Heinz Binder (SBN 87908)
Robert G. Harris (SBN 124678)
Wendy W. Smith (SBN 133887)
BINDER & MALTER, LLP
2775 Park Avenue
Santa Clara, CA 95050
Tel: (408) 295-1700
Fax: (408) 295-1531
Email: Heinz@bindermalter.com
Email: Rob@bindermalter.com
Email: Wendy@bindermalter.com

Attorneys for Debtor and Debtor-in-Possession
TECHNOLOGY PROPERTIES LIMITED LLC

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re: TECHNOLOGY PROPERTIES LIMITED, LLC, a California limited liability company, Debtor.	Case No.: 13- 51589SLJ Chapter 11 Date: October 2, 2014 Time: 3:00 p.m. Place: Courtroom 3099 280 South First Street San Jose, California

AMENDED TPL'S OBJECTIONS TO APPROVAL OF DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION AND TO CONFIRMATION OF PLAN

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I. INTRODUCTION

Pursuant to Federal Rule of Bankruptcy Procedure 3017(a), TPL[1] objects to approval of the Moore DS[2] on the grounds that it describes a plan[3] that is unconfirmable as a matter of law, grossly deficient, and contains numerous factual misstatements. The Moore Plan is based upon the false premise that a reorganized debtor can assume and assign (and issue licenses of) intellectual property rights without IP owners' consent. The law of the 9th Circuit upholds applicable state and federal law in expressly prohibiting such assignments.

II. ARGUMENT:

A. A Disclosure Statement Based On A Plan Not Confirmable On Its Face Should Not Be Approved.

"It is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed. . . . [citation omitted]; *In re Curtis Center Ltd. Partnership,* 195 B.R. 631, 638 (Bankr.E.D.Pa.1996)[amended disclosure statement could not be approved where plan which disclosure statement described was patently unconfirmable as result of its separate classification of mortgagee's deficiency claim apart from claims of other general unsecured creditors solely for purpose of creating impaired, accepting class]; *In re 266 Washington Assocs.*, 141 B.R. 275, 288 (Bankr.E.D.N.Y.1992) [(1) Chapter 11 plan could not place secured and unsecured components of mortgagee's claim in one class and treat the claim as if it were fully secured,

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[1] Debtor and debtor-in-possession Technology Properties Limited, LLC ("TPL").
[2] Disclosure Statement Re: Moore Monetization Plan of Reorganization Dated August 28, 2014 (the "Moore DS").
[3] Moore Monetization Plan of Reorganization Dated August 28, 2014 (the "Moore Plan").

absent election by mortgagee to have claim treated as fully secured; (2) mortgagee's unsecured deficiency claim could not be classified separately from unsecured claims of trade creditors; (3) determination that debtor was unable to effectuate any plan which could be confirmed was proper basis for dismissal] . . . [citation omitted]." *In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999)(principal purpose of debtor's plan of reorganization was avoidance of securities registration laws and, thus, plan could not be confirmed and approval of the disclosure statement was denied).

It would seem that a simple confirmation objection to some provision of a plan will not suffice to deny approval of a disclosure statement with prejudice. A problem that could potentially be remedied by a timely amendment within the power of the proponent probably should not provide grounds for denying approval of a disclosure statement *with* prejudice. If however the objectionable provision is something so central to the plan and scheme for reorganization that confirmation is impossible under any conceivable set of circumstances, then it should be treated as equivalent of a plan not confirmable because it seeks to thwart other laws, such as the securities laws - or laws protecting intellectual property rights and upholding anti-assignment clauses.

TPL's Commercialization Agreements are the core of its business because these are the agreements pursuant to which TPL has the right to manage Licensing Programs, utilize the rights granted to it by third party non-debtor IP owners, and commercialize its Portfolios. The common thread in all TPL's Commercialization Agreements is that TPL acquires the exclusive right to commercialize the Portfolio patents in exchange for an obligation to commercialize and a percentage of the proceeds.

The Moore Plan purports to allow an as yet unnamed trustee to license intellectual property rights of non-debtors without their consent. The Moore DS contains an entire section describing how that as yet unidentified trustee would, in fatally generalized and non-specific language, "develop commercialization plans or other programs to maximize the value of returns realized" for TPL intellectual property rights. Moore DS, 35:3-5. " . . . MIG will ***assume the role of commercializing*** the MMP Portfolio[4] . . . . Moore DS, 36:3-5 (emphasis added)[5]. Without the consent of the IP owners of the various portfolios to allow licensing, neither the unidentified trustee, MIG, Moore, nor any other person or entity, can either assume or assign the intellectual property rights of a non-debtor third party granted under the Commercialization Agreements to anyone. *In re Catapult Entertainment, Inc*., 165 F.3d 747 (9th Cir. 1999).

The Debtor is informed that the IP owners will not consent to assumption and assignment of their Commercialization Agreements or the licensing of their intellectual property by a trustee. They will undoubtedly make their intentions known on October 2nd at the disclosure hearing, if not sooner. If TPL's business and sole method of generating revenue is denied to Mr. Moore, then he has no ability to prove feasibility and approval of the Moore DS should be summarily denied.

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[4] Since MIG will not have the intellectual property of Alliacense, how MIG could ever commercialize the portfolios is also a matter that bears detailed explanation.

[5] Notwithstanding their central role in the Moore Plan and clear intent that the trustee shall enforce them, the Commercialization Agreements are not listed as contracts to be assumed. See Moore DS, 48:16-25.

B. The Moore Plan Contains Other Violations Of the Bankruptcy Code That Also Render It Unconfirmable.

1. The Proposed Treatment of Priority Claims Makes the Moore Plan Unconfirmable

The Moore DS describes the Moore Plan's proposed treatment of priority claims as follows: "[e]xcept to the extent that the holder of a particular Allowed Priority Claim has agreed to a less favorable treatment of such Claim, each holder of an Allowed Priority Claim shall be paid in cash from the Claims Trust Account, in full upon the later of: (a) six months after the Effective Date; or (b) if such Claim is initially a Disputed Claim, when and if it becomes an Allowed Claim. Moore DS, 20:22-26. This treatment fails to meet the requirements of 11 U.S.C. section 1129(a)(9). The Moore DS describes a Plan which cannot be confirmed.

2. The Proposed Treatment Of The Leckrone Claim Imposes Subordination Without An Adversary Proceeding or Due Process.

The Moore DS described a Plan under which the first priority Leckrone secured lien is accorded third priority treatment "[b]ecause Leckrone's purported contract with TPL came into alleged existence after TPL's agreement with Venkidu, and because Leckrone has never been paid either interest or principal on account of his purported contract and its secured interest, the Leckrone Secured Claim has been afforded third priority among the TPL secured claims, to be paid or funded (subject to resolution of its Disputed Claim status) behind the claims in Class 2 and Class 3." Moore DS, 22:17-22.

Neither the Leckrone lien nor the Leckrone claim have been challenged in the case; the Leckrone lien and claim stand as valid and undisputed. Any agreement on subordination under the Joint OCC-TPL Plan is the result of an integrated settlement the benefit of which does not

flow to Mr. Moore and his plan. The statement that "[w]ithin 30 days of the Effective Date, the Chapter 11 Trustee shall file an objection to the Leckrone Secured Claim and shall commence an adversary proceeding to avoid, re-characterize and/or to subordinate such Secured Claim" makes clear that the proposed plan treatment is based on a future action, the particulars of which have not even been set forth by Mr. Moore.

The treatment of the Class 4 Leckrone claim violates Bankruptcy Code section 1129(a)(1), as well as the Fifth Amendment of the United States Constitution, and requires denial of confirmation. The Moore DS therefore describes a plan which cannot be confirmed.

3. The Treatment of Impaired Classes Unfairly Discriminates Against Holders of Claims Who Are Insiders and Some But Not All Who Once Worked For TPL and Violates the Bankruptcy Code's Scheme of Priorities.

From page 24:1 to 25:28, the Moore DS describes a Plan under which the claims of non-insider general unsecured claims and non-insider 13% equity claims, as well as claims of rejected executory contract holders (Classes 6, 7, and 8) receive superior treatment to the claims of "insiders" (some of whom may simply have worked for TPL at one time or another) without any justification under the Bankruptcy Code and in blatant violation of Bankruptcy Code section 1129(b)(1). The Moore DS therefore describes a Plan which cannot be confirmed, so approval of the Moore DS should be denied with prejudice.

4. No Trustee Can Be Appointed After Confirmation

The most glaring flaw in the Moore Plan is this: it seems to call for the appointment of a trustee as part of its means of implementation. The Code is unambiguous: no trustee can be appointed after confirmation. 11 U.S.C. §1104(a). If the appointment of a trustee before

confirmation is a condition precedent to the Moore Plan being able to proceed at all, then the Moore DS should so state prominently.

5. The Moore Plan Purports To Modify Leckrone's Rights as an LLC Member Without His Consent

While Mr. Leckrone may, as he has done under the Joint OCC-TPL Plan, voluntarily and temporarily relinquish certain rights he holds as TPL's member, the Moore DS suggests (33:15-19) that such changes could be forced upon Mr. Leckrone. Whatever rights Mr. Leckrone holds as member are preserved in any plan to which he does not consent as a matter of State law.

C. The Disclosure Statement Does Not Contain Adequate Information.

1. Legal Standards Applicable To Review of a Disclosure Statement

The materiality of alleged omissions and misrepresentations in a disclosure statement are "measured by an objective standard drawn from the definition of 'adequate information' at § 1125(a) that asks what the 'hypothetical reasonable investor typical of holders of claims or interests of the relevant class' would want to know in order to make an informed judgment about the plan." *Official Comm. of Unsecured Creditors v. Michelson (In re Michelson),* 141 B.R. 715, 725 (Bankr.E.D.Cal.1992)(quoting 11 U.S.C. §1125(a)).

"[T]he plan proponent bears the ultimate risk of non-persuasion on the question of compliance with the requirement to disclose adequate information and must bear that burden twice -- once at the hearing on the disclosure statement pursuant to section 1125 and once again at confirmation pursuant to section 1129(a)(2)." *In re Michelson*, supra, 141 B.R. 715, 720.

Case law has developed to flesh out the basic requirements of a disclosure statement:

> Case law under § 1125 of the Bankruptcy Code has produced a list of factors disclosure of which may be mandatory, under the facts and circumstances of

> a particular case, to meet the statutory requirement of adequate information. Disclosure of all factors is not necessary in every case. Conversely, the list is not exhaustive, and a case may arise in which disclosure of all these enumerated factors is still not sufficient to provide adequate information for the creditors to evaluate the plan. . . .
>
> Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the Debtor; and (19) the relationship of the debtor with affiliates."
>
> 'The proposal must set forth a factual basis for the purported value of the real property. Such information is essential for a party weighing the credibility and merits of the plan. . . . Thus, the disclosure statement, settled on a case-by-case basis, must contain factual support of the opinions contained in the disclosure statement.

In re Reilly, 71 B.R. 132, 135 (Bankr. D. Montana, 1987).

2. The Moore DS Is Unacceptably Vague About How New Management Would Operate The Reorganized Company

The Moore DS states that "[u]nder supervision and management by the Chapter 11 Trustee, the Reorganized Company will continue segments of TPL's business operations (licensing and litigation concerning the non-MMP portfolios of patents, following review and evaluation of the non-MMP portfolios as to their viability and profitability), while taking TPL's MMP Portfolio licensing and litigation operations in a new and productive direction." Moore DS, 30:12-16. At a minimum, the Moore DS should disclose (a) the identity of the trustee proposed and his or her qualifications and specific obligations, (b) which segments of TPL's business the trustee would continue, which he or she would abandon, what analysis was done, and why the choices were made, and (c) in specific detail what "taking TPL's MMP Portfolio licensing and litigation operations in a new and productive direction" means in terms of business strategy, litigation, commercialization, and licensing.

The Moore DS speaks in terms of "a significant reduction in force." Mr. Moore is well aware that TPL no longer has employees, and so a cost-benefit analysis comparing the trustee's stewardship to that of current management, Mr. Venkidu, and the employee he intends to hire is mandatory.

3. Proof of Feasibility Is Lacking.

The Moore DS states that " . . . at the conclusion of the Plan, with all Classes of creditors paid according to the Plan provisions, TPL can be returned to those holding Class 10 Interests." Moore DS, 30:27-28. The only proof that the Plan is feasible under 11 U.S.C. section 1129(a)(11) appears in the Moore DS re appendices 1 and 2 thereto. In direct violation of the principles for consideration of the adequacy of information in a disclosure statement, the Moore

DS fails to set forth the accounting method utilized to produce this financial information and the name of the accountants responsible for such information, the assumptions underlying the pro forma profit and loss statements for each entity, and any financial information, data, to facilitate and inform creditors' decision to accept or reject the Chapter 11 plan. *See In re Reilly, supra*, 71 B.R. 132, 135.

4. Leaving Critical Details About The Trustee Management To The Future Violates Bankruptcy Code Section 1129(a)(5)(A)(i).

The Moore DS describes a plan under which a Chapter 11 trustee whose identify is unknown and whose position is subject to a creditor election in which Mr. Moore cannot participate, as his claim as a creditor is contingent and will be challenged**.** The trustee is to act **"**as Chairman and CEO of the Reorganized Company until the MMP Plan has concluded and the Bankruptcy Case has terminated." Moore DS, 31:22-23. The Moore DS violates Bankruptcy Code section 1129(a)(5)(A)(i) in failing to disclose the identity of the trustee and his connections to the case and creditors.

5. The Moore DS Is Riddled With Inaccurate and Baseless Statements that Should Be Stricken Or Supplemented.

TPL has reviewed the disclosure statement and has the following comments as to the factual allegations made between pages 3-15.

Statement in Moore DS	Page and line in Moore Disclosure Statement	Reference(s) to Responsive Filing(s) by TPL
…"Since February 14, 2014, there has been no discernible progress in this case."	4:7; 4:22-23	This statement ignores the negotiations between TPL and the OCC and the Joint Plan and Disclosure Statement now on file.
"TPL 'commercializes' those aggregated patent portfolios through litigation and licensing;	6:6-9	TPL has never used a "litigation-first" strategy. It spends an average of 5 years negotiating

most recently, with a 'litigation-first' strategy whose failings are discussed below."		with each potential defendant before an action to enforce IP rights to stop infringement is filed.
"Beginning in 2008 (a time when it appears that TPL was not paying its creditors), TPL assigned its non-MMP patent portfolios to entities formed and controlled by Mr. Leckrone (the 'Leckrone Entities'); in exchange., TPL retained the exclusive right to commercialize the portfolios."	6:24-27	TPL was paying its creditors in 2008, and never "assigned its non-MMP patent portfolio to entities formed and controlled by Mr. Leckrone." Non-MMP portfolios were acquired directly by the respective portfolio LLCs and in turn licensed to TPL for commercialization. No such assignment of assets occurred. Intellectual property acquisition and related entities are discussed in the TPL DS[6] in Section VI.A.3 (pp 56 – 68).
"TPL has outsourced all of its licensing obligations under the commercialization contracts to Alliacense Limited, LLC."	7:12-13	The relationship with Alliacense and the services it provides is discussed in the TPL DS in Section VI.B (pp 68-72). The business of TPL is discussed in the TPL DS in Section II (pp 11-20).
"When TPL filed for bankruptcy protection in March, 2013, Debtor TPL assured court and creditors that TPL would have a 100% Chapter 11 plan in place within 90 days. It is now 18 months later."	8:1-4	TPL filed its TPL Plan of Reorganization (October 31, 2013) and accompanying disclosure statement [Dkt #256 and #256-1] on the referenced date. The statement by Mr. Moore ignores his role (and that of the OCC) in challenging that initial plan with objections and the fact that a competing OCC plan was filed and prosecuted.
In May 2014, Mr. Leckrone and the entire staff of TPL resigned from the company, and are now employed by a new Leckrone	8:7-8	All TPL personnel were terminated owing to the absence of cash to pay them for continued services. None are now

[6] Disclosure Statement Re: TPL Plan Of Reorganization (February 14, 2014) [Dkt #437] (the TPL DS").

Entity known as Fountainhead LLC.		"employed by a new Leckrone Entity known as Fountainhead LLC." Fountainhead does not employ anyone from either an employment or consulting perspective. It is also not a "new" entity, having been established as a California limited partnership in 2006.
The present MMP Portfolio licensing entity – Mr. Leckrone's wholly owned company Alliacense – is unable or unwilling (or both) to license the MMP Portfolio. Mr. Leckrone and Alliacense elected to defer efforts to license the MMP Portfolio until successful litigation results were in hand to provide leverage in licensing negotiation.	8:16-18 8:21-23	Alliacense does not issue MMP licenses: PDS does.[7] PDS and Alliacense have been attempting to finalize MMP licenses, and while numerous licenses have been discussed, prospective licensees have taken a "wait and see" approach because (1) the bankruptcy process and threat of appointment of a trustee, followed by a creditor plan with a provision that would have allowed rejection of fully paid non-exclusive licenses issued, as well as litigation against insiders and IP owners, (2) there are ongoing appeals in the U.S. District Court of rulings both for and against TPL; and (3) the plans proposed have undermined Alliacense's ability to generate licenses through PDS given the threat of litigation against it.
"The litigation-first strategy chosen by Mr. Leckrone and Alliacense rendered Debtor TPL susceptible to the patent troll label. Alliacense was served by the litigation-first strategy, in that	9:2-7	Neither PDS nor TPL engage in a "litigation first" strategy. Moreover, Alliacense has not provided "expert witness services". Alliacense has provided extensive litigation support services pursuant to the

[7] It is worth noting that the PDS Board now consists of a member appointed by the OCC (since Mr. Leckrone gave up his seat as part of the term sheet with the OCC), a member appointed by PTSC, and a third member to be consensually selected by the aforementioned two members or appointed by an arbitrator. Any perceived deadlock is a thing of the past.

the expert witness services it provides in litigation allows it to claim the right to charge for those services (a) without sharing that compensation with Debtor TPL and its creditors (or with Patriot or Mr. Moore) and (b) regardless of the success or failure of the litigation effort.:		very detailed and specific terms of the PDS/Alliacense services agreement aggressively negotiated by PTSC and received only compensation in accord with the terms thereof.
"TPL, guided and advised, by Mr. Leckrone and Alliacense, made no substantial effort to settle the ITC proceedings against the main respondent parties, taking ten of the cases to trial."	9:16-18	Mr. Moore's statement is false. TPL and Alliacense engaged in a continuous and aggressive effort to settle the ITC cases throughout the course of the proceedings in which litigation counsel Otteson decided that it was not wise to put Mr. Moore on the stand in light of his earlier deposition performance.
"…TPL has taken extraordinary steps to shift the IP assets to companies owned by Dan Leckrone and transferred money to insiders at a time when TPL was not paying its non-insider creditors."	8:19-21	The allegation that TPL has "shifted" all of its IP assets is not accurate and is addressed in the Statement of Decision attached to the TPL DS at Section III.B (pp 3-5).
"Debtor TPL itself has established the International Trade Commission precedent by filing and failing on its CORE Flash case: entities that fit the **present** TPL/Alliacense business model will lack standing to protect their patents before the ITC."	11:12-17	TPL has no control over the ITC's decision to change the law. In any event none of the three portfolios referenced by Mr. Moore would be pursued in the ITC because of their relatively shorter remaining life. Damages are or will be pursued in US District Court where appropriate.
"In sum: unless the MMP Portfolio is represented by and through a practicing entity, its litigation prospects will be dismal; its licensing revenues, de minimis. MMP licensing and litigation require a new approach by TPL."	12:6-8	As mentioned above, the MMP portfolio is past the time when ITC litigation is appropriate, requiring current and future focus to be on litigation in district courts for the recovery of prior infringement damages. Neither the Moore plan nor his new proposed licensing entity changes the prospects in litigation positively; the loss of expert

		support offered by Alliacense promises to make litigation less likely to succeed.
Descriptions and impact of rulings in litigation	9:9-12:2	TPL disagrees with the interpretations of numerous aspects of TPL and PDS litigation as seen through the eyes of Mr. Moore and is seeking TPL's special counsel's input for an appropriate statement if the court views such back and forth as necessary to supply adequate information. TPL believes that Mr. Moore must at least disclose that the statements made are his opinion alone and that TPL and the OCC do not agree.
"In sum, out of the promise of this potential licensing revenue stream, the Debtor consummated only three licenses and was awarded only a fraction of potential damages. In light of the Debtor's business model as described above – to identify infringing companies, and then compel them to purchase licenses through litigated claims of infringement - these outcomes confirm a failed business strategy of Debtor."	15:11-15	The licensing issue has been addressed above, and it should be clear that the statements made are of Mr. Moore's opinion only.
While the Debtor claims that the current bankruptcy is impeding settlements, Mr. Moore believes that this is a result indicative of the toxicity associated with the Debtor's management by Mr. Leckrone and his insiders, and the susceptibility of TPL, Alliacense and Mr. Leckrone to identification under the pejorative and damaging label of "patent troll."	15:16-19	The use of words such as toxicity is highly offensive and improper. Mr. Moore should be prevented from labeling the Debtor and former management with the pejorative term "patent troll" as he does throughout the Moore DS.

III. CONCLUSION

The Moore DS and Moore Plan were apparently filed to prod the OCC and TPL into finalizing their own joint plan and moving it to confirmation with alacrity. Now that this task has been completed, approval of the deficient Moore DS should be denied, and the unconfirmable Moore Plan need not receive further attention from the Court.

Dated: September 25, 2014

BINDER & MALTER, LLP

By: /s/ Robert G. Harris
Robert G. Harris

Attorneys for Debtor and
Debtor-in-Possession Technology
Properties Limited, LLC

Heinz Binder (SBN87908)
Robert G. Harris (SBN 124678)
Wendy W. Smith (SBN 133887)
BINDER & MALTER, LLP
2775 Park Avenue
Santa Clara, CA 95050
Telephone: (408)295-1700
Facsimile: (408) 295-1531
Email: heinz@bindermalter.com
Email: rob@bindermalter.com
Email: Wendy@bindermalter.com

Attorneys for Debtor and Debtor-in-Possession
TECHNOILOGY PROPERTIES LIMITED, LLC

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re TECHNOLOGY PROPERTIES LIMITED, LLC, Debtor.	Case No. 13-51589-SLJ-11 Chapter 11 Date: October 2, 2014 Time: 3:00 p.m. Place: Courtroom 3099 280 South First Street San Jose, California

CERTIFICATE OF SERVICE

I, Natalie D. Gonzalez declare:

I am employed in the County of Santa Clara, California. I am over the age of eighteen (18) years and not a party to the within entitled cause; my business address is 2775 Park Avenue, Santa Clara, California 95050.

On September 25, 2014, I served a true and correct copy of the following document(s):

AMENDED TPL'S OBJECTIONS TO APPROVAL OF DISCLOSURE STATEMENT RE: MOORE MONETIZATION PLAN OF REORGANIZATION AND TO CONFIRMATION OF PLAN

via electronic transmission and/or the Court's CM/ECF notification system to the parties registered to receive notice as follows:

U.S. Trustee
John Wesoloski
United States Trustee
Office of the U.S. Trustee
280 So. First St., Room 268
San Jose, CA 95113
Email: john.wesolowski@usdoj.gov

Unsecured Creditors Committee Attorney
c/o John Walshe Murray, Esq.
c/o Robert Franklin, Esq.
c/o Thomas Hwang, Esq.
Dorsey & Whitney LLP
305 Lytton Avenue
Palo Alto, CA 94301
Email: murray.john@dorsey.com
Email: franklin.robert@dorsey.com
Email: hwang.thomas@dorsey.com

Special Notice
Patriot Scientific Corp.
c/o Gregory J. Charles, Esq.
Law Offices of Gregory Charles
2131 The Alameda Suite C-2
San Jose, CA 95126
Email: greg@gregcharleslaw.com

Arockiyaswamy Venkidu
c/o Javed I. Ellahie
Ellahie & Farooqui LLP
12 S. First St., Suite 600
San Jose, CA 95113
Email: javed@eflawfirm.com

OneBeacon Technology Insurance
c/o Gregg S. Kleiner, Esq.
McKENNA LONG & ALDRIDGE LLP
One Market Plaza
Spear Tower, 24th Floor
San Francisco, CA 94105
Email: gkleiner@mckennalong.com

Special Notice
Charles H. Moore
c/o Kenneth Prochnow, Esq.
Chiles and Prochnow, LLP
2600 El Camino Real, Suite, 412
Palo Alto, Ca 94306
Email: kprochnow@chilesprolaw.com

Phil Marcoux
c/o William Thomas Lewis, Esq.
Robertson & Lewis
150 Almaden Blvd., Suite 950
San Jose, CA 95113
Email: wtl@roblewlaw.com

Farella Braun + Martel LLP
Attn: Gary M. Kaplan, Esq.
235 Montgomery Street, 18th Floor
San Francisco, CA 94104
Email: gkaplan@fbm.com

Cupertino City Center Buildings
c/o Christopher H. Hart, Esq.
Schnader Harrison Segal & Lewis LLP
One Montgomery Street, Suite 2200
San Francisco, CA 94104
Email: chart@schnader.com

Peter C. Califano, Esq.
Cooper, White & Cooper LLP
201 California Street, 17th Floor
San Francisco, California 94111
E-Mail: pcalifano@cwclaw.com

Fujitsu Limited
c/o G. Larry Engel, Esq.
Kristin A. Hiensch, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Email: Lengel@mofo.com

Chester A. Brown, Jr. and Marcie Brown
Randy Michelson
Michelson Law Group
220 Montgomery Street, Suite 2100
San Francisco, CA 94104
Email:
randy.michelson@michelsonlawgroup.com

Special Notice

Apple, Inc
c/o Adam A. Lewis, Esq.
Vincent J. Novak, Esq.
Morrison & Foerster LLP
425 Market St.
San Francisco, CA 94105
Email: alewis@mofo.com
Email: vnovak@mofo.com

VIA ECF
HTC Corporation
c/o Robert L. Eisenbach III
Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Email: reisenbach@cooley.com

Sallie Kim
GCA Law Partners LLP
2570 W. El Camino Real, Suite 510
Mountain View, CA 94040
Email: skim@gcalaw.com

Special Notice

Toshiba Corporation
c/o Jon Swenson
Baker Botts L.L.P.
1001 Page Mill Road
Building One, Suite 200
Palo Alto, CA 94304
Email: jon.swenson@bakerbotts.com

Jessica L. Voyce, Esq
C. Luckey McDowell
Baker Botts L.L.P.
2001 Ross Avenue, Suite 600
Dallas, TX 75201
Email: jessica.voyce@bakerbotts.com
Email: luckey.mcdowell@bakerbotts.com

Attorneys for Sony Corporation
Lillian Stenfeldt
Sedgwick, LLP
333 Bush Street, 30th Floor
San Francisco, CA 94104
Email: lillian.stenfeldt@sedgwicklaw.com

Executed on September 25, 2014, at Santa Clara, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/ *Natalie D. Gonzalez*
Natalie D. Gonzalez