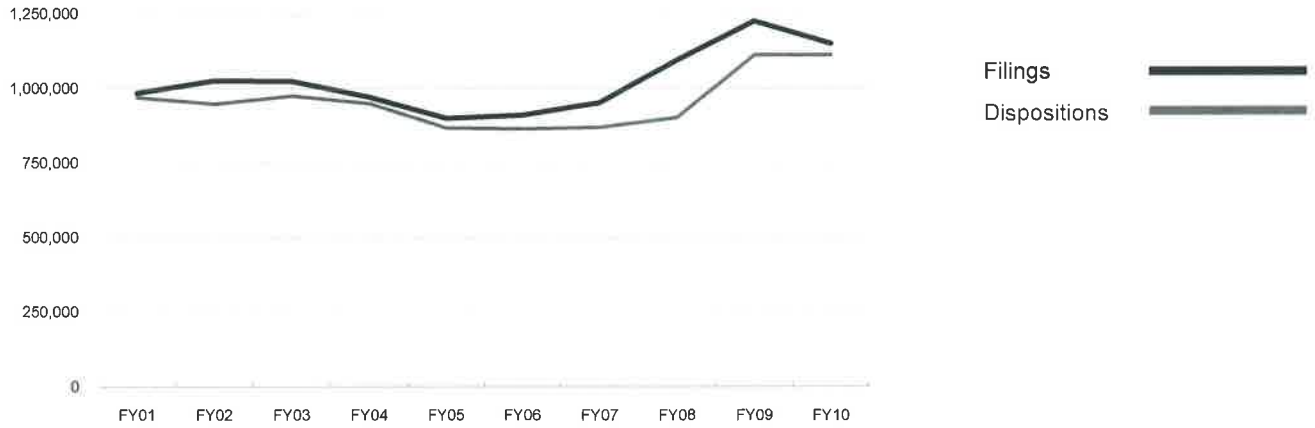


**Civil Filings and Dispositions**  
Fiscal Years 2000–01 through 2009–10

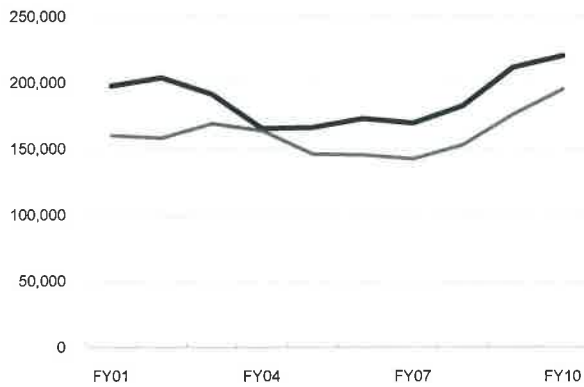
**Superior Courts**  
Figures 3–9



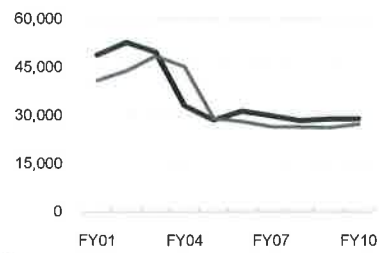
**Figure 3: Total Civil Filings and Dispositions**



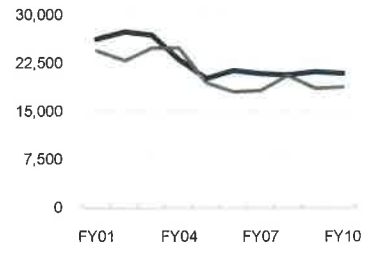
**Figure 4: Civil Unlimited**



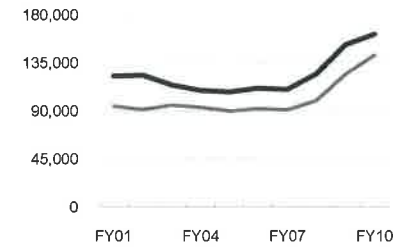
**Figure 5: Motor Vehicle PI/PD/WD**



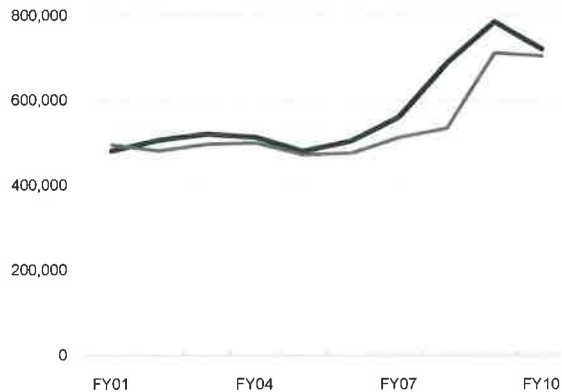
**Figure 6: Other PI/PD/WD**



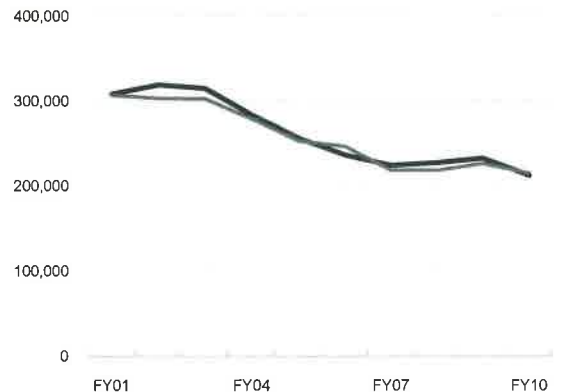
**Figure 7: Civil Complaints**



**Figure 8: Civil Limited**



**Figure 9: Small Claims**

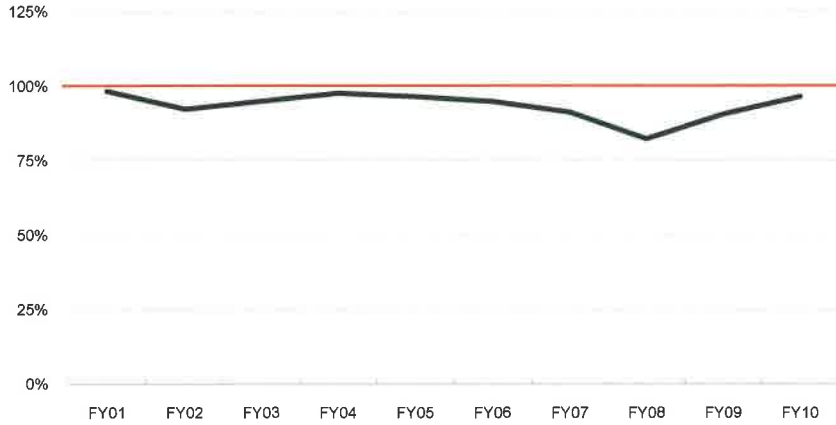


**CalCourTools: Caseload Clearance Rates**  
**Civil Unlimited, Civil Limited, Small Claims**  
 Fiscal Years 2000–01 through 2009–10

**Superior Courts**  
 Figures 10–16



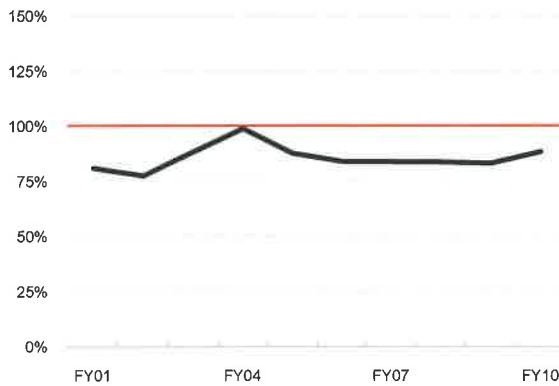
**Figure 10: Total Civil**



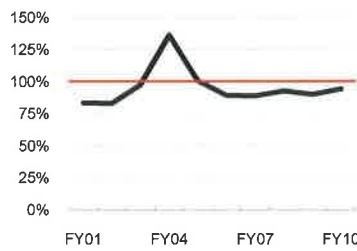
Clearance Rate equals the number of outgoing cases as a percentage of the number of incoming cases. A clearance rate of 100% indicates that the number of cases disposed of in any given year equals the number of cases filed.

$$\text{Clearance Rate} = \frac{\text{Dispositions}}{\text{Filings}}$$

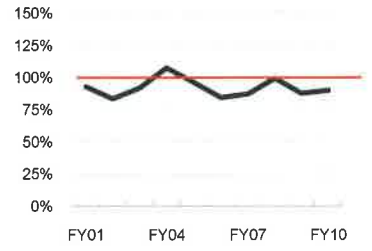
**Figure 11: Civil Unlimited**



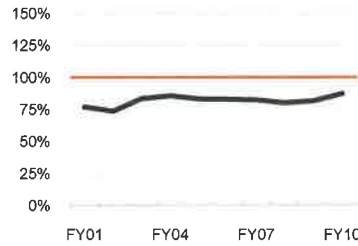
**Figure 12: Motor Vehicle PI/PD/WD**



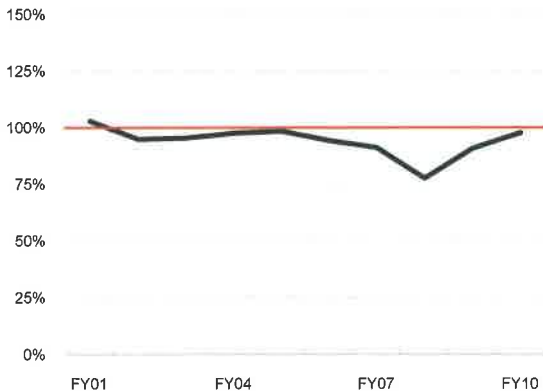
**Figure 13: Other PI/PD/WD**



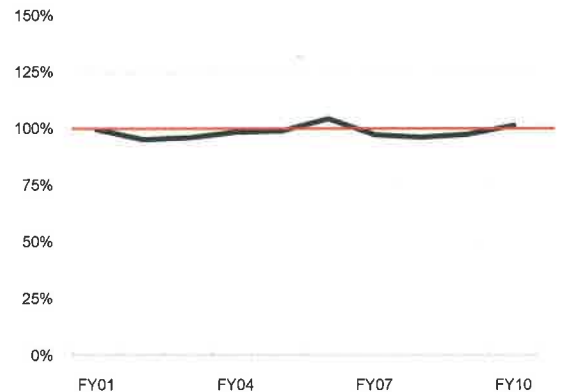
**Figure 14: Civil Complaints**



**Figure 15: Civil Limited**



**Figure 16: Small Claims**





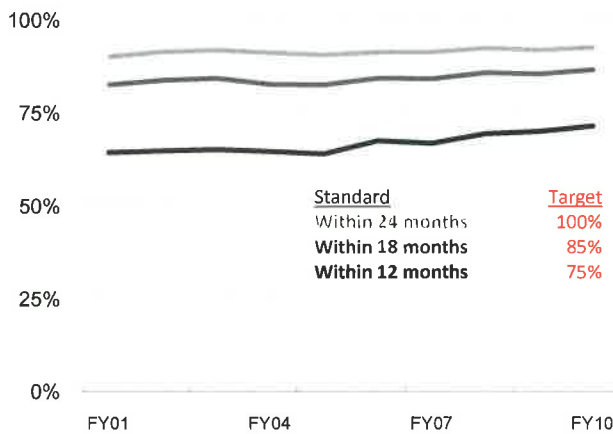
Get this data

**Civil Case Processing Time** (percent of cases disposed within specified periods)

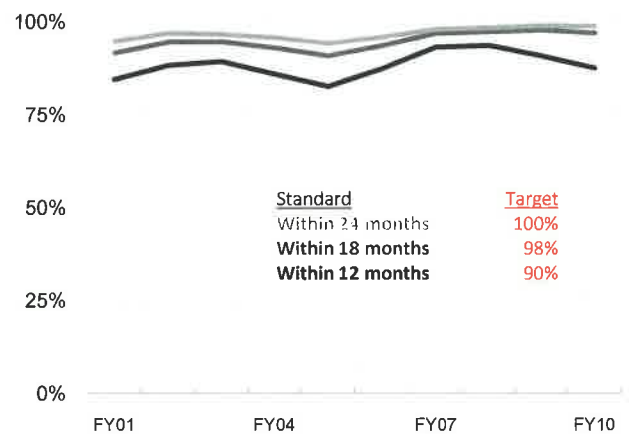
The Standards of Judicial Administration establishes case processing time to disposition goals for different types of civil cases, which are presented below with the specific time standards and target performance level.

Standard  
 Time standard      Target  
                                  **Goal**

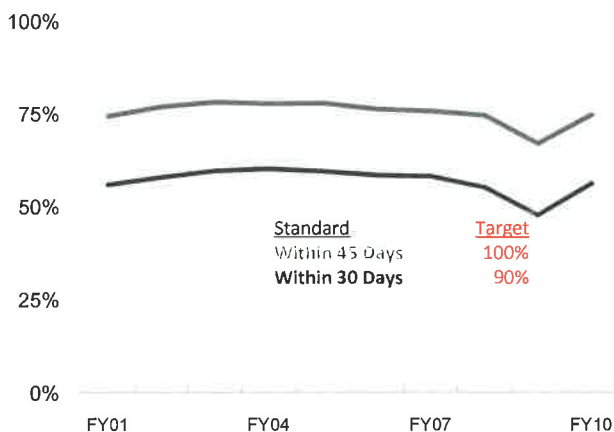
**Figure 17: Civil Unlimited**



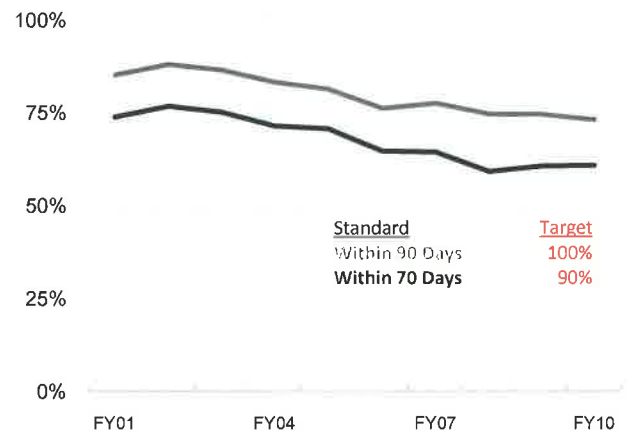
**Figure 18: Limited Civil**

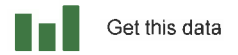


**Figure 19: Unlawful Detainer**



**Figure 20: Small Claims**





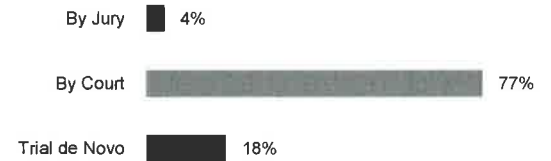
**Figure 21: How and at what stage are civil cases resolved?**

**Unlimited Civil**

Number disposed before trial



Number disposed after trial



**Limited Civil**

Number disposed before trial



Number disposed after trial



**Small Claims**

Number disposed before trial



Number disposed after trial



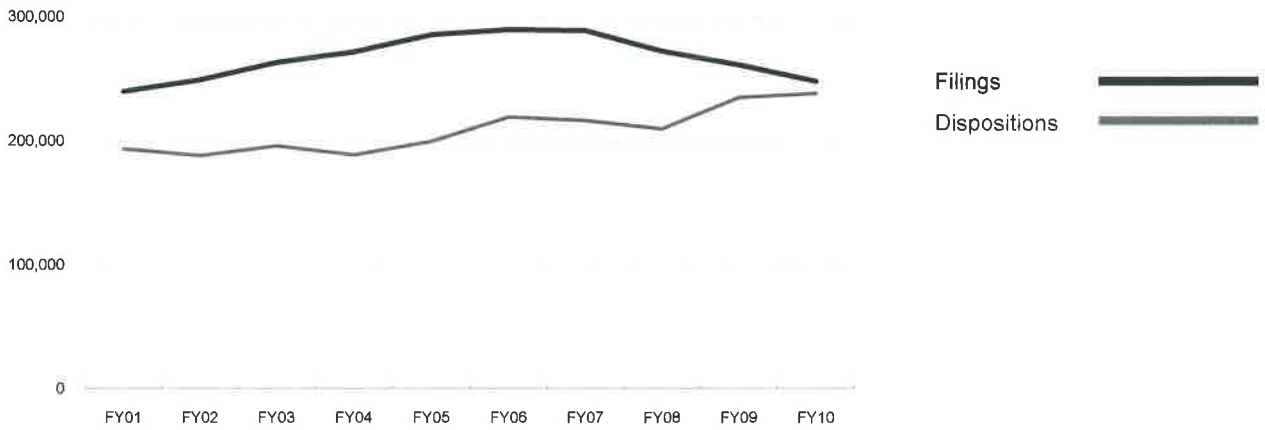


**Criminal Filings and Dispositions**  
Fiscal Years 2000–01 through 2009–10

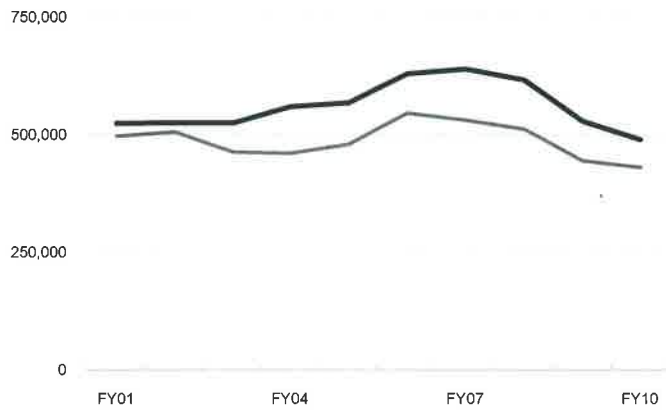
**Superior Courts**  
Figures 22–26



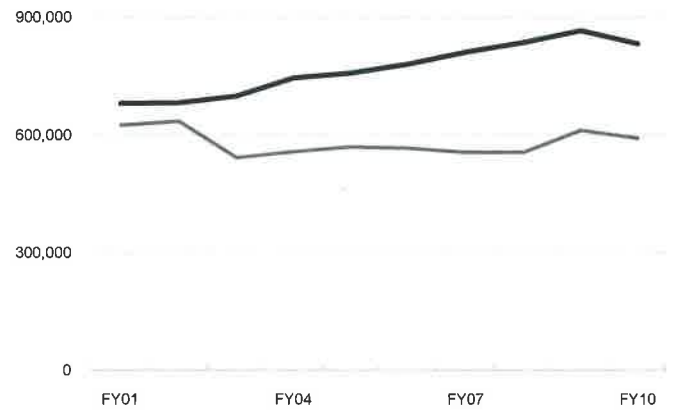
**Figure 22: Felony**



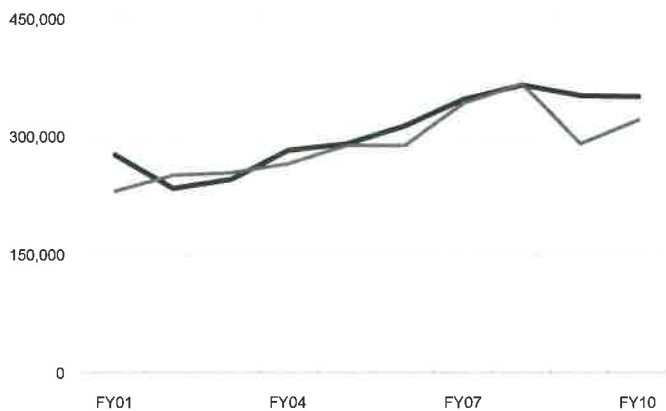
**Figure 23: Nontraffic Misdemeanor**



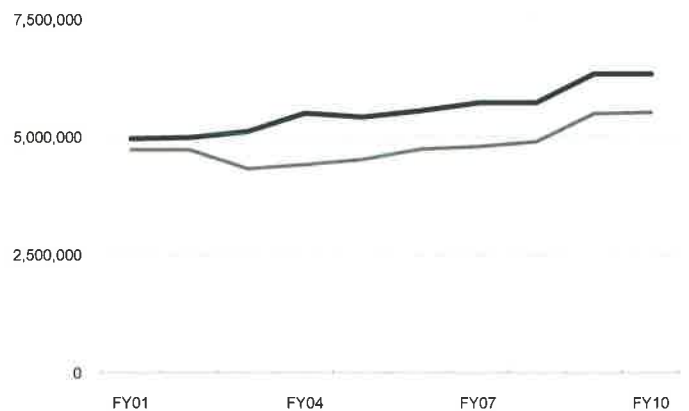
**Figure 24: Traffic Misdemeanor**



**Figure 25: Nontraffic Infraction**

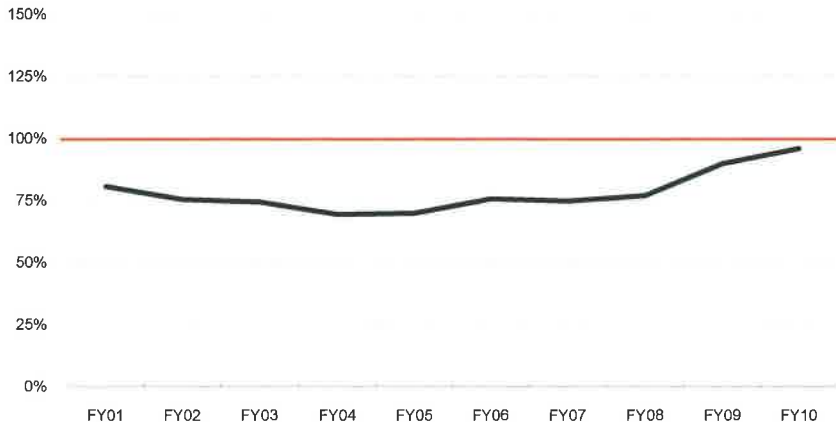


**Figure 26: Traffic Infraction**





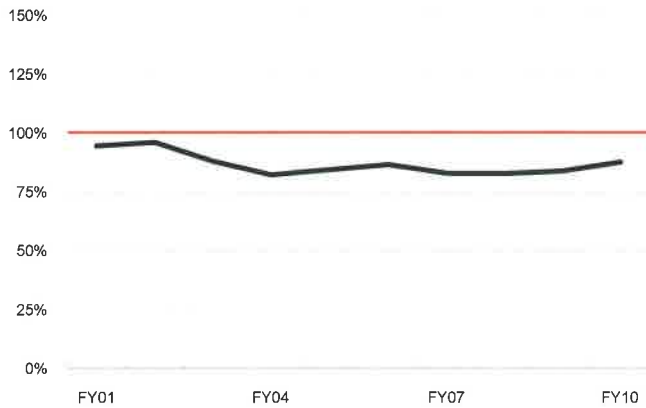
**Figure 27: Felony**



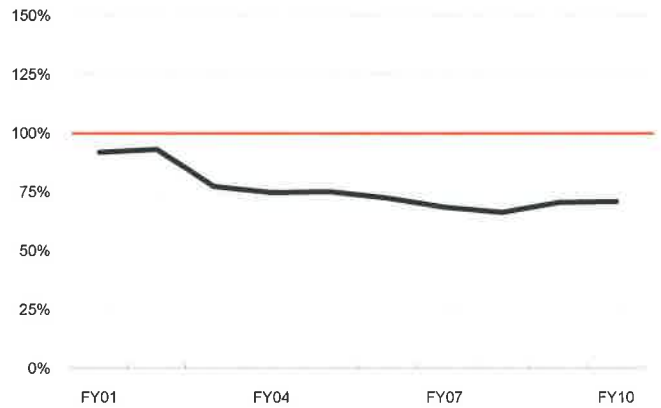
Clearance Rate equals the number of outgoing cases as a percentage of the number of incoming cases. A clearance rate of 100% indicates that the number of cases disposed of in any given year equals the number of cases filed.

$$\text{Clearance Rate} = \frac{\text{Dispositions}}{\text{Filings}}$$

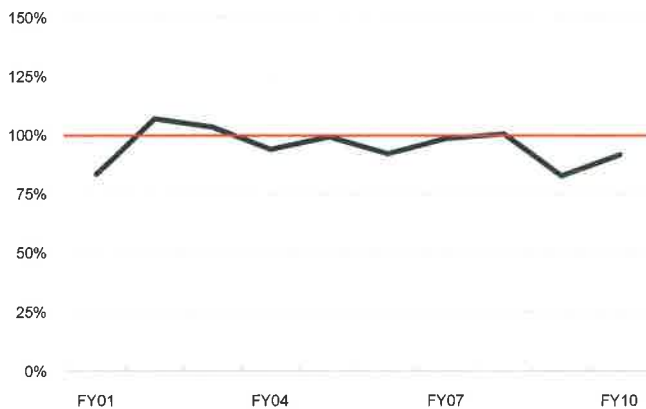
**Figure 28: Nontraffic Misdemeanor**



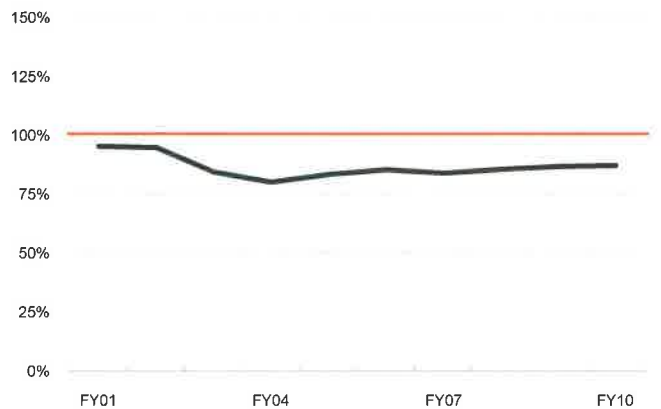
**Figure 29: Traffic Misdemeanor**



**Figure 30: Nontraffic Infraction**



**Figure 31: Traffic Infraction**



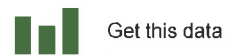
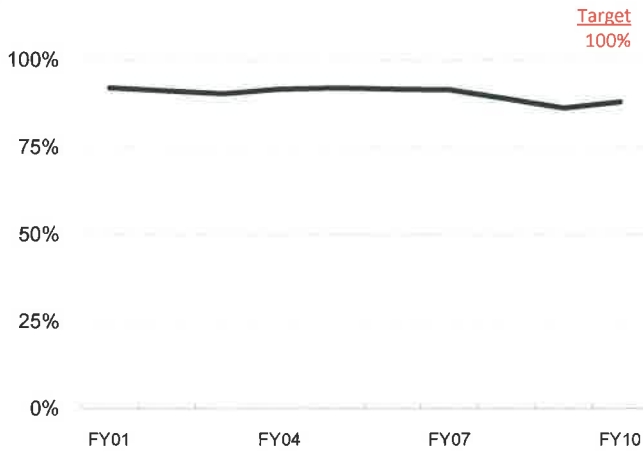


Figure 32: Felonies disposed within 12 months



**Criminal Case Processing Time**  
(percent of cases disposed within specified periods)

The Standards of Judicial Administration establishes case processing time to disposition goals for different types of criminal cases, which are presented below with the specific time standards and target performance level.

Figure 33: Felonies resulting in bindover or certified pleas

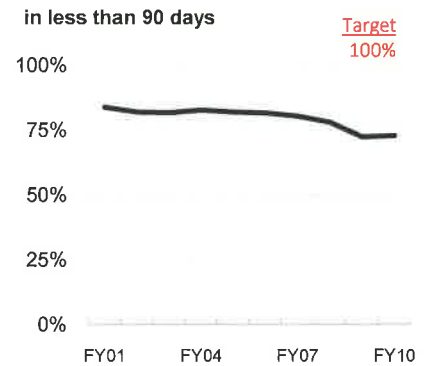
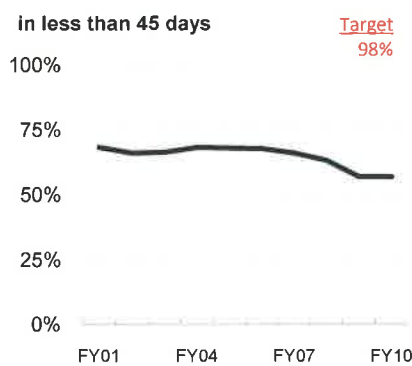
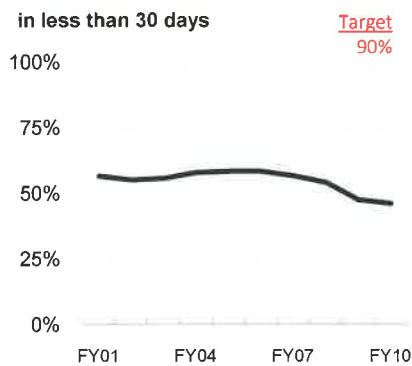


Figure 34: Misdemeanors disposed

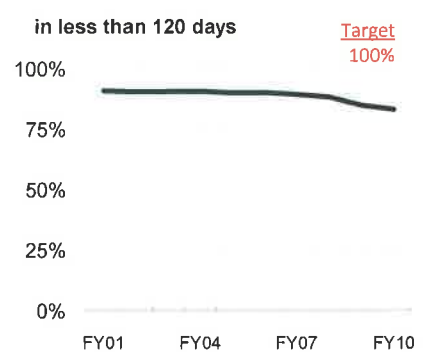
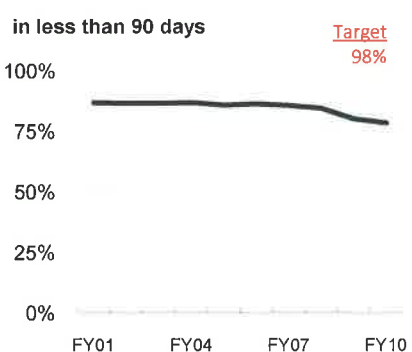
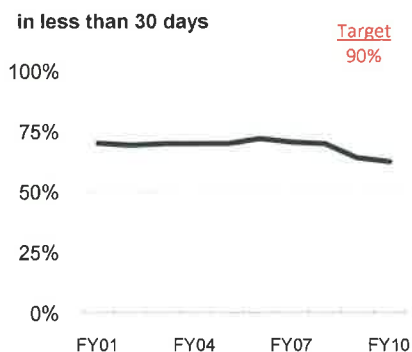


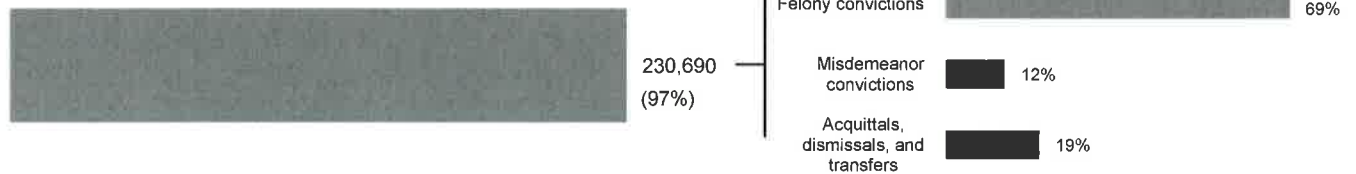


Figure 35: How and at what stage are felony cases resolved?

Total felony dispositions (not including felony petitions)



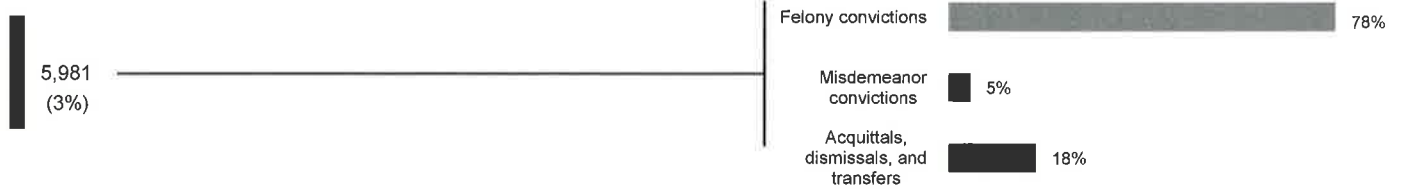
Number disposed before trial

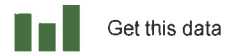


Court trials



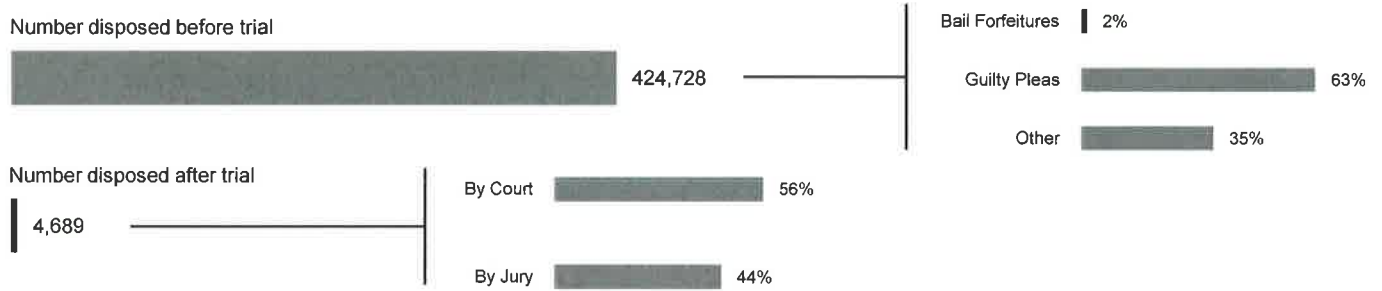
Jury trials



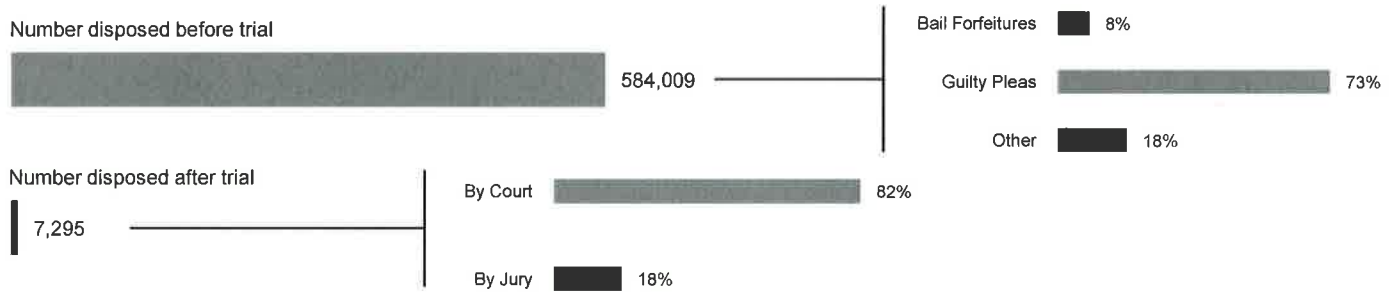


**Figure 36: How and at what stage are misdemeanor and infraction cases resolved?**

**Nontraffic Misdemeanors**



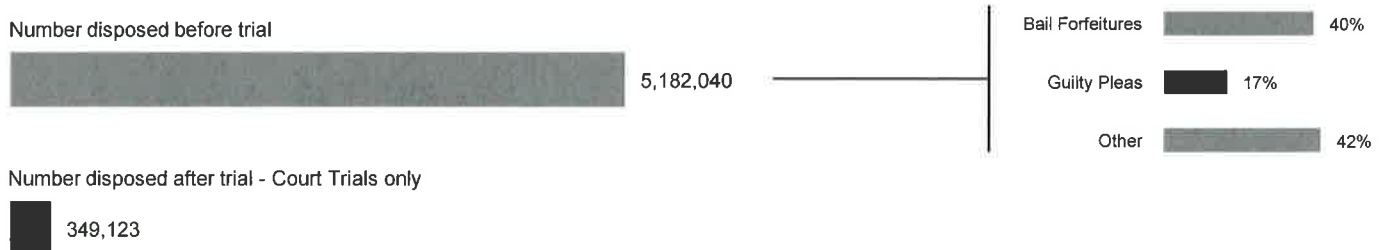
**Traffic Misdemeanors**



**Nontraffic Infractions**



**Traffic Infractions**



**Family and Juvenile Filings and Dispositions**  
 Fiscal Years 2000–01 through 2009–10

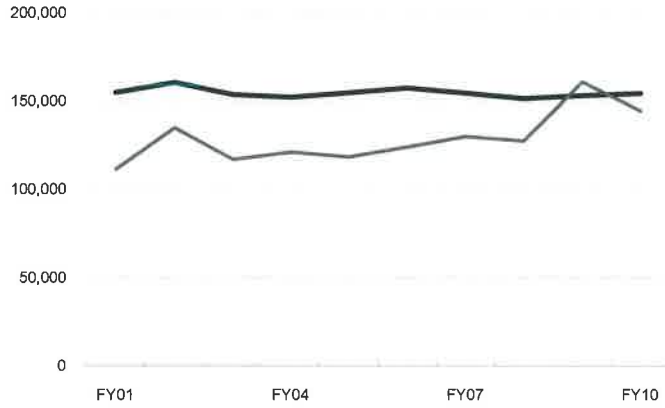
**Superior Courts**  
 Figures 37–40



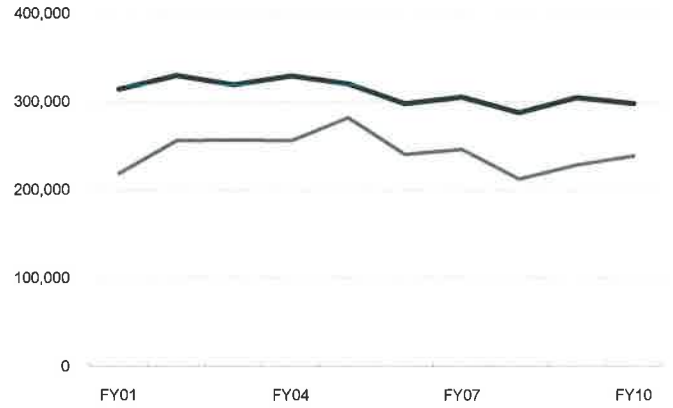
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Filings   
 Dispositions

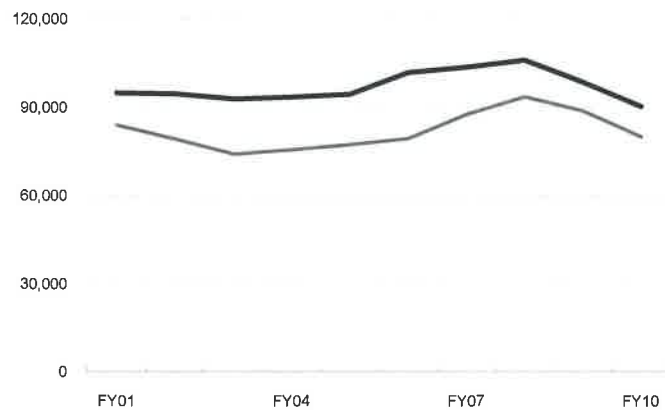
**Figure 37: Family Law — Marital**



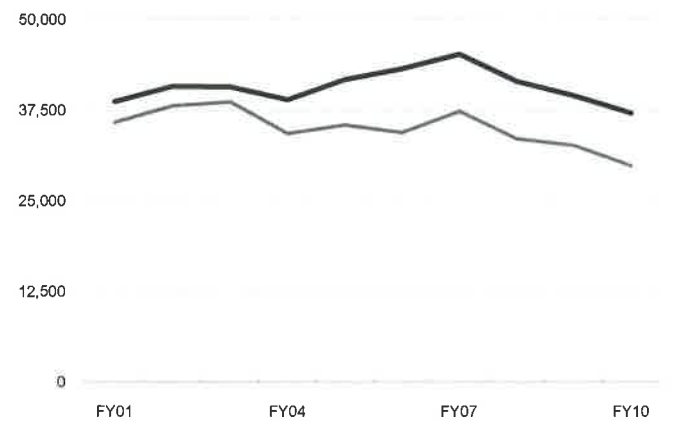
**Figure 38: Family Law Petitions**



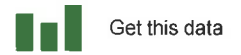
**Figure 39: Juvenile Delinquency**



**Figure 40: Juvenile Dependency**



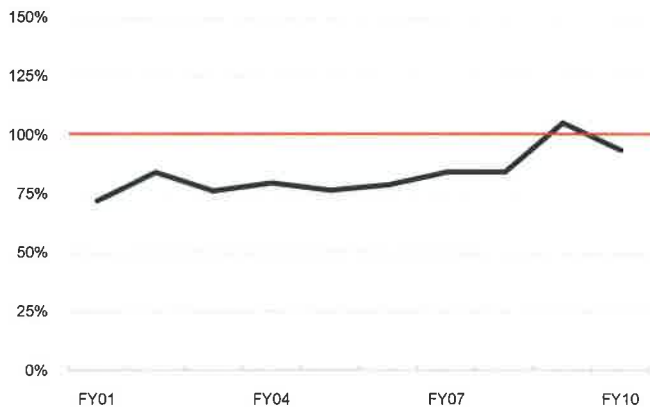
**CalCourTools: Caseload Clearance Rates**  
**Family Law, Juvenile Delinquency, Juvenile Dependency**  
 Fiscal Years 2000–01 through 2009–10



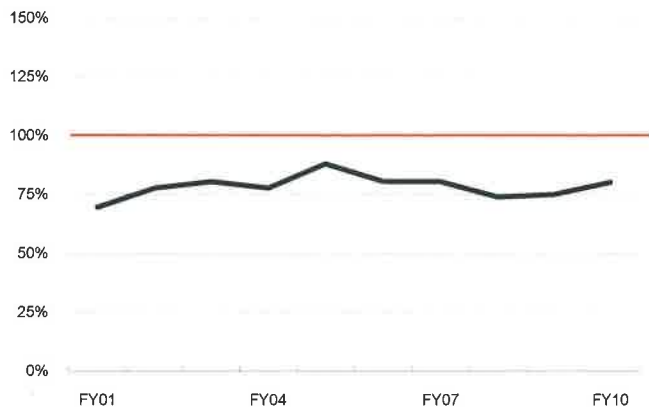
Clearance Rate equals the number of outgoing cases as a percentage of the number of incoming cases. A clearance rate of 100% indicates that the number of cases disposed of in any given year equals the number of cases filed.

$$\text{Clearance Rate} = \frac{\text{Dispositions}}{\text{Filings}}$$

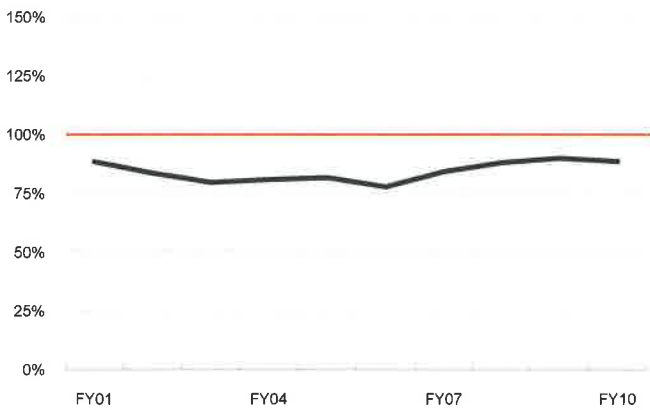
**Figure 41: Family Law — Marital**



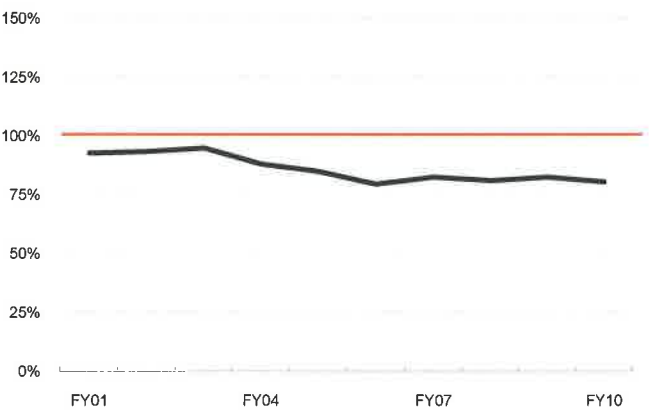
**Figure 42: Family Law Petitions**



**Figure 43: Juvenile Delinquency**

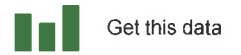


**Figure 44: Juvenile Dependency**



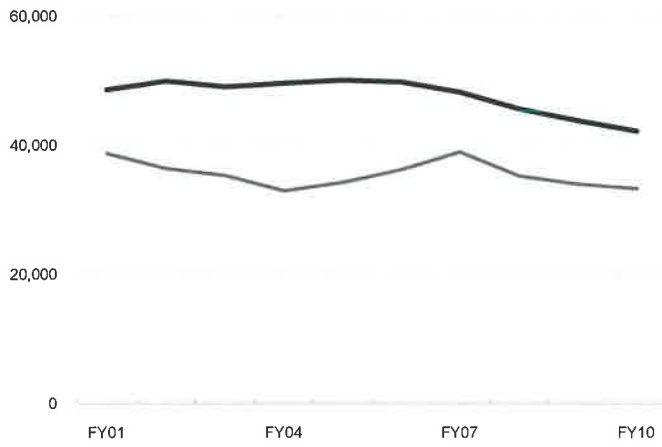
**Probate, Mental Health, Appeals, Habeas Corpus Filings and Dispositions**  
 Fiscal Years 2000–01 through 2009–10

**Superior Courts**  
 Figures 45–48

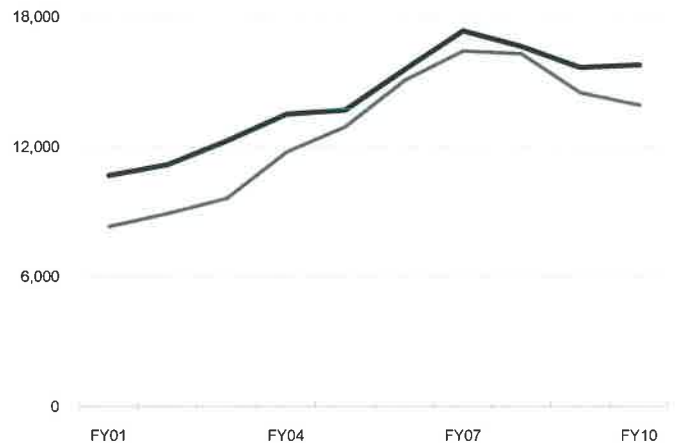


Filings   
 Dispositions 

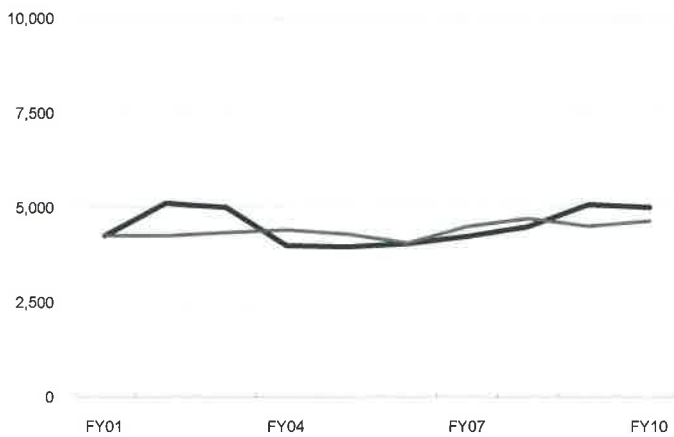
**Figure 45: Probate**



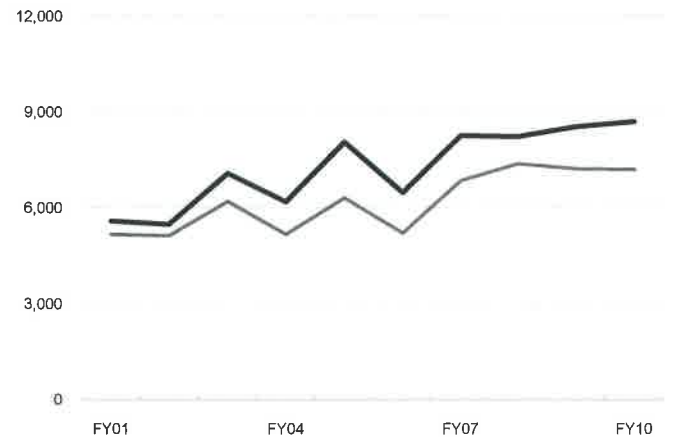
**Figure 46: Mental Health**



**Figure 47: Appeals**



**Figure 48: Criminal Habeas Corpus**





**CalCourTools: Caseload Clearance Rates**  
**Probate, Mental Health, Appeals, Habeas Corpus**  
**Fiscal Years 2000–01 through 2009–10**

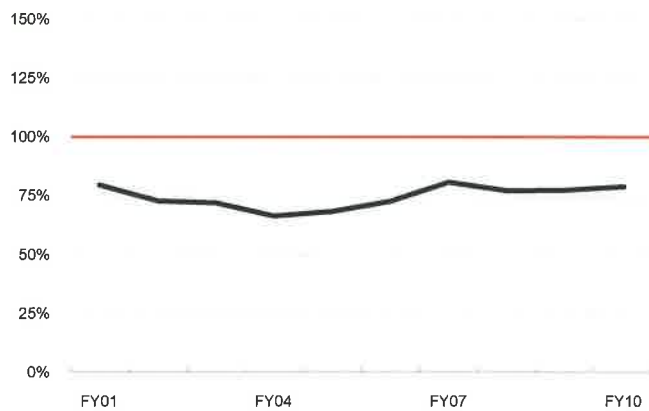


Get this data

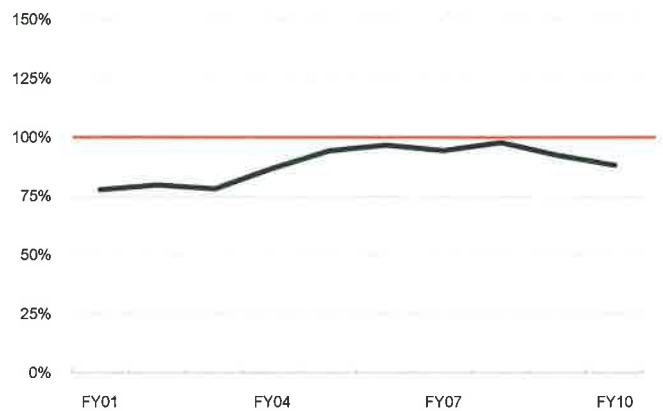
Clearance Rate equals the number of outgoing cases as a percentage of the number of incoming cases. A clearance rate of 100% indicates that the number of cases disposed of in any given year equals the number of cases filed.

$$\text{Clearance Rate} = \frac{\text{Dispositions}}{\text{Filings}}$$

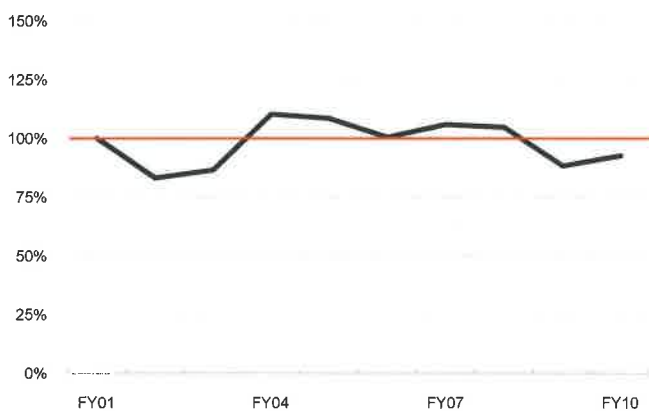
**Figure 49: Probate**



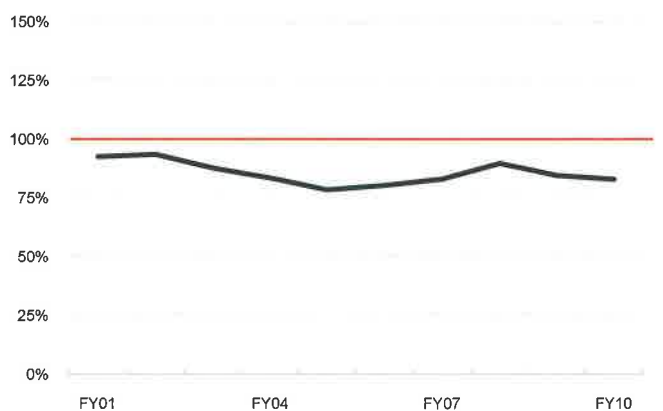
**Figure 50: Mental Health**



**Figure 51: Appeals**

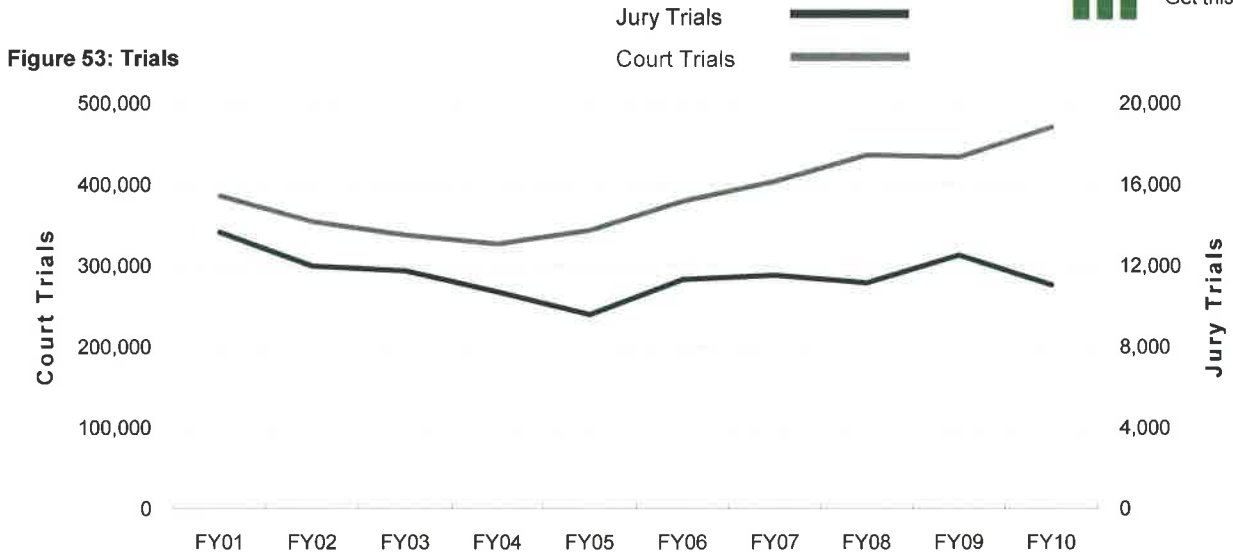
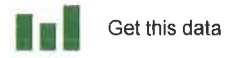


**Figure 52: Criminal Habeas Corpus**



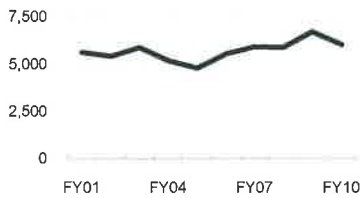
**Caseflow Management Data  
Trials By Type of Proceeding  
Fiscal Years 2000–01 through 2009–10**

**Superior Courts  
Figures 53–65**

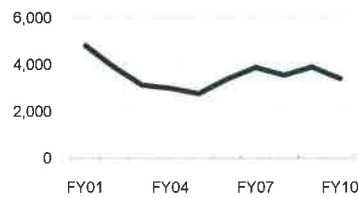


**Jury Trials**

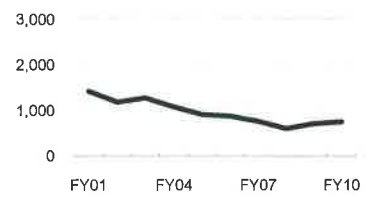
**Figure 54: Felony**



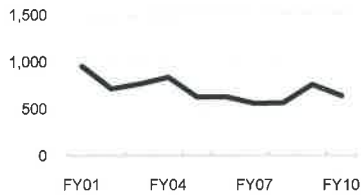
**Figure 55: Misdemeanor**



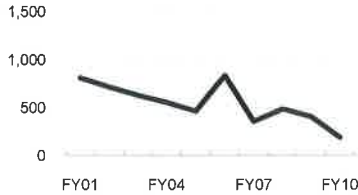
**Figure 56: PI/PD/WD Civil Unlimited**



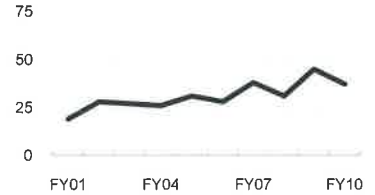
**Figure 57: Other Civil Unlimited**



**Figure 58: Civil Limited**

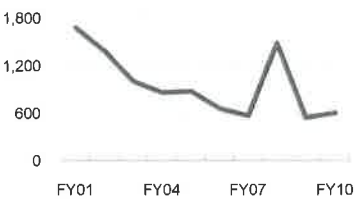


**Figure 59: Probate and Mental Health**

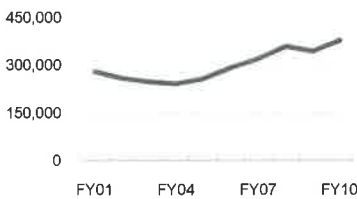


**Court Trials**

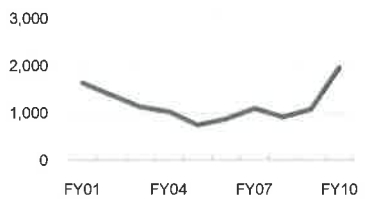
**Figure 60: Felony**



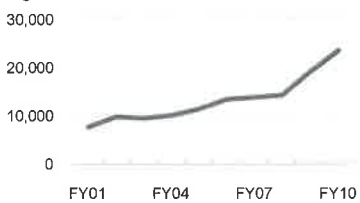
**Figure 61: Misdemeanor and Infractions**



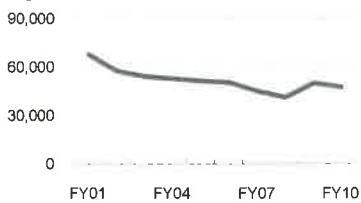
**Figure 62: PI/PD/WD Civil Unlimited**



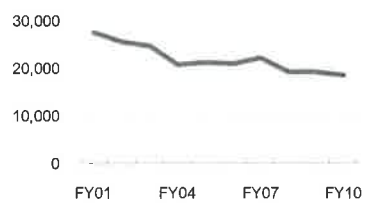
**Figure 63: Other Civil Unlimited**



**Figure 64: Civil Limited**



**Figure 65: Probate and Mental Health**



**Trial Court Workload and Resources  
Judicial Positions and Use of Judicial Assistance  
Fiscal Years 2000–01 through 2009–10**



**Definition of Terms**

**Assessed Judge Need (AJN):** Represents the estimated number of judicial officers needed to handle the workload in the trial courts based on the Judicial Needs Assessment Project. The Judicial Needs Assessment Project was approved by the Judicial Council in 2001 as the methodology for evaluating judicial workload and the need for new judgeships. In 2004, the Judicial Council approved a minor change in the assessment methodology that uses a 3-year average filings data instead of using a single year. The AJN numbers are updated on a 2-year cycle in even-numbered years, and the last update in 2010 was based on filings from FY 2006-07 through FY 2008-09.

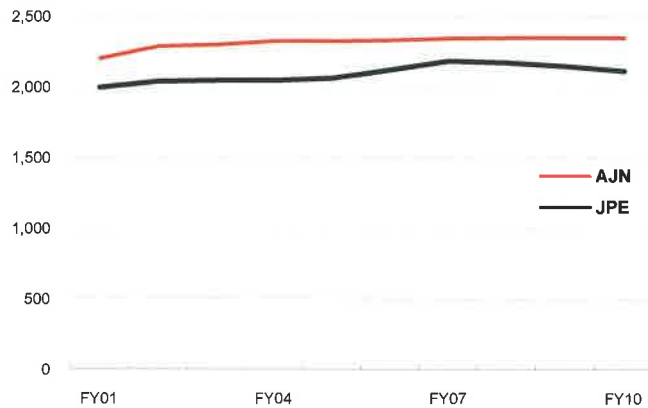
**Judicial Position Equivalents (JPE):** Reflects authorized judicial positions adjusted for vacancies, assistance rendered by the court, and assistance received by the court from assigned judges, temporary judges, commissioners, and referees.

**Authorized Judicial Positions (AJP):** Number of authorized judgeships, commissioners, and referees.

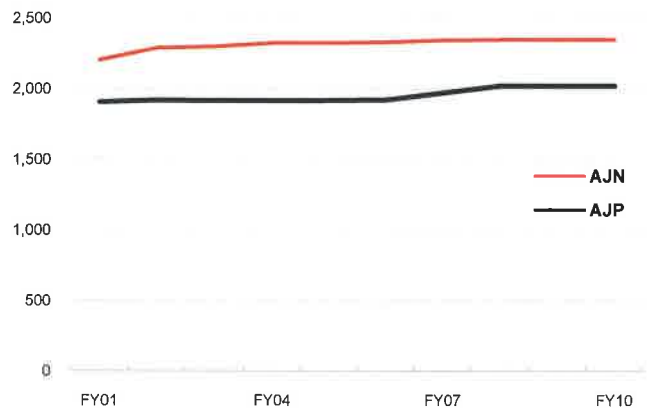
**Authorized Judgeships:** Number of judgeships authorized in statute.

**Judicial Assistance Received by Trial Courts:** Includes only assistance rendered by judges through assignments. Does not include assistance rendered by commissioners, referees, and temporary judges (these are included in JPE).

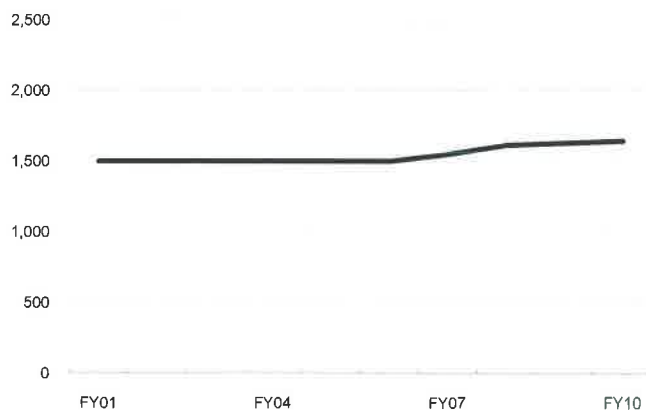
**Figure 66: Total Judicial Position Equivalents (JPE) and Assessed Judge Need (AJN)**



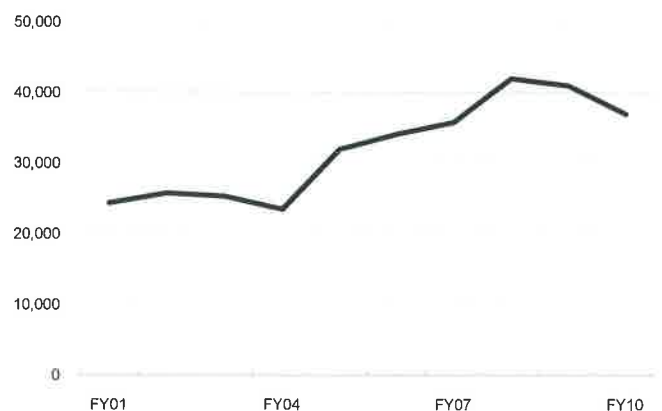
**Figure 67: Total Authorized Judicial Positions (AJP) and Assessed Judge Need (AJN)**



**Figure 68: Authorized Judgeships**



**Figure 69: Judicial Assistance Received by Trial Courts (days received)**



**Background**

The number of judges available to serve a given population is an important measure of the public's access to justice. Having a sufficient number of judges ensures that the public will have proper access to justice through the state trial court system, and also enables the court to provide quality of justice to the public.

The California judicial branch uses a weighted caseload method to determine the number of judicial officers needed to manage the work of the courts. The method measures the amount of time that judges spend processing different types of cases, evaluates the amount of time that judges need to spend on these cases, and then calculates the total workload in the court by multiplying filings data by these case weights.

After calculating the total number of judges needed, each court is ranked according to its absolute need for new judgeships—the total number of judgeships needed—and relative need for new judgeships—the percentage that the need represents. These figures are then used to rank the courts to determine how many judges a court should get. Current estimates indicate a statewide shortfall of over 300 judgeships.

In 2006, the California State Legislature created 50 new judgeships in trial courts identified in the Judicial Workload Assessment as having the most urgent need for new judgeships. In 2007, the State Legislature created another 50 judgeships but did not provide funding for these judgeships.

**Table 1: New Judgeships Created by the State Legislature**

	SB 56 2006	AB 159 2007*
San Bernardino	8	7
Riverside	7	7
Sacramento	5	6
Fresno	4	4
<b>San Joaquin</b>	<b>3</b>	<b>3</b>
Kern	2	3
Stanislaus	3	2
Placer	1	2
Los Angeles	2	1
<b>Merced</b>	<b>2</b>	<b>2</b>
Tulare	2	2
Orange	1	1
Solano	1	1
Sonoma	2	1
<b>Madera</b>	<b>2</b>	<b>1</b>
Monterey	1	1
Shasta	1	1
Butte	1	1
Contra Costa	1	1
<b>Ventura</b>	<b>1</b>	<b>0</b>
Kings	0	1
Del Norte	0	1
Yolo	0	1
<b>Total</b>	<b>50</b>	<b>50</b>

\* AB 159 created 50 new judgeships but did not fund these positions.

**Trial Court Workload and Resources  
Subordinate Judicial Officer Conversions  
Fiscal Years 2007–08 through 2009–10**

**Superior Courts  
Table 2**

**Background**

California rule of court 10.700 provides for the use of subordinate judicial officers (SJOs) to perform subordinate judicial duties. A presiding judge may also assign a SJO to act as a temporary judge where lawful if the presiding judge determines that it is necessary for the effective administration of justice because of a shortage of judges.

During the 1980s and 1990s, the shortage of judicial positions across the state led many trial courts to create SJO positions to manage their caseloads. The stagnation in the number of new judgeships combined with the growth in the number of SJO positions created an imbalance in many courts, with SJOs spending much of their time working as temporary judges.

To restore the appropriate balance between judges and SJOs in the trial courts, in 2007 the Legislature passed AB 159 which authorized the conversion of 162 SJO positions to judgeships in 25 courts where the judicial workload assessment determined that the number of SJOs exceeded the workload appropriate to SJOs.

Government Code 69615(b)(1)(A) provides for the annual conversion of a maximum of 16 SJO positions to judgeships in the 25 courts identified by the judicial workload assessment.

**Table 2: Subordinate Judicial Officer Conversions**

	Total Eligible for Conversion	2007–08	2008–09	2009–10	Positions Remaining for Conversion
Alameda	6	0	0	1	5
Contra Costa	6	3	0	1	2
El Dorado	2	0	1	0	1
Fresno	3	0	1	0	2
Imperial	1	0	0	0	1
Kern	2	0	1	0	1
Los Angeles	78	4	5	7	62
Marin	2	0	0	0	2
Merced	2	0	1	0	1
Napa	1	0	0	0	1
Orange	14	1	2	2	9
Placer	1	0	0	0	1
Riverside	6	1	1	0	4
Sacramento	5	1	2	0	2
San Diego	7	2	0	0	5
San Francisco	9	1	0	1	7
San Luis Obispo	2	1	0	0	1
San Mateo	2	0	0	0	2
Santa Barbara	2	0	0	2	0
Santa Cruz	1	0	0	0	1
Solano	3	1	2	0	0
Sonoma	2	0	0	1	1
Stanislaus	1	0	0	0	1
Tulare	2	0	0	1	1
Yolo	2	1	0	0	1
<b>Total</b>	<b>162</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>114</b>

## JBSIS Courts as of Fiscal Year 2009–10

The following table shows the courts that are submitting data via JBSIS v2.3 (the Judicial Branch Statistical Information System) as of the end of fiscal year 2009–10. For updated information, court staff with access to the password-protected Serranus website may log in directly to JBSIS at <http://jbsis.courts.ca.gov>.

<b>Superior Court</b>	Appellate Court 04a	Appellate Division 04b	Limited Civil 05a	Unlimited Civil 05b	Family Law 06a	Felony 07c	Juvenile Delinquency 08a	Juvenile Dependency 09a	Mental Health 10a	Misdemeanor/ Infraction 11a	Probate 12a	Small Claims 13a
Alameda			X	X	X		X	X				X
Alpine	X	X	X	X	X	X	X	X	X	X	X	X
Calaveras			X	X	X		X	X	X	X	X	X
Colusa			X	X	X							X
Contra Costa			X	X	X	X				X	X	X
El Dorado	X	X	X	X	X	X			X	X	X	X
Humboldt	X	X	X	X	X	X	X	X	X	X	X	X
Inyo			X	X	X	X				X	X	X
Kern						X				X		
Lake	X	X	X	X	X	X	X	X	X	X	X	X
Lassen	X	X	X	X	X	X	X	X	X	X	X	X
Madera	X	X	X	X	X	X	X	X	X	X	X	X
Modoc	X	X	X	X	X	X	X	X	X	X	X	X
Monterey	X	X	X	X	X	X	X	X	X	X	X	X
Napa	X	X	X	X	X	X	X	X	X	X	X	X
Orange						X						
Riverside					X							
Sacramento						X						X
San Benito	X	X	X	X	X	X	X	X	X	X	X	X
San Bernardino	X	X	X	X	X	X	X	X	X	X	X	X
San Joaquin		X	X	X	X			X	X		X	X
San Luis Obispo					X							
San Mateo						X				X		
Santa Barbara		X	X	X	X	X	X	X	X	X	X	X
Santa Clara		X	X	X	X	X	X	X	X	X	X	X
Santa Cruz	X	X	X	X	X				X		X	X
Shasta			X	X	X	X				X		X
Siskiyou	X	X	X	X	X	X	X	X	X	X	X	X
Sonoma	X	X	X	X	X	X	X	X	X	X	X	X
Stanislaus	X	X	X	X	X	X	X	X	X	X	X	X
Sutter	X	X	X	X	X	X	X	X	X	X	X	X
Tehama	X	X	X	X	X	X	X	X	X	X	X	X
Tulare	X	X	X	X	X	X	X	X	X	X	X	X
Tuolumne	X	X	X	X	X	X	X	X	X	X	X	X
Ventura			X	X	X	X			X	X	X	X
Yolo			X	X	X	X	X	X	X	X	X	X
Yuba	X	X	X	X	X	X				X	X	X

# EXHIBIT 7

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):</p> <p>Kenneth H. Prochnow, SBN 112983 Chiles and Prochnow, LLP 2600 El Camino Real, Suite 412, Palo Alto, CA 94306</p> <p>TELEPHONE NO.: (650) 812-0400 FAX NO. (Optional) (650) 812-0404</p> <p>E-MAIL ADDRESS (Optional) kprochnow@chilesprolaw.com</p> <p>ATTORNEY FOR (Name): Plaintiff and Cross-Defendants</p>	<p style="text-align: center;"><b>FILED</b> FOR COURT USE ONLY</p> <p style="text-align: center;">AUG 13 2012</p> <p style="text-align: right;">UCS</p> <p>David H. ... County of ... By: _____</p> <p style="text-align: center;">Superior Court California</p> <p style="text-align: center;">S. Smith</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA</b></p> <p>STREET ADDRESS: 191 N. First Street</p> <p>MAILING ADDRESS: 191 N. First Street</p> <p>CITY AND ZIP CODE: San Jose, CA 95113</p> <p>BRANCH NAME: Unlimited Civil Jurisdiction</p>	
<p>PLAINTIFF/PETITIONER: Charles H. Moore</p> <p>DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.</p>	
<p style="text-align: center;"><b>CASE MANAGEMENT STATEMENT</b></p> <p>(Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)</p>	<p>CASE NUMBER: 1-10-CV-183613</p>
<p>A <b>CASE MANAGEMENT CONFERENCE</b> is scheduled as follows:</p> <p>Date: August 16, 2012 Time: 10:00 a.m. Dept.: 2 Div.: Room:</p> <p>Address of court (if different from the address above): Same as above</p> <p><input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name):</p>	

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

1. **Party or parties (answer one):**
  - a.  This statement is submitted by party (name): Pltf & X-Def Charles H. Moore & X-Def GreenArrays, Inc.
  - b.  This statement is submitted jointly by parties (names):
  
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
  - a. The complaint was filed on (date): 9/27/10
  - b.  The cross-complaint, if any, was filed on (date): 1/17/12
  
3. **Service (to be answered by plaintiffs and cross-complainants only)**
  - a.  All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (specify names and explain why not):  
Plaintiff is unaware if cross-complainant TPL has served cross-defendant Green Arrays, Inc.
    - (2)  have been served but have not appeared and have not been dismissed (specify names):
    - (3)  have had a default entered against them (specify names):
  - c.  The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
  
4. **Description of case**
  - a. Type of case in  complaint  cross-complaint (Describe, including causes of action):  
Complaint causes of action include cancellation, rescission, conspiracy, breach of contract and constructive trust. Cross-complaint causes of action include breach of contract, fraud, interference and misappropriation.



PLAINTIFF/PETITIONER: Charles H. Moore	CASE NUMBER: 1-10-CV-183613
DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)  
Plaintiff entered into an agreement with defendant Technology Properties Limited ("TPL") wherein TPL was to sell licenses for plaintiff's invention & in exchange TPL would receive a percentage of the licensing revenue. TPL & defendants have been successful in the marketing of licenses but refuse to pay plaintiff. In the cross-complaint, TPL is claiming rights to another invention of plaintiff which plaintiff has been successfully developing on his own.  
 (If more space is needed, check this box and attach a page designated as Attachment 4b.)
5. **Jury or nonjury trial**  
The party or parties request  a jury trial  a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):
6. **Trial date**  
a.  The trial has been set for (date):  
b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):  
c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):  
October 9 - 30, 2012 (jury trial, this court); November 28-30, 2012
7. **Estimated length of trial**  
The party or parties estimate that the trial will take (check one):  
a.  days (specify number): 7 to 10  
b.  hours (short causes) (specify):
8. **Trial representation (to be answered for each party)**  
The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:  
a. Attorney:  
b. Firm:  
c. Address:  
d. Telephone number: f. Fax number:  
e. E-mail address: g. Party represented:  
 Additional representation is described in Attachment 8.
9. **Preference**  
 This case is entitled to preference (specify code section): Cal Code Civ. Proc. 36(a)
10. **Alternative dispute resolution (ADR)**  
a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.  
(1) For parties represented by counsel: Counsel  has  has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.  
(2) For self-represented parties: Party  has  has not reviewed the ADR information package identified in rule 3.221.  
b. **Referral to judicial arbitration or civil action mediation (if available).**  
(1)  This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.  
(2)  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
(3)  This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

PLAINTIFF/PETITIONER: Charles H. Moore DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	CASE NUMBER: 1-10-CV-183613
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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes ( <i>check all that apply</i> ):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):
(1) Mediation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete mediation by ( <i>date</i> ): <input type="checkbox"/> Mediation completed on ( <i>date</i> ):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete settlement conference by ( <i>date</i> ): <input type="checkbox"/> Settlement conference completed on ( <i>date</i> ):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete neutral evaluation by ( <i>date</i> ): <input type="checkbox"/> Neutral evaluation completed on ( <i>date</i> ):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete judicial arbitration by ( <i>date</i> ): <input type="checkbox"/> Judicial arbitration completed on ( <i>date</i> ):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete private arbitration by ( <i>date</i> ): <input type="checkbox"/> Private arbitration completed on ( <i>date</i> ):
(6) Other ( <i>specify</i> ):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for ( <i>date</i> ): <input type="checkbox"/> Agreed to complete ADR session by ( <i>date</i> ): <input type="checkbox"/> ADR completed on ( <i>date</i> ):

PLAINTIFF/PETITIONER: Charles H. Moore	CASE NUMBER: 1-10-CV-183613
DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	

11. Insurance

- a.  Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (explain):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy  Other (specify):

Status:

13. Related cases, consolidation, and coordination

- a.  There are companion, underlying, or related cases.
  - (1) Name of case: Brown v. Technology Properties Limited, et al.
  - (2) Name of court: Santa Clara County Superior Court
  - (3) Case number: 1-09-CV-159452
  - (4) Status: Judgment entered
- Additional cases are described in Attachment 13a.
- b.  A motion to  consolidate  coordinate will be filed by (name party):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

15. Other motions

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

16. Discovery

- a.  The party or parties have completed all discovery.
- b.  The following discovery will be completed by the date specified (describe all anticipated discovery):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff & Cross-Defendants	Written Discovery	September 2012
Plaintiff & Cross-Defendants	Depositions	November 2012

- c.  The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

PLAINTIFF/PETITIONER: Charles H. Moore	CASE NUMBER: 1-10-CV-183613
DEFENDANT/RESPONDENT: Technology Properties Limited, LLC, et al.	

17. Economic litigation

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: August 6, 2012

Kenneth H. Prochnow, Attorney for Pltf & Cross-Def.  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

SHORT TITLE: C. Moore v. Technology Properties Limited, LLC, et al	CASE NUMBER: 1-10-CV-183613
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ATTACHMENT 13a - RELATED CASES

(to Plaintiff / Cross-Defendant's Case Management Statement)

- 13(a)(1) (1) Name of case: D. Leckrone, et al. v. P. Marcoux, et al.
- (2) Name of court: Santa Clara County Superior Court
- (3) Case number: 1-09-CV-159593
- (4) Status: Pending
- 13(a)(2) (1) Name of case: Anasift Technology, Inc. v. Technology Properties Limited, LLC, et al.
- (2) Name of court: Santa Clara County Superior Court
- (3) Case number: 1-10-CV-171986
- (4) Status: Pending

(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, *not* line numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

1 **PROOF OF SERVICE FILED**

2 I, Terisa Gurzi, declare:

AUG 13 2012

3 1. I am over the age of 18 years and am not a party to the within action. My business  
4 address is 2600 El Camino Real, Palo Alto, California 94306. David H. ... Superior Court Santa Clara County California S. Smith

5 2. On August 6, 2012, I served the foregoing Plaintiff's and Cross-Defendants' CASE  
6 MANAGEMENT STATEMENT and this PROOF OF SERVICE on the interested parties  
7 herein by placing true and correct copies thereof in sealed envelopes, with postage prepaid  
8 thereon, and depositing the same with the United States Postal Service in Palo Alto, California,  
9 addressed as follows:

10 J. Mark Thacker, Esq.  
11 Ropers, Majeski, Kohn & Bentley  
12 50 W San Fernando St., Ste 1400  
San Jose, CA 95113

13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct, and that this declaration is executed on August 6, 2012, at Palo  
15 Alto, California.

16   
Terisa Gurzi

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**CERTIFICATE OF SERVICE**

I, Susan Damron, certify that a copy of the Motion to Stay with Memorandum in Support of, was served as indicated to the parties listed below on this 16<sup>th</sup> day of October, 2012.

The Honorable Lisa R. Barton Acting Secretary U.S. International Trade Commission 500 E Street, S.W., Room 112A Washington, D.C. 20436	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Filing
The Honorable E. James Gildea Administrative Law Judge U.S. International Trade Commission 500 E Street, S.W., Room 317 Washington, D.C. 20436 (2 Copies)	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Federal Express <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via E-Mail
Kenneth Schopfer Sarah Zimmerman Attorney Advisors U.S. International Trade Commission 500 E Street, S.W., Room 317 Washington, D.C. 20436 (Kenneth.schopfer@usitc.gov) (Sarah.zimmerman@usitc.gov)	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-Mail
<b><i>Office of Unfair Import Investigation</i></b>	
R. Whitney Winston Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Room 401 Washington, D.C. 20436 (Whitney.Winston@usitc.gov)	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-Mail
<b><i>Counsel for Complainants Technology Properties Limited LLC and Phoenix Digital Solutions LLC</i></b>	
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Michelle G. Breit James R. Farmer OTTESON LAW GROUP AGILITY IP LAW, LLP 14350 North 87 <sup>th</sup> Street Suite 190 (TPL853@agilityiplaw.com)	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-Mail

<b><i>Counsel for Complainant Patriot Scientific Corporation</i></b>	
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<b><i>Huawei North America</i></b>	
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<b><i>Counsel for Respondents Kyocera Corporation and Kyocera Communications, Inc.</i></b>	
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<b><i>Counsel for Respondents LG Electronics, Inc. and LG Electronics U.S. A., Inc.</i></b>	
Scott A. Elengold FISH & RICHARDSON P.C. 1425 K Street, N.W., 11 <sup>TH</sup> Floor Washington, DC 20005 (LG-TPLITCService@fr.com)	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Federal Express <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via E-Mail
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/s/Susan Damron

Susan Damron