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12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15
16 In re) Case No. 2:10-bk-44406-PC
17)
18 APEX DIGITAL, INC.,) Chapter 11
19 Debtor.)
20) **PROPONENTS' AMENDED**
21) **DISCLOSURE STATEMENT**
22) **DESCRIBING CHAPTER 11 PLAN**
23) **OF REORGANIZATION (DATED**
24) **FEBRUARY 1, 2013)**
25) Hearing:
26) Date: January 30, 2013
27) Time: 9:30 a.m.
28) Place: Courtroom 1468
255 E. Temple Street
Los Angeles, California

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1 Apex Digital, Inc., a California corporation (the “Debtor”), the debtor and debtor in
2 possession in the above-captioned chapter 11 bankruptcy case, commenced its chapter 11
3 bankruptcy case (the “Case”) by filing a voluntary petition under Chapter 11 of 11 U.S.C. § 101
4 *et seq.* (as amended, the “Bankruptcy Code”) on August 17, 2010 (the “Petition Date”). The
5 Debtor continues to manage its financial affairs and operate its bankruptcy estate as a debtor in
6 possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. On September 14,
7 2010 the Office of the United States Trustee appointed an Official Committee of Creditors
8 Holding Unsecured Claims (the “Committee”) to represent the interests of unsecured creditors
9 in the Debtor’s Case.

10 Chapter 11 allows the Debtor, and, under some circumstances, creditors and other parties
11 in interest, to propose a plan of reorganization. A plan may provide for the debtor to reorganize
12 by continuing to operate, to liquidate by selling the assets of its estate, or a combination of both.
13 In this case, the Debtor and the Committee are the proponents (collectively, the “Proponents”) of
14 the “Amended Chapter 11 Plan of Reorganization (Dated February 1, 2013)” (the “Plan”)
15 described herein and sent to you in the same envelope as this document, which is the Amended
16 Disclosure Statement describing the Plan (the “Disclosure Statement”).

17 The effective date of the Plan (the “Effective Date”) will be the first business day which
18 is at least fifteen (15) days following the date of entry of the Court order confirming the Plan (the
19 “Plan Confirmation Order”) when and provided that all of the following conditions to the
20 effectiveness of the Plan have been satisfied or waived by the Proponents: (a) there shall not be
21 any stay in effect with respect to the Plan Confirmation Order; (b) the Plan Confirmation Order
22 shall not be subject to any appeal or rehearing; and (c) the Plan and all documents, instruments
23 and agreements to be executed in connection with the Plan shall have been executed and
24 delivered by all parties to such documents, instruments and agreements. The Debtor following
25 the Effective Date shall be referred to as the “Reorganized Debtor.”
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1 **A. Purpose Of This Document**

2 This Disclosure Statement summarizes what is in the Plan and tells you certain information
3 relating to the Plan and the process the Court follows in determining whether or not to confirm the
4 Plan. All capitalized terms not specifically defined herein shall have the same meanings ascribed
5 to them in the Plan.

6 **READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO**
7 **KNOW ABOUT:**

- 8 **(1) WHO CAN VOTE OR OBJECT,**
9 **(2) WHAT THE TREATMENT OF YOUR CLAIM IS (*i.e.*, what your claim**
10 **will receive if the Plan is confirmed) AND HOW THIS TREATMENT COMPARES TO**
11 **WHAT YOUR CLAIM WOULD RECEIVE IN A CHAPTER 7 LIQUIDATION,**
12 **(3) THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS**
13 **DURING ITS BANKRUPTCY CASE,**
14 **(4) WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER**
15 **OR NOT TO CONFIRM THE PLAN,**
16 **(5) WHAT IS THE EFFECT OF CONFIRMATION, AND**
17 **(6) WHETHER THE PLAN IS FEASIBLE.**

18 This Disclosure Statement cannot tell you everything about your rights. You are strongly
19 encouraged to consult your own lawyer to obtain more specific advice on how the Plan will
20 affect you and what is the best course of action for you.

21 Be sure to read the Plan as well as this Disclosure Statement. If there are any
22 inconsistencies between the Plan and this Disclosure Statement, the Plan provisions will govern.

23 The Bankruptcy Code requires a Disclosure Statement to contain “adequate” information
24 concerning the Plan. The Bankruptcy Court has approved this document as an adequate
25 Disclosure Statement containing enough information to enable parties affected by the Plan to
26 make an informed judgment about the Plan. Any party can now solicit votes for or against the
27 Plan.

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1 **B. Deadlines For Voting And Objecting; Date Of Plan Confirmation Hearing**

2 THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS
3 DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT
4 YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE
5 PLAN, THEN THE PLAN WILL BE BINDING ON ALL CREDITORS AND INTEREST
6 HOLDERS IN THIS CASE.

7 **1. Time and Place of the Plan Confirmation Hearing**

8 The hearing where the Court will determine whether or not to confirm the Plan (the
9 “Plan Confirmation Hearing”) will take place on March 27, 2013, at 9:30 a.m., before the
10 Honorable Peter Carroll, United States Bankruptcy Judge, in Courtroom “1539,” located at 255
11 E. Temple Street, Los Angeles, California 90012.

12 **2. Deadline For Voting For or Against the Plan**

13 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot
14 and return the ballot in the enclosed envelope to Juliet Y. Oh, Esq., Levene, Neale, Bender, Yoo
15 & Brill L.L.P., 10250 Constellation Boulevard, Suite 1700, Los Angeles, California 90067,
16 facsimile: (310) 229-1244, email: jyo@lnbyb.com.

17 **YOUR BALLOT MUST BE RECEIVED BY CLOSE OF BUSINESS ON March**
18 **11, 2013 OR IT WILL NOT BE COUNTED.**

19 **3. Deadline for Objecting to the Confirmation of the Plan**

20 Objections to the confirmation of the Plan must, by March 11, 2013, be filed with the
21 Court and served by same day service upon Juliet Y. Oh, Esq., Levene, Neale, Bender, Yoo &
22 Brill L.L.P., 10250 Constellation Boulevard, Suite 1700, Los Angeles, California 90067,
23 facsimile: (310) 229-1244, email: jyo@lnbyb.com.

24 **4. Identity of Persons to Contact for More Information Regarding the**
25 **Plan**

26 Any interested party desiring further information about the Plan should contact Juliet Y.
27 Oh, Esq., Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Boulevard, Suite
28

1 1700, Los Angeles, California 90067; phone: (310) 229-1234; facsimile: (310) 229-1244; email:
2 jyo@lnbyb.com.

3 **5. Disclaimer**

4 The financial data relied upon in formulating the Plan is based on the Debtor's books and
5 records which, unless otherwise indicated, are unaudited. The information contained in this
6 Disclosure Statement is provided by the Debtor. The Debtor represents that everything stated in
7 this Disclosure Statement is true to the Debtor's best knowledge. The Bankruptcy Court has not
8 yet determined whether or not the Plan is confirmable and makes no recommendation as to
9 whether or not you should support or oppose the Plan.

10 **I.**

11 **BACKGROUND**

12 **A. Description and History of the Debtor's Business.**

13 On August 17, 2010 (the "Petition Date"), the Debtor filed a voluntary petition under
14 Chapter 11 of the Bankruptcy Code. The Debtor is continuing to manage its financial affairs and
15 operate its bankruptcy estate as a debtor in possession pursuant to Sections 1107 and 1108 of the
16 Bankruptcy Code.

17 The Debtor is a privately held California corporation presently headquartered in Chino,
18 California. The Debtor opened its doors in 1997, and has proven itself a leading market force in
19 consumer electronics since that time. Since its inception, the Debtor's mission has been to
20 provide quality consumer electronics products for the average American at competitive prices.

21 From its start, the Debtor was one of the earliest companies to harness the then-emerging
22 Chinese original equipment manufacturer ("OEM") Original Designed Manufacturer ("ODM")
23 industry. An OEM manufactures products or components that are purchased by a company and
24 retailed under the primary company's brand name. An ODM is a company which designs and
25 manufactures a product which is specified and eventually branded by another firm for sale. Such
26 companies allow the brand firm to produce (either as a supplement or solely) without having to
27 engage in the organization or running of a factory. In late 1999, the Debtor decided to enter the
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1 DVD market. The Debtor struck immediate success in February 2002 when the retailer Circuit
2 City bought 5,000 units and sold them almost immediately. Due to the Debtor's low price point
3 and because at that time only the DVD player that the Debtor produced could also play MP3
4 music discs, the Debtor's sales soared.

5 The Debtor quickly revolutionized the electronics industry by also moving into the LCD
6 television business. The Debtor soon persuaded Wal-Mart, KMart, Best Buy and other discount
7 retailers to stock its products. The Debtor's revenues jumped from \$120 million in 2000 to
8 approximately \$700 million in 2003. In fact, *Time Magazine* recognized the Debtor for its
9 extensive global influence and success and named David Ji, the founder, President and Chief
10 Executive Officer of the Debtor, as one of its fifteen "global influentials" of 2002. While its
11 sales grew, the Debtor continued to keep a slim profit margin and spent very little money on
12 advertising. Rather, the Debtor's success was based on aggressive pricing, desirable features,
13 and new product designs capable of being realized in 3 to 6 months instead of the industry
14 standard of two years.

15 The Debtor continued its expansion into the television market in 2001, and in 2002, the
16 Debtor entered into a purchase agreement with Sichuan Changhong Electronics Co., Ltd
17 ("Changhong"), a state-owned television manufacturer in China. The Debtor's successes
18 continued. By 2003, the Debtor commanded a 10% share of the United States DVD player
19 market and its gross sales was approximately \$700 million a year. While the Debtor's
20 relationship with Changhong was initially profitable, it later became the major factor in its
21 decline.

22 The Debtor possesses a myriad of marketing channels through its extensive industry
23 contacts. Prior to the Petition Date, the Debtor's business was concentrated in two markets –
24 consumer electronics (the "Television Business") and, more recently, green energy in the form of
25 solar powered lights (the "Lighting Business"). With the former, the Debtor focused on
26 nationwide consumer sales of LCD high definition television and converter set top boxes, along
27 with other consumer electronics product lines – all branded in its name through such large scale
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1 chains as Best Buy, Costco, Target and Wal-Mart, while likewise utilizing regional forces, *e.g.*,
2 Office Depot. The Debtor also offered its products on the internet, through such outlets as
3 Amazon and Tiger Direct.

4 As discussed in more detail below, the Debtor's business is presently limited to the
5 Lighting Business and some consulting services related to its former Television Business, which
6 was sold during this Case. The Debtor is well known for its ability to bring new innovations to
7 the mass consumer market. The Debtor developed a new product line – portable consumer solar
8 lighting for outdoor safety and landscaping – branded under an “XEPA” product line. Although
9 solar lights are relatively new, the Debtor has already demonstrated success in obtaining sales
10 and interest from major retailers. The Debtor is working to ultimately achieve the same type of
11 success with its solar lighting product line as it enjoyed with DVD players, televisions and set
12 top boxes. In fact, because solar lights do not require as many licenses, the profit margins are
13 higher and should ultimately generate larger net profits for the Debtor. The Debtor has
14 developed several models of lights for different uses, ranging from solar motion detector lights to
15 solar landscaping lights. The Debtor believes that its ability to progress its business has been
16 significantly hindered by its status as a Chapter 11 debtor.

17 **B. Events Leading To Commencement Of The Debtor's Bankruptcy Case**

18 The Debtor filed its chapter 11 case for two primary reasons. It became increasingly
19 apparent that the Debtor would not be able to resolve its legacy debt in a consensual and feasible
20 manner. Also, due to the litigation that was ongoing as of the Petition Date against the Debtor by
21 various license holders, the loss of the Debtor's license to use the “Apex Digital” trademark, and
22 the declaration of default and related demands by the Debtor's primary secured creditor, Kith
23 Electronics Limited (“Kith Electronics”), it became difficult for the Debtor to continue operating
24 the television side of its business.

25 Despite its success, the Debtor started having financial problems in 2003. Products such
26 as DVD players and televisions require patent licenses, which many of the manufacturers sought
27 out and obtained. As the consumer electronics market developed, margins thinned for the Debtor

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1 as well as its competitors, and disputes and disagreements arose between the Debtor and its
2 manufacturers as to which party was to bear the cost of various licenses.

3 In addition to these factors, by April 2003 the Debtor had paid Changhong \$250 million
4 but Changhong claimed it was owed over \$200 million more. The Debtor strongly disputed this
5 contention and relations between Changhong and the Debtor began to severely deteriorate. In
6 2004, a widely publicized debacle began when Changhong caused Mr. Ji to be detained in China
7 for over two years.

8 While Changhong made a plethora of charges against Mr. Ji, he was never formally
9 charged with a crime. Mr. Ji maintains that he was exonerated of all charges. However, he was
10 not able to leave China as his release was negotiated at the highest levels of government. During
11 this time, the Debtor effectively had no leadership. The Debtor's sales dramatically declined
12 from hundreds of millions of dollars to \$10 million in gross revenue by 2007. To obtain his
13 release, Mr. Ji was forced to sign numerous documents drafted by Changhong's attorneys that
14 were intended to sign away all of the Debtor's legal claims against Changhong and assign all of
15 the Debtor's assets to Changhong. Mr. Ji was also forced to surrender many of his personal
16 assets, including various interests in businesses, and to permit Changhong to obtain a lien against
17 his personal residence and assets for over \$400 million. After two years of efforts on all fronts –
18 including intervention efforts by then President George W. Bush, then Governor Arnold
19 Schwarzenegger and other American political leaders in 2007, Mr. Ji was finally able to
20 negotiate his release (with the assistance of counsel) which, for political reasons, required
21 concessions from the Debtor and from Mr. Ji personally. The terms of his release were
22 negotiated through a "Foundational Agreement" among Changhong, the Debtor and Mr. Ji. Mr.
23 Ji returned to California in 2007.

24 As set forth above and in the Foundational Agreement, Changhong was paid a substantial
25 sum of money, and the Debtor was required to forfeit significant rights, including its ownership
26 of the "Apex Digital" trademark. Until shortly before the Petition Date, Changhong licensed the
27 "Apex Digital" trademark back to the Debtor which it regularly renewed on an annual basis. On
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1 or about July 9, 2010, the Debtor received a notice from Changhong that it would not renew the
2 Debtor's license to use the "Apex Digital" trademark. Accordingly, the Debtor's prior rights to
3 use the "Apex Digital" trademark expired on July 24, 2010.

4 During the period of Mr. Ji's detention in China, many of the Debtor's customers took
5 note of the situation and simply stopped paying the Debtor (perhaps in the hope that it would go
6 out of business). The Debtor took steps to deal with its financial difficulties. The Debtor sold its
7 real property located at 2626 Vista Industrial Parkway, Rancho Dominguez, California (the
8 proceeds of which went entirely to Changhong) and the real property that housed its former
9 corporate headquarters and warehouse located at 2919 East Philadelphia Street, Ontario,
10 California 91761. In an effort to cut costs, the Debtor leased a modest office and warehouse
11 space located in Walnut, California and laid off over a hundred employees, leaving a bare-bones
12 staff of fewer than 30 employees.

13 After Mr. Ji's return to the United States in 2007, Mr. Ji was determined to rebuild the
14 Debtor, virtually from scratch. Mr. Ji built new relationships with new manufacturers in China.
15 At the same time, Mr. Ji personally reached out to American retailers and reconnected with key
16 customers such as Best Buy, Target, Costco and Walmart. The Debtor became well known for
17 its set top boxes which became popular when the United States moved from analog to digital
18 television broadcast transmission in June 2009. The Debtor again earned top honors in sales of
19 set top boxes in the government program. In the two-plus years following his return, Mr. Ji
20 rebuilt the Debtor's operations and increased annual gross revenues, from approximately \$10
21 million dollars to approximately \$120 million in year 2009. However, because margins had
22 dramatically thinned in the television distribution business, the Debtor was not able to generate
23 sufficient net revenue to satisfy its legacy debt.

24 That indebtedness included outstanding licensing fees due or claimed to be due to various
25 license holders, such as MPEG-LA, LLC ("MPEG") and Thomson. The Debtor's outstanding
26 (disputed) unsecured royalty debt at the Petition Date was approximately \$32 million, a large
27 portion of which was related to the Debtor's distribution of LCD televisions. Although the
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1 Debtor disputed much of this debt for a variety of reasons, the Debtor attempted to negotiate
2 with certain license owners to pay off the legacy debt and, in some cases, enter into new
3 licensing agreements. Although the Debtor was successful in its negotiations with some of its
4 creditors, it was unsuccessful with others. Against this backdrop, and given the adverse events
5 noted below, it became impossible for the Debtor to continue to distribute televisions.

6 a. MPEG. MPEG is an administrator of patent licenses, primarily audio and
7 video licenses, and licenses and collects royalties on behalf of numerous patent holders.
8 Various licensing disputes have arisen between MPEG and the Debtor since 2002. MPEG
9 filed lawsuits against the Debtor in 2002 and 2004 which were concluded by settlements.
10 MPEG filed a third lawsuit in New York for breach of contract (the second settlement
11 agreement as well as the existing license) which was ultimately re-filed in the Los
12 Angeles Superior Court for the State of California (Case No. BC416816). On June 28,
13 2010, the Superior Court entered its Minute Order/Ruling on MPEG's Application For
14 Right of Attachment Order and awarded a Writ of Attachment for just under \$4 million.

15 b. Jiangsu Hongtu High Tech Co., Ltd. ("Hongtu"). Hongtu is also a state-
16 owned Chinese manufacturer (like Changhong). On October 18, 2006, Hongtu obtained
17 a Chinese arbitration award in the amount of \$8,792,781. Although the Debtor
18 questioned the propriety of Hongtu's judgment, the foreign judgment was confirmed by
19 the United States District Court on August 5, 2009 (with, according to Hongtu, interest of
20 \$141,839 incurred from October 18, 2006 to the judgment effective date and additional
21 interest calculated at 0.44% annual rate or \$106.17 per day following the judgment
22 effective date). Prior to the Petition Date, Hongtu began aggressively pursuing its
23 judgment. On May 27, 2010, it served a notice of debtor examination on Alice Hsu (the
24 Debtor's Chief Operating Officer).

25 c. Kith Default. Kith Electronics was the Debtor's senior secured pre-
26 petition creditor and held a UCC-1 lien purportedly against substantially all of the
27 Debtor's assets. On June 7, 2010, Kith Electronics served its Notice of Default on the
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1 Debtor. On July 6, 2010, the Debtor received a further notice from Kith Electronics
2 regarding the Debtor's default under the parties' Security Agreement, which indicated
3 that Kith Electronics intended to seek judicial action against the Debtor and demanded
4 that the Debtor segregate its collateral.

5 d. Apex Digital Trade Name. On or about July 9, 2010, the Debtor received
6 notice that Changhong would not renew the Debtor's license to use the "Apex Digital"
7 trade name, effectively barring the Debtor from using the "Apex Digital" trade name as
8 of July 24, 2010.

9 As a result of these events the Debtor determined it was necessary to file the Petition
10 commencing this Chapter 11 case in order to preserve the value of its assets and business for the
11 benefit of creditors. Through its Chapter 11 filing, the Debtor sought to modify its business plan
12 to enable it to realize value for the Assets of its Television Business; to utilize and monetize its
13 pipeline connections as a consultant to Kith Consumer Product, Inc. ("Kith Consumer"), an
14 affiliate of Kith Electronics; to focus on growing its Lighting Business, and to restructure its
15 legacy debt and obligations in a cohesive and efficient manner.

16 **C. Significant Events During The Debtor's Bankruptcy Case**

17 The following is a list of significant events which have occurred during the Debtor's
18 chapter 11 case:

19 1. Formation of the Committee and Employment of Counsel

20 The Office of the United States Trustee (the "OUST") appointed an Official Committee
21 of Unsecured Creditors (the "Committee") to represent the interests of the unsecured creditors in
22 the Debtor's bankruptcy case. There are three members of the Committee consisting of Hongtu,
23 MPEG and Wi-LAN, Inc. ("Wi-LAN"). The Committee employed the law firm of Pachulski
24 Stang Ziehl & Jones LLP as bankruptcy counsel, with Ira D. Kharasch, Esq. serving as lead
25 counsel. Mr. Kharasch's contact information is as follows: Ira D. Kharasch, Esq., Pachulski
26 Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California
27 90067, telephone: (310) 277-6910; email: ikharasch@pszjlaw.com.

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1 2. Administrative Matters

2 The Debtor was required to address the various administrative matters attendant to the
3 commencement of its bankruptcy case. These matters included the preparation of the Debtor's
4 Schedules of Assets and Liabilities and Statement of Financial Affairs, and the preparation of
5 materials required by the OUST. The Debtor has attempted to comply with its duties under 11
6 U.S.C. Sections 521, 1106 and 1107 and all applicable OUST guidelines, including the filing of
7 the Debtor's monthly operating reports with the OUST. The Debtor believes that it is in
8 compliance with such requirements as of the filing of this Disclosure Statement. The Debtor
9 also attended the meeting of creditors required under 11 U.S.C. § 341(a).

10 3. Employment of Professionals

11 The Debtor employed Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB") as its
12 bankruptcy counsel. The Court entered an order approving LNBYB's employment on
13 September 17, 2010.

14 The Debtor has also employed Lewis, Brisbois, Bisgaard & Smith, LLP ("LBBS") as
15 special corporate counsel for the Debtor, and Chang, Chang, Chen & Company ("CCC&C") as
16 accounting and tax consultants to the Debtor. The Court entered orders approving LBBS's
17 employment on November 9, 2010, and CCC&C's employment November 2, 2010. On June 22,
18 2011, and November 14, 2012, the Court entered supplemental orders expanding the scope of
19 employment of LBBS. The Debtor also employed the Law Offices of John J. Shafai as special
20 litigation counsel, on a contingency basis, to attempt to collect old receivables.

21 Following the appointment of the Examiner (discussed and identified below), the
22 Examiner employed, first, Rutter, Hobbs & Davidoff Incorporated, and subsequently, Greenberg
23 Glusker Fields Claman Machtinger LLP, as his counsel.

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1 4. Sale/Settlement Agreement With Kith

2 Immediately following the Petition Date, the Debtor, Kith Consumer and, to a limited
3 extent, Kith Electronics, entered into that certain *Consulting, Sale and Settlement Agreement*
4 dated as of August 17, 2010 (the "Sale/Settlement Agreement"), pursuant to which the Debtor
5 proposed to sell to Kith Consumer certain assets relating to the Television Business including,
6 among other things, inventory and accounts receivable relating to the Television Business, in
7 exchange for the assumption by Kith Consumer of a substantial portion of the debt owed by the
8 Debtor to Kith Electronics (the "Debt"). The Sale/Settlement Agreement also contemplated that
9 Kith Consumer would retain the Debtor as its consultant to provide, among other things, business
10 and product development services and customer service and warranty services for certain
11 consumer electronic products. As a result, upon the closing of the transactions contemplated by
12 the Sale/Settlement Agreement, the Debt owed to Kith Electronics would be reduced to \$1.5
13 million (the "Residual Claim"), with such Residual Claim to remain subject to Kith Electronics'
14 existing security interest and lien in its collateral, to the same priority, force and effect as Kith
15 Electronics' security interest and lien existing pre-petition in such collateral, and the Debtor
16 would be able to continue utilizing and monetizing its pipeline connections as a consultant,
17 notwithstanding its inability to continue operating the Television Business.

18 The closing under the Sale/Settlement Agreement was subject to satisfaction of certain
19 prior conditions, including but not limited to approval of the Sale/Settlement Agreement by the
20 Court. On September 17, 2010, the Court entered an order approving the Sale/Settlement
21 Agreement. The closing of the transactions contemplated by the Sale/Settlement Agreement
22 occurred on September 20, 2010.

23 5. Initial Motions For Relief

24 Promptly following the Petition Date, on August 18, 2010, the Debtor filed several
25 emergency motions seeking orders granting relief necessary to allow it to maintain the operation
26 of its business. These included a motion for approval of a Stipulation with Kith Electronics
27 authorizing use of cash collateral subject to the security interests of Kith Electronics; a motion
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1 for an order authorizing the payment of pre-petition wages and honoring of employee benefits; a
2 motion for an order authorizing and fixing utility deposits; and a motion for an order authorizing
3 the Debtor to honor pre-petition obligations to customers and to continue certain customer
4 programs. An initial hearing was held on August 25, 2010. All of the emergency motions were
5 ultimately granted.

6 6. Subsequent Proceedings Regarding Use of Cash Collateral

7 Following the initial interim approval of the Stipulation with Kith Electronics for use of
8 cash collateral, the Debtor and Kith Electronics entered into subsequent stipulations providing
9 for extended use of cash collateral (in accord with the operating budgets attached thereto), with
10 the approval of the Court.

11 In February, 2011, Kith Electronics sold and assigned to Avision Technology Co.
12 Limited (“Avision”) all of Kith Electronics’ right, title and interest in and to the Residual Claim.
13 As a result, all rights, claims and interests previously held by Kith Electronics in the Residual
14 Claim against the Debtor were transferred to Avision. Following the transfer of the Residual
15 Claim (and all related rights, claims and interests) from Kith Electronics to Avision, the Debtor
16 and Avision entered into a separate stipulation authorizing the Debtor’s continued use of cash
17 collateral in accordance with the operating budget attached thereto. The Avision cash collateral
18 stipulation was approved by the Court pursuant to its order entered on March 2, 2011. The
19 authorization for use of cash collateral was subsequently extended pursuant to numerous
20 stipulations. The Debtor anticipates that Avision will continue to cooperate and that its use of
21 cash collateral will be authorized through the Effective Date

22 7. Real Property Leases

23 As of the Petition Date, the Debtor was leasing its corporate headquarters and warehouse
24 space located at 301 N. Brea Canyon Road, Walnut, California (the “Original Lease”). Pursuant
25 to 11 U.S.C. § 365(d)(4), the Debtor was required to assume or reject the Original Lease within
26 120 days of the commencement of the Debtor’s chapter 11 case (*i.e.*, by December 15, 2010),
27 unless such time period was extended. To obtain the time necessary for the Debtor to
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1 determine, on a business and operational level, whether the Original Lease should be assumed
2 on a long-term basis or rejected (in which case the Debtor would also need time to obtain an
3 alternative space from which to operate), the Debtor filed a motion seeking to extend the time
4 period within which the Debtor was required to assume or reject the Original Lease, from
5 December 15, 2010 to and including March 15, 2011, without prejudice to the Debtor's right to
6 seek further extensions of such period. The Court granted the foregoing motion pursuant to an
7 order entered by the Court on December 21, 2010.

8 Thereafter, the Debtor filed a second motion seeking to further extend the time period
9 within which the Debtor was required to assume or reject the Original Lease, from March 15,
10 2011 to and including June 13, 2011. The Court granted the second motion pursuant to its order
11 entered on April 8, 2011.

12 The Debtor ultimately elected to enter into a new lease for office and warehouse space
13 located at 4401 Eucalyptus Avenue, Chino, California 91710 (the "Chino Premises"). The
14 Debtor negotiated an agreement to lease the Chino Premises from Bidwell Technologies, Inc.
15 for an initial term of one (1) year, beginning on June 15, 2011 and expiring on June 14, 2012
16 (with one option to extend the term of the lease for a period of one year). The Debtor then filed
17 a motion seeking Court approval of the lease for the Chino Premises, which motion was granted
18 pursuant to an order entered by the Court on June 13, 2011.

19 Since the primary focus of the Debtor's business shifted to providing consulting services
20 rather than manufacturing or distributing products, the Debtor determined that it did not require
21 the amount of space it was maintaining at the Chino Premises. Accordingly, the Debtor
22 negotiated an agreement to lease office space consisting of approximately 1,075 square feet
23 located at 21671 Gateway Center Drive, Diamond Bar, California 91765 (the "Diamond Bar
24 Premises"). The Debtor ultimately moved into the Diamond Bar Premises on or about July 10,
25 2012. The Debtor filed a motion seeking Court approval of the lease for the Diamond Bar
26 Premises, which motion was granted pursuant to an order entered by the Court on October 19,
27 2012.

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1 8. Extensions of Time for Assuming Contracts and Plan Exclusivity.

2 On April 8, 2011, pursuant to the Debtor's motion, the Court entered its Order extending
3 the time within which the Debtor must assume or reject its real property lease for its then c
4 premises located in Walnut, California to June 13, 2011.

5 The Debtor filed motions requesting that the Court extend the dates within which the
6 Debtor must file a plan and obtain acceptance of such plan in order to maintain the exclusive
7 right to file a plan in this case. The Motions filed by the Debtor were granted. Ultimately, the
8 Debtor agreed with the Committee that it would not request further extensions of exclusivity,
9 and the Debtor's exclusive right to file a plan expired as of December 12, 2011.

10 9. Claims Bar Date

11 The Debtor filed a motion requesting that the Court set a bar date for the filing of proofs
12 of claim. The Court entered an Order on December 13, 2010, establishing a deadline of
13 February 18, 2011, for creditors to file proofs of claim, except as specifically provided in the
14 Order.

15 10. Termination of Consulting Agreement

16 Subsequent to the closing of the transactions contemplated by the Consulting/Sale
17 Agreement on September 20, 2010, disputes arose between the Debtor and Kith Consumer in
18 connection with the Consulting/Sale Agreement. Specifically, a dispute arose between the
19 parties regarding whether the claims, defenses and causes of action asserted by the Debtor
20 against Sears and Circuit City prior to the bankruptcy filing (the "Sears/Circuit City Claims")
21 were among the assets purchased by Kith Consumer under the terms of the Consulting/Sale
22 Agreement. In addition, disputes arose between the Debtor and Kith Consumer in connection
23 with their consulting arrangement, including with respect to the compensation that the Debtor
24 contends it has earned for providing consulting services to Kith Consumer, which compensation
25 remained unpaid.

26 Recognizing the risks, costs and delays associated with litigation, the Debtor and Kith
27 Consumer engaged in good faith negotiations to resolve their disputes, which ultimately resulted
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1 in two (2) agreements – (1) Agreement For Modification Of Consulting, Sale And Settlement
2 Agreement Dated As Of August 17, 2010 (the “Modification Agreement”); And (2) Agreement
3 For Termination Of Term Of Consulting Services And Modification Of Provisions Relating
4 Thereto, Under Sale And Settlement Agreement Dated As Of August 17, 2010 (the “Termination
5 Agreement,” and together with the Modification Agreement, the “Agreements”). In summary,
6 the Modification Agreement modified the Consulting/Sale Agreement to expressly state that the
7 Sears/Circuit City Claims were excluded from the assets purchased by and transferred to Kith
8 Consumer. The Termination Agreement provided for the termination of the consulting
9 arrangement between the Debtor and Kith Consumer in accordance with the terms and
10 conditions set forth in the Termination Agreement, effective as of 11:59 p.m. (PDT) on March
11 31, 2011.

12 An order approving the Agreements was entered by the Court on May 4, 2011.

13 11. Subsequent Consulting Agreement

14 The Debtor entered into a new consulting agreement with TMAX Digital, Inc.
15 (“TMAX”), dated September 1, 2011. The Debtor is advised that TMAX is the new licensee or
16 sublicensee of the “Apex Digital” trademark through Apollo Holdings Limited. Apollo
17 Holdings Limited is not an affiliate of the Debtor or David Ji. The Debtor negotiated an
18 agreement with TMAX for the Debtor to provide consulting services to TMAX similar to those
19 the Debtor had provided to Kith Consumer. The agreement provided for a term of one year,
20 subject to automatic renewal for an additional year unless either party gave notice of non-
21 renewal at least sixty (60) days prior to the end of the initial term or any renewal term. The
22 agreement is also terminable due to breach of the agreement.

23 The agreement with TMAX provided for a sale commission to the Debtor of 1.5% of net
24 sales in which the Debtor had involvement. However, the Debtor’s agreement with TMAX
25 provided for advance payments of \$100,000 per month for the initial term of the agreement,
26 subject to adjustment in the event that the Debtor’s sales commission did not equal or exceed the
27 advance payments. The TMAX sales were less than projected such that the Debtor did not earn
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1 all of the advance payments it received. As a result, the Debtor has not continued to receive
2 advance payments of \$100,000 per month. The Debtor has negotiated with TMAX to continue
3 to receive reduced monthly payments while TMAX recoups prior advances. For purposes of
4 projected income under the Plan, the Debtor has projected income from consulting services at
5 \$60,000 per month. TMAX has agreed to this monthly payment commencing January 1, 2013.

6 12. The Coleman License

7 In June 2011, the Court entered an order approving the Debtor's license agreement with
8 The Coleman Company, Inc. ("Coleman"), pursuant to which Coleman granted the Debtor a
9 license to use its trademark in the manufacture and sale of solar landscape lighting, solar security
10 lighting, and solar utility shed lighting. As a result of less than anticipated sales, in July 2012,
11 the Debtor and Coleman agreed that the license would terminate December 31, 2012 (one year
12 early), and that the Debtor would pay the minimum royalties at a discounted rate, with the
13 payments to be completed in January 2013. The Debtor has represented that it will complete the
14 payments as scheduled.

15 13. Plan Negotiations With the Committee and Appointment of Examiner

16 a. Initiation of Plan Negotiations and Informal Discovery with Committee

17 In the Spring of 2011, the Debtor presented a proposed plan to the Committee, and the
18 Debtor and the Committee began extensive plan discussions, through their respective counsel.

19 The Debtor advised the Committee that certain items on the Debtor's historical balance
20 sheet were inaccurate and that the balance sheet was being corrected to reflect the actual facts.

21 The Committee requested additional information. The Debtor and the Committee engaged in the
22 exchange and discussion of extensive background documents and information over the following
23 months.

24 The Committee ultimately contended that it had identified potential substantial claims by
25 the Debtor and the bankruptcy estate against certain directors and officers and their relatives and
26 affiliates, including (without limitation) potential claims for transfers and uncollected obligations
27 totaling millions of dollars, many of which were not listed in the Debtor's Schedules of Assets
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1 and Liabilities (as amended) or Statement of Financial Affairs, and the Committee contended
2 that at least some of the claims were or may be covered by the Debtor's D&O insurance, which
3 had a \$1.0 million coverage limit.

4 b. Notification to D&O Carrier

5 In September 2011 counsel for the Committee requested that the Debtor notify its
6 directors and officers ("D&O") insurance carrier of potential claims against the Debtor's
7 president and director, David Ji, and chief financial officer, Alice Hsu. By letter dated
8 September 20, 2012, the Debtor notified the D&O carrier of the assertion of potential claims
9 against David Ji, Alice Hsu, and possibly others.

10 c. Appointment of Examiner and Commencement of D&O Action

11 However, the Debtor's D&O insurance had expired on September 21, 2011, and the
12 policy provided (among other things) that a claim under the policy must be made within 90 days
13 of the end of the policy period, or December 20, 2011. In order to preserve such claims under
14 the policy, the Debtor and the Committee stipulated to the appointment of an examiner pursuant
15 to Section 1104 of the Bankruptcy Code, for the purpose of allowing the examiner to investigate
16 such claims and to commence an action to preserve and to prosecute such claims. The
17 stipulation was filed November 30, 2011, and the order authorizing the appointment of an
18 examiner was entered the same day.

19 Rosendo Gonzalez was appointed as Examiner by the Office of the United States Trustee
20 ("UST") on December 7, 2011. With the concurrence of the Committee and the UST, the
21 Debtor transferred \$56,534.84 to the Examiner, to be held as funds of the Debtor's bankruptcy
22 estate. The Examiner filed a complaint in the Bankruptcy Court on December 19, 2011,
23 commencing an action against David Longfen Ji, Alice Hsu, Ancle Hsu (not related to Alice),
24 Jean Ji, Andrew Lashenske, and (David Ji's wife) Ru-Ying Liu (the "D&O Action"). A copy of
25 the Complaint is attached hereto as Exhibit "B."

26 On August 26, 2012, the Examiner filed his report with the Bankruptcy Court. A copy of
27 the filed Examiner's Report is attached hereto as Exhibit "C."

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1 Under the Plan the D&O Action is being settled as part of the settlement involving David
2 Ji. That settlement is discussed later in this Disclosure Statement. In addition to the amounts
3 being paid or contributed as plan funding by David Ji under the Plan, the Examiner negotiated a
4 payment of \$125,000 from the D&O insurance carrier. The settlement is subject to the Plan
5 becoming effective.

6 d. Execution of Term Sheet for Plan of Reorganization

7 As of November 12, 2012, the Committee, the Debtor and David Ji executed a Term
8 Sheet for a consensual plan of reorganization, after lengthy and detailed negotiations. The
9 negotiation process included review of additional information requested by the Committee and
10 provided by the Debtor, as well as information independently developed by the Committee, and
11 also included discussions with the Examiner, who also participated in a mediation session to
12 assist the Debtor and the Committee in reaching agreement on a plan of reorganization which
13 would benefit creditors.

14 A copy of the Term Sheet is attached hereto as Exhibit "D." The provisions of the Term
15 Sheet have been incorporated into the Plan, and serve as the basis for the Plan jointly proposed
16 by the Committee and the Debtor.

17 14. Avoidance Actions

18 Prior to the deadline for commencing avoidance actions for recovery of pre-petition
19 preferences or fraudulent transfers, the Debtor and the Committee reviewed information
20 regarding potential causes of action. The Debtor proposed that the the Committee be
21 authorized to pursue avoidance actions which were potentially worth pursuing. Ultimately the
22 Committee requested that the Debtor pursue three avoidance actions. The Debtor commenced
23 one action, which was subsequently settled for \$35,000, and has obtained agreement on
24 extensions of time on the two others, while information is being reviewed.

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1 II.

2 **SUMMARY OF THE PLAN OF REORGANIZATION**

3 **A. What Creditors And Interest Holders Will Receive Under The Plan**

4 As required by the Bankruptcy Code, the Plan classifies claims and interests in various
5 classes according to their right to priority. The Plan states whether each class of claims or
6 interests is impaired or unimpaired. The Plan provides the treatment each class will receive. A
7 claim or interest is classified in a particular class only to the extent that it falls within the
8 description of that class. To the extent that part of a claim or interest falls within a different class
9 description, the claim or interest is classified in that different class.

10 **B. Unclassified Claims**

11 Certain types of claims are not placed into voting classes; instead they are unclassified.
12 They are not considered impaired and they do not vote on the Plan because they are
13 automatically entitled to specific treatment provided for them in the Bankruptcy Code.
14 Therefore, the Debtor has not placed the following claims in classes:

15 **1. Administrative Claims**

16 Administrative claims are claims for costs or expenses of administering the Debtor's
17 chapter 11 case which are entitled to priority under Bankruptcy Code Section 507(a)(2). The
18 Bankruptcy Code requires that all allowed administrative claims be paid on the Effective Date,
19 unless a particular holder of an allowed administrative claim agrees to a different treatment.

20 The following chart lists all of the Debtor's known administrative claims, in the amounts
21 the Debtor estimate will be unpaid on the Effective Date, and their treatment under the Plan.

<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
Clerk's Office Fees	\$0	Paid in full prior to the Effective Date.
Office of the U.S. Trustee Fees	\$0	Paid in full current on the Effective Date, and thereafter by the Reorganized Debtor.

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<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
Levene, Neale, Bender, Yoo & Brill L.L.P., bankruptcy counsel for the Debtor	\$475,000 (est.) in excess of any amounts paid pursuant to Court order prior to the Effective Date.	Paid in full from the Creditors' Trust on the later of (1) the Effective Date, or (2) the date the Court allows such fees and expenses pursuant to a final order.
Pachulski Stang Ziehl & Jones LLP, counsel to the Committee	\$475,000 (est.)	Paid in full from the Creditors' Trust on the later of (1) the Effective Date, or (2) the date the Court allows such fees and expenses pursuant to a final order.
Rosendo Gonzalez, Examiner	\$44,000 (est.)	Paid in full, first (a) pro rata with fees of the Examiner's counsel from the funds of the Debtor's Estate held by the Examiner (approximately \$56,534.84), and then (b) from the Creditors' Trust, on the later of (1) the Effective Date, or (2) the date the Court allows such fees and expenses pursuant to a final order.
Rutter, Hobbs & Davidoff Incorporated, former counsel to the Examiner	\$17,105 (est.)	Paid in full, first (a) pro rata with fees of the Examiner's counsel from the funds of the Debtor's Estate held by the Examiner, and then (b) from the Creditors' Trust, on the later of (1) the Effective Date, or (2) the date the Court allows such fees and expenses pursuant to a final order.
Greenberg Glusker,Fields Claman Machtinger LLP, counsel to the Examiner	\$21,000 (est.)	Paid in full, first (a) pro rata with fees of the Examiner's counsel from the funds of the Debtor's Estate held by the Examiner, and then (b)

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<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
		from the Creditors' Trust, on the later of (1) the Effective Date, or (2) the date the Court allows such fees and expenses pursuant to a final order.
Lewis, Brisbois, Bisgaard & Smith, LLP (Special Corporate Counsel to the Debtor)	\$35,000 (est.)	Paid in full from the Creditors' Trust, or retainers held, on the later of (1) the Effective Date, or (2) the date the Court allows such fees and expenses pursuant to a final order.
Chang, Chang, Chen & Company (accounting and tax consultants to the Debtor)	\$10,000 (est.)	Paid in full from the Creditors' Trust on the later of (1) the Effective Date, or (2) the date the Court allows such fees and expenses pursuant to a final order.
Hartford Fire Insurance Co.	\$2,093 (est.)	Paid in full from the Creditors' Trust on the later of (1) the Effective Date, or (2) the date the Court allows such claim pursuant to a final order.
Metlife	\$1,087 (est.)	Paid in full from the Creditors' Trust on the later of (1) the Effective Date, or (2) the date the Court allows such claim pursuant to a final order.
Alice Hsu, Chief Financial Officer of Debtor	\$60,000	Paid in full from the Creditors' Trust on the Effective Date. Alice Hsu shall not be entitled to any other distribution from the Creditor Trust.

<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
Administrative tax payments on administrative wage claim of Alice Hsu: FICA: \$60,000 * 7.65% = 4,590.00 SUI: \$7,000 * 6.2% = 434.00 FedUI: \$7,000 * 6.2% = 434.00 Total: \$5,458.00	\$5,458.00	Paid in full from the Creditors' Trust on the Effective Date.
TOTAL	\$1,145,743 (est.)	

The administrative claim amounts set forth above represent only the Debtor's best estimate as to the amount of allowed administrative claims in the Debtor's case, based upon information provided by the administrative claimants and information in the possession or control of the Debtor. The actual amount of allowed administrative claims may be higher or lower.

Bankruptcy Court Approval of Professional Fees Required

Before they may be paid, the Bankruptcy Court must approve and allow all unpaid fees and expenses of professionals employed at the expense of the Debtor's bankruptcy estate. For all professional fees and expenses, the professional in question must file and serve a properly noticed final fee application and the Court must rule on the application. Only the amount of fees and expenses allowed by a final order of the Bankruptcy Court will be paid under the Plan.

By voting to accept the Plan, Creditors are not acknowledging the validity of, or consenting to the amount of, the allowed administrative claim of any professional employed at the expense of the Debtor's bankruptcy estate, and creditors are not waiving any of their rights to object to the allowance of any of the administrative claims asserted by such professionals.

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2. Priority Tax Claims

Except to the extent the holder of a particular claim has agreed to different treatment, the Bankruptcy Code requires that the holder of an allowed priority tax claim receive on account of such claim either (i) payment in full on the Effective Date, or (ii) regular installment payments in cash (x) of a total value, as of the Effective Date of the Plan, equal to the allowed amount of such claim; (y) over a period ending not later than five (5) years after the commencement of a Debtor’s case; and (z) in a manner not less favorable than the most favored non-priority unsecured claim provided for under the Plan.

The chart below indicates all priority tax claims which were either scheduled by the Debtor as undisputed, liquidated, and non-contingent or asserted by the taxing agencies in filed proofs of claim, and the treatment of such allowed priority tax claims under the Plan:

<u>Description</u>	<u>Amount Owed</u>	<u>Treatment</u>
California Franchise Tax Board	\$0	Paid in full from the Creditors’ Trust on the later of (1) the Effective Date, or (2) the date the Court allows such claim by a final order.
California State Board of Equalization	\$0	Paid in full from the Creditors’ Trust on the later of (1) the Effective Date, or (2) the date the Court allows such claim by a final order.
California Employment Development Department	\$0	Paid in full from the Creditors’ Trust on the later of (1) the Effective Date, or (2) the date the Court allows such claim by a final order.

<u>Description</u>	<u>Amount Owed</u>	<u>Treatment</u>
United States Treasury, Internal Revenue Service	\$0	Paid in full from the Creditors' Trust on the later of (1) the Effective Date, or (2) the date the Court allows such claim by a final order.
Total	\$0.00	

C. Classified Claims and Interests

1. Classes of Secured Claims

The following chart lists all of the secured claims which were either scheduled by the Debtor as undisputed, liquidated and non-contingent or asserted by the creditor in filed proofs of claim, and the treatment of such allowed secured claims under the Plan:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>INSIDERS (Y/N)</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
1	<p><u>Secured claim of:</u> Avision Technology Co. Limited ("Avision")</p> <p><u>Collateral:</u> Substantially all of the Debtor's assets</p> <p><u>Priority of Security Interest:</u> Subordinated to Liens of Creditors' Trust</p> <p><u>Collateral value:</u> Unknown</p> <p><u>Amount of Claim:</u> \$1,500,000</p>	N (per Debtor)	Y	Avision's allowed secured claim will accrue interest following the Effective Date at the rate of 5% per annum. The Reorganized Debtor will make monthly payments of \$5,000 to Avision by the last day of each of the first forty-eight (48) full calendar months following the Effective Date. The principal balance of Avision's allowed secured claim, and any accrued but unpaid interest, will be fully due and payable on the first day of the fiftieth (50 th) full calendar month following the Effective Date.

2. Classes of Priority Claims

Certain priority claims that are referred to in Bankruptcy Code Sections 507(a)(3), (4),

(5), (6), and (7) are required to be placed in classes. Allowed priority claims are entitled to treatment as follows: the Bankruptcy Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claims.

The following chart lists all of the priority claims which were either scheduled by the Debtor as undisputed, liquidated and non-contingent or asserted by the creditor in filed proofs of claim, and the treatment of such allowed priority claims under the Plan:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>INSIDERS (Y/N)</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
2	Allowed Priority Claims against the Debtor <u>Estimated Amount of Priority Claims:</u> \$0	N	N Not impaired; not entitled to vote on the Plan.	To the extent there are any allowed priority claims, the holder of each such Class 3 claim will be paid in full from the Creditors' Trust on the later of (1) the Effective Date, or (2) the date the Court allows such claim by a final order.

3. Classes of Allowed Unsecured Claims

The following chart describes the Plan's treatment of the classes containing the Debtor's allowed unsecured claims:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
3	All General Unsecured Claims which are not included in any other class <u>Aggregate Amount of Class 3 Allowed General Unsecured Claims:</u> \$35,597,317 (est.)	Y Impaired; Allowed claims in this class are entitled to vote on the Plan.	Holders of Class 3 allowed claims will be paid on a <i>pro rata</i> basis from cash of the Creditors Trust remaining after payment of administrative and priority claims, and post-confirmation fees and expenses payable from the Creditors' Trust, as further described in the Plan and in the Trust Agreement substantially in the form of Exhibit "1" to the

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	<p>A detailed claims chart showing all claims which were scheduled by the Debtor, all proofs of claim which have been filed against the Debtor, and whether such scheduled and/or filed claims are objectionable to the Debtor is attached hereto as Exhibit "A" (the "Claims Chart").</p> <p>Based on the Claims Chart, the Debtor estimates that after the objection to claims process has been completed, there will likely be a total of approximately \$35,597,317 of Class 3 allowed claims to be paid by the Reorganized Debtor pursuant to the terms of the Plan. Based on the foregoing, the Proponents estimate that Class 3 creditors will receive total distributions under the Plan equal to approximately 3.0% of the allowed amount of their Class 3 allowed claims.</p>		<p>Plan.</p> <p>The treatment of holders of Class 3 allowed claims described in the Plan shall be in full settlement and satisfaction of all Class 3 allowed claims.</p>
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4. Classes of Interest Holders

Interest holders are the entities that hold an ownership interest (*i.e.*, equity interest) in the Debtor. The following chart describes the Plan's treatment of the classes of interests:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
4	Equity interests in the Debtor	Y Impaired; Allowed interests in this class are entitled to vote on the Plan.	The equity interests in the Debtor shall be cancelled to the extent not held by David Ji. Following the Effective Date 100% of the equity interests shall be held by David Ji.

1 **D. Means of Effectuating the Plan and Implementation of the Plan**

2 **1. Funding for the Plan**

3 The payments to be made under the Plan will be funded primarily from amounts to be
4 transferred to, paid to, and collected by the Creditors' Trust as described below. Amounts
5 payable under the Plan to holders of all unclassified allowed administrative and priority claims,
6 and Class 2 and 3 Claims, will be paid from the Creditors' Trust. Amounts payable following
7 the Effective Date to the holder of the Class 1 Claim and to ongoing business expenses of the
8 Debtor and the Reorganized Debtor shall be paid by the Reorganized Debtor from the Debtor's
9 cash on hand as of the Effective Date, and cash generated thereafter by the Reorganized Debtor.

10 **2. Establishment and Funding of Creditors' Trust; Appointment of**
11 **Creditors' Representative**

12 (a) *Establishment of Creditors' Trust*

13 On the Effective Date, the Creditors' Trust will be established pursuant to the Trust
14 Agreement substantially in the form attached to the Plan as Exhibit "1", and the Creditors'
15 Representative shall be appointed as provided herein. The Creditor Representative shall serve as
16 the Trustee of the Creditor's Trust. The Creditors' Trust shall be organized and established as a
17 trust for the benefit of the creditor beneficiaries and is intended to qualify as a liquidating trust
18 within the meaning of Treasury Regulation Section 301.7701-4(d). In accordance with Treasury
19 Regulation Section 301.7701-4(d), the beneficiaries of the Creditors' Trust shall be the holders
20 of allowed claims against the Debtor, that are entitled to receive distributions from the Creditors'
21 Trust pursuant to the Plan including administrative, priority tax and classified claims. For United
22 States federal and applicable state income tax purposes, the transfer of the trust assets to the
23 Creditors' Trust pursuant to, and in accordance with, the Plan shall be deemed to be, and shall be
24 reported as, a disposition of the trust assets directly to, and for the benefit of, the beneficiaries,
25 for all purposes of the Internal Revenue Code (including, but not limited to, sections 61(a)(12),
26 483, 1001, 1012 and 1274), as provided for in the Plan in satisfaction of allowed claims held by
27 such beneficiaries, immediately followed by a contribution of the trust assets by the beneficiaries

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1 to the Creditors' Trust in exchange for the participating interests in the Creditors' Trust to be
2 distributed to the beneficiaries. Upon the transfer of the trust assets to the Creditors' Trust,
3 neither the Reorganized Debtor nor its estate will have any further interest in or with respect to
4 the trust assets or the Creditors' Trust. The beneficiaries will be treated as the grantors and
5 deemed owners of the Creditors' Trust. The Creditors' Trust shall hold the legal title to property
6 to be transferred to fund the Creditors' Trust under Section I.D.2(b) of the Plan and shall hold
7 such property in trust to be administered and disposed of pursuant to the terms of the Plan and
8 the Trust Agreement for the benefit of the beneficiaries. The Trustee is authorized to make
9 disbursements and payments from the Creditors' Trust in accordance with the Plan and the Trust
10 Agreement. The Creditors' Trust shall be organized for the purposes of collecting, holding and
11 liquidating the trust assets, making payments to the beneficiaries, and administering,
12 compromising, settling, withdrawing, objecting to, or litigating objections to disputed claims,
13 collecting and enforcing obligations owed to the Creditors' Trust, and prosecuting causes of
14 action transferred to the Creditors' Trust, with no objective to engage in the conduct of a trade or
15 business except to the extent reasonably necessary to, and consistent with, the liquidating
16 purpose of the Creditors' Trust.

17 (b) *Funding of Creditors' Trust*

18 The Creditors' Trust will be funded by the proceeds of the following rights and property
19 to be assigned to the Creditors' Trust as of the Effective Date:

20 (i) \$750,000 to be paid by the Reorganized Debtor not later than one year
21 from the Effective Date, payable as follows:

22 (x) \$200,000 payable not later than six (6) months after the Effective
23 Date.

24 (y) \$275,000 payable not later than ten (10) months after the Effective
25 Date and an additional \$275,000 payable not later than twelve (12) months after
26 the Effective Date; provided, however, that if the Reorganized Debtor is unable to
27 make all of such payments when due as provided above in this subsection (y),
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1 then it may elect to defer up to \$200,000 of such payments and pay them in two
2 equal installments of up to \$100,000 each payable not later than fifteen (15) and
3 eighteen (18) months after the Effective Date, but with an additional amount of
4 1.5% of the amount unpaid, for each month unpaid (ie., 18% per annum), due
5 eighteen (18) months after the Effective Date if any of the \$750,000 remains
6 unpaid after the date which is twelve (12) months after the Effective Date;
7 provided further, that although the Reorganized Debtor intends to make these
8 payments from its operating revenues, the payments may and must be made
9 within the times provided in the Plan from any source of funds available to the
10 Reorganized Debtor, or the Reorganized Debtor will be in default, and interest on
11 the unpaid amounts after any default will also accrue at the rate of 1.5% per
12 month (18% per annum).

13 (ii) Two and one half percent (2.5%) of the Reorganized Debtor's net sales
14 (net only of any returns, allowances and discounts incurred in the ordinary course of
15 business on ordinary business terms), consulting revenues (but not reimbursement of
16 expenses), and revenues from any source not otherwise being contributed to the
17 Creditors' Trust under the Plan, for the period commencing with the thirteenth (13th)
18 month following the Effective Date and ending with the forty-eighth (48th) month
19 following the Effective Date. Such amounts shall be payable quarterly, within forty-five
20 (45) days after the end of each three (3) month period, with the first payment due within
21 forty-five (45) days after the end of the fifteenth (15th) month following the Effective
22 Date, calculated based on sales reported for the thirteenth (13th) through the fifteenth
23 (15th) months following the Effective Date. If such amounts are not timely paid when
24 due, interest at 1.5% per month (18% per annum) shall accrue on all unpaid amount that
25 are due until such amounts and interest are paid. Notwithstanding the foregoing, if the
26 Effective Date does not occur on a day which is the first day of a calendar month, then
27 (x) the day of the Effective Date though the last day of such month shall be treated as a
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1 “stub” payment period, with payment of two and one half percent (2.5%) of the
2 Reorganized Debtor’s net sales, consulting revenues and other revenues (all as described
3 above) due within forty-five (45) days after the end of such stub period; (y) for purposes
4 of this subsection (b)(ii) the thirteenth (13th) month following the Effective Date and the
5 first full quarterly period shall begin on the first day of the month following the month in
6 which the Effective Date occurs; and (z) for purposes of this subsection (b)(ii) the forty-
7 eighth (48th) month following the Effective Date shall be deemed to end on the day of
8 such month which is four years after the Effective Date. The Reorganized Debtor shall
9 provide to the Creditors’ Representative a statement of net sales monthly, within 15 days
10 of the close of each month. If such amounts are not timely reported when due, an
11 amount equal to interest at 1.5% per month (18% per annum), calculated based on the
12 amount of such net sales, shall accrue until the report is made and such interest is paid.
13 In addition, the failure to timely make any such report or payment may become an event
14 of default if not cured following notice by the Creditors’ Representative and 20-days’
15 opportunity for cure.

16 (iii) If the Reorganized Debtor’s after-tax net revenue for the period
17 commencing with the thirteenth (13th) month following the Effective Date and ending
18 with the forty-eighth (48th) month following the Effective Date, after taking into account
19 the payments to be made by the Reorganized Debtor to the Creditors’ Representative
20 under the Plan, and allowing salary and bonus payments to David Ji and Alice Hsu of
21 \$250,000 each, or a combined \$500,000, exceeds \$500,000 in any year (based on a
22 twelve month tax year ending within such period), then the Reorganized Debtor shall pay
23 fifty percent (50%) of such excess amount to the Creditors’ Trust. Such payment shall be
24 due within the earlier of (a) 30 days after the filing of the Reorganized Debtor’s tax return
25 for the applicable year or (b) the last date of any extension for filing such returns for such
26 tax year permitted under the Internal Revenue Code or applicable tax regulations (if the
27 tax return is not timely filed, the amount to be paid for any such year as provided herein
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1 shall be calculated using pre-tax net revenue).

2 (iv) \$1,000,000 in cash, to be contributed by David Ji, paid as follows: (i)
3 \$100,000 previously paid and held by the Reorganized Debtor in a segregated account,
4 and to be paid to the Creditors' Trust on the Effective Date (it having been agreed that
5 such amount shall be nonrefundable if the Debtor or David Ji (or any of his relatives or
6 affiliates) is determined by the Bankruptcy Court to be the primary cause of any
7 nonconfirmation or nonconsummation of the Plan, after notice by the Committee or
8 Examiner and a hearing, with any amount retained as nonrefundable to be applied to any
9 liability of David Ji or his wife to the Debtor and the estate, as may be determined by a
10 judgment or settlement); (ii) \$650,000 to be paid on the Effective Date to the Creditors'
11 Trust, and (iii) \$250,000 to be paid within 90 days after the Effective Date to the
12 Creditors' Trust.

13 (v) If a settlement of the D&O Actions (defined below) is reached before the
14 Effective Date of the Plan, any amounts to be paid from proceeds of insurance in
15 settlement of claims (but not as defense costs) against the Debtor's D&O policy shall be
16 paid to the Creditors' Trust. If a settlement is not reached before the Effective Date of the
17 Plan, the first \$1,000,000 of recovery proceeds of actions against the Debtor's officers
18 and directors and their relatives and affiliates, inclusive of any amounts to be paid under
19 the Debtor's D&O policy as settlement (collectively, the "D&O Actions") shall be paid to
20 the Creditors' Trust; provided that such \$1,000,000 shall be reduced by any amount of
21 D&O policy insurance proceeds expended on defense costs. Notwithstanding the
22 foregoing, any proceeds of actions against David Ji, Alice Hsu and their relatives and
23 affiliates which are not payable from or reimbursable from insurance proceeds shall not
24 be included in the amounts payable to the Creditors' Trust, and proceeds or rights to
25 payment of the D&O Actions which are not included in the amounts to be paid to the
26 Creditors' Trust shall be retained by the Reorganized Debtor and any judgment obtained
27 may be forgiven at the option of the Reorganized Debtor to the extent not payable from
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1 proceeds of the Debtor's D&O insurance, after the recovery from insurance proceeds is
2 received. The Examiner appointed in the Debtor's Chapter 11 case shall be authorized to
3 proceed with the D&O Actions if they remain pending after the Effective Date; however,
4 any settlement of the D&O Actions shall be subject to approval of the Bankruptcy Court
5 after notice to the Creditor Representative and opportunity for hearing.

6 (vi) Proceeds of Avoidance Actions (as defined below) and the Debtor's share
7 of recovery on causes of action existing on the Petition Date (other than D&O Actions and
8 other claims being released, as provided for elsewhere in the Plan), including without
9 limitation those listed in Debtor's Schedule B (other than the claim against Circuit City,
10 which was sold), net of fees and expenses incurred in such actions; provided, however,
11 that any recovery on the cause of action against Sears (including any amount paid by CIT)
12 shall be applied as follows: (i) first, an amount equal to the amount of legal fees and costs
13 of Lewis, Brisbois, Bisgaard & Smith, LLP incurred in such recovery which are allowed
14 by the Court and paid or payable from Payments from Operations or Additional Funding
15 shall be contributed as Additional Funding; (ii) second, 50% (of 100%) of the balance, less
16 \$170,000, shall be paid to Changhong; and (iii) one half of the remaining balance shall be
17 retained by the Reorganized Debtor, and one half shall be Additional Funding. For
18 purposes of the Plan, "Avoidance Actions" shall consist of all actions pursuant to Chapter
19 5 of the Bankruptcy Code; provided that Avoidance Actions against David Ji or his family
20 members will be released as provided below.

21 (vii) The Reorganized Debtor will provide quarterly financial statements to the
22 Creditor Representative, prepared by an accountant reasonably acceptable to the Creditor
23 Representative, commencing with a report covering the first three months starting with
24 the Effective Date to be transmitted within forty-five (45) days after the end of the fourth
25 (4th) full month after the month in which the Effective Date occurs, and then each three
26 months thereafter covering each succeeding quarter. The Reorganized Debtor's costs of
27 preparing and providing such financial statements to the Creditors' Representative shall
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1 be deducted from payments otherwise due from the Reorganized Debtor to the Creditors’
2 Trust.

3 (c) *Provisions Regarding Future Obligations of the Reorganized Debtor and David Ji*
4 *to the Creditors’ Trust*

5 (i) The obligations of the Reorganized Debtor and David Ji to the Creditors’
6 Trust under the Plan shall be secured by the grant by the Reorganized Debtor of a first
7 priority UCC security interest (the “Security Interest”) in all of the Reorganized Debtor’s
8 assets (including after-acquired property), and a perfected pledge by David Ji in all the
9 Reorganized Debtor’s stock (the “Pledge”). The Security Interest shall be subordinate
10 only to the payment of continued monthly adequate protection payments to Avision in the
11 amount of \$5,000.00 on account of its lien, which will otherwise remain valid; provided
12 that, the Security Interest shall be subject to subordination to new money financing
13 obtained by Reorganized Debtor from any lender that is an independent third party
14 (including, without limitation, any lender that is not any of the Reorganized Debtor’s
15 directors or officers or their relatives or affiliates or an insider of any of them) to fund
16 business operations. The Security Interest will be documented by a security agreement
17 conforming to the terms of the Plan, and containing such other terms and provisions as
18 are standard in such agreements, but including without limitation provisions for notice
19 and 20-days’ opportunity for cure of non-monetary defaults, and for payment by the
20 Reorganized Debtor of reasonable fees and costs incurred by the Creditors’
21 Representative after default in enforcing the obligations of the Reorganized Debtor or
22 David Ji under the Plan and agreements implementing the Plan.

23 (ii) The Reorganized Debtor waives the automatic stay with respect to the
24 Security Interest in any subsequent bankruptcy,

25 (d) *Appointment and Powers of Creditors’ Representative*

26 (i) The Creditors’ Representative shall have authority to enforce the Plan and
27 related documents on behalf of the interest of unsecured creditors, including the Security
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1 Interest and Pledge and the terms of any agreement with David Ji embodied in the Plan
2 and/or separately executed by David Ji regarding the Plan. From and after the Effective
3 Date, the Creditors' Representative shall be authorized to pursue Avoidance Actions and
4 shall assume control of the Avoidance Actions and of other causes of action as to which
5 any of the proceeds are part of the funding of the Creditors' Trust provided in
6 subparagraph D.2 (b) (vi) of this Article. The Creditors' Representative shall monitor and
7 enforce compliance with the Plan and implementing agreements, including, without
8 limitation, the Security Interest, the Pledge and any agreement with David Ji embodied in
9 the Plan and/or separately executed by David Ji regarding the Plan, and the Reorganized
10 Debtor's payment of post-confirmation fees and expenses, including without limitation
11 fees payable to the United States Trustee. The Creditor's Representative shall have
12 authority to employ attorneys or other professionals as it determines is required to carry
13 out its responsibilities, with the fees and expenses of such professionals to be paid as
14 expenses of the Creditors' Representative from the funds of the Creditor's Trust.

15 (ii) The initial Creditors' Representative shall be Lee Diercks of Clear
16 Thinking Group. Should Diercks be unable or unwilling to serve at any time before or
17 after his designation, the Plan Committee (as that term is defined below) shall designate a
18 replacement from Clear Thinking Group or an independent individual with a similar
19 financial capability in accordance with the terms of the Trust Agreement.

20 (e) *Plan Committee*

21 (i) Prior to the Effective Date, the Committee shall select the members of a
22 post-confirmation committee (the "Plan Committee"), subject to the provisions of section
23 I.D.2(e) of the Plan. On or before the Effective Date, the Committee shall file and serve
24 on the Debtor, the Debtor's counsel, and the Office of the United States Trustee, a notice
25 identifying the Plan Committee members as selected by the Committee (the "Plan
26 Committee Notice"). The Plan Committee shall consist of no less than two (2) and no
27 more than (5) members, to be selected by the Committee in its sole discretion; provided,

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1 however, that any creditor whose pre-petition Claim has been paid in full shall not be
2 eligible to serve on the Plan Committee. As of the Effective Date, the Plan Committee
3 shall be deemed to be appointed. The Plan Committee shall continue after the Effective
4 Date and shall exercise the rights and powers set forth in section I.D.2(e) of the Plan.
5 The Plan Committee may adopt Plan Committee Bylaws for purposes of internal
6 governance, so long as such Plan Committee Bylaws are not inconsistent with the Plan
7 and the Confirmation Order.

8 If a member of the Plan Committee elects not to serve on the Plan Committee on
9 and after the Effective Date, a replacement member(s) shall be chosen according to the
10 procedures for the selection of the original Plan Committee as set forth in section I.D.2(e)
11 of the Plan; provided, however, that if there are not at least three qualifying persons who
12 agree to serve on the Plan Committee, (a) the Plan Committee shall be dissolved and the
13 members thereof shall be released and discharged of and from all further authority,
14 duties, responsibilities, and obligations related to and arising from and in connection with
15 the Chapter 11 Case, and (b) all references in the Plan to the Plan Committee's rights,
16 powers, and duties on and after the Effective Date shall be deemed null and void, in
17 which case the Creditors' Representative shall proceed as if there is no Plan Committee.

18 (ii) From and after the Effective Date through the date of its termination, the
19 Plan Committee shall have the authority and power to: (x) monitor the Creditors'
20 Representative's implementation of the Plan; (y) receive the information as set forth
21 herein and review the same with the Creditors' Representative; and (z) participate in the
22 process for the selection of a replacement or successor Creditors' Representative as
23 provided in the Trust Agreement. The Creditors' Representative shall be authorized to
24 communicate with the Plan Committee regarding the administration of the Creditors'
25 Trust and to share information concerning the administration of the Creditors' Trust,
26 including but not limited to reports received from the Debtor, with the Plan Committee
27 subject to any limitations deemed by the Creditors' Representative to be in the best
28 interests of the Creditors' Trust and Beneficiaries.

1 (iii) Plan Committee members shall have the right to resign upon ten (10)
2 days' written notice to the Plan Committee. In addition, Plan Committee members may
3 be removed for cause by a majority vote of the Plan Committee (not including the
4 affected member) and written notice. The Plan Committee may determine that there is
5 cause to remove a member if a majority of the entire Plan Committee (not including the
6 named member) finds there is cause. Cause shall include, but is not limited to:

7 (v) Intentional violation of Plan Committee Bylaws;

8 (w) Willful failure to disclose to the Plan Committee facts that
9 give rise to a conflict of interest in any matter upon which
10 the Plan Committee member participates in Plan
Committee deliberations or voting;

11 (x) The member no longer holds an unsecured Claim against
12 the Estate;

13 (y) The designated representative of the Plan Committee
14 member frequently fails to participate (by telephone or in
15 person) in Plan Committee meetings and telephone
16 conferences, and the Plan Committee in good faith believes
that holders of Beneficial Interests would be better served
by a replacement; or

17 (z) The presence of circumstances that makes the member
18 incapable of representing the interests of holders of
Beneficial Interests.

19 Any dispute between the Plan Committee and the removed member with respect to
20 whether cause for removal exists shall be determined by the Bankruptcy Court. Upon
21 resignation or removal, the Plan Committee member shall be discharged from that
22 member's duties. Such discharge from duties as a Plan Committee member shall become
23 effective upon the appointment of a successor member in accordance with the Plan.

24 (iv) Plan Committee members shall serve without compensation, but shall be entitled
25 to reimbursement of their reasonable and necessary out of pocket expenses from the Creditors'
26 Trust.

27 (v) The Plan Committee shall be dissolved and its members discharged upon the
28 earliest of (a) payment of the final distribution to holders of allowed claims provided for in the

1 Plan the timing of which shall be communicated in writing by the Creditors' Representative to
2 the Plan Committee and (b) such time as set forth in section I.D.2(e) of the Plan.

3 (f) *Settlement with David Ji*

4 (i) As a part of the Plan, the claims between David Ji will be settled as
5 follows (subject to provisions regarding the D&O Claims as set forth in the Plan):

6 (ii) David Ji will agree that during the four years following the Effective Date
7 of the Plan, he will only engage in the lighting business through and on behalf of the
8 Reorganized Debtor and the business of consulting in the sale of Apex brand or other
9 televisions through and on behalf of the Reorganized Debtor, or direct sale of televisions
10 through and on behalf of the Reorganized Debtor. David Ji and the Reorganized Debtor
11 each will also agree that they will not engage in any such business without maintaining
12 any licenses which they are aware, bearing in mind their collective past business
13 knowledge and experience, each of them individually or any business entity in which
14 either or both of them (directly or indirectly) holds any equity interest, right to acquire
15 any equity interest or right to a share of profits (other than a commission based on a
16 percentage of sales) is required to hold in connection with the manufacture, sale or
17 distribution of any products involved in any such business including, to the extent
18 applicable but without limitation, licenses to MPEG LA's patent portfolio pools (or the
19 specific patents included in those pools) and WiLAN's US and Canadian Vchip patent(s).
20 Each of David Ji and the Reorganized Debtor will also agree that they will not, directly or
21 indirectly: (A) act to circumvent or frustrate the purposes of this subsection (e)(ii); or (B)
22 structure any transaction so that the effect of such transaction would be to avoid the
23 requirements of this subsection (e)(ii). Any breach of the commitments in this subsection
24 (e)(ii) during the four years following the Effective Date of the Plan shall constitute an
25 event of default in respect of the Security Interest and the Pledge. David Ji represents
26 that (i) he is a minority shareholder and current board member of China Data
27 Broadcasting Holdings Limited ("CDB"), and is not now and will not during the four
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1 years following the Effective Date of the Plan be doing any business with CDB; (ii) that
2 the Debtor is not involved in business with CDB, and will not during the four years
3 following the Effective Date of the Plan be doing any business with CDB; and, (iii) that
4 he will not have any involvement in the operations of CDB during the four years
5 following the Effective Date of the Plan. The foregoing circumstances relating to CDB
6 will not be a breach of the commitments in this subsection (e)(ii).

7 (iii) David Ji and his wife have waived and shall not be entitled to any right to
8 distribution on pre-petition and post-petition claims against the estate, or to participate in
9 any distribution from the Creditors' Trust.

10 (iv) In consideration of the payments agreed to be made by David Ji under the
11 Plan, all claims of the Debtor and the Debtor's estate against David Ji and his family
12 members shall be released as of the Effective Date of the Plan, except for any D&O
13 Actions which are pending as of the Effective Date of the Plan. After the recovery from
14 insurance proceeds on any D&O Actions is received, any judgment obtained against
15 David Ji or his wife on D&O Actions may be forgiven at the option of the Reorganized
16 Debtor to the extent proceeds of collection would not be included in the amounts payable
17 to the Creditor's Representative under the Plan. Pending the occurrence of the Effective
18 Date, David Ji and his wife have entered into tolling agreements as to any actions to be
19 released as of the Effective Date.

20 **3. Composition of the Reorganized Debtor and Post-Confirmation** 21 **Management**

22 Following the Effective Date, the Debtor shall be referred to as the "Reorganized
23 Debtor." The legal and ownership structure of the Debtor will remain unchanged following the
24 Effective Date, except that David Ji will be the sole equity interest holder of the Reorganized
25 Debtor.

26 The pre-petition management of the Debtor will remain and continue to manage the
27 business affairs of the Reorganized Debtor following the Effective Date. David Ji will continue
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1 to serve as the President and Chief Executive Officer of the Reorganized Debtor, and the
2 Reorganized Debtor contemplates that Alice Hsu will continue to serve as the Chief Financial
3 Officer of the Reorganized Debtor.

4 **4. Disbursing Agent**

5 The Creditors' Representative shall act as the disbursing agent (the "Disbursing Agent")
6 for purposes of making all distributions provided for under the Plan, unless specifically provided
7 herein to be made by the Reorganized Debtor. The Disbursing Agent shall serve without bond
8 and shall receive no additional compensation for distribution services rendered and expenses
9 incurred pursuant to the Plan.

10 **5. Objections to Claims**

11 The Creditors' Representative or the Reorganized Debtor, as the case may be, and any
12 party in interest may review all claims filed or deemed filed and may object to or seek
13 subordination of any claim filed or scheduled in this case. The deadline to file objections to
14 claims shall be 180 days after the Effective Date, unless extended by order of the Bankruptcy
15 Court. As provided by Section 502(c) of the Bankruptcy Code, the Court may estimate any
16 contingent or unliquidated disputed claim for purposes of confirmation of the Plan. The Court
17 shall retain jurisdiction over the Debtor, the Reorganized Debtor and this case to resolve such
18 objections to claims following the confirmation of the Plan, if necessary.

19 Nothing contained in the Plan shall constitute a waiver or release by the Debtor or the
20 Debtor's estate of any rights of setoff or recoupment, or of any defense, it may have with respect
21 to any claim. The Disbursing Agent will withhold from property to be distributed under the Plan
22 and will place in reserve a sufficient amount of cash to be distributed on account of claims that
23 are disputed and have not been allowed as of the date of distribution to creditors ("Disputed
24 Claims") of any particular class as if such claims were allowed in full.

25 **6. Interest Pending Allowance of Claims**

26 Except as specifically provided for in the Plan, in the order confirming the Plan, or in
27 some other order of the Court, interest shall not accrue on claims and no holder of a claim shall
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1 be entitled to interest accruing on or after the Petition Date on any claim.

2 To the extent the Reorganized Debtor or any other party in interest objects to the
3 allowance of any claim, nothing in the Plan or herein shall be deemed to imply or create for the
4 holders of any Disputed Claims any entitlement to receive interest upon the allowed amount of
5 any such Disputed Claims as a result, *inter alia*, of the delay in payment of such claims.

6 **7. Distributions to be Made Pursuant to the Plan**

7 On the Effective Date, or as soon thereafter as is practicable, the Disbursing Agent shall
8 establish, in one or more accounts, such reserves as are necessary to provide for distribution to
9 holders of allowed claims pursuant to the Plan, including administrative and priority claims, and
10 for the expenses of the Creditors' Trust. On or as soon as practicable after the Effective Date,
11 the Disbursing Agent shall cause the payments to be made to holders of allowed claims
12 described in Bankruptcy Sections 507(a)(2) through 507(a)(8) to be made from the Creditors'
13 Trust in accordance with the Plan. Distributions to be made by the Reorganized Debtor or the
14 Disbursing Agent on the Effective Date on account of any claim shall be made on the Effective
15 Date or as promptly thereafter as practicable.

16 The Creditors' Representative, as Trustee of the Creditors' Trust, shall make such post-
17 Effective Date interim and/or final distribution(s) to holders of allowed Class 4 Claims as the
18 Trustee deems to be prudent and consistent with the provisions of the Plan. No cash payment of
19 less than [ten dollars (\$10.00)] shall be made by the Disbursing Agent to any holder of a Claim.

20 Distributions to be made by the Disbursing Agent under the Plan shall be made by check
21 drawn on a domestic bank or by wire transfer, at the sole election of the Disbursing Agent.

22 Except as otherwise agreed to by the Disbursing Agent in writing, distributions to be
23 made to holders of allowed claims pursuant to the Plan may be delivered by regular mail,
24 postage prepaid, to the address shown in the Debtor's schedules, as they may from time to time
25 be amended in accordance with Rule 1009 of the Federal Rules of Bankruptcy Procedure (the
26 "Bankruptcy Rules"), or, if a different address is stated in a proof of claim duly filed with the
27 Court, to such address.

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1 Checks issued by the Disbursing Agent to pay allowed claims shall be null and void if not
2 negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of
3 any check shall be made to the Disbursing Agent by the holder of the allowed claim to whom
4 such check originally was issued, prior to the expiration of the foregoing sixty (60) day claiming
5 period. After such date, (i) the holder of any such claim who has failed to make a timely request
6 for reissuance of such a voided check or such claim and (ii) the unclaimed property held on
7 account of such voided check or such claim shall revert in the Creditors' Trust free and clear of
8 all claims and interests.

9 All distributions made under the Plan with respect to a particular allowed claim shall be
10 allocated first to the principal amount of such allowed claim. In connection with the Plan and
11 any instruments issued in connection therewith, the Disbursing Agent shall comply with all
12 applicable withholding and reporting requirements imposed by any federal, state or local taxing
13 authority, and all distributions under the Plan shall be subject to any such withholding or
14 reporting requirements. All holders of claims shall be required to provide information to
15 effectuate the withholding of such taxes. Notwithstanding anything to the contrary herein, no
16 holder of an allowed claim shall receive in respect of such claim any distribution of a value in
17 excess of the allowed amount of such claim.

18 **8. Exculpations and Releases**

19 To the maximum extent permitted by law, none of the Debtor, the Reorganized Debtor,
20 the Debtor's estate, the Committee, the members of the Committee in their capacity as such, nor
21 any of their employees, agents, representatives, or the professionals employed or retained by any
22 of them, whether or not by Bankruptcy Court order (each, an "Covered Person"), shall have or
23 incur liability to any person or entity for an act taken or omission made in good faith in
24 connection with or related to the formulation of the Plan, the Disclosure Statement, or a contract,
25 instrument, release, or other agreement or document created in connection therewith, the
26 solicitation of acceptances for or confirmation of the Plan, or the consummation and
27 implementation of the Plan and the transactions contemplated therein; provided that, nothing

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1 herein shall release any Covered Person from claims arising from such Covered Person's fraud,
2 gross negligence, intentional misconduct or breach of fiduciary duty. Each Covered Person shall
3 in all respects be entitled to reasonably rely on the advice of counsel with respect to its duties
4 and responsibilities under the Plan. Nothing herein, however, shall relieve the Reorganized
5 Debtor and/or David Ji of its or his obligations under the Plan, the Security Agreement, the
6 Pledge or any other agreements, documents or instruments made or delivered in connection with
7 the Plan, and any counsel's advice (even if reasonable) shall not relieve it or him from any such
8 obligations.

9 The Debtor, the Reorganized Debtor and the Debtor's estate will be deemed to be forever
10 released and discharged from all claims, obligations, suits, judgments, damages, demands, debts,
11 rights, causes of action and liabilities whatsoever in connection with or related to the Debtor and
12 the Debtor's estate, or the Plan (other than the rights of the Debtor to enforce the Plan and the
13 contracts, instruments, releases, indentures, and other agreements or documents delivered
14 thereunder) whether liquidated or unliquidated, fixed or contingent, matured or unmatured,
15 known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or
16 otherwise that are based in whole or part on any act, omission, transaction, event or other
17 occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the
18 Debtor's estate, or the Plan, and that may be asserted by or on behalf of the Debtor or its
19 bankruptcy estate.

20 **9. Injunctions**

21 **THE CONFIRMATION ORDER SHALL ENJOIN THE PROSECUTION,**
22 **WHETHER DIRECTLY, DERIVATIVELY OR OTHERWISE, OF ANY CLAIM,**
23 **OBLIGATION, SUIT, JUDGMENT, DAMAGE, DEMAND, DEBT, RIGHT, CAUSE OF**
24 **ACTION, LIABILITY OR INTEREST RELEASED, DISCHARGED OR TERMINATED**
25 **PURSUANT TO THE PLAN.**

26 **EXCEPT AS PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, AS**
27 **OF THE EFFECTIVE DATE, ALL ENTITIES THAT HAVE HELD, CURRENTLY**
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1 **HOLD OR MAY HOLD A CLAIM OR OTHER DEBT OR LIABILITY THAT IS**
2 **DISCHARGED OR AN INTEREST OR OTHER RIGHT OF AN EQUITY SECURITY**
3 **HOLDER THAT IS TERMINATED PURSUANT TO THE TERMS OF THE PLAN ARE**
4 **PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS**
5 **AGAINST THE DEBTOR, THE REORGANIZED DEBTOR, THE DEBTOR'S ESTATE,**
6 **THE CREDITORS' TRUST, OR THEIR PROPERTY ON ACCOUNT OF ANY SUCH**
7 **DISCHARGED CLAIMS, DEBTS OR LIABILITIES OR TERMINATED INTERESTS**
8 **OR RIGHTS: (I) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY**
9 **PLACE, ANY ACTION OR OTHER PROCEEDING; (II) ENFORCING, ATTACHING,**
10 **COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD,**
11 **DECREE OR ORDER; (III) CREATING, PERFECTING OR ENFORCING ANY LIEN**
12 **OR ENCUMBRANCE; (IV) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR**
13 **RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION**
14 **DUE TO THE DEBTOR; AND (V) COMMENCING OR CONTINUING ANY ACTION**
15 **IN ANY MANNER, IN ANY PLACE THAT DOES NOT COMPLY WITH OR IS**
16 **INCONSISTENT WITH THE PROVISIONS OF THE PLAN.**

17 **BY ACCEPTING DISTRIBUTION PURSUANT TO THE PLAN, EACH**
18 **HOLDER OF AN ALLOWED CLAIM OR ALLOWED INTEREST RECEIVING**
19 **DISTRIBUTIONS PURSUANT TO THE PLAN (OR RETAINING INTERESTS IN THE**
20 **REORGANIZED DEBTOR) WILL BE DEEMED TO HAVE SPECIFICALLY**
21 **CONSENTED TO THE INJUNCTIONS SET FORTH IN THIS SECTION.**

22 **E. Other Provisions of the Plan**

23 **1. Executory Contracts and Unexpired Leases**

24 On the Effective Date, all of the Debtor's remaining executory contracts and unexpired
25 leases which have not previously been assumed or rejected by the Debtor and which are
26 identified in Exhibit "E" to the Disclosure Statement filed concurrently herewith shall be deemed
27 to be assumed by the Debtor and to become valid and binding executory contracts and unexpired
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1 leases of the Reorganized Debtor (the “Debtor’s Assumed Contracts and Leases”). By 5:00 p.m.
2 Pacific Time on the day prior to the date of the Plan confirmation hearing, the Debtor shall file a
3 pleading with the Court identifying all of the Debtor’s Assumed Contracts and Leases. All of the
4 Debtor’s remaining executory contracts and unexpired leases which have not previously been
5 assumed or rejected by the Debtor and which are not included among the Debtor’s Assumed
6 Contracts and Leases shall be deemed rejected effective as of 11:59 p.m. Pacific Time on the
7 Effective Date of the Plan. The Confirmation Order shall constitute an Order approving the
8 Debtor’s rejection of all such executory contracts and unexpired leases.

9 With respect to all of the Debtor’s Assumed Contracts and Leases for which a default
10 exists on the Effective Date of the Plan, the Debtor will be required to (a) cure or provide
11 adequate assurance that the Reorganized Debtor will promptly cure any default existing under
12 any such executory contracts and unexpired leases, (b) compensate or provide adequate
13 assurance that the Reorganized Debtor will promptly compensate any other party to such
14 executory contracts and unexpired leases for any actual pecuniary loss to such parties resulting
15 from any default existing under any such executory contracts and unexpired leases, and (c)
16 provide adequate assurance of future performance under such executory contracts and unexpired
17 leases. The Debtor or the Reorganized Debtor shall be responsible for paying any such cure
18 amounts, and the Creditors’ Trust shall not have any responsibility for the payment of any such
19 cure amounts. **THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A**
20 **CLAIM ARISING FROM THE REJECTION OF AN UNEXPIRED LEASE OR**
21 **EXECUTORY CONTRACT WHICH IS REJECTED ON THE EFFECTIVE DATE OF**
22 **THE PLAN WILL BE THIRTY (30) DAYS AFTER THE DATE OF ENTRY OF THE**
23 **CONFIRMATION ORDER.** Any claim based on the rejection of an unexpired lease or
24 executory contract will be barred if the proof of claim is not timely filed, unless the Court orders
25 otherwise.
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1 **2. Changes in Rates Subject to Regulatory Commission Approval**

2 The Debtor is not subject to governmental regulatory commission approval of its rates.

3 **3. Usury Provision**

4 None of the terms and provisions contained in this Plan, or in any document or
5 instrument related hereto shall ever be construed to create a contract for the use, forbearance or
6 detention of money requiring payment of interest at a rate in excess of the maximum interest rate
7 permitted to be charged under California law (the "Usury Laws"). The Reorganized Debtor
8 and/or David Ji shall never be required to pay interest under this Plan, or in any document or
9 instrument related hereto, in excess of the maximum interest that may be lawfully charged under
10 such Usury Laws, as made applicable by the final judgment of a court of competent jurisdiction,
11 and the provisions of this section shall control over all other provisions hereof and of any other
12 document or instrument at any time executed in connection herewith or executed to secure the
13 indebtedness and/or obligations evidenced hereby, which may be in apparent conflict with this
14 section. If the Creditors' Representative collects monies which are deemed to constitute interest
15 which would otherwise increase the effective interest rate under this Plan, or in any document or
16 instrument related hereto, to a rate in excess of that permitted to be charged by such Usury Laws,
17 all such sums deemed to constitute interest in excess of the maximum rate shall, at the option of
18 the Creditor's Representative, either be credited to the payment of principal or returned to the
19 Reorganized Debtor or David Ji, as the case may be.

20 **4. Retention of Jurisdiction**

21 After confirmation of the Plan and occurrence of the Effective Date, in addition to
22 jurisdiction which exists in any other court, the Bankruptcy Court will retain such jurisdiction as
23 is legally permissible including for the following purposes:

- 24 a. To resolve any and all disputes regarding the operation and interpretation of the
25 Plan, the Confirmation Order, the Creditors' Trust, and any and all documents and agreements to
26 be executed and delivered pursuant to the Plan, including but not limited to the Creditors' Trust,
27 the Security Agreement, the Pledge Agreement and any other agreement under which David Ji

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1 agrees to his obligations under the Plan;

2 b. To determine the allowability, classification, or priority of claims and interests
3 upon objection by the Debtor, the Reorganized Debtor, or by other parties in interest with
4 standing to bring such objection or proceeding;

5 c. To determine the extent, validity and priority of any lien asserted against property
6 of the Debtor or property of the Debtor's estate.

7 d. To construe and take any action to enforce the Plan, and any and all documents
8 and agreements to be executed and delivered pursuant to the Plan, the Confirmation Order, and
9 any other order of the Court, issue such orders as may be necessary for the implementation,
10 execution, performance, and consummation of the Plan, and any and all documents and
11 agreements to be executed and delivered pursuant to the Plan, the Confirmation Order, and all
12 matters referred to in the Plan, the Confirmation Order, and to determine all matters that may be
13 pending before the Court in this case on or before the Effective Date with respect to any person
14 or entity related thereto;

15 e. To determine (to the extent necessary) any and all applications for allowance of
16 compensation and reimbursement of expenses of professionals for the period on or before the
17 Effective Date;

18 f. To determine any request for payment of administrative expenses;

19 g. To determine all applications, motions, adversary proceedings, contested matters,
20 and any other litigated matters instituted during the pendency of this case whether before, on, or
21 after the Effective Date;

22 h. To determine such other matters and for such other purposes as may be provided
23 in the Confirmation Order.

24 i. To modify the Plan under Section 1127 of the Bankruptcy Code in order to
25 remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the Plan
26 so as to carry out its intent and purpose;

27 j. Except as otherwise provided in the Plan or the Confirmation Order, to issue
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1 injunctions to take such other actions or make such other orders as may be necessary or
2 appropriate to restrain interference with the Plan or the Confirmation Order, or the execution or
3 implementation by any person or entity of the Plan or the Confirmation Order;

4 k. To issue such orders in aid of consummation of the Plan or the Confirmation
5 Order, notwithstanding any otherwise applicable nonbankruptcy law, with respect to any person
6 or entity, to the fullest extent authorized by the Bankruptcy Code or Bankruptcy Rules; and

7 1. To enter a final decree closing this Case.

8 **5. Nonconsensual Confirmation**

9 To the extent necessary, the Proponents request the Court to confirm the Plan under
10 Section 1129(b) of the Bankruptcy Code.

11 **III.**

12 **TAX CONSEQUENCES OF THE PLAN**

13 CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN
14 MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
15 ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure of
16 possible tax consequences is intended solely for the purpose of alerting readers about possible
17 tax issues the Plan may present to the Debtor or creditors. The Proponents CANNOT and DO
18 NOT represent that the tax consequences contained below are the only tax consequences of the
19 Plan because the Tax Code embodies many complicated rules which make it difficult to state
20 completely and accurately all of the tax implications of any action.

21 THE FOLLOWING IS INTENDED ONLY AS A GENERAL DISCUSSION OF
22 SOME CONSEQUENCES WHICH MAY APPLY TO DISTRIBUTIONS TO HOLDERS OF
23 CLAIMS UNDER THE FEDERAL TAX LAWS. OTHER CONSEQUENCES MAY APPLY,
24 AND THE CONSEQUENCES MAY BE DIFFERENT DEPENDING ON THE
25 CIRCUMSTANCES OF A PARTICULAR HOLDER AND OTHER FACTORS.
26 MOREOVER, ANY VALUATION INFORMATION INCLUDED WITH THE PLAN OR
27 THIS DISCLOSURE STATEMENT IS INCLUDED BY THE DEBTOR SOLELY FOR
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1 PURPOSES OF COMPLYING WITH THE REQUIREMENTS OF THE COURT IN
2 CONNECTION WITH THE PLAN AND THE CASES. THE PROPONENTS MAKE NO
3 REPRESENTATIONS OR WARRANTIES WHATSOEVER CONCERNING THE
4 VALIDITY OR SUFFICIENCY OF ANY SUCH VALUATION INFORMATION FOR
5 PURPOSES OF FEDERAL INCOME TAX OR OTHER TAX CONSEQUENCES. .

6 The Plan is intended to qualify such that transfer of property to the Creditors' Trust
7 should be exempt from taxes on transfers pursuant to 11 U.S.C. §1146 and California Revenue
8 and Taxation Code §11923. The Creditors' Trust is intended to qualify as a liquidating trust
9 within the meaning of Treasury Regulation Section 301.7701-4(d), such that for United States
10 federal and applicable state income tax purposes, the transfer of the trust assets to the Creditors'
11 Trust pursuant to, and in accordance with, the Plan shall be deemed to be, and shall be reported
12 as, a disposition of the trust assets directly to, and for the benefit of, the beneficiaries, for all
13 purposes of the Internal Revenue Code (including, but not limited to, sections 61(a)(12), 483,
14 1001, 1012 and 1274), as provided for in the Plan in satisfaction of allowed claims held by such
15 beneficiaries, immediately followed by a contribution of the trust assets by the beneficiaries to
16 the Creditors' Trust in exchange for the participating interests in the Creditors' Trust to be
17 distributed to the beneficiaries. THE PROPONENTS CANNOT AND DO NOT PROVIDE
18 ASSURANCES THAT THE CREDITORS' TRUST WILL OPERATE AS INTENDED OR
19 THAT TAX CONSEQUENCES WILL BE AS INTENDED. The Plan provides that payments
20 and distributions on an allowed claim shall be allocated first to the principal amount of the
21 allowed claim. The federal income tax consequences of the implementation of the Plan to a
22 creditor will typically depend upon a number of factors, including whether the creditor is
23 deemed to have received a payment of principal or interest; whether the creditor reports income
24 on the accrual or cash method of accounting for income tax purposes; and the type of
25 consideration received by the creditor in exchange for the creditor's allowed claim. However,
26 many other factors may be relevant to the tax consequences of a distribution to an individual
27 creditor. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN

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1 PROFESSIONAL ADVISORS CONCERNING THE TAX CONSEQUENCES TO THEM OF
2 THE TREATMENT OF CLAIMS UNDER THE PLAN.

3 The confirmation of the Plan is expected to have significant tax consequences to the
4 Debtor. The Debtor is advised that the cancellation of indebtedness resulting from the Plan will
5 reduce its Net Operating Loss (NOL) carry forwards, such that much or all of the Debtor's NOL
6 will not be available to the Reorganized Debtor in the future. The specific amount cannot be
7 determined with certainty at this time. Depending on the amount of NOL impacted by the
8 cancellation if indebtedness under the Plan, there may be an impact on the Reorganized Debtor's
9 tax obligations at some point in the future.

10 Pursuant to Internal Revenue Code Section 108, cancellation of indebtedness income is
11 excluded from gross income if the discharge of debt occurs in a Title 11 (bankruptcy) case and
12 results instead in a reduction of tax attributes, such as NOL. Pursuant to Internal Revenue Code
13 Section 108(b) NOL may be reduced dollar for dollar for indebtedness which is discharged
14 under the Plan. For purposes of the Plan, the Debtor has estimated the amount of allowed
15 unsecured claims as in excess of \$35 million. The exact amount of debt to be discharged is yet
16 to be determined. However, based on the Debtor's filed consolidated federal income tax return,
17 the NOL carryover to 2012 and future years is about \$43.7 million. Based on the foregoing
18 numbers for estimated claims and NOL, the Debtor's available NOL carryover from 2011 and
19 before could be reduced to about \$8.7 million prior to consideration of subsequent tax years.
20 The Debtor's NOL could be increased by a loss in the 2012 tax year (which is anticipated in an
21 amount yet to be determined).

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IV.

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CONFIRMATION REQUIREMENTS AND PROCEDURES

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PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN
SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following

1 discussion is intended solely for the purpose of alerting readers about basic confirmation issues,
2 which they may wish to consider, as well as certain deadlines for filing claims. The Proponents
3 r CANNOT and DO NOT represent that the discussion contained below is a complete summary
4 of the law on this topic.

5 Many requirements must be met before the Court can confirm a plan. Some of the
6 requirements include that the plan must be proposed in good faith, acceptance of the plan,
7 whether the plan pays creditors at least as much as creditors would receive in a chapter
8 7liquidation, and whether the plan is feasible. These requirements are not the only requirements
9 for confirmation.

10 **A. Who May Vote or Object**

11 Any party in interest may object to the confirmation of the Plan, but, as explained below,
12 not everyone is entitled to vote to accept or reject the Plan.

13 **B. Who May Vote to Accept/Reject the Plan**

14 A creditor or interest holder has a right to vote for or against the Plan if that creditor or
15 interest holder has a claim or interest which is both (1) allowed or allowed for voting purposes
16 and (2) classified in an impaired class.

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C. What Is an Allowed Claim/Interest

As noted above, a creditor or interest holder must first have an allowed claim or interest to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest files an objection to the claim or interest. When an objection to a claim or interest is filed, the creditor or interest holder holding the claim or interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or interest for voting purposes.

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THESE CASES ON ACCOUNT OF PRE-PETITION CLAIMS OTHER THAN AS SET FORTH IN THE BAR DATE ORDER, WAS FEBRUARY 18, 2011. A creditor or interest holder may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed allowed if (1) it is scheduled on the Debtor’s schedules and such claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the interest.

A detailed Claims Chart is attached hereto as Exhibit “A.” The Claims Chart identifies all claims which were scheduled by the Debtor, including the amounts and priorities of the claims and whether the Debtor contends that the claims are disputed, contingent or unliquidated. The Claims Chart also identifies all proofs of claim which were filed by creditors asserting claims against the Debtor, including the amounts and priorities of the claims asserted. Finally, the Claims Chart indicates whether the Debtor has disputed or presently disputes any portion of the claims. The Proponents reserve the right to update and modify the Claims Chart at any time. The Creditor’s Representative or a party in interest may file objections to claims even if the Claims Chart does not identify any dispute relating to a particular claim.

D. What Is an Impaired Claim/Interest

As noted above, an allowed claim or interest has the right to vote only if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or

1 contractual rights of the members of that class. For example, a class comprised of general
2 unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what
3 they are owed.

4 The Proponents believe that members of classes 1, 3, and 4 are impaired and entitled to
5 vote to accept or reject the Plan. Parties who dispute the Proponents' characterization of their
6 claim or interest as being impaired or unimpaired may file an objection to the Plan contending
7 that the Proponents have incorrectly characterized the class.

8 **E. Who Is Not Entitled to Vote**

9 The following four types of claims are not entitled to vote: (1) claims that have been
10 disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to
11 Bankruptcy Code Sections 507(a)(2), (a)(3), and (a)(8); and (4) claims in classes that do not
12 receive or retain any value under the Plan. Claims in unimpaired classes are not entitled to vote
13 because such classes are deemed to have accepted the Plan. Claims entitled to priority pursuant
14 to Bankruptcy Code Sections 507(a)(2), (a)(3), and (a)(8) are not entitled to vote because such
15 claims are not placed in classes and they are required to receive certain treatment specified by
16 the Bankruptcy Code. Claims in classes that do not receive or retain any value under the Plan
17 do not vote because such classes are deemed to have rejected the Plan. EVEN IF YOUR
18 CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO
19 OBJECT TO THE CONFIRMATION OF THE PLAN.

20 **F. Who Can Vote in More Than One Class**

21 A creditor whose claim has been allowed in part as a secured claim and in part as an
22 unsecured claim is entitled to accept or reject the Plan in both capacities by casting one ballot
23 for the secured part of the claim and another ballot for the unsecured claim.

24 **G. Votes Necessary to Confirm the Plan**

25 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one
26 impaired class has accepted the Plan without counting the votes of any insiders within that class,
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1 and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be
2 confirmed by “cramdown” on non-accepting classes, as discussed below.

3 **H. Votes Necessary for a Class to Accept the Plan**

4 A class of claims is considered to have accepted the Plan when more than one-half (1/2)
5 in number and at least two-thirds (2/3) in dollar amount of the claims which actually voted on
6 the plan, voted in favor of the plan. A class of interests is considered to have “accepted” a plan
7 when at least two-thirds (2/3) in amount of the interest-holders of such class which actually
8 voted on the plan, voted to accept the plan.

9 **I. Treatment of Non-accepting Classes**

10 As noted above, even if all impaired classes do not accept the Plan, the Court may
11 nonetheless confirm the Plan if the non-accepting classes are treated in the manner required by
12 the Bankruptcy Code. The process by which non-accepting classes are forced to be bound by
13 the terms of a plan is commonly referred to as “cramdown.” The Bankruptcy Code allows the
14 Plan to be “crammed down” on non-accepting classes of claims or interests if it meets all
15 consensual requirements except the voting requirements of 1129(a)(8) and if the Plan does not
16 “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted
17 to accept the Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law.

18 **J. Request for Confirmation Despite Nonacceptance by Impaired**
19 **Class(es)**

20 The Proponents will ask the Court to confirm the Plan by cramdown on any and all
21 impaired classes that do not vote to accept the Plan.

22 **K. Liquidation Analysis**

23 Another confirmation requirement is the “Best Interest Test”, which requires a
24 liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an
25 impaired class and that claimant or interest holder does not vote to accept the Plan, then that
26 claimant or interest holder must receive or retain under the Plan property of a value not less than
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1 the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7
2 of the Bankruptcy Code.

3 In a chapter 7 case, the debtor's assets are usually sold by a chapter 7 trustee. Secured
4 creditors are paid first from the sales proceeds of properties on which the secured creditor has a
5 lien. Administrative claims are paid next. Next, unsecured creditors are paid from any
6 remaining sales proceeds, according to their rights to priority. Unsecured creditors with the
7 same priority share in proportion to the amount of their allowed claim in relationship to the
8 amount of total allowed unsecured claims. Finally, interest holders receive the balance that
9 remains after all creditors are paid, if any.

10 For the Court to be able to confirm the Plan, the Court must find that all creditors and
11 interest holders who do not accept the Plan will receive at least as much under the Plan as such
12 holders would receive under a chapter 7 liquidation of the Debtor. The Debtor maintains that
13 this requirement is clearly met.

14 The impaired classes under the Plan consist of class 1 (Avision's allowed claim), class 3
15 (allowed general unsecured claims which are not included in any other classes), and class 4 equity
16 interests. The Proponents must therefore satisfy the "best interest of creditors test" with respect
17 to members of classes 1, 3 and 4 who do not vote to accept the Plan.

18 As described above, class 1 claims will be paid the full amount of their allowed claims
19 under the Plan, over time with agreed market terms which will result in all such claim holders
20 receiving the full amount of the present value of their allowed claims. Since all such claim
21 holders would be paid the full amount of their allowed claims under the terms of the Plan, all
22 holders of such allowed claims will receive *not less* under the Plan than they would receive in a
23 chapter 7 liquidation of the Debtor.

24 Furthermore, given that Avision claims that substantially all business assets of this estate
25 are encumbered by the lien of Avision, in a Chapter 7 liquidation of the Debtor, unless a trustee
26 could avoid or limit that lien, either Avision would foreclose on the assets or the Chapter 7
27 trustee would sell the assets. Even if a Chapter 7 trustee could sell the assets for an amount

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1 sufficient to pay the claims of Avision, the Chapter 7 trustee would then be entitled to be paid
2 fees as provided by Section 326 and 330 of the Bankruptcy Code, and allowed Chapter 11 fees
3 and other administrative claims would be entitled to priority

4 While the Debtor does not have a formal appraisal of its remaining assets, the Debtor
5 believes that, if the Debtor were to be forced to discontinue its business and have its assets
6 liquidated by a trustee and/or Avision, the net liquidation value of the assets would be
7 significantly less than their going concern value. The chart set forth below sets forth the
8 Debtor's estimates of what the remaining assets may yield in a chapter 7 liquidation, the costs
9 which would attend such a liquidation, and the total amount which may be available for
10 distribution to holders of allowed class 3 unsecured claims. Exhibit "F" hereto is a copy of the
11 Debtor's Balance Sheet as of October 31, 2012. While the amount and value of the Debtor's
12 inventory and accounts receivable – which comprise the bulk of the realizable value of its assets
13 – by nature varies from time to time, the Debtor believes that the chart below fairly presents a
14 possible or likely result under the assumptions shown.

15 A Chapter 7 trustee would presumably pursue recovery in the pending D&O Action, as
16 well. The Debtor and the Committee do not agree on the merits of such action. The Examiner
17 filed the D&O Action to pursue the claims, and the Committee asserts that the claims have
18 merit, while the Debtor asserts that the claims will not lead to any recovery if actually litigated.
19 However, should that action proceed, the coverage limits of the D&O policy would first be
20 applied to defense costs under the terms of the policy. The litigation could be extremely
21 expensive given the nature of the disputes. A Chapter 7 trustee could not necessarily rely on
22 having funds of the estate to pay litigation costs, while defense costs would be paid by the
23 insurer. Even assuming a favorable result in the litigation, there is no assurance that a judgment
24 would be collected. The policy proceeds would only be available to the extent that they were
25 not exhausted by the defense costs. The Examiner has negotiated a payment of \$125,000 from
26 the insurer under the current settlement. In addition, David Ji has already deposited \$100,000
27 under the Term Sheet, which amount would be available to a Chapter 7 Trustee to apply to any

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1 judgment obtained against David Ji or his wife if the Debtor or David Ji (or any of his relatives
2 or affiliates) is determined by the Bankruptcy Court to be the primary cause of any
3 nonconfirmation or nonconsummation of the Plan, after notice by the Committee or Examiner
4 and a hearing. The analysis below assumes these amounts would be available in a Chapter 7
5 liquidation; however, there is no assurance that the amount to be paid by the insurer would be
6 available.

7 Perhaps most importantly, the amounts to be paid by the Reorganized Debtor would not
8 be available in a Chapter 7 liquidation, because the Debtor would be out of business. Thus, the
9 estimated \$1,106,954 to be paid by the Reorganized Debtor under the Plan would not be
10 available – and there would be no possible upside as there is under the Plan should the
11 Reorganized Debtor be more successful than projected during the four years of the Plan.¹

12 The Debtor believes that the settlement with David Ji is reasonable and in the best
13 interest of creditors, and based on that and the Debtor’s liquidation analysis, believes that all
14 holders of class 3 allowed claims will receive more under the Plan than they would receive in a
15 chapter 7 liquidation of the Debtor.

16 The Debtor therefore believes that the Plan satisfies the “best interests of creditors test”
17 with respect to any class 1 or class 3 claim holder, or class 4 interest holder, who votes against
18 the Plan. The Debtor contends that the Plan provides fair and equitable treatment of all classes
19 of creditors and the greatest feasible recovery to all creditors.

20 Below is a demonstration, in balance sheet format, that all holders of class 3 claims will
21 receive more under the Plan than they would receive under a chapter 7 liquidation of the Debtor.
22 This information is provided by the Debtor².

23	Cash	\$ 16,238
24	Funds held by Examiner	\$ 56,535
25	Accounts Receivable	\$ 159,697 (25%)

26 ¹ A schedule of amounts projected to be paid to the Creditors’ Trust under the Plan is attached
hereto as Exhibit “G.”

27 ² The amounts are based on the Debtor’s balance sheet filed with its October 2012 Monthly
28 Operating Report.

1	Inventory	\$ 71,636 (15%)
	Prepaid Expenses	\$ 0
2	Equipment/Fixed Assets	\$ 25,000
3	Recovery in D&O litigation	\$ 250,000 ³
	Preference Recovery	\$ 35,000
4	Other Assets (Sears/CIT)	<u>\$ 100,000</u>
	Total Asset Liquidation Value	\$ 714,106

5
6 **Less:**

7	Secured Claims:	
	Avison	\$ 1,500,000

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9 Administrative Claims:

10	Chapter 7 Trustee Fees and	\$ 75,000
11	the Fees/Expenses of the	
12	Professionals Employed By	
	the Trustee	
13	Professionals Fees/Expenses	\$ 1,077,105 ⁴
	Incurred During Chapter 11	
14	Other administrative claims	\$ 68,638

15		
16	Pre-Petition Priority Tax Claims:	\$ 0

17	Balance Available to be Paid	\$ 0
18	To Pre-Petition General	
	Unsecured Creditors	

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20 **% OF THEIR CLAIMS WHICH GENERAL UNSECURED CREDITORS (HOLDERS**
21 **OF CLASS 3 ALLOWED CLAIMS) OF THE DEBTOR WOULD RECEIVE OR**
22 **RETAIN IN A CH. 7 LIQUIDATION = 0%.**

23 **% OF THEIR CLAIMS WHICH GENERAL UNSECURED CREDITORS (HOLDERS**
24 **OF CLASS 3 ALLOWED CLAIMS) OF THE DEBTOR WILL RECEIVE OR RETAIN**
25 **UNDER THE PLAN = 3% OVER FOUR YEARS**

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27 ³ Assumes recovery of funds already paid by David Ji, and funds to be paid by insurer under
current settlement.

28 ⁴ Assumes Examiner and his counsel paid from funds held.

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L. Feasibility

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtor.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Reorganized Debtor will have enough cash on hand on the Plan Effective Date to pay all the claims and expenses which are entitled to be paid on such date. The projections show that the amount to be contributed to the Creditors' Trust as of the Effective Date and prior to the allowance of all claims to be paid as of the Effective Date will enable the Disbursing Agent to fund the initial payments to be made on the Plan Effective Date. This will satisfy the first aspect of the feasibility analysis.

The second aspect considers whether the Reorganized Debtor will be able to continue in business and have enough cash over the life of the Plan to make the required Plan payments. Attached as Exhibit "G" hereto is a cash flow projection (the "Projections") prepared on a monthly basis for the four year period of the Plan, which demonstrate the ability of the Reorganized Debtor to make all of the Plan payments which are required to be made over time.

The Projections are supported by an analysis prepared by the Debtor. The assumptions underlying the Plan include the assumptions described included in Exhibit "G" as well as those set forth below:

The Projections assume a Plan Effective Date of April 1, 2013. The Debtor believes that a Plan Effective Date in April or May 2012 is feasible. The Debtor does not believe that a variance in that range will significantly impact the feasibility of the Plan. The Debtor has projected the timing of sales to major customers or potential customers, and has projected sales, and purchases necessary to complete such sales, accordingly. The Debtor also anticipates that it will be able to generate significant revenue from consulting services, based primarily on the experience, knowledge and track record of David Ji. The Projections are based on these assumptions, historic experience in related businesses, and the short-term experience which the

1 Debtor has in its current lighting business. While there can be no assurance that the sales,
2 revenue and expense estimates will prove accurate, the Debtor believes that the sales projections
3 are achievable and that the expense projections are realistic based on current conditions.

4
5 **V.**

6 **EFFECT OF CONFIRMATION OF PLAN**

7 **A. Discharge**

8 The Plan provides that upon confirmation of the Plan and the occurrence of the Effective
9 Date the Debtor shall be discharged of liabilities for debts incurred before confirmation of the
10 Plan, to the extent provided in 11 U.S.C. § 1141 and as set forth in the Plan.

11 Confirmation shall bind the Debtor, all creditors, and other parties in interest to the
12 provisions of the Plan whether or not the claim of such creditor is impaired under the Plan and
13 whether or not such creditor has accepted the Plan.

14 **B. Revesting of Property in the Reorganized Debtor**

15 Except as provided elsewhere herein, including but not limited to property to be transferred to
16 the Creditor Trust under the Plan (which shall vest in the Creditors' Trust), the confirmation of
17 the Plan revests all of the property of the Debtor's bankruptcy estate in the Reorganized Debtor.

18 In addition, on the Effective Date, except as provided elsewhere herein, all of the claims against
19 and/or interests in third parties that constitute property of the Debtor's bankruptcy estate shall be
20 revested in the Reorganized Debtor, or in the Creditors' Trust as to property transferred to the
21 Creditors' Trust. Following the Effective Date, the Reorganized Debtor as to any claims to be
22 paid by the Reorganized Debtor, and the Disbursing Agent as to any claims to be paid from the
23 Creditors' Trust, shall have absolute authority to prosecute, waive, adjust or settle any claims
24 without the need for approval by the Court. Following the Effective Date, the Reorganized
25 Debtor or the Creditors' Representative, respectively, shall have the authority to employ such
26 professionals as he deems necessary to prosecute or defend such claims asserted without the
27 need for Court approval.

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1 **C. Default**

2 Except as otherwise provided herein (including any agreements or other documents
3 executed pursuant to the Plan) or in the Confirmation Order, in the event that the Reorganized
4 Debtor or the Disbursing Agent shall default in the performance of any of their obligations under
5 the Plan, the Creditors' Trust, Security Agreement, Pledge, or any other agreement executed by
6 David Ji regarding the Plan, and shall not have cured such a default within twenty (20) days
7 after receipt of written notice of default from the Creditors' Representative or the creditor to
8 whom the performance is due, then the entity or individual to whom the performance is due may
9 pursue such remedies as are available at law or in equity. An event of default occurring with
10 respect to one claim shall not be any event of default with respect to any other claim.

11 **D. Modification of Plan**

12 The Proponents may withdraw or modify the Plan at any time before confirmation. The
13 Court may require a new disclosure statement and/or re-voting on the Plan if the Proponents
14 modify the Plan before confirmation. Modification of the Plan shall be in accordance, and the
15 Plan as modified shall comply, with the requirements of Section 1127 of the Bankruptcy Code.

16 **E. Post-Confirmation Status Report**

17 Within 120 days of the entry of the order confirming the Plan, the Reorganized Debtor
18 and the Creditors' Representative shall each (or jointly) file a status report with the Court
19 explaining what progress has been made toward consummation of the confirmed Plan. Each
20 status report must be served on the Office of the United States Trustee, the Reorganized Debtor,
21 the Creditors' Representative, the 20 largest unsecured creditors and any secured creditors and
22 priority unsecured creditors that continue to be entitled to receive distributions under the Plan.
23 Further status reports shall be filed every 120 days and served on the same entities.

24 **F. Post-Confirmation Conversion/Dismissal**

25 The Creditors' Representative and/or a creditor or party in interest may bring a motion to
26 convert or dismiss the Debtor's case under § 1112(b) after the Plan is confirmed if there is a
27 default by the Reorganized Debtor or David Ji in performing their obligations under the Plan, the
28

1 Creditors' Trust, Security Agreement, Pledge, or any other agreement executed by David Ji
2 regarding the Plan. If the Court orders the Debtor's case converted to Chapter 7 after the Plan is
3 confirmed, then all property that had been property of the Chapter 11 estate, and that has not
4 been disbursed or transferred to the Creditors' Trust pursuant to the Plan, will revert in the
5 Chapter 7 estate. The automatic stay will be reimposed upon the revested property, but only to
6 the extent that the Court did not previously authorize relief from stay during the Debtor's case.

7 The order confirming the Plan may also be revoked under very limited circumstances.
8 The Court may revoke the order if the order of confirmation was procured by fraud and if the
9 Creditors' Representative or other party in interest brings an adversary proceeding to revoke
10 confirmation within 180 days after the entry of the order of confirmation.

11 **G. Post-Confirmation U.S. Trustee Fees**

12 The Debtor shall be responsible for timely payment of all fees incurred after the Effective
13 Date pursuant to 28 U.S.C. Section 1930(a)(6).

14 **H. Final Decree**

15 Once the estate has been fully administered as referred to in Bankruptcy Rule 3022, the
16 Debtor, the Creditors' Representative, or other party as the Court shall designate in the order
17 confirming the Plan shall file a motion with the Court to obtain a final decree to close the Case.

18 Dated: February 1, 2012

19
20 APEX DIGITAL, INC.

21 By: 
22 David Ji
23 President and Chief Executive Officer,
24 Apex Digital, Inc.

25
26 *[Signatures continued on following page]*
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COMMITTEE OF CREDITORS HOLDING
UNSECURED CLAIMS

By:  _____

Submitted By:

PACHULSKI STANG ZIEHL & JONES LLP

BY: /s/ Robert Saunders
Attorneys for Committee

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

BY: /s/ Philip Gasteier
PHILIP A. GASTEIER
JULIET Y. OH
Attorneys for Debtor and Debtor in Possession

DECLARATION OF DAVID JI

I, David Ji, hereby declare as follows:

1. I have personal knowledge of the facts set forth below and, if called to testify, I could and would testify competently thereto.

2. I am the President and Chief Executive Officer of Apex Digital, Inc., the debtor and debtor in possession herein (the "Debtor"). Accordingly, I am familiar with virtually all aspects of the Debtor's affairs. Except where otherwise indicated, the statements made herein are of my own personal knowledge and based upon the Debtor's books and records, and if called upon, I could and would testify to their truth.

3. I make this Declaration in support of the Disclosure Statement to which this Declaration is attached.

4. I have reviewed the information contained within the Disclosure Statement, including all financial information. To the best of my knowledge, information and belief, I believe that all of the information contained in this Disclosure Statement is truthful and accurate.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 1st day of February 2013, at Los Angeles, California.


DAVID JI

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EXHIBIT “A”

[Claims Chart]

Name	Proof of Claim					Unsecured	C/ U/ D	Scheduled Claim			Obj?	Estimated Allowed Claim			
	Claim No.	Date Claim Filed	Admin	Secured	Priority			Schedule "D" Secured	Schedule "E" Priority	Schedule "F" Unsecured		Admin	Secured	Priority	Unsecured
ADP										62.53	Yes				1.95
ADP										191.85					191.85
Alliacense							X			Unk					0.00
AMAZ										312.50					312.50
American Express										37,900.92	Yes				0.00
Apex Digital Inc. Ltd.										8,366.23					8,366.23
Arcsoft										Unk					0.00
Au, Sharon	24	2/17/2011			1,542.00				Unscheduled		Yes			0.00	
Avison Technology Co. Limited (assignee of Kith Electronics Limited claim)										12,198,130.05			1,500,000.00		
Blue Shield of California										537.54					537.54
Bureau Veritas Hong Kong Limited										912.43	Yes				0.00
Chen, Sara	22	2/17/2011			1,021.57				Unscheduled		Yes			891.49	
Chep USA	17	1/18/2011				1,634.00				Unscheduled	Yes				1,284.00
China Data Broadcasting Holding										Unk					0.00
Chubb & Son, Inc.	21	2/15/2011			0.00	0.00				Unscheduled					0.00
Citibank South Dakota NA	1	9/1/2010				131.68				Unscheduled	Yes				0.00
Clean Sweep Supply Co., Inc.										69.14					69.14
Command Freight	15	1/3/2011				550.00				550.00					550.00
Covington & Burling LLP Current Sales/Chris Tec Marketing	7	10/28/2010			3,152.98					2,471.76			3,152.98		
Dept of Environmental Protection DesignBLOT										Unk					0.00
Dept of Environmental Protection DesignBLOT										1,450.00	Yes				0.00
Digital Choice of Texas LLC										Unk					0.00
Digital Content Protection, LLC							X			Unk					0.00
DirectTV										1.73					1.73
Disco Vision	8	11/29/2010				1,194,730.43	X			Unk					388,675.41
DivX, Inc.										0.00					0.00
Dolby Laboratories Licensing DTS										Unk					0.00
Dolby Laboratories Licensing DTS										Unk					0.00

Name	Proof of Claim					Unsecured	C/ U/ D	Scheduled Claim			Obj?	Estimated Allowed Claim			
	Claim No.	Date Claim Filed	Admin	Secured	Priority			Schedule "D" Secured	Schedule "E" Priority	Schedule "F" Unsecured		Admin	Secured	Priority	Unsecured
E E Electronic Engineering Research										135.00				135.00	
Easy Link										215.32				215.32	
EBM, Inc.										340.65				340.65	
Edgewood Partners Insurance										41.94				41.94	
Employment Development Dept.										0.00				0.00	
Eugene M Cummings P.C. Client Trust										Unk				0.00	
E-Waste Manufacture Registration										Unk				0.00	
eWaste Recycling Solutions										Unk				0.00	
EWI, Inc.										131.73				131.73	
Excel Marketing										736.00	Yes			0.00	
FedEx										Unk				0.00	
FedEx	9	12/22/2010				7,347.65				7,020.89	Yes			6,755.68	
FedEx Freight Inc.	3	9/1/2010				32,704.91	X			32,704.91	Yes			13,727.81	
FedEx National LLC	2	9/1/2010				5,120.85	X			6,327.11	Yes			3,697.06	
Franchise Tax Board										0.00				0.00	
Funai							X			Unk				0.00	
G & J Express Transport, Inc										200.00	Yes			0.00	
General Electric Capital Corp.	5	10/6/2010				2,835.03				714.76	Yes			555.50	
General Electric Capital Corp.	6	10/6/2010				3,086.04				0.00	Yes			0.00	
Global Parcel Service										308.38				308.38	
Goodbay Technologies										26,834.49	Yes			0.00	
Guardian Media Technologies, Ltd.										Unk				0.00	
Gurus2go										9,789.00	Yes			0.00	
Hartford Fire Insurance Co.	30	2/22/2011	9,471.30							Unscheduled	Yes	2,093.00			
Hartford Fire Insurance Co.	13	12/27/2010			Unk	Unk				Unscheduled			0.00	0.00	
HDMI Licensing, LLC										Unk				0.00	
Hitachi, LTD							X			Unk				0.00	
HSBC Limited							X			0.00				0.00	

Name	Proof of Claim					Scheduled Claim				Estimated Allowed Claim					
	Claim No.	Date Claim Filed	Admin	Secured	Priority	Unsecured	C/ U/ D	Schedule "D" Secured	Schedule "E" Priority	Schedule "F" Unsecured	Obj?	Admin	Secured	Priority	Unsecured
Internal Revenue Service									0.00						0.00
J.B. Hunt Transport, Inc.	16	1/6/2011				3,500.00	X		3,500.00	Yes					3,200.00
Jiangsu Hongtu High Tech Co., Ltd.	26	2/17/2011				8,934,710.00	X		8,000,000.00	Yes					8,000,000.00
Jiangsu Qiao Yue Shu Ma You Xian							X		Unk						0.00
John Hancock Life Insurance Company									41.69						41.69
Koninklijke Philips Electronics KW Global, Inc.	14	1/4/2011				1,577,503.21	X		983,631.00	Yes					983,631.00
Kyocera Mita Direct Sales LA County Treasurer & Tax Collector									77.05	Yes					34.66
LA Link Network LLC									0.00						0.00
									527.61						527.61
Lau, Wing-Yu	25	2/17/2011			1,723.52			Unscheduled		Yes			1,612.60		
Lewis Brisbois Bisgaard & Smith LLP									2,210.22						2,210.22
Li, Ben	23	2/17/2011			987.00			Unscheduled		Yes			879.58		
Los Angeles Superior Transportation									1,193.00						1,193.00
Macrovision Corporation									Unk						0.00
Metlife	31	2/18/2011	1,086.64						145.18		1,086.64				145.18
MPEG, LA, LLC	29	2/18/2011				22,171,205.26	X		Unk	Yes					21,362,505.00
Oracle American Inc.	19	2/11/2011				627,958.40	X		166,648.00	Yes					166,648.00
Paypal, Inc.									38.22	Yes					0.00
Preferred Marketing Group									9,875.61	Yes					0.00
Royal West Sales, Inc.									8,745.76	Yes					0.00
Select Representatives									9,734.53	Yes					0.00
Shanghai World Trade Development	32	3/2/2011				3,644,776.08	X		3,667,246.00						3,644,776.08
Sichuan Changhong Electric Co., Ltd									Unk						0.00
SPS Commerce									339.69						339.69
Staples Credit Plan									131.68						131.68
State Board of Equalization	11	12/21/2010			387.00				0.00	0.00	Yes			0.00	0.00

Name	Proof of Claim					Unsecured	C/ U/ D	Scheduled Claim			Obj?	Estimated Allowed Claim			
	Claim No.	Date Claim Filed	Admin	Secured	Priority			Schedule "D" Secured	Schedule "E" Priority	Schedule "F" Unsecured		Admin	Secured	Priority	Unsecured
State of Connecticut Dept. of Environmental Protection										Unk					0.00
State of Hawaii Dept. of Health										Unk					0.00
State of Illinois Environmental Protection Agency										Unk					0.00
State of Indiana Dept. of Environmental Management										Unk					0.00
State of Maryland Dept. of the Environment										Unk					0.00
State of Michigan										Unk					0.00
State of Michigan Dept. of Environmental Quality										Unk					0.00
State of Minnesota Revenue										Unk					0.00
State of Oregon Dept. of Environmental Quality	18	1/31/2011				14,645.34				Unk	Yes				0.00
State of Rhode Island Dept. of Environmental Management										Unk					0.00
State of Wisconsin Dept. of Natural Resources										Unk					0.00
Sterling Commerce Inc.	4	9/27/2010				301.96				301.96					301.96
Sterling Computer Products	10	12/21/2010				215.11				Unscheduled	Yes				0.00
Sunrise Shuttle										346.50					346.50
Technology Company, Inc.										0.00					0.00
Technology Resource Group, Telepacific										8,773.81	Yes				0.00
The CIT Group/Commercial Services										187.94					187.94
The CIT Group/Commercial Services										0.00					0.00
Thomson Multimedia							X			748,063.67					0.00
Thomson West										159.07					159.07
Tianjin Duty Technology Trade Co.										2,322.58					2,322.58
Topocean Consolidating Service Inc. d/b/a Topland Trucking, Inc.	12	12/28/2010				940.00				940.00					940.00
Trans Wagon Int'l (USA) Co., Ltd.										6,412.00					6,412.00
United States Customs and Border Protection	20	2/14/2011			0.00	0.00				Unscheduled			0.00		0.00
Universal Recycling Technologies										Unk					0.00
UPS										84.00					84.00
UPS Supply Chain Solutions										11,420.02					11,420.02
Venture Network										373.68					373.68
Verizon										2.90					2.90
Verizon										37.74					37.74
Vizio							X			Unk					0.00

Name	Proof of Claim					Scheduled Claim					Estimated Allowed Claim				
	Claim No.	Date Claim Filed	Admin	Secured	Priority	Unsecured	C/ U/ D	Schedule "D" Secured	Schedule "E" Priority	Schedule "F" Unsecured	Obj?	Admin	Secured	Priority	Unsecured
Vogler, Marei Jean	28	2/18/2011			5,524.07				Unscheduled		Yes			5,192.29	
Wang, Jerry										312.50					312.50
Wells Fargo Trade Capital, LLC							X			0.00					0.00
Wi-Lan, Inc.	27	2/17/2011				979,455.50				1,179,455.50					979,455.50
Wintek Group, Inc.										500.00					500.00
WMMFA										Unk					0.00
TOTAL:			10,557.94	3,152.98	11,185.16	39,203,351.45		0.00	0.00	27,153,653.37		3,179.64	1,503,152.98	8,575.96	35,597,317.02

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EXHIBIT “B”

[Complaint in D&O Action]

1 C. JOHN M. MELISSINOS (State Bar No. 149224)
jmelissinos@rutterhobbs.com
2 RUTTER HOBBS & DAVIDOFF
INCORPORATED
3 1901 Avenue of the Stars, Suite 1700
Los Angeles, California 90067
4 Telephone: (310) 286-1700
Facsimile: (310) 286-1728

5 Proposed Attorneys for Plaintiff Examiner
6 Rosendo Gonzalez

7
8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11 In re:
12 APEX DIGITAL, INC., a California
corporation,
13 Debtor.

Case No. 2:10-bk-44406-PC
Chapter 11

14
15 ROSENDO GONZALEZ, Examiner, on behalf
16 of the bankruptcy estate of APEX DIGITAL,
INC., Debtor,
17 Plaintiff,

Adversary Case No. _____

**COMPLAINT FOR BREACH OF FIDUCIARY
DUTY; JURY TRIAL DEMAND**

[Hearing date to be set by Summons]

18 v.
19 DAVID LONGFEN JI, an individual, ALICE
20 HSU, an individual, ANCLE HSU, an
individual, JEAN JI, an individual, ANDREW
21 LASHENSKE, an individual, and RU-YING
LIU, an individual,
22 Defendants.

JURISDICTION

1
2 1. Plaintiff Rosendo Gonzalez, Examiner (“Plaintiff” or the “Examiner”) is the
3 duly appointed and acting Examiner of the bankruptcy estate of Apex Digital, Inc., a
4 California corporation (“Apex” or the “Debtor”).

5 2. Apex is a debtor and debtor-in-possession of its bankruptcy estate (the
6 “Bankruptcy Estate”) in a bankruptcy case pending before the United States Bankruptcy
7 Court for the Central District of California, Los Angeles Division (the “Bankruptcy Court”),
8 bankruptcy case no. 2:10-bk-44406-PC (the “Bankruptcy Case”).

9 3. Plaintiff is informed and believes and based thereon alleges that Defendant
10 David LongFen Ji (“Ji”) is an individual residing in the County of Los Angeles, California.

11 4. Plaintiff is informed and believes and based thereon alleges that Defendant
12 Alice Hsu (“Hsu”) is an individual residing in the County of Los Angeles, California.

13 5. Plaintiff is informed and believes and based thereon alleges that Defendant
14 Ancle Hsu (“Ancle Hsu”) is an individual who at one time resided in or about the County of
15 Los Angeles, California.

16 6. Plaintiff is informed and believes and based thereon alleges that Defendant
17 Jean Ji (“Jean Ji”) is an individual residing in the County of Los Angeles, California, and
18 that Jean Ji is the daughter of Ji.

19 7. Plaintiff is informed and believes and based thereon alleges that Defendant
20 Andrew Lashenske (“Lashenske”) is an individual who at one time resided in or about the
21 County of Los Angeles, California.

22 8. Plaintiff is informed and believes and based thereon alleges that Defendant
23 Ru-Ying Liu (“Liu”) is an individual residing in the County of Los Angeles, California, and
24 that Liu is the wife of Ji. Defendants David Ji, Alice Hsu, Ancle Hsu, Jean Ji, Andrew
25 Lashenske and Ru-Ying Liu are sometimes referred to collectively herein as the
26 “Defendants.”

27 9. Plaintiff is informed and believes and based thereon alleges that Defendants,
28 and each of them, are and/or were each the agent, servant, and employee of the others, and

1 each of them, and, to the extent of doing the acts alleged herein, each acted within the
2 course and scope of said agency or employment.

3 10. Apex commenced its Bankruptcy Case by filing a voluntary Petition under
4 Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* on August 17,
5 2010 (“Petition Date”).

6 11. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E) and (O). The
7 Court can enter a final judgment herein.

8 12. This Court has jurisdiction over this matter by virtue of 28 U.S.C. §§ 157(a)
9 and 1334. Venue is proper in this Court under 28 U.S.C. § 1409(a).

10 13. Plaintiff was appointed after the Petition Date. As a result, Plaintiff Examiner
11 does not have personal knowledge of the facts alleged in this Complaint that occurred prior
12 to the Petition Date and therefore alleges all those facts on information and belief.

13 14. Plaintiff reserves the right to amend this Complaint to allege additional claims
14 against Defendants in addition to those alleged in this Complaint.

15 **GENERAL ALLEGATIONS**

16 **A. The Appointment of the Examiner.**

17 15. Plaintiff is informed and believes and based thereon alleges that Apex
18 continues to operate as debtor and debtor-in-possession of its Bankruptcy Estate. Plaintiff is
19 informed and believes and based thereon alleges Apex is corporation organized under the
20 laws of the State of California.

21 16. Plaintiff is informed and believes and based thereon alleges that Ji is President
22 and Chief Executive Officer (“CEO”) of Apex, as well as its sole director.

23 17. Plaintiff is informed and believes and based thereon alleges that Hsu is Chief
24 Operating Officer (“COO”) of Apex.

25 18. Plaintiff is informed and believes and based thereon alleges that Ancle Hsu is a
26 former officer and director of Apex, but that he purported to resign his positions in or about
27 2006.

28 ///

1 19. Plaintiff is informed and believes and based thereon alleges that Jean Ji is a
2 former officer and director of Apex.

3 20. Plaintiff is informed and believes and based thereon alleges that Lashenske is a
4 former officer and director of Apex.

5 21. In various filings it has made in its Bankruptcy Case, Apex, and Ji and Hsu,
6 have described Apex's current operations as consulting for one or more firms which sell
7 "Apex" branded televisions and other items, and also the sale of solar-powered outdoor
8 lighting.

9 22. Apex filed its Schedules of Assets and Liabilities ("Schedules") and its
10 Statement of Financial Affairs ("SOFA") on August 30, 2010. The Schedules and the SOFA
11 were each attested to under penalty of perjury by Ji.

12 23. Apex has yet to file a proposed chapter 11 plan in its Bankruptcy Case. An
13 Official Committee of Creditors Holding Unsecured Claims (the "Committee") was
14 appointed, and the Committee has retained counsel.

15 24. On November 30, 2011, in accordance with the *Stipulation Between Debtor and*
16 *Committee of Creditors Holding Unsecured Claims for the Expedited Appointment of an*
17 *Examiner* (the "Stipulation for Order Appointing Examiner"), the Bankruptcy Court entered
18 its *Order Approving Stipulation Between Debtor and Committee of Creditors Holding Unsecured*
19 *Claims for the Expedited Appointment of an Examiner* (the "Order Appointing Examiner").

20 25. In accordance with the Order Appointing Examiner, on December 7, 2011, the
21 United States Trustee appointed the Examiner in accordance with his *Notice of Appointment*
22 *of Examiner* filed on that date.

23 26. Among other things, the Order Appointing Examiner Provides that the
24 Examiner shall:

25 . . . conduct a factual and legal investigation of any potential
26 claim or claims of the Estate against Directors and Officers any
27 their [sic.] relatives and affiliates of any of them, and **commence**
28 **and prosecute any appropriate action** against one or more of them

1 in a relevant court or other adjudicative body against Directors
2 and Officers or any of them and/or make any applicable Policy
3 Claim. (Emphasis added.)

4 27. The Order Appointing Examiner provides capitalized terms not expressly
5 defined therein shall have the meanings ascribed to them in the Stipulation for Order
6 Appointing Examiner. The Stipulation for Order Appointing Examiner defines “Policy
7 Claim” as “. . . any claim (‘Policy Claim’) of the Estate under the Debtor’s Management
8 Liability Insurance policy (as modified, the ‘Policy’) before such Policy’s December 20, 2011
9 deadline (the ‘Policy Claims Deadline’) for making Policy Claims.”

10 **B. The History of the Operations of Apex.**

11 28. Plaintiff is informed and believes and based thereon alleges that the Apex is a
12 privately held California corporation currently headquartered in Chino, California, and that
13 Apex commenced business in 1997.

14 29. Plaintiff is informed and believes and based thereon alleges that Apex was one
15 of the earliest companies to harness the then-emerging Chinese original equipment
16 manufacturer (“OEM”) and Original Designed Manufacturer (“ODM”) industry.

17 30. Plaintiff is informed and believes and based thereon alleges that in late 1999,
18 Apex decided to enter the DVD-player market by importing DVD players from China and
19 selling them on a wholesale basis to retailers in the United States.

20 31. Plaintiff is informed and believes and based thereon alleges that Apex was able
21 to rapidly expand by also moving into the LCD television business, including by persuading
22 Wal-Mart, KMart, Best Buy and other discount retailers to stock Apex’s products, and that
23 Apex’s revenues jumped from \$120 million in 2000 to approximately \$700 million in 2003.

24 32. Plaintiff is informed and believes and based thereon alleges that in 2002, Apex
25 entered into a purchase agreement with Sichuan Changhong Electronics Co., Ltd
26 (“Changhong”), a state-owned television manufacturer in China, to supply Apex with
27 televisions and possibly other electronics that Apex would distribute on a wholesale basis in
28 the United States.

1 33. Plaintiff is informed and believes and based thereon alleges that Apex started
2 having financial problems in 2003, as disputes arose between Apex and its manufacturers,
3 including Changhong.

4 34. Plaintiff is informed and believes and based thereon alleges that the dispute
5 with Changhong led to an agreement (the “Foundational Agreement”) with Changhong
6 whereby Apex transferred substantially all of its assets to Changhong in a series of steps and
7 transactions (collectively, the “Changhong Transfer”).

8 35. Plaintiff is informed and believes and based thereon alleges that at the time
9 that Apex entered into the Foundational Agreement, Ji was held against his will in China at
10 the behest of Changhong or those in control of it.

11 36. Plaintiff is informed and believes and based thereon alleges that, in
12 accordance with the Foundational Agreement (including through other agreements related
13 to it), and constituting the Changhong Transfer, Apex paid Changhong a substantial sum of
14 money, including from the sale of two real properties owned by Apex, and Apex was
15 required to forfeit significant rights, including its ownership of the “Apex Digital” trademark
16 and its stock in China Data Broadcasting, Inc., a publically-traded Hong Kong entity of
17 unknown form (“CDB”). With respect to the latter transfer, Plaintiff is informed and
18 believes and based thereon alleges that certain of the CDB stock was sold for an amount less
19 than that provided for in the Foundational Agreement.

20 37. Plaintiff is informed and believes and based thereon alleges that until shortly
21 before the Petition Date, Changhong licensed the “Apex Digital” trademark back to the
22 Debtor through a series of one-year agreements, but that on or about July 9, 2010, the
23 Debtor received a notice from Changhong that it would not renew the Debtor’s license to
24 use the “Apex Digital” trademark.

25 38. Plaintiff is informed and believes and based thereon alleges that the Debtor’s
26 business is presently concentrated in two markets, namely consumer electronics/consulting
27 and the sale and distribution of solar power lights, and, further, that Apex intends to
28 reorganize around these businesses.

1 C. The Failures to Disclose by Ji and Hsu

2 39. Plaintiff is informed and believes and based thereon alleges that the Schedules
3 and SOFA filed by the Debtor, and attested to by Ji, were incomplete and misleading as they
4 omitted assets of the Apex Bankruptcy Estate that should have been set forth in, *inter alia*,
5 the relevant section of Schedule “B”. Plaintiff is informed and believes and based thereon
6 alleges the omitted assets were claims for recovery of money, directly or indirectly, from Ji
7 or other current or former insiders of Apex, including but not limited to the following (all of
8 which are collectively referred to herein as the “Insider Claims”):

9 a. Amounts owing by Ji to Apex in the combined amount of \$926,166.30,
10 as listed on the financial statements for Apex, including payments to Nature’s Value, Inc.
11 (“Nature’s Value”) which, upon information and belief, were for the benefit of Ji because of
12 an interest he has in Nature’s Value or its affiliate and/or successor entity.

13 b. Amounts owing to Apex by United Delta, Inc. (in which, upon
14 information and believe, Ji is the principal or only shareholder) in the amount of
15 \$862,071.39, which United Delta, Inc. could repay if Ji and Ancle Hsu paid their obligations
16 to United Delta, Inc.

17 c. Amounts owing directly to Apex by Ancle Hsu in the amount of
18 \$759,988.78, and/or claims to rescind any purported release given to Ancle Hsu at the time
19 of his alleged departure from Apex.

20 d. Amounts owing to Apex by its affiliates, including without limitation
21 LSY Trading and Development Co., LA Sound USA, Inc., JDA International, Inc., Apex
22 Shanghai, American Apex Digital, Inc. and Apex Digital Inc. Ltd., a Hong Kong entity, in the
23 net amount of \$12,398,425.41.

24 e. Amounts owing on account of \$150,000 paid to Liu, in or about 2010.

25 f. Amounts owing on account of \$170,000 which Ji caused Apex to pay to
26 Nature’s Value, on behalf of CDB, in which Ji retains an interest.

27 g. Claims against Ji and Ancle Hsu for contribution on account of a
28 settlement Apex reached in or about 2007 with Koninkjke Philips Electronics N.V. (“Philips”)

1 in a patent infringement suit filed against them and Apex by Philips, by which Apex agreed
2 to pay Philips \$3 million in installments but, upon information and belief, Ji, Ancle Hsu,
3 United Delta, Inc. and CDB did not have to pay anything.

4 h. Claims against Ji for structuring the settlement represented by the
5 Foundational Agreement such that Ji would retain his stock in CBD, but Apex would have to
6 sell all of its stock in CBD.

7 40. Plaintiff is informed and believes and based thereon alleges that Apex has or
8 had claims (the “Changhong Transfer Claims”) to avoid some or all of the Changhong
9 Transfers, which included real property, intellectual property, and personal property owned
10 by Apex, in that at the time Apex entered into the Changhong Transfers, it was or became
11 insolvent, and that Apex did not receive reasonable or adequate consideration in exchange
12 for the Changhong Transfers.

13 41. Plaintiff is informed and believes and based thereon alleges that the
14 Changhong Transfer Claims were not disclosed in Apex’s Schedules and SOFA.

15 42. Plaintiff is informed and believes and based thereon alleges that the failure to
16 disclose the Insider Claims and the Changhong Transfer Claims was repeated in multiple
17 filings made in the Bankruptcy Court, including notably in the *Declaration of Alice Hsu in*
18 *Support of Debtor’s Emergency “First Day” Motions* (the “Hsu First Day Declaration”), and the
19 *Declaration of David Ji in Support of Debtor’s Emergency “First Day” Motions* (the “Ji First Day
20 Declaration”), each filed on August 18, 2010.

21 **D. The Failures to Pursue by Defendants**

22 43. Plaintiff is informed and believes and based thereon alleges that Apex has
23 never made a demand on account of, filed a lawsuit to recover, or otherwise pursued the
24 Insider Claims and the Changhong Transfer Claims.

25 44. Plaintiff is informed and believes and based thereon alleges that in addition to
26 failing to disclose the Insider Claims and the Changhong Transfer Claims, Ji and Hsu failed
27 to cause Apex to pursue one or more of the Insider Claims and the Changhong Transfer
28

1 Claims, in certain cases potentially causing those claims to be lost by reason of the running
2 of one or more statutes of limitation.

3 **E. Undisclosed Post-Petition Agreement**

4 45. Plaintiff is informed and believes and based thereon alleges that after the
5 Petition Date, and without adequate disclosure to the Bankruptcy Court or the creditors
6 herein, Ji and Hsu have caused Apex to enter into an agreement with an entity known as
7 “TMAX” and its affiliates (the “TMAX Agreement”), under which TMAX and/or its affiliates
8 receives consideration from Apex or its personnel, with no corresponding benefit to the
9 Bankruptcy Estate.

10 **F. Apex’s September Claim Made to Insurance Carrier**

11 46. Plaintiff is informed and believes and based thereon alleges that from
12 approximately September, 2009, through September, 2011, Apex maintained Management
13 Liability Insurance with Carolina Casualty Insurance Company (“Carolina”), Policy No.
14 6913169/0 (the “D&O Insurance Policy”).

15 47. Plaintiff is informed and believes and based thereon alleges that by letter
16 dated September 20, 2011, counsel for Apex made a claim and/or a provided a notice of
17 circumstances to Carolina (such communication, the “September Claim”) with respect to the
18 existence of the Insider Claims, the Changhong Transfer Claims and the TMAX Agreement.

19 48. Plaintiff is informed and believes and based thereon alleges that Carolina,
20 through its agent Monitor Liability Managers, LLC (“Monitor”), denies that the September
21 Claim was properly made as either a claim and/or a notice of circumstances under the D&O
22 Insurance Policy.

23 49. To the extent that the September Claim is denied as deficient, Plaintiff is
24 informed and believes and based thereon alleges that Ji and Hsu breached their duty to
25 Apex and its stakeholders to ensure that a proper notice of circumstances and/or claim was
26 made on account of the D&O Insurance Policy.

27 ///

28 ///

1 FIRST CLAIM FOR RELIEF

2 FOR BREACH OF OFFICER'S AND DIRECTOR'S

3 FIDUCIARY DUTY

4 (Against Defendants Ji and Hsu)

5 50. Plaintiff repeats the allegations of paragraphs 1-49 with the same effect as if
6 set forth here.

7 51. Defendants Ji and Hsu are officers and/or directors of Apex.

8 52. By virtue of these Defendants' status as directors and/or officers of Apex, Ji
9 and Hsu, and each of them, owe a fiduciary duty to Apex to act in good faith, in the best
10 interests of the corporation and its shareholders and/or stakeholders, and with such care,
11 including reasonable inquiry, as an ordinary prudent person in a like corporation would act
12 under similar circumstances.

13 53. Ji and Hsu, and each of them, by virtue of the conduct alleged herein,
14 breached their fiduciary duties to Apex by, among other things, mismanaging the affairs of
15 Apex and/or failing to make adequate disclosures to Apex and in the Bankruptcy Case of
16 material facts which they had a duty to disclose, as alleged herein.

17 54. Each of the above mentioned breaches of fiduciary duty included, without
18 limitation, failing to make adequate disclosures in the Bankruptcy Case of material facts,
19 negligent and intentional concealment of material facts, intentional misconduct, an absence
20 of good faith, recklessness, and/or an unexcused pattern of inattention by Ji and Hsu, and
21 each of them.

22 55. As a proximate result of the said breaches of fiduciary duty by Ji and Hsu, and
23 each of them, the Bankruptcy Estate has suffered damages in an undetermined amount.
24 Plaintiff will seek leave to amend the exact amount of damages according to proof at time of
25 trial.

26 56. These Defendants' acts alleged above were willful, wanton, malicious and
27 oppressive and justify the awarding of exemplary and punitive damages.

28 ///

1 65. These Defendants' acts alleged above were willful, wanton, malicious and
2 oppressive and justify the awarding of exemplary and punitive damages.

3 WHEREFORE, Plaintiff prays for entry of a judgment against Defendants as follows:

4 1. ON THE FIRST CLAIM FOR RELIEF:

5 (a) For general and special damages to be determined at time of trial; and

6 (b) For punitive and exemplary damages.

7 2. ON THE SECOND CLAIM FOR RELIEF:

8 (a) For general and special damages to be determined at time of trial; and

9 (b) For punitive and exemplary damages;

10 AND Plaintiff prays that:

11 (i) That Plaintiff recover pre-judgment interest, costs of suit
12 incurred and attorneys' fees as the law allows; and

13 (ii) That Plaintiff have such other and further relief as the Court
14 finds just and proper.

15 DATED: December 19, 2011

RUTTER HOBBS & DAVIDOFF
INCORPORATED

17 By: /s/ C. John M. Melissinos

C. JOHN M. MELISSINOS

18 Proposed Attorneys for Plaintiff Rosendo
19 Gonzalez, Examiner

20 **JURY TRIAL DEMAND**

21 In accordance with Fed. R. Bankr. P. 9015 and Local Bankruptcy Rule 9015-2,
22 Plaintiff Examiner hereby demands a jury trial on all issues. In accordance with 28 U.S.C.
23 § 157(e), Plaintiff consents to the conduct of the jury trial by the Bankruptcy Court.

24 DATED: December 19, 2011


RUTTER HOBBS & DAVIDOFF
INCORPORATED

26 By: /s/ C. John M. Melissinos

C. JOHN M. MELISSINOS

27 Proposed Attorneys for Plaintiff Rosendo
28 Gonzalez, Examiner

ADVERSARY PROCEEDING COVER SHEET (Instructions on Page 2)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS ROSENDO GONZALEZ, Examiner, on behalf of the bankruptcy estate of APEX DIGITAL, INC., Debtor	DEFENDANTS DAVID JI, ALICE HSU, ANCLE HSU, JEAN JI, ANDREW LASHENSKE, and RU-YING LIU	
ATTORNEYS (Firm Name, Address, and Telephone No.) C. JOHN M. MELISSINOS (State Bar No. 149224) Rutter Hobbs & Davidoff, 1901 Avenue of the Stars, Suite 1700 LA, CA 90067; (310) 286-1700; jmelissinos@rutterhobbs.com	ATTORNEYS (If Known) Ekwan E. Rhaw Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg, 1875 Century Park East, 23rd Floor, LA, CA 90067	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other Examiner <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Breach of Fiduciary Duty		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
(continued next column)		
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 1,000,000+	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR APEX DIGITAL, INC., a California corporation,		BANKRUPTCY CASE NO. 2:10-bk-44406-PC	
DISTRICT IN WHICH CASE IS PENDING Central	DIVISIONAL OFFICE Los Angeles		NAME OF JUDGE Hon. Peter Carroll
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE		NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE December 19, 2011	PRINT NAME OF ATTORNEY (OR PLAINTIFF) C. John M. Melissinos		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not presented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number		FOR COURT USE ONLY
C. JOHN M. MELISSINOS (State Bar No. 149224) jmelissinos@rutterhobbs.com RUTTER HOBBS & DAVIDOFF INCORPORATED 1901 Avenue of the Stars, Suite 1700 Los Angeles, California 90067 Telephone: (310) 286-1700 Facsimile: (310) 286-1728 Attorney for Plaintiff Rosendo Gonzalez, Examiner		
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		
In re: APEX DIGITAL, INC.,		CHAPTER <u> 11 </u> CASE NUMBER 2:10-bk-44406-PC ADVERSARY NUMBER
Debtor.		
ROSENDO GONZALEZ, Examiner, on behalf of the bankruptcy estate of APEX DIGITAL, INC., Debtor vs. DAVID JI, ALICE HSU, ANCLE HSU, JEAN JI et al.	Plaintiff(s), Defendant(s).	(The Boxes and Blank Lines below are for the Court's Use Only) (Do Not Fill Them In) SUMMONS AND NOTICE OF STATUS CONFERENCE

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend yourself, you must file with the Court a written pleading, in duplicate, in response to the Complaint. You must also send a copy of your written response to the party shown in the upper left-hand corner of this page. Unless you have filed in duplicate and served a responsive pleading by _____, the Court may enter a judgment by default against you for the relief demanded in the Complaint.

A Status Conference on the proceeding commenced by the Complaint has been set for:

Hearing Date:	Time:	Courtroom:	Floor:
<input type="checkbox"/> 255 East Temple Street, Los Angeles		<input type="checkbox"/> 411 West Fourth Street, Santa Ana	
<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills		<input type="checkbox"/> 1415 State Street, Santa Barbara	
<input type="checkbox"/> 3420 Twelfth Street, Riverside			

PLEASE TAKE NOTICE that if the trial of the proceeding is anticipated to take less than two (2) hours, the parties may stipulate to conduct the trial of the case on the date specified, instead of holding a Status Conference. Such a stipulation must be lodged with the Court at least two (2) Court days before the date set forth above and is subject to Court approval. The Court may continue the trial to another date if necessary to accommodate the anticipated length of the trial.

Date of Issuance: _____

KATHLEEN J. CAMPBELL
Clerk of Court

By: _____
Deputy Clerk

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EXHIBIT “C”

[Examiner’s Report]

1 C. JOHN M. MELISSINOS (SBN 149224)
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2 GREENBERG GLUSKER FIELDS CLAMAN
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3 1900 Avenue of the Stars, 21st Floor
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4 Telephone: 310.553.3610
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5 Proposed Successor Attorneys for Examiner

6
7
8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11 In re:
12 APEX DIGITAL, INC., a California corporation,
13 Debtor.

Case No. 2:10-bk-44406-PC

Chapter 11

**NOTICE OF FILING OF REPORT OF
EXAMINER ROSENDO GONZALEZ**

[NO HEARING REQUIRED]

14
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18
19 **TO THE HONORABLE PETER H. CARROLL, UNITED STATES BANKRUPTCY**
20 **JUDGE, THE UNITED STATES TRUSTEE AND ALL PARTIES-IN-INTEREST HEREIN:**

21 **PLEASE TAKE NOTICE** that attached as Exhibit "A" hereto is a copy of the Report
22 ("Report") dated August 15, 2012 of Rosendo Gonzalez, Examiner ("Examiner") appointed in the
23 bankruptcy estate of Debtor Apex Digital, Inc. (the "Debtor"), As noted in Section IX of the Report,
24 in July, 2012, a draft of the Report was previously provided to the Debtor and counsel for the
25 Official Committee of Creditors Holding Unsecured Claims.

26 DATED: August 16, 2012

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

27
28 By: /s/ C. John M. Melissinos

C. JOHN M. MELISSINOS

Proposed Successor Attorneys for Examiner

NOTICE OF FILING OF EXAMINER'S REPORT

EXHIBIT "A"

Report by Examiner Rosendo Gonzalez

Rosendo Gonzalez, Examiner (“Plaintiff”) with respect to the bankruptcy case of Apex Digital, Inc. (“Apex” or the “Debtor”), pending in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “Bankruptcy Court”), bankruptcy case no. 2:10-bk-44406-PC (the “Apex Bankruptcy Case” or the “Bankruptcy Case”) hereby submits his Report of Examiner Rosendo Gonzalez (the “Report”).

I. INTRODUCTION

The Report provides a narrative review of the status of the Apex bankruptcy case, the Examiner’s investigation to date, the lawsuit which was filed, the Examiner’s view of the claims which may exist against the insiders, and the further inquiries which the Examiner believes to be prudent in this matter. As noted in Section IX, below, in early July, the Examiner provided a draft of this Report to the Debtor and the Committee (as defined below). This led to a series of meetings and exchanges between the Examiner, the Debtor and the Committee, and certain other parties.

II. BACKGROUND OF APEX DIGITAL, INC.

The Examiner understands that Apex is a privately held California corporation currently headquartered in Chino, California, and that Apex commenced business in 1997. The Examiner also understands that Apex was one of the earliest companies to harness the then-emerging ability to source low-cost electronic goods from the Chinese mainland.

According to pleadings filed by the Debtor, Apex was a leading producer and seller of consumer electronic products, including high-definition LCD televisions, home entertainment media devices, digital set top boxes, and other products, which were or are carried or sold in hundreds of retail outlets nationwide, during the period from approximately 2000 to the date that it filed its bankruptcy case in 2010.

Additional general background regarding the history of Apex and its pre-petition operations can be gleaned from the Debtor’s pleadings filed with the Bankruptcy Court. Details specific to the Examiner’s inquiries are also included in the discussion set forth in this Report.

Where specific background details are pertinent, the Examiner has either qualified his knowledge of them, or provided evidentiary support for them.

III. PROCEDURAL HISTORY OF BANKRUPTCY CASE

The Apex bankruptcy case was commenced by the filing of a voluntary Petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) on August 17, 2011 (the “Petition Date”). The Debtor continues to operate its business, manage its financial affairs and operate its bankruptcy estate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. An Official Committee of Creditors Holding Unsecured Claims (the “Committee”) was appointed in the case, and the Committee has retained counsel.

The members of the Committee are Jiangsu Hongtu High Tech Co., Ltd., a mainland Chinese manufacturer of TVs and TV-related items which had supplied products to Apex but claimed that it was owed substantial amounts for those products, MPEG, LA, LLC, an organization which administers patents and collects royalties, and Wi-Lan, Inc., also a patent holder. Based on the Schedules of Assets and Liabilities (the “Schedules”) and the Statement of Financial Affairs (“SOFA”), filed by the Debtor, as well as the Claims Register maintained by the Clerk of the Bankruptcy Court, there are approximately \$35-40 million in non-duplicative claims against the Debtor.

Shortly after the Petition Date, after a regularly noticed motion, the Debtor, pursuant to the Court’s Order Granting Motion for Entry of an Order: (A) Approving Compromise of Controversy Between Debtor and Secured Creditor; (B) Authorizing the Sale of Substantially all of the Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances and Interests; (C) Approving Consulting Agreement; and (D) Granting Related Relief (the “TV Inventory and Receivables Sale Order”), dated September 17, 2010, sold all of its remaining television inventory and television related accounts receivable to Kith Consumer Product, Inc. (“Kith Consumer”) and to Kith Electronics Limited (“KEL” and, with Kith Consumer, collectively herein “Kith”). The sale to Kith closed shortly thereafter, dramatically changing the Debtor’s

business model. Since the date, the Examiner understands that the Debtor has been working to reorganize around its lighting business,¹ which admittedly was in its earlier stages of development at the commencement of the Apex Bankruptcy Case (and appears to remain so at this time). The sale to Kith is described in more detail below.

The Examiner understands that for the better part of the last year, the Debtor and the Committee have negotiated regarding a potential chapter 11 plan of reorganization that would allow Apex to emerge from bankruptcy to focus on, and hopefully further develop, the lighting business. However, in the course of these negotiations, the Committee raised a number of issues relating to, among other things, certain pre-petition and post-petition transactions entered into by Apex and its insiders, whether or not Apex and/or its bankruptcy estate has any claims related to these transactions and whether or not the Debtor's required reporting and disclosures in its bankruptcy case, including its Schedules and SOFA, have been complete and adequate.² More specifically, the Committee asserted that claims might exist against David LongFen ("Ji"), the President and Chief Executive Officer ("CEO") of Apex, as well as its sole director, and Alice Hsu ("Alice Hsu"), currently Chief Operating Officer ("COO") of Apex. For this reason, the Committee and the Debtor stipulated to the appointment of an Examiner.

IV. THE APPOINTMENT OF THE EXAMINER

On November 30, 2011, in accordance with the *Stipulation Between Debtor and Committee of Creditors Holding Unsecured Claims for the Expedited Appointment of an Examiner* (the "Stipulation for Order Appointing Examiner"), the Bankruptcy Court entered its *Order Approving Stipulation Between Debtor and Committee of Creditors Holding Unsecured Claims for the Expedited Appointment of an Examiner* (the "Order Appointing Examiner"). Among other things, the Order Appointing Examiner provides that the Examiner shall:

¹ A copy of the Bankruptcy Court's order dated June 22, 2011 approving a license agreement with the Coleman Company, Inc., is attached hereto as Exhibit "1".

² The Debtor has stated that it would be willing to amend its Schedules and SOFA to the extent required.

. . . conduct a factual and legal investigation of any potential claim or claims of the Estate against Directors and Officers any their [sic.] relatives and affiliates of any of them, and ***commence and prosecute any appropriate action*** against one or more of them in a relevant court or other adjudicative body against Directors and Officers or any of them and/or make any applicable Policy Claim. (Emphasis added.)

In accordance with the Order Appointing Examiner, on December 7, 2011, the United States Trustee appointed the Examiner in accordance with his *Notice of Appointment of Examiner* filed on that date.

V. THE FILING OF THE D&O LAWSUIT AND PROCEEDINGS THEREIN

A. Procedural History

On December 19, 2011, the Examiner filed a Complaint for Breach of Fiduciary Duty (the “Complaint”) against, Ji, Alice Hsu, Jean Ji (Ji’s daughter), Ancle Hsu, Andrew Lashenske, and Ru Ying Lui (Ji’s wife), initiating that certain adversary proceeding styled as *Examiner v. David LongFen Ji, et al.*, Adv. Case No. 2:11-ap-03207-PC (the “D&O Lawsuit”). On March 19, 2012, Defendants Ji, Alice Hsu and Jean Ji (collectively, the “Defendants”) filed their Answer to Plaintiff’s Complaint for Breach of Fiduciary Duty; Jury Trial Demand (the “Answer”). Also on March 19, 2012, Defendants filed, with the Bankruptcy Court, their Motion for Determination That Adversary Proceeding Is not a Core Proceeding (the “Motion for Core/Non-Core Determination”), and the Motion for Core/Non-Core Determination was set for hearing on May 1, 2012. Shortly thereafter, on March 20, 2012, the Defendants filed their Motion to Withdraw the Bankruptcy Reference (the “Motion to Withdraw the Reference”) with the United States District Court for the Central District of California (the “District Court”). The Motion to Withdraw the Reference has been assigned Case No. CV 12-2360-DMG, and the Motion to Withdraw the Reference was set for hearing on May 11, 2012.

After a hearing, and by order entered May 7, 2012, the Bankruptcy Court found that neither of the two claims for relief in the Complaint were core. The District Court did not hold a hearing on the Motion to Withdraw the Reference, and the District Court has yet to make an order with respect to it. A continued Status Conference is set before the Bankruptcy Court on October 23, 2012 at 9:30 a.m.

Subject to certain conditions, and after Bankruptcy Court approval in the Apex bankruptcy case, Plaintiff has agreed to dismiss the Complaint, without prejudice, as to Defendants Ancle Hsu and Ru Ying Liu. To date, Defendants Ancle Hsu and Ru Ying Liu, and Defendant Andrew Lashenske, have never been served with the Complaint.

A copy of the Complaint is attached as Exhibit "1" hereto. A copy of the Answer is attached as Exhibit "2" hereto.

B. The Claims in the Complaint

The Complaint includes a variety of allegations regarding the conduct of the Defendants which is alleged to have breached their duties as officers and/or directors to Apex. As set forth in the Complaint, these can be described as:

(1) the failure of Defendants Ji and Alice Hsu to accurately reflect the Debtor's claims against insiders in the Debtor's Schedules and Statements of Financial Affairs (Complaint, ¶¶ 39-41);

(2) the failure to accurately reflect these claims in summaries of the Debtor's circumstances presented to the Court, including with respect to the "first-day" motions and the proceedings on the sale of the inventory and certain accounts receivable to Kith Electronics (Complaint, ¶ 42);

(3) the failure to pursue claims against the directors and officers, or cause the Debtor to do so in a timely manner (Complaint, ¶¶ 43-44); and

(4) the entry into an undisclosed post-petition agreement with an affiliate (or *de facto* affiliate or alter ego) without benefit to the estate (Complaint, ¶ 45).

C. The Insurance Policy

From approximately September, 2009, through September, 2011, Apex maintained Management Liability Insurance with Carolina Casualty Insurance Company (“Carolina”), Policy No. 6913169/0 (the “D&O Insurance Policy”). On or about September 20, 2012, counsel for Apex made a claim and/or provided a notice of circumstances to Carolina regarding potential claims which might exist against one or more of the officers and directors of the Debtor. After the filing of the Complaint, Carolina agreed to provide a defense to (at a minimum) the Defendants in the D&O Lawsuit.

D. The Motion for Relief from Stay Filed by the Carrier

On or about April 13, 2012, Carolina filed a motion for relief from the automatic stay with respect to the payment of proceeds from the D&O Insurance Policy for costs (including attorney’s fees and costs) of the defense of the Complaint. Although the Examiner opposed the motion for relief, by order dated May 18, 2012 the Bankruptcy Court granted the motion. In light of the order Carolina is free to use proceeds of the D&O Insurance Policy to pay costs of defense and other amounts as they are required to do under its terms.

E. The Measure of Damages

On issue which confronts the Examiner with respect to the D&O Lawsuit is Defendants’ contention that the Examiner will not be able to demonstrate that there are any provable damages from many of the claims. This is especially the case with respect to the allegations that Ji and Alice Hsu made inadequate disclosures. Under Defendants’ logic, because the issues have now been raised by the Examiner, they can be litigated, thus eliminating any damage to the estate (except for attorneys’ fees and costs, which could be substantial) which otherwise would have resulted. The Examiner disagrees with Defendants on this point, but they raise a colorable issue.

F. The Court May Find That There Is No Lien on the Proceeds of the D&O Lawsuit

As discussed below, a Chinese entity called Avision Technology (Changzhou) Co., Ltd. (“Avision”) now owns the residual lien which remained after the consummation of the sale

transaction with Kith. At the time of the proceeds on the motion to approve the sale – and to approve the compromise embedded in the sale – there was discussion and investigation of the extent of Kith’s liens in the Debtor’s assets. Although the issue was discussed, it was not resolved by the TV Inventory and Receivables Sale Order.

The Examiner believes that because the commercial tort claims which form the basis of the Complaint were not identified in the UCC-1 Financing Statement filed by Kith against the Debtor, that Avision, taking its rights through Kith, does not have a security interest in any proceeds to be received from the D&O Lawsuit. In addition, the Examiner believes that the scope of Kith’s pre-petition lien may be circumscribed in various other ways, preventing its attachment to other assets of the estate. (However, in some cases the ability to realize value from these assets is unknown.) Notably, the orders granting use of cash collateral only provided Kith (and now Avision) post-petition liens to the extent of the pre-petition security which it held. The Examiner’s current understanding of the relationship of Kith and Avision is described in more detail in Section VII, below.

A copy of the order approving the sale to Kith is attached as Exhibit “3” hereto. Copies of the most recent cash collateral stipulation, and the order thereon, are attached here to as Exhibits “4” and “5”, respectively.

VI. THE EXAMINER’S INVESTIGATION TO DATE

After the Examiner’s appointment, he hired counsel to assist him in his investigation of the circumstances of the Apex Bankruptcy Case – and to file and prosecute the D&O Lawsuit. The Examiner and his counsel met with each of counsel for the Committee and counsel for the Debtor. They have reviewed numerous pleadings filed in the Apex Bankruptcy Case, as well as other documents presented by the Committee and the Debtor. In addition, the Examiner has conducted a number of interviews of parties with knowledge relating to the circumstances of Apex.

The Examiner and his counsel have also evaluating the legal basis and viability of a number of the claims which are asserted to exist against the insiders of the Debtor. As set forth

herein, in addition to the claims asserted in the D&O Lawsuit, the Examiner has developed a list of additional claims which may exist against the insiders of the Debtor.

The Debtor subleases the office space at 4401 Eucalyptus Avenue, Chino, California 91710 (the “Premises”) from an entity called Bidwell Technologies Inc. (“Bidwell”) in accordance with the Court’s Order Granting Motion for Order Authorizing Debtor to Enter Into New Real Property Lease for Office Space (the “Bidwell Lease Order”) dated June 13, 2011. However, the Examiner understands that another entity known as TMax Digital, Inc. (“TMax”) shares the Premises with the Debtor, and, in fact, starting in late 2011 TMax began paying most of the rent owing by Apex to Bidwell. A copy of the Bidwell Lease Order is attached as Exhibit “7”.

TMax is reported to have a license to use the “Apex” trademark, allegedly owned by Sichuan Changhong Electronics Co., Ltd. (“Changhong”). TMax, in turn, has a “consulting” agreement with the Debtor by which the Debtor receives a monthly income stream. In the last quarter of 2011, TMax paid \$100,000 or more per month to the Debtor, although more recently the payments have been reduced.³

On May 31, 2012, the Examiner made an in-person visit to the Debtor’s premises. Based on the Examiner’s review of the actual operations at the Premises, there did not seem to be any distinction between the personnel and operations of Apex and TMax.

VII. ADDITIONAL POTENTIAL CLAIMS AGAINST INSIDERS BEYOND THOSE ASSERTED IN THE D&O LAWSUIT

The D&O Lawsuit asserts claims for breach of fiduciary duty, only, with respect to the conduct of the defendants both before and after the commencement of the Bankruptcy Case. Significantly, the claims in the D&O Lawsuit are based on transactions which may give rise to separate liability of the Defendants or others, including (a) the avoidance and recovery of

³ As reflected in the MOR’s filed with the Bankruptcy Court, these payments have been \$131,200 (Oct. 2011); \$100,000 (Nov. 2011); \$100,000 (Dec. 2011); \$50,000 (Jan. 2012); \$75,000 (Feb. 2012); \$65,400 (Mar. 2012); \$75,200 (Apr. 2012); \$75,200 (May 2012); \$105,200 (June 2012); and \$30,200 (July 2012).

preferences or other transfers to insiders; (b) the collection of amounts loaned to insiders which are now owing or amounts that were advanced for the benefit of insiders which should now be repaid to the estate, including payments for insurance policies for the benefit of the insiders; and (c) the collection of amounts owed from affiliates. As set forth in the Complaint, these claims are significant, in that the balance sheets that were part of the original Monthly Operating Reports filed by the Debtor with the Bankruptcy Court indicated that almost \$1 million was due from insiders. In addition, amounts may be owed by Ru Ying Liu on account of a preferential payment (in the amount of \$150,000), and by an entity known as Nature's Value, which may be an affiliate (in the amount of \$170,000). A former shareholder and director, Ancle Hsu, may also have liability for the amounts he owed to Apex, despite the stock in the Debtor which he relinquished. Also as apparently reflected in the Debtor's books and records, other of the Debtor's former affiliates may also owe money to the Debtor.⁴ The Debtor disputes some or all of the Examiner's contentions and, with respect to Mr. Ji, the Debtor asserts that the accounting as reflecting the early MOR's is correct and, further, asserts that many of the claimed expenses are business expenses.

In addition, under the terms of the Order Appointing Examiner, the Examiner is only permitted to investigate claims of the estate against directors and officers, and their affiliates. It has been alleged to the Examiner, and it appears possible based on the Examiner's investigation to date, that Mr. Ji has a number of undisclosed, or not fully explained, relationships with the Debtor's putative contract counter-parties, and that, in essence, these entities could be found to be affiliates of the Debtor for purposes of examining transactions between them. While the Examiner is continuing to review this issue, the Examiner notes that if this were the case, claims might exist against a number of additional parties, including TMax, Kith, Avision (and each of their respective affiliates) and Changhong. Intriguingly, several former Apex employees appear to currently be, or have been in the past, TMax employees, including notably its director Wang

⁴ The ability to collect any resulting judgment from these affiliates appears to be uncertain.

Zhenhua (“Wang”). Wang also appeared at least at certain times as an executive of China Data Broadcasting (“CDB”), a publically-traded Hong Kong entity in which Ji retains an interest despite the fact that Apex had to surrender its interest in CDB to Changhong (or its affiliate).

Of particular interest to the Examiner is the fact that at present TMax has the right to exploit the “Apex” trademark, although the trademark is putatively under the control of Changhong. It is troubling that while Apex “lost” the right to use the trademark only days before the filing of the Bankruptcy Case, an entity with a very close relationship to Apex is now exploiting the trademark – without any current benefit to creditors beyond the consulting payments to the Debtor made by TMax. The relationship raises substantial questions regarding the underlying settlement with Changhong, the ability to which Ji is able to control the trademark, and the extent to which creditors of Apex are realizing appropriate value for the trademark. The Debtor vigorously asserts that Apex and its personnel, including Mr. Ji, have absolutely no control of any kind over TMax of Changhong, and, further, that Mr. Ji does not have any ability whatsoever to direct the disposition of the “Apex” trademark. Moreover, in light of the not insubstantial on-going “consulting” payments being made to the Debtor by TMax, it could be argued that in any case the Debtor continues to generate substantial income related to the trademark.

VIII. ADDITIONAL POTENTIAL CLAIMS OF ESTATE

A. Preference Actions Against Non-Insiders

Such actions, to the extent they are not against insiders, are clearly not within the Examiner’s purview, and the Examiner will not be taking any action with respect to them.

B. The Viability of Any Action to Avoid the Transfer of the Trademark to Changhong

As noted above, despite the integrated nature of Apex’s settlement with Changhong (which itself is dated as of 2006, more than four (4) years prior to the filing of the bankruptcy case), it appears that Ji/Apex/TMax still retain the ability to at least arrange for the use of the trademark. Claims may exist against Changhong for recovery of the trademark on the grounds

that one or more parts of the settlement with Changhong are illusory. However, the Examiner has not separately reviewed whether or not such claim is viable, or the adequacy of the consideration which underlay the settlement between Apex and Changhong.

C. The Secured Claim of Avision

Whether or not it qualifies as an insider, the secured claim of Avision may be subject to subordination or disallowance on the grounds that the sale to Kith was an effort to retain the value of Apex's television distribution business by completing a sale to an entity with an extremely close relationship to Apex/TMax. The Complaint alleges, essentially, that such a scheme existed and that Mr. Ji breached his duty to the Debtor by not stopping or circumventing it.

D. Tolling Agreements

The deadline for filing avoidance actions is August 17, 2012. In light of the on-going negotiations described below, the Examiner has entered into, or anticipates entering into, tolling agreements with the following individuals: Mr. Ji, Jean Ji, Alice Hsu, Ru Ying Lui, and Ancle Hsu.

IX. TRANSMISSION OF DRAFT OF REPORT TO DEBTOR AND COMMITTEE

On July 12, 2012, the Examiner circulated a draft of this Report to representatives of the Debtor and the Committee. Thereafter, the Examiner and his counsel met with counsel for the Debtor and counsel for the Committee. Subsequently, the Examiner and his counsel met with the Debtor, its counsel, counsel for the Committee, Mr. Ji and his counsel, Alice Hsu, and counsel for the defendants in the D&O Lawsuit. After this meeting, the Examiner made a proposal to the parties regarding a proposed term sheet for a plan of reorganization in the bankruptcy case. The Examiner understands that negotiations regarding the formulation of a joint plan continue.

X. CONCLUSION

In accordance with the Order Appointing Examiner, the Examiner has worked with representatives of both the Committee and the Debtor in order to review the contentions raised by the Committee. As noted above, it appears that a number of claims against insiders may exist, in addition to the D&O Lawsuit already filed.

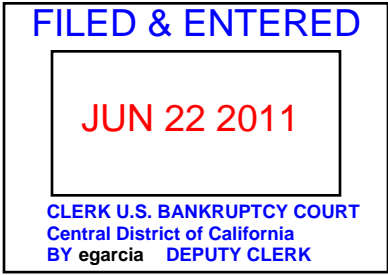
DATED: August 15, 2012



ROSENDO GONZALEZ, Examiner
Gonzalez & Associates, P.L.C.
530 S. Hewitt St., #148
Los Angeles, CA 90013

EXHIBIT "1"

1 PHILIP A. GASTEIER (SBN 130043)
2 JULIET Y. OH (SBN 211414)
3 LINDSEY L. SMITH (SBN 265401)
4 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
5 10250 Constellation Blvd., Suite 1700
6 Los Angeles, California 90067
7 Telephone: (310) 229-1234
8 Facsimile: (310) 229-1244
9 Email: pag@lnbyb.com; jyo@lnbyb.com; lls@lnbyb.com



10 Attorneys for Chapter 11 Debtors and
11 Debtors in Possession

12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15 In re) Case No. 2:10-bk-44406-PC
16 APEX DIGITAL, INC.,)
17 Debtor.) Chapter 11
18)
19) **ORDER GRANTING MOTION FOR**
20) **ORDER AUTHORIZING DEBTOR TO**
21) **ENTER INTO LICENSE AGREEMENT**
22) **WITH THE COLEMAN COMPANY,**
23) **INC.**
24) [No Hearing Required Unless Requested –
Local Bankruptcy Rule 9013-1(o)]

25 The Court, having considered that certain “*Notice Of Motion And Motion For Entry of*
26 *An Order, To The Extent Necessary, Pursuant to U.S.C. § 363(b), Authorizing Debtor To*
27 *Enter Into License Agreement With The Coleman Company, Inc.*” [Doc. No. 159] (the
28 “Motion”) filed by Apex Digital, Inc. (the “Debtor”), the memorandum of points and

1 authorities and declaration of Alice Hsu (the “Hsu Declaration”) submitted by the Debtor in
2 support of the Motion, proper notice of the Motion having been provided, and good cause
3 appearing therefor, the Court hereby orders as follows:

- 4 1. The Motion is hereby granted in its entirety.
- 5 2. The Debtor is hereby authorized to enter into the license agreement with The
6 Coleman Company, Inc. in substantially the form attached as Exhibit “1” to the Hsu
7 Declaration annexed to the Motion.

8 IT IS SO ORDERED.

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DATED: June 22, 2011

United States Bankruptcy Judge

1 **NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity
in Category I.
2 Proposed orders do not generate an NEF because only orders that have been entered are placed on
the CM/ECF docket.

3 **PROOF OF SERVICE OF DOCUMENT**

4 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business
5 address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, California 90067.

6 A true and correct copy of the foregoing document described as **ORDER GRANTING MOTION FOR**
ORDER AUTHORIZING DEBTOR TO ENTER INTO LICENSE AGREEMENT WITH THE COLEMAN
7 **COMPANY, INC.** will be served or was served **(a)** on the judge in chambers in the form and manner
required by LBR 5005-2(d); and **(b)** in the manner indicated below:

8 I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)** – Pursuant to
9 controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be
served by the court via NEF and hyperlink to the document. On **Fill in Date Document is Filed** I
10 checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that
the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email
11 address(es) indicated below:

12 Service information

continued on attached page

13 II. **SERVED BY U.S. MAIL** (indicate method for each person or entity served):
14 On **June 20, 2011**, I served the following person(s) and/or entity(ies) at the last known address(es) in
this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed
15 envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service
addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge **will be**
16 completed no later than 24 hours after the document is filed.

17 The Honorable Peter H. Carroll
U.S. Bankruptcy Court
18 255 E. Temple St., #1534
Los Angeles, CA 90012

19 Service information

20 continued on attached page

21 III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method
for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **Fill in Date**
22 **Document is Filed**, I served the following person(s) and/or entity(ies) by personal delivery, or (for
those who consented in writing to such service method), by facsimile transmission and/or email as
23 follows. Listing the judge here constitutes a declaration that personal delivery on the judge **will be**
completed no later than 24 hours after the document is filed.

24 Service information

25 continued on attached page

26 I declare under penalty of perjury under the laws of the United States of America that the foregoing is
true and correct.

27 June 20, 2011 Katie Finn /s/Katie Finn
28 *Date* *Type Name* *Signature*

NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **ORDER GRANTING MOTION FOR ORDER AUTHORIZING DEBTOR TO ENTER INTO LICENSE AGREEMENT WITH THE COLEMAN COMPANY, INC.** was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **June 20, 2011**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

- Lindsey L Smith lls@lnbyb.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an Entered stamp, the party lodging the judgment or order will serve a complete copy bearing an Entered stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

Service information continued on attached page

EXHIBIT “2”

1 C. JOHN M. MELISSINOS (State Bar No. 149224)
jmelissinos@rutterhobbs.com
2 RUTTER HOBBS & DAVIDOFF
INCORPORATED
3 1901 Avenue of the Stars, Suite 1700
Los Angeles, California 90067
4 Telephone: (310) 286-1700
Facsimile: (310) 286-1728

5 Proposed Attorneys for Plaintiff Examiner
6 Rosendo Gonzalez

7
8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11 In re:
12 APEX DIGITAL, INC., a California
corporation,
13 Debtor.

Case No. 2:10-bk-44406-PC
Chapter 11

14
15 ROSENDO GONZALEZ, Examiner, on behalf
16 of the bankruptcy estate of APEX DIGITAL,
INC., Debtor,
17 Plaintiff,

Adversary Case No. _____

**COMPLAINT FOR BREACH OF FIDUCIARY
DUTY; JURY TRIAL DEMAND**

[Hearing date to be set by Summons]

18 v.
19 DAVID LONGFEN JI, an individual, ALICE
20 HSU, an individual, ANCLE HSU, an
individual, JEAN JI, an individual, ANDREW
21 LASHENSKE, an individual, and RU-YING
LIU, an individual,
22 Defendants.

JURISDICTION

1
2 1. Plaintiff Rosendo Gonzalez, Examiner (“Plaintiff” or the “Examiner”) is the
3 duly appointed and acting Examiner of the bankruptcy estate of Apex Digital, Inc., a
4 California corporation (“Apex” or the “Debtor”).

5 2. Apex is a debtor and debtor-in-possession of its bankruptcy estate (the
6 “Bankruptcy Estate”) in a bankruptcy case pending before the United States Bankruptcy
7 Court for the Central District of California, Los Angeles Division (the “Bankruptcy Court”),
8 bankruptcy case no. 2:10-bk-44406-PC (the “Bankruptcy Case”).

9 3. Plaintiff is informed and believes and based thereon alleges that Defendant
10 David LongFen Ji (“Ji”) is an individual residing in the County of Los Angeles, California.

11 4. Plaintiff is informed and believes and based thereon alleges that Defendant
12 Alice Hsu (“Hsu”) is an individual residing in the County of Los Angeles, California.

13 5. Plaintiff is informed and believes and based thereon alleges that Defendant
14 Ancle Hsu (“Ancle Hsu”) is an individual who at one time resided in or about the County of
15 Los Angeles, California.

16 6. Plaintiff is informed and believes and based thereon alleges that Defendant
17 Jean Ji (“Jean Ji”) is an individual residing in the County of Los Angeles, California, and
18 that Jean Ji is the daughter of Ji.

19 7. Plaintiff is informed and believes and based thereon alleges that Defendant
20 Andrew Lashenske (“Lashenske”) is an individual who at one time resided in or about the
21 County of Los Angeles, California.

22 8. Plaintiff is informed and believes and based thereon alleges that Defendant
23 Ru-Ying Liu (“Liu”) is an individual residing in the County of Los Angeles, California, and
24 that Liu is the wife of Ji. Defendants David Ji, Alice Hsu, Ancle Hsu, Jean Ji, Andrew
25 Lashenske and Ru-Ying Liu are sometimes referred to collectively herein as the
26 “Defendants.”

27 9. Plaintiff is informed and believes and based thereon alleges that Defendants,
28 and each of them, are and/or were each the agent, servant, and employee of the others, and

1 each of them, and, to the extent of doing the acts alleged herein, each acted within the
2 course and scope of said agency or employment.

3 10. Apex commenced its Bankruptcy Case by filing a voluntary Petition under
4 Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* on August 17,
5 2010 (“Petition Date”).

6 11. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E) and (O). The
7 Court can enter a final judgment herein.

8 12. This Court has jurisdiction over this matter by virtue of 28 U.S.C. §§ 157(a)
9 and 1334. Venue is proper in this Court under 28 U.S.C. § 1409(a).

10 13. Plaintiff was appointed after the Petition Date. As a result, Plaintiff Examiner
11 does not have personal knowledge of the facts alleged in this Complaint that occurred prior
12 to the Petition Date and therefore alleges all those facts on information and belief.

13 14. Plaintiff reserves the right to amend this Complaint to allege additional claims
14 against Defendants in addition to those alleged in this Complaint.

15 **GENERAL ALLEGATIONS**

16 **A. The Appointment of the Examiner.**

17 15. Plaintiff is informed and believes and based thereon alleges that Apex
18 continues to operate as debtor and debtor-in-possession of its Bankruptcy Estate. Plaintiff is
19 informed and believes and based thereon alleges Apex is corporation organized under the
20 laws of the State of California.

21 16. Plaintiff is informed and believes and based thereon alleges that Ji is President
22 and Chief Executive Officer (“CEO”) of Apex, as well as its sole director.

23 17. Plaintiff is informed and believes and based thereon alleges that Hsu is Chief
24 Operating Officer (“COO”) of Apex.

25 18. Plaintiff is informed and believes and based thereon alleges that Ancle Hsu is a
26 former officer and director of Apex, but that he purported to resign his positions in or about
27 2006.

28 ///

1 19. Plaintiff is informed and believes and based thereon alleges that Jean Ji is a
2 former officer and director of Apex.

3 20. Plaintiff is informed and believes and based thereon alleges that Lashenske is a
4 former officer and director of Apex.

5 21. In various filings it has made in its Bankruptcy Case, Apex, and Ji and Hsu,
6 have described Apex's current operations as consulting for one or more firms which sell
7 "Apex" branded televisions and other items, and also the sale of solar-powered outdoor
8 lighting.

9 22. Apex filed its Schedules of Assets and Liabilities ("Schedules") and its
10 Statement of Financial Affairs ("SOFA") on August 30, 2010. The Schedules and the SOFA
11 were each attested to under penalty of perjury by Ji.

12 23. Apex has yet to file a proposed chapter 11 plan in its Bankruptcy Case. An
13 Official Committee of Creditors Holding Unsecured Claims (the "Committee") was
14 appointed, and the Committee has retained counsel.

15 24. On November 30, 2011, in accordance with the *Stipulation Between Debtor and*
16 *Committee of Creditors Holding Unsecured Claims for the Expedited Appointment of an*
17 *Examiner* (the "Stipulation for Order Appointing Examiner"), the Bankruptcy Court entered
18 its *Order Approving Stipulation Between Debtor and Committee of Creditors Holding Unsecured*
19 *Claims for the Expedited Appointment of an Examiner* (the "Order Appointing Examiner").

20 25. In accordance with the Order Appointing Examiner, on December 7, 2011, the
21 United States Trustee appointed the Examiner in accordance with his *Notice of Appointment*
22 *of Examiner* filed on that date.

23 26. Among other things, the Order Appointing Examiner Provides that the
24 Examiner shall:

25 . . . conduct a factual and legal investigation of any potential
26 claim or claims of the Estate against Directors and Officers any
27 their [sic.] relatives and affiliates of any of them, and **commence**
28 **and prosecute any appropriate action** against one or more of them

1 in a relevant court or other adjudicative body against Directors
2 and Officers or any of them and/or make any applicable Policy
3 Claim. (Emphasis added.)

4 27. The Order Appointing Examiner provides capitalized terms not expressly
5 defined therein shall have the meanings ascribed to them in the Stipulation for Order
6 Appointing Examiner. The Stipulation for Order Appointing Examiner defines “Policy
7 Claim” as “. . . any claim (‘Policy Claim’) of the Estate under the Debtor’s Management
8 Liability Insurance policy (as modified, the ‘Policy’) before such Policy’s December 20, 2011
9 deadline (the ‘Policy Claims Deadline’) for making Policy Claims.”

10 **B. The History of the Operations of Apex.**

11 28. Plaintiff is informed and believes and based thereon alleges that the Apex is a
12 privately held California corporation currently headquartered in Chino, California, and that
13 Apex commenced business in 1997.

14 29. Plaintiff is informed and believes and based thereon alleges that Apex was one
15 of the earliest companies to harness the then-emerging Chinese original equipment
16 manufacturer (“OEM”) and Original Designed Manufacturer (“ODM”) industry.

17 30. Plaintiff is informed and believes and based thereon alleges that in late 1999,
18 Apex decided to enter the DVD-player market by importing DVD players from China and
19 selling them on a wholesale basis to retailers in the United States.

20 31. Plaintiff is informed and believes and based thereon alleges that Apex was able
21 to rapidly expand by also moving into the LCD television business, including by persuading
22 Wal-Mart, KMart, Best Buy and other discount retailers to stock Apex’s products, and that
23 Apex’s revenues jumped from \$120 million in 2000 to approximately \$700 million in 2003.

24 32. Plaintiff is informed and believes and based thereon alleges that in 2002, Apex
25 entered into a purchase agreement with Sichuan Changhong Electronics Co., Ltd
26 (“Changhong”), a state-owned television manufacturer in China, to supply Apex with
27 televisions and possibly other electronics that Apex would distribute on a wholesale basis in
28 the United States.

1 33. Plaintiff is informed and believes and based thereon alleges that Apex started
2 having financial problems in 2003, as disputes arose between Apex and its manufacturers,
3 including Changhong.

4 34. Plaintiff is informed and believes and based thereon alleges that the dispute
5 with Changhong led to an agreement (the “Foundational Agreement”) with Changhong
6 whereby Apex transferred substantially all of its assets to Changhong in a series of steps and
7 transactions (collectively, the “Changhong Transfer”).

8 35. Plaintiff is informed and believes and based thereon alleges that at the time
9 that Apex entered into the Foundational Agreement, Ji was held against his will in China at
10 the behest of Changhong or those in control of it.

11 36. Plaintiff is informed and believes and based thereon alleges that, in
12 accordance with the Foundational Agreement (including through other agreements related
13 to it), and constituting the Changhong Transfer, Apex paid Changhong a substantial sum of
14 money, including from the sale of two real properties owned by Apex, and Apex was
15 required to forfeit significant rights, including its ownership of the “Apex Digital” trademark
16 and its stock in China Data Broadcasting, Inc., a publically-traded Hong Kong entity of
17 unknown form (“CDB”). With respect to the latter transfer, Plaintiff is informed and
18 believes and based thereon alleges that certain of the CDB stock was sold for an amount less
19 than that provided for in the Foundational Agreement.

20 37. Plaintiff is informed and believes and based thereon alleges that until shortly
21 before the Petition Date, Changhong licensed the “Apex Digital” trademark back to the
22 Debtor through a series of one-year agreements, but that on or about July 9, 2010, the
23 Debtor received a notice from Changhong that it would not renew the Debtor’s license to
24 use the “Apex Digital” trademark.

25 38. Plaintiff is informed and believes and based thereon alleges that the Debtor’s
26 business is presently concentrated in two markets, namely consumer electronics/consulting
27 and the sale and distribution of solar power lights, and, further, that Apex intends to
28 reorganize around these businesses.

1 C. The Failures to Disclose by Ji and Hsu

2 39. Plaintiff is informed and believes and based thereon alleges that the Schedules
3 and SOFA filed by the Debtor, and attested to by Ji, were incomplete and misleading as they
4 omitted assets of the Apex Bankruptcy Estate that should have been set forth in, *inter alia*,
5 the relevant section of Schedule “B”. Plaintiff is informed and believes and based thereon
6 alleges the omitted assets were claims for recovery of money, directly or indirectly, from Ji
7 or other current or former insiders of Apex, including but not limited to the following (all of
8 which are collectively referred to herein as the “Insider Claims”):

9 a. Amounts owing by Ji to Apex in the combined amount of \$926,166.30,
10 as listed on the financial statements for Apex, including payments to Nature’s Value, Inc.
11 (“Nature’s Value”) which, upon information and belief, were for the benefit of Ji because of
12 an interest he has in Nature’s Value or its affiliate and/or successor entity.

13 b. Amounts owing to Apex by United Delta, Inc. (in which, upon
14 information and believe, Ji is the principal or only shareholder) in the amount of
15 \$862,071.39, which United Delta, Inc. could repay if Ji and Ancle Hsu paid their obligations
16 to United Delta, Inc.

17 c. Amounts owing directly to Apex by Ancle Hsu in the amount of
18 \$759,988.78, and/or claims to rescind any purported release given to Ancle Hsu at the time
19 of his alleged departure from Apex.

20 d. Amounts owing to Apex by its affiliates, including without limitation
21 LSY Trading and Development Co., LA Sound USA, Inc., JDA International, Inc., Apex
22 Shanghai, American Apex Digital, Inc. and Apex Digital Inc. Ltd., a Hong Kong entity, in the
23 net amount of \$12,398,425.41.

24 e. Amounts owing on account of \$150,000 paid to Liu, in or about 2010.

25 f. Amounts owing on account of \$170,000 which Ji caused Apex to pay to
26 Nature’s Value, on behalf of CDB, in which Ji retains an interest.

27 g. Claims against Ji and Ancle Hsu for contribution on account of a
28 settlement Apex reached in or about 2007 with Koninkjke Philips Electronics N.V. (“Philips”)

1 in a patent infringement suit filed against them and Apex by Philips, by which Apex agreed
2 to pay Philips \$3 million in installments but, upon information and belief, Ji, Ancle Hsu,
3 United Delta, Inc. and CDB did not have to pay anything.

4 h. Claims against Ji for structuring the settlement represented by the
5 Foundational Agreement such that Ji would retain his stock in CBD, but Apex would have to
6 sell all of its stock in CBD.

7 40. Plaintiff is informed and believes and based thereon alleges that Apex has or
8 had claims (the “Changhong Transfer Claims”) to avoid some or all of the Changhong
9 Transfers, which included real property, intellectual property, and personal property owned
10 by Apex, in that at the time Apex entered into the Changhong Transfers, it was or became
11 insolvent, and that Apex did not receive reasonable or adequate consideration in exchange
12 for the Changhong Transfers.

13 41. Plaintiff is informed and believes and based thereon alleges that the
14 Changhong Transfer Claims were not disclosed in Apex’s Schedules and SOFA.

15 42. Plaintiff is informed and believes and based thereon alleges that the failure to
16 disclose the Insider Claims and the Changhong Transfer Claims was repeated in multiple
17 filings made in the Bankruptcy Court, including notably in the *Declaration of Alice Hsu in*
18 *Support of Debtor’s Emergency “First Day” Motions* (the “Hsu First Day Declaration”), and the
19 *Declaration of David Ji in Support of Debtor’s Emergency “First Day” Motions* (the “Ji First Day
20 Declaration”), each filed on August 18, 2010.

21 **D. The Failures to Pursue by Defendants**

22 43. Plaintiff is informed and believes and based thereon alleges that Apex has
23 never made a demand on account of, filed a lawsuit to recover, or otherwise pursued the
24 Insider Claims and the Changhong Transfer Claims.

25 44. Plaintiff is informed and believes and based thereon alleges that in addition to
26 failing to disclose the Insider Claims and the Changhong Transfer Claims, Ji and Hsu failed
27 to cause Apex to pursue one or more of the Insider Claims and the Changhong Transfer
28

1 Claims, in certain cases potentially causing those claims to be lost by reason of the running
2 of one or more statutes of limitation.

3 **E. Undisclosed Post-Petition Agreement**

4 45. Plaintiff is informed and believes and based thereon alleges that after the
5 Petition Date, and without adequate disclosure to the Bankruptcy Court or the creditors
6 herein, Ji and Hsu have caused Apex to enter into an agreement with an entity known as
7 “TMAX” and its affiliates (the “TMAX Agreement”), under which TMAX and/or its affiliates
8 receives consideration from Apex or its personnel, with no corresponding benefit to the
9 Bankruptcy Estate.

10 **F. Apex’s September Claim Made to Insurance Carrier**

11 46. Plaintiff is informed and believes and based thereon alleges that from
12 approximately September, 2009, through September, 2011, Apex maintained Management
13 Liability Insurance with Carolina Casualty Insurance Company (“Carolina”), Policy No.
14 6913169/0 (the “D&O Insurance Policy”).

15 47. Plaintiff is informed and believes and based thereon alleges that by letter
16 dated September 20, 2011, counsel for Apex made a claim and/or a provided a notice of
17 circumstances to Carolina (such communication, the “September Claim”) with respect to the
18 existence of the Insider Claims, the Changhong Transfer Claims and the TMAX Agreement.

19 48. Plaintiff is informed and believes and based thereon alleges that Carolina,
20 through its agent Monitor Liability Managers, LLC (“Monitor”), denies that the September
21 Claim was properly made as either a claim and/or a notice of circumstances under the D&O
22 Insurance Policy.

23 49. To the extent that the September Claim is denied as deficient, Plaintiff is
24 informed and believes and based thereon alleges that Ji and Hsu breached their duty to
25 Apex and its stakeholders to ensure that a proper notice of circumstances and/or claim was
26 made on account of the D&O Insurance Policy.

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FIRST CLAIM FOR RELIEF

FOR BREACH OF OFFICER'S AND DIRECTOR'S

FIDUCIARY DUTY

(Against Defendants Ji and Hsu)

50. Plaintiff repeats the allegations of paragraphs 1-49 with the same effect as if set forth here.

51. Defendants Ji and Hsu are officers and/or directors of Apex.

52. By virtue of these Defendants' status as directors and/or officers of Apex, Ji and Hsu, and each of them, owe a fiduciary duty to Apex to act in good faith, in the best interests of the corporation and its shareholders and/or stakeholders, and with such care, including reasonable inquiry, as an ordinary prudent person in a like corporation would act under similar circumstances.

53. Ji and Hsu, and each of them, by virtue of the conduct alleged herein, breached their fiduciary duties to Apex by, among other things, mismanaging the affairs of Apex and/or failing to make adequate disclosures to Apex and in the Bankruptcy Case of material facts which they had a duty to disclose, as alleged herein.

54. Each of the above mentioned breaches of fiduciary duty included, without limitation, failing to make adequate disclosures in the Bankruptcy Case of material facts, negligent and intentional concealment of material facts, intentional misconduct, an absence of good faith, recklessness, and/or an unexcused pattern of inattention by Ji and Hsu, and each of them.

55. As a proximate result of the said breaches of fiduciary duty by Ji and Hsu, and each of them, the Bankruptcy Estate has suffered damages in an undetermined amount. Plaintiff will seek leave to amend the exact amount of damages according to proof at time of trial.

56. These Defendants' acts alleged above were willful, wanton, malicious and oppressive and justify the awarding of exemplary and punitive damages.

///

1 65. These Defendants' acts alleged above were willful, wanton, malicious and
2 oppressive and justify the awarding of exemplary and punitive damages.

3 WHEREFORE, Plaintiff prays for entry of a judgment against Defendants as follows:

4 1. ON THE FIRST CLAIM FOR RELIEF:

5 (a) For general and special damages to be determined at time of trial; and

6 (b) For punitive and exemplary damages.

7 2. ON THE SECOND CLAIM FOR RELIEF:

8 (a) For general and special damages to be determined at time of trial; and

9 (b) For punitive and exemplary damages;

10 AND Plaintiff prays that:

11 (i) That Plaintiff recover pre-judgment interest, costs of suit
12 incurred and attorneys' fees as the law allows; and

13 (ii) That Plaintiff have such other and further relief as the Court
14 finds just and proper.

15 DATED: December 19, 2011

RUTTER HOBBS & DAVIDOFF
INCORPORATED

17 By: /s/ C. John M. Melissinos

C. JOHN M. MELISSINOS

18 Proposed Attorneys for Plaintiff Rosendo
19 Gonzalez, Examiner

20 **JURY TRIAL DEMAND**

21 In accordance with Fed. R. Bankr. P. 9015 and Local Bankruptcy Rule 9015-2,
22 Plaintiff Examiner hereby demands a jury trial on all issues. In accordance with 28 U.S.C.
23 § 157(e), Plaintiff consents to the conduct of the jury trial by the Bankruptcy Court.

24 DATED: December 19, 2011


RUTTER HOBBS & DAVIDOFF
INCORPORATED

26 By: /s/ C. John M. Melissinos

C. JOHN M. MELISSINOS

27 Proposed Attorneys for Plaintiff Rosendo
28 Gonzalez, Examiner

ADVERSARY PROCEEDING COVER SHEET (Instructions on Page 2)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS ROSENDO GONZALEZ, Examiner, on behalf of the bankruptcy estate of APEX DIGITAL, INC., Debtor		DEFENDANTS DAVID JI, ALICE HSU, ANCLE HSU, JEAN JI, ANDREW LASHENSKE, and RU-YING LIU
ATTORNEYS (Firm Name, Address, and Telephone No.) C. JOHN M. MELISSINOS (State Bar No. 149224) Rutter Hobbs & Davidoff, 1901 Avenue of the Stars, Suite 1700 LA, CA 90067; (310) 286-1700; jmelissinos@rutterhobbs.com		ATTORNEYS (If Known) Ekwan E. Rhaw Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg, 1875 Century Park East, 23rd Floor, LA, CA 90067
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other Examiner <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Breach of Fiduciary Duty		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
(continued next column)		
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 1,000,000+	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR APEX DIGITAL, INC., a California corporation,		BANKRUPTCY CASE NO. 2:10-bk-44406-PC	
DISTRICT IN WHICH CASE IS PENDING Central	DIVISIONAL OFFICE Los Angeles		NAME OF JUDGE Hon. Peter Carroll
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT		ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE		NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 			
DATE December 19, 2011	PRINT NAME OF ATTORNEY (OR PLAINTIFF) C. John M. Melissinos		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not presented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number C. JOHN M. MELISSINOS (State Bar No. 149224) jmelissinos@rutterhobbs.com RUTTER HOBBS & DAVIDOFF INCORPORATED 1901 Avenue of the Stars, Suite 1700 Los Angeles, California 90067 Telephone: (310) 286-1700 Facsimile: (310) 286-1728 Attorney for Plaintiff Rosendo Gonzalez, Examiner	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: APEX DIGITAL, INC., <div style="text-align: right;">Debtor.</div>	CHAPTER <u> 11 </u> CASE NUMBER 2:10-bk-44406-PC ADVERSARY NUMBER
ROSENDO GONZALEZ, Examiner, on behalf of the bankruptcy estate of APEX DIGITAL, INC., Debtor <div style="text-align: center;">vs.</div> DAVID JI, ALICE HSU, ANCLE HSU, JEAN JI et al. <div style="text-align: right;">Plaintiff(s), Defendant(s).</div>	(The Boxes and Blank Lines below are for the Court's Use Only) (Do Not Fill Them In) <div style="text-align: center;"> SUMMONS AND NOTICE OF STATUS CONFERENCE </div>

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend yourself, you must file with the Court a written pleading, in duplicate, in response to the Complaint. You must also send a copy of your written response to the party shown in the upper left-hand corner of this page. Unless you have filed in duplicate and served a responsive pleading by _____, the Court may enter a judgment by default against you for the relief demanded in the Complaint.

A Status Conference on the proceeding commenced by the Complaint has been set for:

Hearing Date:	Time:	Courtroom:	Floor:
<input type="checkbox"/> 255 East Temple Street, Los Angeles		<input type="checkbox"/> 411 West Fourth Street, Santa Ana	
<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills		<input type="checkbox"/> 1415 State Street, Santa Barbara	
<input type="checkbox"/> 3420 Twelfth Street, Riverside			

PLEASE TAKE NOTICE that if the trial of the proceeding is anticipated to take less than two (2) hours, the parties may stipulate to conduct the trial of the case on the date specified, instead of holding a Status Conference. Such a stipulation must be lodged with the Court at least two (2) Court days before the date set forth above and is subject to Court approval. The Court may continue the trial to another date if necessary to accommodate the anticipated length of the trial.

Date of Issuance: _____

KATHLEEN J. CAMPBELL
Clerk of Court

By: _____
Deputy Clerk

EXHIBIT “3”

1 Craig J. Mariam (SBN: 225280)
Email: cmariam@gordonrees.com
2 Eric Caligiuri (SBN: 260442)
Email: ecaligiuri@gordonrees.com
3 Michelle J. Wells (SBN: 279967)
Email: mwells@gordonrees.com
4 GORDON & REES LLP
633 W. Fifth Street, 52nd Floor
5 Los Angeles, CA 90071
Telephone: (213) 576-5000
6 Facsimile: (877) 306-0043

7 Attorneys for defendants David Ji, Alice Hsu, and Jean Ji

8 UNITED STATES BANKRUPTCY COURT

9 CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

10 In re:	}	BK Case No.: 2:10-bk-44406-PC
11 APEX DIGITAL, INC., a California	}	Chapter 11
12 corporation,	}	Adv. Case No.: 2:11-ap-03207-PC
13 Debtor.	}	<i>Honorable Peter H. Carroll</i>
14 ROSENDO GONZALEZ, Examiner, on	}	ANSWER TO PLAINTIFF’S COMPLAINT FOR BREACH OF FIDUCIARY DUTY; JURY TRIAL DEMAND
15 behalf of the bankruptcy estate of APEX DIGITAL, INC., Debtor,	}	
16 Plaintiff,	}	Complaint filed: December 19, 2011
17 v.	}	Trial date: Not set
18 DAVID LONGFEN JI, an individual,	}	
19 ALICE HSU, an individual, ANCLE	}	
20 HSU, an individual, JEAN JI, an	}	
21 individual, ANDREW LASHENSKE, an	}	
22 individual,	}	
23 Defendants.	}	

23 Defendants David Ji, Alice Hsu, and Jean Ji hereby respond to plaintiff’s
24 complaint as follows:

25 **PLAINTIFF’S ALLEGATIONS**

26 **JURISDICTION**

27 1. In answer to paragraph 1 of the complaint, defendants are without
28 sufficient knowledge or information to form a belief as to the allegation that

1 plaintiff was “duly appointed” as the examiner of the bankruptcy estate, and on
2 that basis, defendants deny the allegations in this paragraph.

3 2. In answer to paragraph 2 of the complaint, defendants admit the
4 allegations of this paragraph.

5 3. In answer to paragraph 3 of the complaint, defendants admit the
6 allegations of this paragraph.

7 4. In answer to paragraph 4 of the complaint, defendants admit the
8 allegations of this paragraph.

9 5. In answer to paragraph 5 of the complaint, defendants admit the
10 allegations of this paragraph.

11 6. In answer to paragraph 6 of the complaint, defendants admit the
12 allegations of this paragraph.

13 7. In answer to paragraph 7 of the complaint, defendants admit the
14 allegations of this paragraph.

15 8. In answer to paragraph 8 of the complaint, defendants admit the
16 allegations of this paragraph.

17 9. In answer to paragraph 9 of the complaint, defendants deny each and
18 every allegation contained therein.

19 10. In answer to paragraph 10 of the complaint, defendants admit the
20 allegations of this paragraph.

21 11. In answer to paragraph 11 of the complaint, defendants deny each and
22 every allegation contained therein.

23 12. In answer to paragraph 12 of the complaint, defendants admit the
24 allegations of this paragraph.

25 13. In answer to paragraph 13 of the complaint, defendants admit that
26 plaintiff was appointed after the petition date. For the remaining allegations,
27 defendants are without sufficient knowledge or information to form a belief as to
28 plaintiff’s knowledge of facts alleged in the complaint, and on that basis,

1 defendants deny the remaining allegations in this paragraph.

2 14. In answer to paragraph 14 of the complaint, there are no allegations to
3 admit or deny in this paragraph.

4 **GENERAL ALLEGATIONS**

5 A. The Appointment of the Examiner.

6 15. In answer to paragraph 15 of the complaint, defendants admit the
7 allegations of this paragraph.

8 16. In answer to paragraph 16 of the complaint, defendants admit the
9 allegations of this paragraph.

10 17. In answer to paragraph 17 of the complaint, defendants admit the
11 allegations of this paragraph.

12 18. In answer to paragraph 18 of the complaint, defendants admit the
13 allegations of this paragraph.

14 19. In answer to paragraph 19 of the complaint, defendants deny the
15 allegations in this paragraph.

16 20. In answer to paragraph 20 of the complaint, defendants deny the
17 allegations in this paragraph.

18 21. In answer to paragraph 21 of the complaint, defendants are without
19 sufficient knowledge or information to form a belief as to Apex's bankruptcy
20 filings, and on this basis, defendants deny this allegation. Defendants admit the
21 remaining allegations of this paragraph.

22 22. In answer to paragraph 22 of the complaint, defendants deny the
23 allegation that Apex filed its Schedules of Assets and Liabilities and Statement of
24 Financial Affairs on August 30, 2010. Defendants admit the remaining allegations
25 in this paragraph.

26 23. In answer to paragraph 23 of the complaint, defendants admit the
27 allegations of this paragraph.

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1 24. In answer to paragraph 24 of the complaint, defendants admit the
2 allegations of this paragraph.

3 25. In answer to paragraph 25 of the complaint, defendants admit that the
4 Notice of Appointment of Examiner was filed on December 7, 2011. Defendants
5 are without sufficient knowledge or information to form a belief as to whether the
6 Examiner was appointed “in accordance” with the Order Appointing Examiner,
7 and on this basis, defendants deny the remaining allegations in this paragraph.

8 26. In answer to paragraph 26 of the complaint, defendants admit the
9 allegations of this paragraph.

10 27. In answer to paragraph 27 of the complaint, defendants admit the
11 allegations of this paragraph.

12 B. The History of the Operations of Apex.

13 28. In answer to paragraph 28 of the complaint, defendants admit the
14 allegations of this paragraph.

15 29. In answer to paragraph 29 of the complaint, defendants admit the
16 allegations of this paragraph.

17 30. In answer to paragraph 30 of the complaint, defendants admit the
18 allegations of this paragraph.

19 31. In answer to paragraph 31 of the complaint, defendants admit the
20 allegations of this paragraph.

21 32. In answer to paragraph 32 of the complaint, defendants admit the
22 allegations of this paragraph.

23 33. In answer to paragraph 33 of the complaint, defendants admit the
24 allegations of this paragraph.

25 34. In answer to paragraph 34 of the complaint, defendants admit the
26 allegations of this paragraph.

27 35. In answer to paragraph 35 of the complaint, defendants admit the
28 allegations of this paragraph.

1 36. In answer to paragraph 36 of the complaint, defendants admit that
2 Apex paid Changhong a substantial sum of money and that Apex was required to
3 forfeit significant rights, including its ownership of the Apex Digital trademark.
4 Defendants deny the remaining allegations of this paragraph.

5 37. In answer to paragraph 37 of the complaint, defendants admit the
6 allegations of this paragraph.

7 38. In answer to paragraph 38 of the complaint, defendants admit the
8 allegations of this paragraph.

9 C. The Failures to Disclose by Ji and Hsu.

10 39. In answer to paragraph 39 of the complaint, defendants deny the
11 allegations of this paragraph.

12 a. In answer to paragraph 39(a) of the complaint, defendants deny
13 the allegations of this sub-paragraph.

14 b. In answer to paragraph 39(b) of the complaint, defendants deny
15 the allegations of this sub-paragraph.

16 c. In answer to paragraph 39(c) of the complaint, defendants deny
17 the allegations of this paragraph.

18 d. In answer to paragraph 39(d) of the complaint, defendants deny
19 the allegations of this paragraph.

20 e. In answer to paragraph 39(e) of the complaint, defendants deny
21 the allegations of this paragraph.

22 f. In answer to paragraph 39(f) of the complaint, defendants deny
23 the allegations of this paragraph.

24 g. In answer to paragraph 39(g) of the complaint, defendants deny
25 the allegations of this paragraph.

26 h. In answer to paragraph 39(h) of the complaint, defendants deny
27 the allegations of this paragraph.

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1 40. In answer to paragraph 40 of the complaint, defendants deny the
2 allegations of this paragraph.

3 41. In answer to paragraph 41 of the complaint, defendants deny the
4 allegations of this paragraph.

5 42. In answer to paragraph 42 of the complaint, defendants deny the
6 allegations of this paragraph.

7 D. The Failures to Pursue by Defendants.

8 43. In answer to paragraph 43 of the complaint, defendants deny the
9 allegations in this paragraph.

10 44. In answer to paragraph 44 of the complaint, defendants deny the
11 allegations of this paragraph.

12 E. Undisclosed Post-Petition Agreement.

13 45. In answer to paragraph 45 of the complaint, defendants deny the
14 allegations in this paragraph.

15 F. Apex's September Claim Made to Insurance Carrier.

16 46. In answer to paragraph 46 of the complaint, defendants are without
17 sufficient knowledge or information to form a belief as to these allegations, and on
18 this basis, defendants deny the allegations in this paragraph.

19 47. In answer to paragraph 47 of the complaint, defendants are without
20 sufficient knowledge or information to form a belief as to these allegations, and on
21 this basis, defendants deny the allegations in this paragraph.

22 48. In answer to paragraph 48 of the complaint, defendants are without
23 sufficient knowledge or information to form a belief as to these allegations, and on
24 this basis, defendants deny the allegations in this paragraph.

25 49. In answer to paragraph 49 of the complaint, defendants deny the
26 allegations of this paragraph.

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AFFIRMATIVE DEFENSES

Pursuant to Rules 7008 of the Federal Rules of Bankruptcy Procedure and 8(c) of the Federal Rules of Civil Procedure, defendants set forth the following matters constituting avoidance or affirmative defenses:

FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)

1. All or part of the relief sought by plaintiff is barred because the complaint was filed after the applicable statute of limitations contained in California Code of Civil Procedure section 343, and any other applicable statute of limitations, had expired.

SECOND AFFIRMATIVE DEFENSE
(Laches)

2. All or part of the relief sought by plaintiff is barred by the doctrine of laches in that plaintiff's delay in bringing this suit has prejudiced defendants.

THIRD AFFIRMATIVE DEFENSE
(Waiver)

3. All or part of the relief sought by plaintiff is barred based on the equitable doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE
(Release)

4. All or part of the relief sought by plaintiff is barred because such claims were released by contractual agreement with the debtor.

FIFTH AFFIRMATIVE DEFENSE
(Estoppel)

5. All or part of the relief sought by plaintiff is barred because the debtor is estopped from asserting all or some of the claims or amounts allegedly owed.

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SIXTH AFFIRMATIVE DEFENSE
(Setoff)

6. All or part of the relief sought by plaintiff is barred because all or some of the amounts owed were set off.

SEVENTH AFFIRMATIVE DEFENSE
(Business Judgment Rule)

7. All or part of the relief sought by plaintiff is barred by the California Corporations Code and/or other applicable statutes or common law, which immunize corporate directors where their actions were reasonable and/or in good faith.

EIGHTH AFFIRMATIVE DEFENSE
(Defendants' Conduct in Good Faith)

8. At all times relevant herein, Defendants exercised reasonable care and due diligence and otherwise acted in good faith.

NINTH AFFIRMATIVE DEFENSE
(Corporate Charter)

9. All or part of the relief sought by plaintiff is barred because debtor's corporate charter absolves defendants from such liability.

TENTH AFFIRMATIVE DEFENSE
(Ratification)

10. All or part of the relief sought by plaintiff is barred because the acts of defendants alleged in the Complaint have been ratified by the debtor and/or its agents.

ELEVENTH AFFIRMATIVE DEFENSE
(Standing)

11. All or part of the relief sought by plaintiff is barred because plaintiff lacks standing to assert the claims alleged in the complaint.

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TWELFTH AFFIRMATIVE DEFENSE
(Privilege)

12. All or part of the relief sought by plaintiff is barred because defendants' conduct was privileged, and any breach was thus excused under the circumstances.

THIRTEENTH AFFIRMATIVE DEFENSE
(Payment)

13. All or part of the relief sought by plaintiff is barred because all or some of the amounts owed to debtor have been paid.

FOURTEENTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

14. All of the relief sought by plaintiff is barred because debtor has failed to mitigate its damages.

WHEREFORE, defendants pray for judgment as follows:

1. That plaintiff takes nothing by his complaint;
2. That the complaint be dismissed in its entirety with prejudice;
3. That defendants be awarded all their attorneys' fees and costs; and
4. That the Court award such other and further relief as it deems just and proper.

Respectfully submitted,

Dated: March 19, 2012

GORDON & REES LLP

By: /s/ Craig J. Mariam
Craig J. Mariam
Eric Caligiuri
Michelle J. Wells
Attorneys for defendants David Ji,
Alice Hsu, and Jean Ji

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
GORDON & REES LLP
633 W. Fifth Street, 52nd Floor
Los Angeles, CA 90071

A true and correct copy of the foregoing document described as ANSWER TO PLAINTIFF'S COMPLAINT FOR BREACH OF FIDUCIARY DUTY; JURY TRIAL DEMAND will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On March 19, 2012, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

C. John M. Melissinos, Esq.
Rutter Hobbs & Davidoff Incorporated
1901 Avenue of the Stars Ste 1700
Los Angeles, CA 90067
Tel.: (310) 286-1700
Fax : (310) 286-1728
Email: jmelissinos@davidoffgold.com

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On March 19, 2012, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on March 19, 2012, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

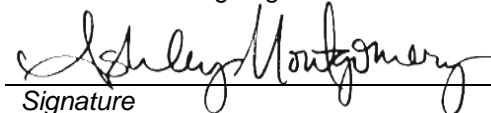
BY PERSONAL DELIVERY: Judge Peter H. Carroll, US Bankruptcy Court, Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Room 940
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

March 19, 2012

Ashley Montgomery



Date

Type Name

Signature

EXHIBIT “4”

FILED & ENTERED
SEP 17 2010
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY egarcia DEPUTY CLERK

1 PHILIP A. GASTEIER (SBN 130043)
pag@lnbyb.com
2 JULIET Y. OH (SBN 211414)
jyo@lnbyb.com
3 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
4 10250 Constellation Boulevard, Suite 1700
Los Angeles, California 90067
5 Telephone: (310) 229-1234
6 Facsimile: (310) 229-1244

7 Proposed Counsel for Chapter 11 Debtor
and Debtor in Possession

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11 In re:) Case No.: 2:10-bk-44406-PC
12)
13 APEX DIGITAL, INC., a California) Chapter 11 Case
corporation,)
14) ORDER GRANTING MOTION FOR
Debtor.) ENTRY OF AN ORDER: (A)
15) APPROVING COMPROMISE OF
16) CONTROVERSY BETWEEN DEBTOR
AND SECURED CREDITOR; (B)
17) AUTHORIZING THE SALE OF
18) SUBSTANTIALLY ALL OF THE
DEBTOR'S ASSETS FREE AND CLEAR
19) OF LIENS, CLAIMS, ENCUMBRANCES
AND INTERESTS; (C) APPROVING
20) CONSULTING AGREEMENT; AND (D)
GRANTING RELATED RELIEF
21)
Date: September 17, 2010
22) Time: 10:00 a.m.
Place: Courtroom 1539
23) 255 East Temple Street
Los Angeles, CA 90012
24)
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1 A hearing on the Motion For Entry Of An Order: (A) Approving Compromise Of
2 Controversy Between Debtor And Secured Creditor; (B) Authorizing The Sale Of Substantially
3 All Of The Debtor's Assets Free And Clear Of Liens, Claims, Encumbrances And Interests; (C)
4 Approving Consulting Agreement; And (D) Granting Related Relief (the "Motion"), filed by
5 Apex Digital, Inc., a California corporation, the debtor and debtor in possession in the above-
6 captioned chapter 11 bankruptcy case (the "Debtor"), was held before the undersigned United
7 States Bankruptcy Judge on September 15, 2010, at which time this Court continued the hearing
8 to September 17, 2010, for the announcement of the Court's decision and finding of fact and
9 conclusions of law. Appearances were as noted in the record.

10 The Court having reviewed and considered the Motion and supporting papers, the
11 Objection to the Motion and other supporting papers filed by Jiangsu Hongtu High Tech Co. Ltd.
12 (the "Hongtu Objection"), the Replies to the Hongtu Objection and other supporting papers filed
13 by the Debtor and by Kith Electronics Limited, and having heard the arguments of counsel at the
14 hearing; no other party having appeared to present an offer for the Purchased Assets (defined
15 herein); the Court having found that notice of the Motion was proper and sufficient in the
16 circumstances; good and sufficient cause appearing therefor, it appearing that the relief requested
17 in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in
18 interest; and the Court being otherwise fully advised in the premises and having stated its
19 findings and conclusions on the record in open Court at the continued hearing,

20
21 IT IS HEREBY ORDERED:

- 22 1. The Motion is granted as set forth herein.
- 23 2. The Consulting, Sale and Settlement Agreement ("Agreement") dated as of
24 August 17, 2010, between the Debtor, Kith Consumer Product, Inc. ("Kith Consumer") and to a
25 limited extent Kith Electronics Limited ("KEL"), a copy of which is attached as Exhibit "1" to
26 the Declaration of David Ji filed concurrently with the Motion (Docket #30), is hereby approved.

1 Any terms not specifically defined herein shall have the meanings ascribed to them in the
2 Agreement.

3 3. The sale to Kith Consumer of all of the assets of Debtor identified as the “Purchased
4 Assets” in Article I, Section 1.1 of the Agreement, which shall not include those assets listed in
5 Section 1.2 of the Agreement (the “Excluded Assets”), in exchange for the assumption by Kith
6 Consumer of the Debt Assumption and other Consideration as provided in Article II, section 2.1
7 of the Agreement, is hereby approved and confirmed pursuant to 11 U.S.C. §363, such sale to be
8 free and clear of any and all liens, encumbrances, claims, rights, demands, charges, mortgages,
9 options, pledges, security interests or similar interests, title defects and claims relating to unpaid
10 license fees, royalty fees, other intellectual property violations and infringement claims,
11 tenancies (and other possessory interests), easements, rights of way, covenants, encroachments,
12 rights of first refusal, preemptive rights, judgments, conditional sale or other title retention
13 agreements and other impositions or imperfections of title or restrictions on transfer of any
14 nature (collectively, the “Encumbrances”) pursuant to 11 U.S.C. §363(f).

15 4. The Court having found that the KEL Debt is a valid secured claim as to the
16 Purchased Assets, the settlement between the Debtor and KEL provided for in the Agreement is
17 hereby approved, the Debtor is authorized to enter into the Debt Assignment and Assumption
18 Agreement in the form attached as Exhibit “B” to the Agreement, and the Remaining Debt
19 provided for in Article II, section 2.1 of the Agreement (i) shall be an allowed claim against the
20 Debtor’s bankruptcy estate in the amount of \$1,500,000.00 and not subject to objection,
21 avoidance, subordination or other challenge by any entity, and (ii) is secured by a valid,
22 perfected first priority security interest and lien against all of Debtor’s assets in which KEL held
23 a pre-petition security interest, including but not limited to Debtor’s remaining accounts
24 receivable and inventory, which security interest is not subject to objection, avoidance,
25 subordination or other challenge by any entity.

26 5. Pursuant to 11 U.S.C. §§ 363(b) and (f) and 365(b), the Debtor and its officers,
27 employees and agents, are authorized, empowered, and, subject to the terms of the Agreement
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1 and this Order, directed to execute, deliver, and perform under, consummate, and implement the
2 Agreement together with all additional instruments and documents that are requested by Kith
3 Consumer and may be reasonably necessary or desirable to implement the Agreement, and to
4 take any and all actions as Debtor deems necessary, appropriate, or advisable for the purpose of
5 assigning, transferring, granting, conveying, and conferring to Kith Consumer or reducing to
6 possession of Kith Consumer, the Purchased Assets, or as may be necessary or appropriate to the
7 performance of the obligations as contemplated by the Agreement.

8 6. The terms and provisions of the Agreement and the Order shall be binding in all
9 respects upon all persons, including, but not limited to, the Debtor and its estates and creditors
10 and all governmental bodies.

11 7. Pursuant to 11 U.S.C. §§105(a), 363(f), and 365(b) of the Bankruptcy Code, upon the
12 Closing the transfer of the Purchased Assets to Kith Consumer pursuant to the Agreement shall
13 constitute a legal, valid, and effective transfer of the Purchased Assets and shall vest Kith
14 Consumer with all right, title, and interest in and to the Purchased Assets free and clear of
15 Encumbrances.

16 8. The terms and provisions of the Agreement, the ancillary agreements, and this Order
17 shall be binding in all respects upon, and shall inure to the benefit of, Debtor, Kith Consumer,
18 KEL and their respective affiliates, successors and assigns, and any affected third parties,
19 notwithstanding any subsequent appointment of any trustee(s) under any chapter of the
20 Bankruptcy Code or conversion of this case to a case under chapter 7, as to which trustee(s) such
21 terms and provisions likewise shall be binding. The Agreement and the transactions
22 contemplated thereby may be specifically enforced against, and shall not be subject to rejection
23 or avoidance by, the Debtor or any Chapter 7 or Chapter 11 Trustee of Debtor.

24 9. The Agreement and any related agreements, documents, or other instruments may be
25 modified, amended, or supplemented by the parties thereto, in a writing signed by such parties,
26 and in accordance with the terms thereof, without further order of the Court, provided that any
27 such modification, amendment, or supplement does not constitute a material modification of
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1 such instrument.

2 10. The failure specifically to include any particular provisions of the Agreement or the
3 ancillary agreements in this Order shall not diminish or impair the effectiveness of such
4 provisions, it being the intent of the Court that the Agreement and the ancillary agreements be
5 authorized and approved in their entirety.

6 11. To the extent of any inconsistency between the provisions of this Order, the
7 Agreement, and any documents executed in connection therewith, the provisions contained in the
8 Agreement and the Order and any documents executed or delivered in connection therewith shall
9 govern, in that order.

10 12. Nothing contained in any chapter 11 plan confirmed in this chapter 11 case or any
11 Order of this Court confirming such plan or any other order entered in this chapter 11 case (or
12 any converted chapter 7 case) shall conflict with or derogate from the provisions of the
13 Agreement, to the extent modified by this Order, or the terms of this Order.

14 13. In the event that this chapter 11 case is dismissed or converted to a chapter 7 case, or
15 a trustee is appointed (whether under chapter 11 or 7), neither the dismissal nor conversion of
16 this case, nor the appointment of such a trustee, shall affect, in any manner, the rights of Kith
17 Consumer under the Agreement or this Order, or any other agreements executed by Debtor in
18 conjunction with the Agreement, and such agreements shall remain in full force and effect as if
19 the case had not been dismissed or converted or a trustee had not been appointed.

20 14. This Order shall take immediate effect and the 14-day appeal period provided by
21 Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d) are hereby waived for cause so that
22 the Closing under the Agreement may take place immediately.

23 15. Any and all oppositions to the motion not heretofore withdrawn are overruled.

24 16. The Agreement was negotiated, proposed and entered into by the parties without
25 collusion, in good faith and from arm's-length bargaining positions; accordingly, Kith Consumer
26 has acted in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code and is a
27 good faith buyer entitled to all of the protections afforded by that Section.

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1 17. This Court shall retain jurisdiction to resolve any controversy or claim arising out
2 of or relating to the Agreement, or the breach thereof.

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DATED: September 17, 2010

United States Bankruptcy Judge

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Debtor/Debtor-in-Possession

Apex Digital, Inc.
 301 Brea Canyon Road
 Walnut, CA 91789

Secured Creditors

The CIT Group/Commercial Services 300 South Grand Avenue Los Angeles, CA 90071	Wells Fargo Trade Capital, LLC 333 South Grand Avenue, Suite 4150 Los Angeles, CA 90071	Alan S. Gutman, Esq. 9401 Wilshire Blvd., Suite 575 Beverly Hills, CA 90212
Kith Electronics Limited 1/F Hing Lung Commerical Building 68 Bonham Stand East, Hong Kong CHINA [no zip code]	MPEG LA 6312 S Fiddlers Green Circle Suite 400E Greenwood Village, CO 80111	<u>Counsel for MPEG LA</u> Michael H. Steinbuerg, Esq. Sullivan & Cromwell LLP 1888 Century Park East, Suite 2100 Los Angeles, CA 90067

20 Largest Unsecured Creditors

Covington & Burling LLP 1201 Pennsylvania Ave. N.W. Washington, DC 20004-2401	Regent USA Inc 1208 John Reed Court City of Industry, CA 91745 [DISSOLVED]	Koninklijke Philips Electronics 1251 Avenue of the Americas New York, NY 10020
Wintek Group, Inc. 13418 Wandering Ridge Way Chino Hills, CA 91709	G & J Express Transport, Inc 9121 Blackley Street Temple City, CA 91780	Disco Vision 1925 E. Dominguez St. Long Beach, CA 90810
Oracle Corporation 500 Oracle Parkway Redwood City, CA 94065	MPEG LA 6312 S Fiddlers Green Circle Suite 400E Greenwood Village, CO 80111	Vizio 39 Tesla Irvine, CA 92618
Jiangsu Qiao Yue Shu Ma You Xian #1, Jing Jiu Road, Ding Mao Jing Ji Kai Fa, Zhen Jiang City, Jiangsu CHINA 212009	Funai 7-1, 7-Chome, Nakagaito Daito, Osaka 574-0013 JAPAN	Jiangsu Hongtu High Tech Co Ltd 83 Hu Bei Road Nanijing P.R., Post Code 210009 CHINA
Shanghai World Trade Dev. Co., LTD Unit 118, Suite 1016, Xin Ling Road Wai Gao Qiao Bao Shui, Shanghai CHINA 200031	Wi-LAN V-Chip Corp. 11 Holland Avenue, Suite 608 Attn: Prashant R. Watchmaker, Gen. Counsel Ottawa, ON K1Y 4S1 CANADA	Thomson Multimedia Two Independence Way, Suite 100 Princeton, NJ 08540
Sichuan Digital Telemedia Co. Ltd. Jiuzhopu Electric Bldg., 6th Floor High-Tech Park, Nanshan, Shenzhen CHINA 518057	Apex Digital Inc. Ltd. Unit 37031, 37/F West Tower Shun Tak Centre 168-200 Connaught Rd Cen HONG KONG	

In re: <p style="text-align: center;">APEX DIGITAL, INC., Debtor(s).</p>	CHAPTER 11 CASE NO. 2:10-bk-44406-PC
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NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled: **ORDER GRANTING MOTION FOR ENTRY OF AN ORDER: (A) APPROVING COMPROMISE OF CONTROVERSY BETWEEN DEBTOR AND SECURED CREDITOR; (B) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (C) APPROVING CONSULTING AGREEMENT; AND (D) GRANTING RELATED RELIEF,** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”) - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **September 17, 2010**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Service information on attached page [X]

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Apex Digital, Inc.
301 Brea Canyon Road
Walnut, CA 91789

Office of the United States Trustee
Attn: Russell Clementson
Ernst & Young Plaza
725 S. Figueroa Street, 26th Floor
Los Angeles, CA 90017

Service information on attached page []

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

Service information continued on attached page []

1 **I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)**

2 Shawn M Christianson on behalf of Interested Party Courtesy NEF
cmcintire@buchalter.com

3
4 Russell Clementson on behalf of U.S. Trustee United States Trustee (LA)
russell.clementson@usdoj.gov

5 Philip A Gasteier on behalf of Debtor Apex Digital, Inc.
pag@lnbrb.com

6
7 John W Kim on behalf of Interested Party Courtesy NEF
jkim@nossaman.com

8 Juliet Y Oh on behalf of Debtor Apex Digital, Inc.
jyo@lnbrb.com, jyo@lnbrb.com

9
10 Kathy Bazoian Phelps on behalf of Creditor Kith Electronics Limited
kphelps@dgd.com

11 Robert M Saunders on behalf of Interested Party Jiangsu Hongtu High Tech Co., Ltd.
rsaunders@pszlaw.com, rsaunders@pszlaw.com

12
13 George E Schulman on behalf of Creditor Kith Electronics Limited
GSchulman@DGDK.Com

14 David B Shemano on behalf of Interested Party Courtesy NEF
dshemano@pwkllp.com

15
16 United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

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EXHIBIT "5"

1 PHILIP A. GASTEIER (SBN 130043)
pag@lnbyb.com
2 JULIET Y. OH (SBN 211414)
jyo@lnbyb.com
3 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
4 10250 Constellation Boulevard, Suite 1700
Los Angeles, California 90067
5 Telephone: (310) 229-1234
6 Facsimile: (310) 229-1244
7 Counsel for Chapter 11 Debtor and
Debtor in Possession

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **LOS ANGELES DIVISION**

13 In re:) Case No. 2:10-bk-44406-PC
14)
15 APEX DIGITAL, INC., a California) Chapter 11
corporation,)
16) **SIXTH STIPULATION BETWEEN**
17 Debtor.) **DEBTOR AND AVISION**
18) **TECHNOLOGY CO. LIMITED**
19) **REGARDING USE OF CASH**
20) **COLLATERAL**
21)
22) [No Hearing Required]
23)

24 This sixth stipulation (the “**Stipulation**”) is entered into by and between secured
25 creditor Avision Technology Co. Limited (“**Avision**”), as assignee of Kith Electronics Limited
26 (“**KEL**”), and Apex Digital, Inc., debtor and debtor in possession in the above-captioned
27 chapter 11 bankruptcy case (the “**Debtor**”), by and through their respective counsel of record,
28 and is made with reference to the following facts:

RECITALS

1
2 A. The Debtor was a leading producer and seller of consumer electronic products,
3 including high-definition LCD televisions, home entertainment media devices, digital set top
4 boxes and lighting products (e.g., solar powered lights), which are carried and sold in hundreds
5 of retail outlets nationwide.

6 B. The Debtor was indebted to KEL as of August 13, 2010 in the principal amount
7 of \$12,067,734.80 plus attorney's fees in the amount of \$130,395.25, subject to amendment to
8 include additional attorney's fees which might be incurred (the "**Debt**"), the amount of which
9 Debt the parties acknowledged would be subject to adjustment in the event any prior payments
10 made by Apex to KEL which had been previously credited to Apex in arriving at the amount of
11 the Debt became uncollectible or in the event KEL was required to return any such payments
12 previously credited.

13 C. The Debt was secured pursuant to that certain Security Agreement dated as of
14 September, 2008 (as amended and modified, if applicable) by and between Apex and KEL and
15 any other related documentation (collectively, the "**Loan Documentation**"), and was thereby
16 secured by a valid, perfected first priority security interest and lien against all of Apex's assets
17 including Apex's current and future accounts receivable and inventory.

18 D. Pursuant to the Security Agreement, the Debtor granted to KEL a continuing
19 valid, first priority security interest in all present and future "**Collateral**," as defined in Exhibit
20 "B" to the Security Agreement, owned or thereafter acquired by the Debtor to secure payment
21 and performance of the Debtor's obligations under the Loan Documents. The Collateral
22 included, among other things, all of the Debtor's accounts and accounts receivable, inventory
23 and deposit accounts, and all of the proceeds derived from the foregoing assets.

24 E. On August 12, 2008, KEL recorded a financing statement with the California
25 Secretary of State (Filing No. 08-7168547339) to perfect its security interest in the Collateral
26 (the "**Financing Statement**").

27 F. On August 17, 2010 (the "**Petition Date**"), the Debtor filed a voluntary petition
28 under Chapter 11 of 11 U.S.C. § 101 et seq. (as amended, the "**Bankruptcy Code**"). The

1 Debtor continues to operate its business, manage its financial affairs and operate its bankruptcy
2 estate as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3 G. By virtue of KEL's security interest in the Collateral as set forth above, KEL has
4 an interest in "Cash Collateral" within the meaning of section 363(a) of the Bankruptcy Code.
5 In this regard, Debtor acknowledged and agreed that any cash or cash equivalent (or other
6 proceeds) received by Debtor after the Petition Date constituted proceeds of the Collateral and
7 were, therefore, part of KEL's Cash Collateral within the meaning of section 363(a) of the
8 Code to the same extent KEL had a security interest in such Collateral pre-petition.

9 H. At the outset of the Debtor's bankruptcy case, the Debtor, Kith Consumer
10 Product, Inc. (an affiliate of KEL) and, to a limited extent, KEL, entered into that certain
11 *Consulting, Sale and Settlement Agreement* dated as of August 17, 2010 (the "**Sale/Settlement**
12 **Agreement**"), pursuant to which the principal balance owing on the Debt was proposed to be
13 reduced to \$1,500,000 (the "**Residual Claim**") upon closing of the transactions contemplated
14 by the Sale/Settlement Agreement (the "**Closing**"), with such Residual Claim to remain subject
15 to KEL's existing security interest and lien in the Collateral, to the same priority, force and
16 effect as KEL's security interest and lien existing prepetition in the Collateral. The Closing
17 under the Sale/Settlement Agreement was subject to satisfaction of certain prior conditions,
18 including but not limited to approval of the Sale/Settlement Agreement by the Court.

19 I. On September 17, 2010, the Court entered an order approving the
20 Sale/Settlement Agreement and the transactions contemplated thereby. The Closing of the
21 transactions contemplated by the Sale/Settlement Agreement occurred on September 20, 2010.

22 J. The Debtor and KEL entered into a stipulation authorizing the Debtor to use
23 cash collateral from the Petition Date through September 15, 2010 (the "**First CC**
24 **Stipulation**") pursuant to the terms and conditions set forth in the First CC Stipulation, as
25 modified by the order entered by the Court on September 1, 2010 approving such stipulation.

26 K. The Debtor and KEL subsequently entered into a second stipulation (the
27 "**Second CC Stipulation**") authorizing the Debtor to use cash collateral through and including
28 September 24, 2010 pursuant to the terms and conditions set forth in the Second CC

1 Stipulation. At the hearing on the Second CC Stipulation held on September 15, 2010, the
2 Court continued such hearing to September 17, 2010 at 10:00 a.m. and KEL agreed on the
3 record to extend the Debtor's authority to use cash collateral, under the terms of the First CC
4 Stipulation, through 12:00 p.m. (PDT) on September 17, 2010. At the continued hearing held
5 on September 17, 2010, the Court approved the Second CC Stipulation and entered an order
6 thereafter accordingly.

7 L. Pursuant to paragraph 27 of the Second CC Stipulation, the term of the Second
8 CC Stipulation could "be further extended by the parties in writing without further order of the
9 Bankruptcy Court."

10 M. Subsequently, the Debtor and KEL agreed to extend the term of the Second CC
11 Stipulation from September 24, 2010 through and including December 27, 2010. The parties
12 entered into a stipulation to extend the term of the Second CC Stipulation accordingly, which
13 stipulation was approved by the Court pursuant to its order entered on September 28, 2010.

14 N. Thereafter, the Debtor and KEL agreed to further extend the term of the Second
15 CC Stipulation from December 27, 2010 through and including February 28, 2011. The parties
16 entered into a stipulation to further extend the term of the Second CC Stipulation accordingly,
17 which stipulation was approved by the Court pursuant to its order entered on December 17,
18 2010.

19 O. In February, 2011, KEL sold and assigned to Avision all of its right, title and
20 interest in and to the Residual Claim, including, among other things, all of KEL's rights and
21 remedies under the Loan Documents with respect to the Residual Claim. As a result, all rights,
22 claims and interests previously held by KEL in the Residual Claim against the Debtor have
23 been transferred to Avision.

24 P. The Debtor and Avision subsequently entered into a stipulation authorizing the
25 Debtor to use cash collateral through and including May 30, 2011 pursuant to the terms and
26 conditions set forth in such stipulation. The foregoing stipulation was approved by the Court
27 pursuant to its order entered on March 2, 2011.

28

1 Q. The Debtor and Avision subsequently entered into four successive stipulations
2 authorizing the Debtor to use cash collateral through and including July 16, 2012 pursuant to
3 the terms and conditions set forth in such stipulations. The foregoing stipulations were
4 approved by the Court pursuant to orders entered on June 1, 2011, October 4, 2011, December
5 29, 2011, and March 26, 2012, respectively.

6 R. The Debtor has requested that Avision agree, and Avision has in fact agreed, to
7 the Debtor's continued use of cash collateral, through and including October 29, 2012, in
8 accordance with the terms and conditions set forth in this Stipulation.

9 **AGREEMENT**

10 **NOW THEREFORE**, the following is hereby stipulated and agreed to by the parties
11 hereto:

12 1. Recitals. The recitals are incorporated herein by this reference. The parties
13 agree that the matters set forth in the recitals are true and correct.

14 2. Use of Cash Collateral. Subject to the other provisions of this Stipulation,
15 including the extension provision at paragraph 26 below, the parties hereto agree that, until the
16 earlier of (i) October 29, 2012, (ii) the Effective Date of a confirmed plan of reorganization in
17 the Debtor's case, (iii) the entry of an order dismissing the Debtor's bankruptcy case, or (iv) the
18 termination of this Stipulation as set forth in paragraph 14 below, the Debtor may use its cash
19 which constitutes Avision's Collateral ("**Cash Collateral**"), on the following terms and
20 conditions:

21 a. Subject to further order of the Bankruptcy Court, or as otherwise
22 consented to by Avision in writing, Cash Collateral may be used by the Debtor for only
23 the items identified in the budget ("**Budget**") stipulated to and incorporated hereat by
24 reference and attached hereto as Exhibit "1." The Debtor shall be authorized to use Cash
25 Collateral in accordance with the Budget, subject to a permitted deviance of up to 10%
26 of the total expenses for any week with any unused portions to be carried over into the
27 following week on a line-item by line-item basis only.

28

1 b. The Debtor shall have the right to use Cash Collateral during the period
2 covered by this Stipulation as specifically set forth herein to pay expenses which are not
3 contained in the Budget or in amounts which are greater than as set forth in the Budget
4 (subject to the permitted 10% deviance) with the prior written consent of Avision
5 without the need for any further Bankruptcy Court order. If Avision does not consent,
6 the Debtor reserves the right to seek authority to pay such expenses on an emergency or
7 otherwise expedited basis.

8 3. Reporting to Avision. The Debtor shall provide Avision with monthly cash flow
9 reports, a written Budget reconciliation report in form and detail acceptable to Avision, which
10 report compares Debtor's actual receipts, income, expenditures and cash flow versus the
11 amounts for receipts, income expenditures and cash flow originally projected by Debtor in the
12 Budget, on a line-item by line-item basis, and copies of the Monthly Operating Reports as filed
13 with the Court and the Office of the United States Trustee.

14 4. Access to the Debtor's Books and Records. In addition, on no less than five (5)
15 business days' notice following a written request from Avision, the Debtor shall provide, make
16 available, and otherwise permit access to such financial and operating information as
17 representatives of Avision shall reasonably request from time to time and which can reasonably
18 be made available by Debtor (taking into account such things as the Debtor's manpower, time,
19 cost, scope of the request, etc.), including, without limitation, all books and records relating to
20 the Collateral.

21 5. Replacement Lien. Subject to the terms and conditions set forth below, as
22 adequate protection for the Cash Collateral used by Debtor, and only to the extent that the Cash
23 Collateral is used (subject to the uses as permitted by this Stipulation), Avision shall be granted
24 a replacement lien (the "**Replacement Lien**") on, and security interest in, any and all assets of
25 Debtor of any kind or nature whatsoever, now owned or hereinafter acquired (excluding any
26 causes of action arising under Sections 105, 506(c), 542, 543, 544, 545, 547, 548, 550, 551, 552,
27 and 553 of the Bankruptcy Code, and all proceeds, rents, products, or profits thereof (the "**Post-**
28 **Petition Collateral**").

1 a. The Replacement Lien and security interest shall have the same priority,
2 extent and validity as Avision's liens and security interests existing in the Cash
3 Collateral used by the Debtor. The Replacement Lien and security interest granted
4 herein are valid, enforceable and fully perfected, and no filing or recordation or any
5 other act in accordance with any applicable local, state or federal law is necessary to
6 create or perfect such lien and security interest; provided, however, that upon request of
7 Avision, the Debtor shall execute such security and perfection documentation as may be
8 reasonably required to create or perfect such liens under applicable nonbankruptcy law,
9 including without limitation, UCC-1 financing statements and notices to depository
10 banks.

11 b. The Replacement Lien does **not** extend to avoidance actions.

12 c. The Replacement Lien shall at all times not be subject to priming or
13 subordination and shall be senior and superior to any and all other mortgages, liens,
14 claims and security interests held by KEL as of the Petition Date (except for creditors, if
15 any, with valid, binding, enforceable, unavoidable and perfected liens and security
16 interests on the Post-Petition Collateral existing on the Petition Date that were senior in
17 priority to the security interests of KEL immediately prior to the Petition Date). In the
18 event it is determined that there is a creditor with valid, binding, enforceable,
19 unavoidable and perfected lien and security interest on the Collateral that was senior in
20 priority to the security interest and lien of KEL, the Replacement Lien shall be secured
21 by a second priority lien in all Post-Petition Collateral that is subject to valid, binding,
22 enforceable, unavoidable and perfected mortgages, liens and security interests existing
23 in the Post-Petition Collateral at the time of the Petition Date.

24 6. Adequate Protection Payments: As adequate protection for any diminution in the
25 value of the interests of Avision in the Collateral (including Cash Collateral) on account of
26 Debtor's use of Avision's Cash Collateral, and other decline, if any, in value arising out of the
27 automatic stay or the Debtor's use, sale, depreciation or disposition of the Collateral, including
28 Cash Collateral, Avision shall receive additional adequate protection in the form of monthly

1 payments of \$5,000 each, which payments shall be made to Avision on each of the following
2 dates: July 9, 2012, August 6, 2012, September 10, 2012 and October 8, 2012.

3 7. Protection as to Actual Use: If any party in interest objects to this Stipulation
4 and such objection is sustained, or if the Bankruptcy Court does not approve this Stipulation,
5 Avision shall be fully protected as set forth herein to the extent of Debtor's actual use of
6 Avision's Cash Collateral prior to entry of a Court Order curtailing or otherwise modifying the
7 provisions of this Stipulation.

8 8. No Limitation on Remedies: Nothing contained in this Stipulation shall limit,
9 impair or in any way affect (i) Avision's right at any time to seek relief from the automatic stay
10 to enforce any of its remedies under the Loan Documents or Financing Statement or applicable
11 law; and (ii) Avision's rights under Section 507(b) of the Bankruptcy Code in the event that the
12 adequate protection provided to Avision hereunder is insufficient to compensate for the
13 diminution in value of the interest of Avision in the Collateral during the Debtor's bankruptcy
14 case or any successor case.

15 9. No Waiver. Nothing contained in this Stipulation and the Order thereon shall be
16 deemed or construed to waive, reduce or otherwise diminish the rights Avision under the Loan
17 Documents, Financing Statement, or the Bankruptcy Code. Nothing contained in this
18 Stipulation and the Order thereon shall be deemed or construed to waive, reduce, or otherwise
19 diminish the rights, claims and defenses of the Debtor under the Loan Documents, Financing
20 Statement, or the Bankruptcy Code.

21 10. No Impact on Right to Seek Other or Different Relief. Nothing contained in this
22 Stipulation and the Order thereon shall be deemed or construed to waive, reduce or otherwise
23 diminish the rights of Avision to seek additional or different adequate protection of its interests
24 under the Loan Documents and Financing Statement, or to take any other action in the Debtor's
25 bankruptcy case, including, but not limited to, seeking relief from the automatic stay or
26 dismissal or conversion of this case at any time. The Debtor reserves all of its rights, claims and
27 defenses with respect to any additional or different relief requested, or any action taken, by
28 Avision in its bankruptcy case.

1 11. No Admission Regarding Adequate Protection. Nothing contained in this
2 Stipulation and the Order thereon shall be deemed or construed to be an admission by either
3 party that Avision is or is not adequately protected.

4 12. Notices to Avision. Performance due to Avision hereunder, including without
5 limitation, notices, financial reports, and requests for approval of budget modifications, shall be
6 made to Avision at the following address:

7
8 Avision Technology Co. Limited
9 Attn: Ada Chan
10 Rm. 1013B Seaview Estate, 2-8 Watson Road
11 North Point, Hong Kong
12 China
13 Tel: 852-25109188
14 Fax: 852-28063931
15 Email: achan@koka.com.hk

16 In addition, copies of all notices or other communications hereunder shall be sent to
17 Avision’s counsel at the following address:

18 David B. Shemano, Esq.
19 Peitzman Weg LLP
20 2029 Century Park East, Suite 3100
21 Los Angeles, California 90067
22 Tel: (310) 552-3100
23 Fax: (310) 552-3101
24 Email: dshemano@peitzmanweg.com

25 13. Default. If the Debtor fails to perform fully and timely any provision, term or
26 condition of this Stipulation, the Debtor shall be in default under this Stipulation. In the event
27 that Avision asserts a default by the Debtor, it shall give written notice to the Debtor of its
28 assertion, and the Debtor shall have five (5) business days after receipt of such notice from
Avision to cure any such default (“**Cure Period**”). The Debtor may use Cash Collateral during
the Cure Period, and the Debtor shall have the right to schedule an emergency hearing during
the Cure Period to seek continuing Court authority to use Cash Collateral. Notice of any
default, or any other notices required to be given hereunder, shall be provided to the Debtor by

1 facsimile, personal or overnight delivery at the following addresses, or at such other address(es)
2 as Debtor may give to Avision in writing:

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Apex Digital, Inc.
Attn: David Ji, Chief Executive Officer
4401 Eucalyptus Avenue, Suite 100
Chino, California 91710
Tel: (909) 923-8686
Fax: (909) 923-8675
Email: dji@apexdigitalinc.com

9 In addition, copies of all notices or other communications hereunder shall be sent by
10 facsimile to counsel for the Debtor at the following address:

11
12
13
14
15
16

Philip A. Gasteier, Esq.
Juliet Y. Oh, Esq.
Levene Neale Bender Yoo & Brill LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067
Tel: (310) 229-1234
Fax: (310) 229-1244
Emails: pag@lnbyb.com, jyo@lnbyb.com

17 14. Termination. This Stipulation (including Avision’s consent to use of Cash
18 Collateral) shall terminate at the earliest of the following: (i) upon the expiration of the Cure
19 Period without a timely cure of the asserted default; (ii) upon grant of relief from stay to
20 Avision; (iii) conversion, dismissal or closing of this case, for any reason whatsoever; (iv) the
21 Effective Date of a confirmed plan of reorganization in the Debtor’s case, or (v) October 29,
22 2012, unless such date is extended pursuant to paragraph 26 of this Stipulation.

23 15. Time Is Of The Essence. In consideration of the facts and circumstances under
24 which the Stipulation is executed, and the terms, conditions and provisions of this Stipulation,
25 the parties expressly acknowledge and agree that time is of the essence and that all deadlines
26 and time periods provided for under the Stipulation are absolute and final.

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1 16. Headings. The headings set forth herein are inserted for convenience of the
2 parties only, and shall not be used to interpret or construe or in any way affect the meaning of
3 the terms and provisions of this Stipulation.

4 17. Representations and Warranties. The parties hereto further represent and warrant
5 to one another as follows:

6 a. Each party hereto has received independent legal advice of attorneys of
7 that party's choice with respect to the advisability of executing this Stipulation, and prior to the
8 execution of this Stipulation by each party, that party's attorney reviewed the Stipulation and
9 discussed the Stipulation with the party.

10 b. Except as expressly stated in this Stipulation, no party hereto has made
11 any statement or representation to any other party hereto regarding any facts relied upon by said
12 party in entering into this Stipulation, and each party hereto specifically does not rely upon any
13 statement, representation or promise of any other party hereto in executing this Stipulation,
14 except as expressly stated in this Stipulation.

15 c. Each party and its attorneys have made such investigation of the facts
16 pertaining to this Stipulation, and all other matters pertaining thereto, as they deem necessary.

17 d. The terms of this Stipulation are contractual and not a mere recital.

18 e. This Stipulation has been carefully read by, the contents hereof are known
19 and understood by, and it is signed freely by each party executing this Stipulation, and each
20 party executing this Stipulation in a representative capacity is empowered to do so.

21 f. Each of the parties hereto has the full right and authority to enter into this
22 Stipulation, subject only to the provisions of paragraph 25 with respect to Bankruptcy Court
23 approval, and the attorney executing this Stipulation on behalf of his or her client has the full
24 right and authority to commit and bind his or her client to this Stipulation.

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1 18. Binding on Successors. This Stipulation shall be binding on Avision and the
2 Debtor, and any and all assigns and/or successors-in-interest to any of these persons or entities,
3 including but not limited to, any trustee in a Chapter 11 or 7 proceeding if the case is converted,
4 provided that Avision's consent to the use of Cash Collateral is subject to earlier termination as
5 set forth in paragraph 14 herein.

6 19. Use of Number and Gender. Whenever the context requires, the masculine
7 gender shall include the feminine or neuter, and a singular number shall include the plural, and
8 vice versa.

9 20. Neutral Construction. This Stipulation is the product of negotiation among the
10 parties hereto and represents the jointly conceived, bargained-for, and agreed-upon language
11 mutually determined by the parties to express their intentions of entering into this Stipulation.
12 Any ambiguity or uncertainty in this Stipulation shall be deemed to be caused by, or attributable
13 to, all parties hereto collectively. In any action to enforce or interpret this Stipulation, the
14 Stipulation shall be construed in a neutral manner, and no term or provision of this Stipulation,
15 or this Stipulation as a whole, shall be construed more or less favorably to any one party, group
16 or groups of parties, to this Stipulation.

17 21. Integration. Except as expressly provided in this Stipulation, this Stipulation is
18 the final written expression and complete and exclusive statement of all the agreements,
19 conditions, promises and covenants among the parties with respect to the subject matter hereof
20 and supersedes all prior or contemporaneous agreements, negotiations, representations,
21 understandings and discussions among the parties and their predecessors in interest, and/or their
22 respective counsel, with respect to the subject matter conveyed hereby. Any amendment or
23 modification of this Stipulation, in order to be legally binding, must be in writing specifically
24 referring to the Stipulation and signed by duly authorized representatives of all parties hereto.

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1 22. No Agreement to Provide Financial Accommodation. No provision of this
2 Stipulation shall in any way impose upon Avision any duty or obligation to provide any
3 financing or financial accommodation to the Debtor, or any other party, to collect, sell, lease or
4 otherwise dispose of any of Avision's collateral, to proceed against any party, person, individual
5 or entity, to proceed against or exhaust any security held by Avision or any other party, person,
6 individual or entity, or to otherwise pursue any action, right or remedy whatsoever in Avision's
7 power.

8 23. No Benefit to Non-Parties. Nothing contained in this Stipulation is intended, nor
9 shall it be construed or deemed to, confer any rights, powers or privileges on any person, firm,
10 partnership, corporation or other entity not an express party hereto or a successor-in-interest
11 thereof, including, without limitation, any and all sureties and guarantors with respect to any
12 indebtedness owed by the Debtor to Avision, or otherwise. Avision reserves all of its rights
13 under law, equity or otherwise with respect to such non-parties and/or non-successors-in-
14 interest.

15 24. Counterpart Signatures. This Stipulation may be signed in counterpart.

16 25. Bankruptcy Court Order. This Stipulation shall be submitted forthwith to the
17 Bankruptcy Court for approval and, in that regard, the Debtor shall give such notice and
18 opportunity to be heard as is required under Federal Rule of Bankruptcy Procedure 4001 or
19 other applicable law.

20 26. Extensions. This Stipulation can be further extended by the parties in writing
21 without further order of the Bankruptcy Court.

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1 IN WITNESS WHEREOF, the parties hereto execute this Stipulation, by and through
2 their respective counsel, as of the date set forth opposite their respective signatures.

3 DATED: July 12, 2012

AVISION TECHNOLOGY CO. LIMITED


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By: 
David B. Shemano
Peitzman Weg LLP
Attorneys for Secured Creditor, Avison
Technology Co. Limited

9 DATED: July 11, 2012

APEX DIGITAL, INC.

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By: 
Juliet Y. Oh
Levene, Neale, Bender, Yoo & Brill L.L.P.
Attorneys for Debtor and Debtor in
Possession, Apex Digital, Inc.

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EXHIBIT “1”
[Cash Collateral Budget]

APEX Digital, Inc
 Projected Cash Flow
 As of 07/09/2012

Week Ending/Month	7/9/2012	7/16/2012	7/23/2012	7/30/2012	8/6/2012	8/13/2012	8/20/2012	8/27/2012	9/3/2012	9/10/2012	9/17/2012	9/24/2012	10/1/2012	10/8/2012	10/15/2012	10/22/2012	10/29/2012	17 weeks Total	
Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	Total	
RECEIPTS																			
Beginning Cash Balance	\$20,293	\$8,693	\$10,386	\$33,620	\$15,869	\$30,623	\$6,578	\$26,009	\$3,074	\$12,659	\$16,645	\$7,210	\$13,530	\$106,370	\$39,950	\$51,185	\$51,185	\$20,293	
Collection of AR - lighting (Note 1)	-	1,500	390	25,000	5,200	10,500	350	15,390	21,100	39,000	1,500	37,890	111,000	12,500	25,000	5,400	11,500	323,220	
Services (Note 2)	-	30,000	30,000	-	30,000	-	30,000	-	-	30,000	-	30,000	-	30,000	-	30,000	-	240,000	
Others	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Receipts	-	31,500	30,390	25,000	35,200	10,500	30,350	15,390	21,100	69,000	1,500	67,890	111,000	42,500	25,000	35,400	11,500	563,220	
DISBURSEMENTS																			
Purchases (Note 3)																			
Vendors	290	580	-	290	-	870	-	870	-	21,250	870	20,250	290	60,000	-	-	32,000	136,690	
Freight In	-	-	-	-	-	-	-	-	-	1,750	-	-	-	2,625	-	-	500	4,875	
Broker's Fee & Duties	-	-	-	-	-	-	-	-	-	1,050	-	-	-	3,200	-	-	1,200	5,450	
Others	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Purchases	290	580	-	290	-	870	-	870	-	24,050	870	20,250	290	65,825	-	-	33,700	147,015	
Operating Expenses																			
Advertising / Promotion	-	-	-	-	-	-	-	-	-	99	-	-	-	-	-	-	-	198	
Alarm / Security	-	-	-	-	-	-	-	-	-	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	19,500	
Auto Expenses / Travel	1,000	2,000	500	500	1,500	3,500	1,500	500	500	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	8,045	
Commission (Note 4)	-	-	-	-	-	-	-	-	-	45	-	-	-	5,550	-	-	575	13,560	
Computer - Tech Support / Parts	-	890	-	-	4,890	-	-	-	-	3,890	-	-	-	3,890	-	-	-	34,500	
Development R & D	-	1,000	1,000	1,000	1,000	1,000	1,000	1,000	3,500	1,500	1,500	3,500	3,500	3,500	3,500	3,500	3,500	16,500	
EDI & Internet	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	1,275	
Freight In & Out	1,000	1,000	1,000	500	500	500	1,000	500	500	500	500	500	500	2,000	2,000	2,000	2,000	12,700	
Insurance	-	-	-	-	-	2,350	2,000	-	-	2,350	2,000	-	-	1,000	1,000	1,000	1,000	12,700	
Interest (Note 5)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Legal Fee	-	1,500	-	-	3,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	16,500	
License & Registration	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	1,875	
Office Expenses/Supplies/Postages	-	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	250	3,750	
Outside Service (Note 6)	750	250	750	750	750	750	750	750	750	750	750	750	750	750	750	750	750	12,750	
Payroll Services	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	675	
Professional / Consultant Fee (Note 7)	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	7,500	
Rent - Building (Note 8)	1,380	-	-	2,000	-	-	-	-	2,000	-	-	-	2,000	-	-	-	-	2,000	
Rent - Equipment & Auto (Note 9)	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	2,125	
Repair & Maintenance	-	-	-	10,000	-	-	-	-	-	-	-	10,000	-	-	-	-	-	30,000	
Royalty Premium	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Salary & Wages / Retirement	-	19,500	-	19,500	-	19,500	-	19,500	-	19,500	-	19,500	-	19,500	-	19,500	-	156,000	
Taxes	-	1,880	-	1,880	-	1,880	-	1,880	-	1,880	-	1,880	-	1,640	-	1,640	-	14,560	
Telephone	156	156	256	156	156	325	325	325	325	325	325	325	325	325	325	325	325	4,781	
Trade Show	-	-	-	-	-	220	220	220	215	220	220	215	220	215	215	215	215	2,610	
Warehouse (Note 10)	200	200	200	200	200	350	350	350	350	350	350	350	350	350	350	350	350	5,800	
Warranty (Note 11)	800	800	800	800	800	800	800	800	800	800	800	800	800	800	800	800	800	13,600	
Utilities	-	300	-	300	-	300	-	300	-	300	-	300	-	300	-	300	-	1,800	
Others	125	125	125	125	125	375	375	375	375	375	375	375	375	375	375	375	375	5,125	
Total Operating Expenses	6,311	29,226	7,156	37,586	15,446	33,675	10,919	38,325	11,515	35,964	10,065	41,320	17,870	38,095	13,765	34,130	13,340	394,709	
Restructuring																			
Adequate Protection Payment	5,000	-	-	-	5,000	-	-	-	-	5,000	-	-	-	5,000	-	-	-	20,000	
Public Relations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Distribution to Trust - Operations (Note 12)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
U.S. Trustee Fees	-	-	-	4,875	-	-	-	-	-	-	-	-	-	-	-	-	-	9,750	
Total Restructuring	5,000	-	-	4,875	5,000	-	-	-	-	5,000	-	-	-	5,000	-	-	-	29,750	
Total Disbursements	11,601	29,806	7,156	42,751	20,446	34,545	10,919	38,325	11,515	65,014	10,935	61,570	18,160	108,920	13,765	34,130	13,340	571,474	
Period Net Cash Flow	\$(11,601)	\$1,694	\$23,234	\$(17,751)	\$14,794	\$(24,045)	\$19,431	\$(22,995)	\$9,585	\$3,986	\$(9,435)	\$6,320	\$92,840	\$(66,420)	\$11,235	\$1,270	\$(40,415)	\$(6,254)	
Ending Cash Balance	\$8,693	\$10,386	\$33,620	\$15,869	\$30,623	\$6,578	\$26,009	\$3,074	\$12,659	\$16,645	\$7,210	\$13,530	\$106,370	\$39,950	\$51,185	\$51,185	\$51,185	\$12,040	

In re:	APEX DIGITAL, INC.,	Debtor(s).	CHAPTER 11	CASE NO. 2:10-bk-44406-PC
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document described as: **SIXTH STIPULATION BETWEEN DEBTOR AND AVISION TECHNOLOGY CO. LIMITED REGARDING USE OF CASH COLLATERAL** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”) – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF and hyperlink to the document. On **July 12, 2012**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Shawn M Christianson cmcintire@buchalter.com
- Philip A Gasteier pag@lnrb.com
- John W Kim jkim@nossaman.com
- Kenneth G Lau kenneth.g.lau@usdoj.gov
- Queenie K Ng queenie.k.ng@usdoj.gov
- Juliet Y Oh jyo@lnrb.com, jyo@lnrb.com
- Kathy Bazoian Phelps kphelps@dgd.com
- Robert M Saunders rsaunders@pszjlaw.com, rsaunders@pszjlaw.com
- George E Schulman GSchulman@DGDK.Com
- David B Shemano dshemano@pwkllp.com
- Lindsey L Smith lls@lnbyb.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL: On **July 12, 2012**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service and/or by attorney service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

None.

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **July 12, 2012**, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

By Personal Delivery Via Attorney Service

Hon. Peter H. Carroll
U. S. Bankruptcy Court/Los Angeles Div.
Edward R. Roybal Fed. Bldg. & Courthouse
255 E. Temple Street, Suite 1539
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

<u>July 12, 2012</u>	<u>Stephanie Reichert</u>	<u>/s/ Stephanie Reichert</u>
Date	Type Name	Signature

EXHIBIT “6”

1 PHILIP A. GASTEIER (SBN 130043)
pag@lnbyb.com
2 JULIET Y. OH (SBN 211414)
jyo@lnbyb.com
3 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
4 10250 Constellation Boulevard, Suite 1700
Los Angeles, California 90067
5 Telephone: (310) 229-1234
6 Facsimile: (310) 229-1244
7 Counsel for Chapter 11 Debtor and
Debtor in Possession



10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 LOS ANGELES DIVISION

14 In re:) Case No. 2:10-bk-44406-PC
15)
16 APEX DIGITAL, INC., a California) Chapter 11
corporation,)
17) **ORDER APPROVING SIXTH**
18 Debtor.) **STIPULATION BETWEEN DEBTOR**
19) **AND AVISION TECHNOLOGY CO.**
20) **LIMITED REGARDING USE OF CASH**
21) **COLLATERAL**
22)
23) [No Hearing Required]
24)
25)
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1 This Court, having considered that certain “Sixth S tipulation Between Debtor And
2 *Avision Technology Co. Limited Regarding Use Of Cash Collateral*” (the “Stipulation”) entered
3 into by and between Apex Digital, Inc., debtor and debtor in possession in the above-captioned
4 chapter 11 bankruptcy case (the “Debtor”), and secured creditor Avision Technology Co.
5 Limited (“Avision”), and good cause appearing therefor,

6 IT IS HEREBY ORDERED that the Stipulation is approved in its entirety, and the
7 Debtor is authorized to continue to use cash collateral in accordance with the terms and
8 conditions set forth in the Stipulation.

9 **IT IS SO ORDERED.**

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United States Bankruptcy Judge

DATED: July 12, 2012

In re: <p style="text-align: center;">APEX DIGITAL, INC.,</p> <p style="text-align: right;">Debtor(s).</p>	CHAPTER 11 CASE NO. 2:10-bk-44406-PC
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document described as **ORDER APPROVING SIXTH STIPULATION BETWEEN DEBTOR AND AVISION TECHNOLOGY CO. LIMITED REGARDING USE OF CASH COLLATERAL** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”) – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

N/A

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL: On _____, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service and/or by attorney service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

None.

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **July 12, 2012**, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

By Personal Delivery Via Attorney Service

Hon. Peter H. Carroll
 U. S. Bankruptcy Court/Los Angeles Div.
 Edward R. Roybal Fed. Bldg. & Courthouse
 255 E. Temple Street, Suite 1539
 Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

July 12, 2012	Stephanie Reichert	/s/ Stephanie Reichert
Date	Type Name	Signature

In re: <p style="text-align: center;">APEX DIGITAL, INC.,</p> <p style="text-align: right;">Debtor(s).</p>	CHAPTER 11 CASE NO. 2:10-bk-44406-PC
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NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled: **ORDER APPROVING SIXTH STIPULATION BETWEEN DEBTOR AND AVISION TECHNOLOGY CO. LIMITED REGARDING USE OF CASH COLLATERAL** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **July 12, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

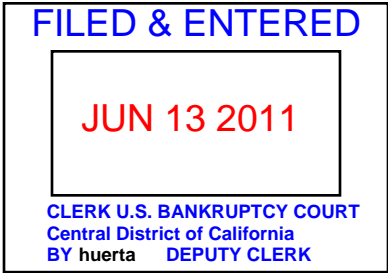
- Shawn M Christianson cmcintire@buchalter.com
- Philip A Gasteier pag@lnbrb.com
- John W Kim jkim@nossaman.com
- Kenneth G Lau kenneth.g.lau@usdoj.gov
- Queenie K Ng queenie.k.ng@usdoj.gov
- Juliet Y Oh jyo@lnbrb.com, jyo@lnbrb.com
- Kathy Bazoian Phelps kphelps@dgd.com
- Robert M Saunders rsaunders@pszjlaw.com, rsaunders@pszjlaw.com
- George E Schulman GSchulman@DGDK.Com
- David B Shemano dshemano@pwkllp.com
- Lindsey L Smith lls@lnbyb.com
- United States Trustee (LA) ustregion16.la.ecf@usdoj.gov

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

EXHIBIT “7”

1 PHILIP A. GASTEIER (SBN 130043)
2 JULIET Y. OH (SBN 211414)
3 LINDSEY L. SMITH (SBN 265401)
4 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
5 10250 Constellation Blvd., Suite 1700
6 Los Angeles, California 90067
7 Telephone: (310) 229-1234
8 Facsimile: (310) 229-1244
9 Email: pag@lnbyb.com; jyo@lnbyb.com; lls@lnbyb.com



10 Attorneys for Chapter 11 Debtors and
11 Debtors in Possession

12
13 **UNITED STATES BANKRUPTCY COURT**
14
15 **CENTRAL DISTRICT OF CALIFORNIA**
16
17 **LOS ANGELES DIVISION**

18 In re) Case No. 2:10-bk-44406-PC
19 APEX DIGITAL, INC.,)
20 Debtor.) Chapter 11

21) **ORDER GRANTING MOTION FOR**
22) **ORDER AUTHORIZING DEBTOR TO**
23) **ENTER INTO NEW REAL PROPERTY**
24) **LEASE FOR OFFICE SPACE**

25) [No Hearing Required Unless Requested –
26) Local Bankruptcy Rule 9013-1(o)]

27 The Court, having considered that certain “*Notice Of Motion And Motion For Order*
28 *Authorizing Debtor To Enter Into New Real Property Lease For Office Space*” [Doc. No.
156] (the “Motion”) filed by Apex Digital, Inc. (the “Debtor”), the memorandum of points
and authorities and declaration of Alice Hsu (the “Hsu Declaration”) submitted by the Debtor

1 in support of the Motion, proper notice of the Motion having been provided, and good cause
2 appearing therefor, the Court hereby orders as follows:

- 3 1. The Motion is hereby granted in its entirety.
- 4 2. The Debtor is hereby authorized to enter into a new real property lease for
5 office space located at 4401 Eucalyptus Avenue, Chino, California 91710, in substantially the
6 form attached as Exhibit "1" to the Hsu Declaration annexed to the Motion.

7 IT IS SO ORDERED.

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DATED: June 13, 2011

United States Bankruptcy Judge

1 **NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity
in Category I.
2 Proposed orders do not generate an NEF because only orders that have been entered are placed on
the CM/ECF docket.

3 **PROOF OF SERVICE OF DOCUMENT**

4 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business
5 address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, California 90067.

6 A true and correct copy of the foregoing document described as **ORDER GRANTING MOTION FOR**
ORDER AUTHORIZING DEBTOR TO ENTER INTO NEW REAL PROPERTY LEASE FOR OFFICE
7 **SPACE** will be served or was served **(a)** on the judge in chambers in the form and manner required by
LBR 5005-2(d); and **(b)** in the manner indicated below:

8 I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)** – Pursuant to
9 controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be
served by the court via NEF and hyperlink to the document. On **Fill in Date Document is Filed** I
10 checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that
the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email
11 address(es) indicated below:

12 Service information

continued on attached page

13 II. **SERVED BY U.S. MAIL** (indicate method for each person or entity served):
14 On **June 10, 2011**, I served the following person(s) and/or entity(ies) at the last known address(es) in
this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed
15 envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service
addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge **will be**
16 completed no later than 24 hours after the document is filed.

17 The Honorable Peter H. Carroll
U.S. Bankruptcy Court
255 E. Temple St., #1534
Los Angeles, CA 90012

19 United States Trustee
20 725 S. Figueroa St., 26th Fl.
Los Angeles, CA 90012

21 Service information

continued on attached page

22 III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method
23 **for each person or entity served**): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **Fill in Date**
Document is Filed, I served the following person(s) and/or entity(ies) by personal delivery, or (for
24 those who consented in writing to such service method), by facsimile transmission and/or email as
follows. Listing the judge here constitutes a declaration that personal delivery on the judge **will be**
25 completed no later than 24 hours after the document is filed.

26 Service information

27 continued on attached page

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NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List **ONLY** addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **ORDER GRANTING MOTION FOR ORDER AUTHORIZING DEBTOR TO ENTER INTO NEW REAL PROPERTY LEASE FOR OFFICE SPACE** was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of June 10, 2011, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

- Lindsey L Smith lls@lnbyb.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an Entered stamp, the party lodging the judgment or order will serve a complete copy bearing an Entered stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

Service information continued on attached page

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1900 Avenue of the Stars, 21st Floor, Los Angeles, CA

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF FILING OF REPORT OF EXAMINER ROSENDO GONZALEZ** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) August 16, 2012, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) August 16, 2012, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor:

Apex Digital, Inc.
4401 Eucalyptus Ave.
Chino, CA 91710

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) August 16, 2012, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA OVERNITE EXPRESS

Honorable Peter H. Carroll
United States Bankruptcy Court
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1460
Los Angeles, CA 90012

Service information continued on attached page

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

August 16, 2012

Date

Kaitlin Woodson

Printed Name

/s/ Kaitlin Woodson

Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Shawn M Christianson on behalf of Creditor Oracle America, Inc.
cmcintire@buchalter.com

Philip A Gasteier on behalf of Debtor Apex Digital, Inc.
pag@lnbrb.com

John W Kim on behalf of Interested Party Courtesy NEF
jkim@nossaman.com

Kenneth G Lau on behalf of U.S. Trustee United States Trustee (LA)
kenneth.g.lau@usdoj.gov

Craig J Mariam on behalf of Defendant Alice Hsu
cmariam@gordonrees.com, amontgomery@gordonrees.com

C John M Melissinos on behalf of Examiner Rosendo Gonzalez
jmelissinos@greenbergglusker.com, jreinglass@greenbergglusker.com

Juliet Y Oh on behalf of Debtor Apex Digital, Inc.
jyo@lnbrb.com, jyo@lnbrb.com

Kathy Bazoian Phelps on behalf of Creditor Kith Electronics Limited
kphelps@dgdk.com, DanningGill@gmail.com

Robert M Saunders on behalf of Creditor Committee Official Committee of Creditors Holding Unsecured Claims of Apex Digital, Inc.
rsaunders@pszjlaw.com, rsaunders@pszjlaw.com

George E Schulman on behalf of Creditor Kith Electronics Limited
GSchulman@DGDK.Com, DanningGill@gmail.com

Melanie C Scott on behalf of U.S. Trustee United States Trustee (LA)
Melanie.Scott@usdoj.gov

David B Shemano on behalf of Interested Party Courtesy NEF
dshemano@peitzmanweg.com

Lindsey L Smith on behalf of Debtor Apex Digital, Inc.
lls@lnbyb.com

United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

Chang Chang Chen & Company
21671 Gateway Center Dr ste 200
Diamond Bar, CA 91765
Levene Neale Bender Yoo & Brill LLP
10250 Constellation Blvd Ste 1700
Los Angeles, CA 90067

Citibank, N.A.
701 East 60th Street North
SIOUX FALLS, SD 57117
Lewis Brisbois Bigsgaard & Smith
221 North Figueroa Street Suite 1200
Los Angeles, CA 90012

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Nicole Moore
c/o Law Offices of Allan D. Sarver
16000 Ventura Blvd, Suite 1000
Encino, CA 91436

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EXHIBIT “D”

[Plan Term Sheet]

**SETTLEMENT COMMUNICATION
PURSUANT TO FEDERAL RULE OF EVIDENCE 408**

TERM SHEET


**CONSENSUAL JOINT PLAN OF REORGANIZATION
APEX DIGITAL, INC.**

This term sheet ("Term Sheet") sets forth proposed terms regarding a proposed consensual plan of reorganization ("Plan") for Apex Digital, Inc., the debtor and debtor in possession ("Debtor"), in the case entitled In re Apex Digital, Inc., Case No. 2:10-bk-44406-PC, Central District of California, Los Angeles Division, to be proposed by the Debtor and the Official Committee of Creditors Holding Unsecured Claims (the "Committee"). This term sheet is issued for discussion purposes only and is not a commitment or agreement of any kind on the part of any party hereto and should not be relied upon as such. Any obligation of any party to this Term Sheet shall arise only upon the signing of formal documents by authorized signatories of the parties hereto. The information contained herein is strictly confidential and is intended for review by the principals, their advisors and legal counsel only.

The Debtor and the Committee shall jointly propose and pursue confirmation of a plan, which shall be substantially in a form and content acceptable to each of the parties hereto, each in their absolute discretion, which shall contain the following material terms:

1. The Plan will be funded by payments from Debtor's future operations as described in paragraph 3 below ("Payments from Operations"), and by the "Additional Funding," as defined in paragraph 4 below.
2. The treatment of general unsecured creditors shall provide that unsecured creditors shall receive payment of the aggregate amount of Payments from Operations and Additional Funding remaining after payment of administrative and priority claims, including any post-confirmation fees and expenses incurred in implementing the Plan (including UST fees and fees and expenses of any Creditors' Representative, as such term is defined below) and pursuing recoveries in actions included in the Additional Funding items.
3. Payments from Operations shall consist of:
 - a. \$750,000 to be paid from Debtor's operating revenue not later than one year from the effective date of the Plan (the "Effective Date"): \$200,000 in plan month 6; \$275,000 in each of plan months 10 and 12; provided, however, that if the Debtor is unable to make all of the payments due in month 10 or 12, then it may elect to defer up to \$200,000 of the payments due and pay them in two equal installments of \$100,000 in months 15 and 18, but with an additional amount of 1.5% of the amount unpaid, for each

- month unpaid (*i.e.*, 18% per annum), due in month 18 if any of the \$750,000 remains unpaid after month 12; provided further, that although the Debtor intends to make these payments from its operating revenues, the payments may and must be made within the times provided herein from any source of funds available to the Debtor, or the Debtor will be in default, and interest on the unpaid amounts after any default will also accrue at the rate of 1.5% per month (18% per annum); and
- b. Two and one half percent (2.5%) of the Debtor's net sales (net only of any returns, allowances and discounts incurred in the ordinary course of business on ordinary business terms), consulting revenues (but not reimbursement of expenses), and revenues from any source not otherwise included in Additional Funding (described in paragraphs 4.a, 4.b and 4.c below) for years 2 through 4 following the Effective Date of the Plan (commencing with the 13th month following the Effective Date and ending with the 48th month following the Effective Date, payable quarterly, within 45 days (with no grace period – default interest at 1.5% per month to be added if not paid when due) after the end of each 3-month period (with the first payment due within 45 days after the end of the 15th month following the Effective Date)). The right to such payments, as well as all other obligations of the Reorganized Debtor, shall be secured by the grant by the Reorganized Debtor of a first priority UCC security interest (the "Security Interest") in all of the Reorganized Debtor's assets (including after-acquired property, and a perfected pledge by David Ji and affiliates in all the Reorganized Debtor's stock (the "Pledge")), and the Plan shall provide that the Reorganized Debtor waives the automatic stay with respect to such Security Interest in any subsequent bankruptcy, subordinate only to the payment of continued monthly adequate protection payments to Avision in the amount of \$5,000.00 on account of its lien, which will otherwise remain valid; provided that, the Security Interest shall be subject to subordination to new money financing obtained by Reorganized Debtor from any lender that is an independent third party (including, without limitation, any lender that is not any of the Reorganized Debtor's directors or officers or their relatives or affiliates or an insider of any of them) to fund business operations; and provided further that the Plan may provide, at David Ji's election, that he shall be the 100% shareholder of the Reorganized Debtor; and
- c. The Additional Net Revenue Kicker Payment if the Reorganized Debtor's performance exceeds the benchmark stated in paragraph 7 below.
4. Additional Funding shall be provided as follows:
- a. \$1,000,000 in cash, to be contributed by David Ji with (i) \$100,000 to be paid upon execution hereof into a segregated DIP account and paid to the Creditors' Representative (as defined in paragraph 6 below) on the Effective Date, which shall be nonrefundable if the Debtor or David Ji (or any of his relatives or affiliates) is determined by the Bankruptcy Court to be the primary cause of any nonconfirmation or nonconsummation of the

- plan, after notice by the Committee or Examiner and a hearing, with any amount retained as nonrefundable to be applied to any liability of David Ji or his wife to the Debtor and the estate, as may be determined by a judgment or settlement; (ii) \$650,000 to be paid on the Effective Date to the Creditors' Representative, and (iii) \$250,000 to be paid within 90 days of the Effective Date to the Creditors' Representative.
- b. If a settlement of the D&O Actions (defined below) is reached before the Effective Date of the Plan, any amounts to be paid by Carolina Casualty in settlement of claims (but not as defense costs) against the Debtor's D&O policy shall be Additional Funding; if a settlement is not reached before the Effective Date of the Plan, the first \$1,000,000 of recovery proceeds of actions against the Debtor's officers and directors and their relatives and affiliates, inclusive of any amounts to be paid under the Debtor's D&O policy as settlement (collectively, the "D&O Actions"); provided that such \$1,000,000 be reduced by any amount of D&O policy insurance proceeds expended on defense costs; and provided further that any proceeds of actions against David Ji, Alice Hsu and their relatives and affiliates which are not payable from or reimbursable from insurance proceeds shall not be included in Additional Funding (proceeds of the D&O Actions which are not included in the Additional Funding shall be retained by the Reorganized Debtor and any judgment may be forgiven at the option of the Debtor to the extent not payable from proceeds of the Debtor's D&O insurance, after the recovery from insurance proceeds is received). The Examiner shall be authorized to proceed with the D&O Actions if they remain pending after the Effective Date; however, any settlement of the D&O Actions shall be subject to approval of the Bankruptcy Court after notice to the Creditor Representative and opportunity for hearing.
- c. Proceeds of Avoidance Actions (as defined below) and the Debtor's share of recovery on causes of action existing on the petition date (other than D&O Actions and other claims being released, as provided for elsewhere in this Term Sheet), including without limitation those listed in Debtor's schedule B (other than Circuit City, which was sold), net of fees and expenses incurred in such actions; provided, however, that any recovery on the cause of action against Sears (including any amount paid by CIT) shall be applied as follows: (i) first, an amount equal to the amount of legal fees and costs of Lewis, Brisbois, Bisgaard & Smith, LLP incurred in such recovery which are allowed by the Court and paid or payable from Payments from Operations or Additional Funding shall be contributed as Additional Funding; (ii) second, 50% (of 100%) of the balance, less \$170,000, shall be paid to Changhong; and (iii) one half of the remaining balance shall be retained by the Debtor, and one half shall be Additional Funding.
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5. Reporting to Creditors' Representative: The Reorganized Debtor will provide a statement of net sales monthly, within 15 days of the close of each month (no grace period – late fee to be assessed if not timely and may become default if not cured following notice and 20-days' opportunity for cure). The Reorganized Debtor will provide quarterly financial statements, prepared by an accountant reasonably acceptable to the Committee (the costs of which financial statements shall be deducted from the Payments From Operations otherwise due), the first of which shall be transmitted within 45 days after the end of the 4th full month after the month in which the Effective Date occurs, and then each three months thereafter.

6. Creditors' Representative's Audit Rights: The Committee shall designate a representative (the "Creditors' Representative") to monitor and enforce compliance with the Plan and implementing agreements, including, without limitation, the Security Interest, Pledge and any agreement with David Ji implementing paragraph 8 below, and the Reorganized Debtor's payment of post-confirmation fees and expenses, including without limitation the UST fees. The Creditors' Representative shall have authority to enforce the Plan and related documents on behalf of unsecured creditors, including the Security Interest and Pledge and any agreement with David Ji implementing paragraph 8 below. From and after the Effective Date, the Creditors' Representative shall assume control of the Avoidance Actions and other causes of action, any proceeds of which are part of the Additional Funding as provided in subparagraph 4(c) of this Term Sheet. The Creditor's Representative shall have authority to employ attorneys or other professionals as it determines is required to carry out its responsibilities, with the fees and expenses of such professionals to be paid as expenses of the Creditors' Representative as provided in paragraph 2 of this Term Sheet. The initial Creditors' Representative designated by the Committee shall be Lee Diercks of Clear Thinking Group. Should Diercks be unable or unwilling to serve at any time before or after his designation, the Committee shall designate a replacement from Clear Thinking Group or an independent individual with a similar financial capability. The Security Interest, as defined in paragraph 3(b) above, will be documented by a security agreement conforming to the terms hereof and of the Plan, and containing such other terms and provisions as are standard in such agreements, but including without limitation provisions for notice and 20-days' opportunity for cure of non-monetary defaults, and for payment by the Reorganized Debtor of reasonable fees and costs incurred by the Creditors' Representative after default in enforcing the obligations of the Debtor or David Ji under the Plan and agreements implementing the Plan.

7. Additional Net Revenue Kicker Payment. If the Reorganized Debtor's after-tax net revenue, taking into account the payments herein, in years 2-4, and allowing salary and bonus payments to David Ji and Alice Hsu of \$250,000 each, or a combined \$500,000, exceeds \$500,000 in any year, then the

Reorganized Debtor shall pay fifty percent (50%) of such amount to the Creditors' Representative. Such payment shall be due within the earlier of (a) 30 days after the filing of the Reorganized Debtor's tax return for the applicable year or (b) the last date of any extension for filing such returns for such tax year permitted under the Internal Revenue Code or applicable tax regulations (if the tax return is not timely filed, the Additional Net Revenue Kicker Payment shall be calculated using pre-tax net revenue).

8. David Ji will agree that during the four years following the Effective Date of the Plan, he will only engage in the lighting business through and on behalf of the Reorganized Debtor and the business of consulting in the sale of Apex brand or other televisions through and on behalf of the Reorganized Debtor, or direct sale of televisions through and on behalf of the Reorganized Debtor. David Ji and the Reorganized Debtor each will also agree that they will not engage in any such business without maintaining any licenses which they are aware, bearing in mind their collective past business knowledge and experience, each of them individually or any business entity in which either or both of them (directly or indirectly) holds any equity interest, right to acquire any equity interest or right to a share of profits (other than a commission based on a percentage of sales) is required to hold in connection with the manufacture, sale or distribution of any products involved in any such business including, to the extent applicable but without limitation, licenses to MPEG LA's patent portfolio pools (or the specific patents included in those pools) and WiLAN's US and Canadian Vchip patent(s). Each of David Ji and the Reorganized Debtor will also agree that they will not, directly or indirectly: (A) act to circumvent or frustrate the purposes of this paragraph 8; or (B) structure any transaction so that the effect of such transaction would be to avoid the requirements of this paragraph 8. Any breach of the commitments in this paragraph 8 during the four years following the Effective Date of the Plan shall constitute an event of default in respect of the Security Interest and the Pledge. David Ji represents that (i) he is a minority shareholder and current board member of China Data Broadcasting Holdings Limited ("CDB"), and is not now and will not during the four years following the Effective Date of the Plan be doing any business with CDB; (ii) that the Debtor is not involved in business with CDB, and will not during the four years following the Effective Date of the Plan be doing any business with CDB; and, (iii) that he will not have any involvement in the operations of CDB during the four years following the Effective Date of the Plan. The Committee acknowledges and agrees that the foregoing circumstances relating to CDB will not be a breach of the commitments in this paragraph 8.

9. David Ji and his wife will waive any right to distribution on pre-petition and post-petition claims against the estate, and Alice Hsu will waive any right to distribution on pre-petition and post-petition claims against the estate other than post-petition claims against the estate for unpaid and owing

compensation for work performed prior to the Effective Date, in the amount of \$60,000.


10. Avoidance Actions. The Committee shall be authorized to pursue Avoidance Actions for the benefit of the Debtor's estate to the extent such actions are not pursued by the Debtor. Avoidance Actions shall consist of all actions pursuant to Chapter 5 of the Bankruptcy Code; provided that Avoidance Actions against David Ji or his family members will be released as provided below.
11. In consideration of the Additional Funding to be provided by David Ji, all claims of the Debtor and the Debtor's estate against David Ji and his family members shall be released as of the Effective Date of the Plan, except for any D&O Actions which are pending as of the Effective Date of the Plan. After the recovery from insurance proceeds on any D&O Actions is received, any judgment obtained against David Ji or his wife on D&O Actions may be forgiven at the option of the Reorganized Debtor to the extent proceeds of collection would not be included in the Additional Funding. Pending the occurrence of the Effective Date, David Ji and his wife have entered into tolling agreements as to any actions to be released as of the Effective Date.
12. This Term Sheet is provided for discussion purposes only and is not a commitment or agreement of any kind. The terms set forth herein are not binding on either party. Each party shall have the right to terminate negotiations regarding this Term Sheet and the transactions contemplated herein at any time for any or no reason without liability to the other party.



13. Neither the execution of this Term Sheet nor the conduct of the parties towards pursuing the consummation of the transactions contemplated by this Term Sheet (other than the execution and delivery of formal written releases) shall constitute a waiver of any rights or remedies which any party may have against the other party.
14. The Plan will include exculpation provisions which are typical of Chapter 11 plans.

This Term Sheet is entered into as of the 12th day of November, 2012.

APEX DIGITAL, INC.

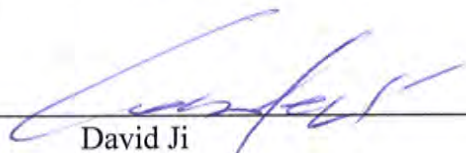
By: 

David Ji, President

COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS

By: _____
Pachulski Stang Ziehl & Jones LLP
Attorneys for Committee

DAVID JI, an individual



David Ji

13. Neither the execution of this Term Sheet nor the conduct of the parties towards pursuing the consummation of the transactions contemplated by this Term Sheet (other than the execution and delivery of formal written releases) shall constitute a waiver of any rights or remedies which any party may have against the other party.
14. The Plan will include exculpation provisions which are typical of Chapter 11 plans.

This Term Sheet is entered into as of the 12th day of November, 2012.

APEX DIGITAL, INC.

By: _____
David Ji, President

COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS

By: *Robert M. Samuels* 11/15/12
Pachulski Stang Ziehl & Jones LLP
Attorneys for Committee

DAVID JI, an individual

David Ji

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EXHIBIT “E”

[Debtor’s Assumed Contracts and Leases]

EXHIBIT "E"

[Debtor's Assumed Contracts and Leases]

NONE

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EXHIBIT ‘F’

[Debtor’s Balance Sheet as of October 31, 2012]

ASSETS	Current Month End	
Current Assets:		
Unrestricted Cash	16,238.21	
Restricted Cash		
Accounts Receivable	638,790.13	
Inventory	477,576.02	
Employee Advance	0.00	
Notes Receivable	170,000.00	
Prepaid Expenses	42,341.68	
Prepaid State Tax	1,600.00	
Allowance for Doubtful Account'	0.00	
Total Current Assets		1,346,546.04
Property, Plant, and Equipment		
Accumulated Depreciation/Depletion	98,496.88	
Net Property, Plant, and Equipment		98,496.88
Other Assets (Net of Amortization):		
Due from Insiders		
Other (Itemize)	2,970,102.69	
Total Other Assets		2,970,102.69
TOTAL ASSETS		4,415,145.61
LIABILITIES		
Post-petition Liabilities:		
Accounts Payable	669,352.53	
Wages payable	0.00	
Taxes Payable	613.52	
Royalty payable		
Loan from Shareholder		
Secured Debt		
Other (Itemize)		
Total Post-petition Liabilities		669,966.05
Pre-petition Liabilities:		
Secured Liabilities	0.00	
Priority Liabilities	136,909.90	
Unsecured Liabilities	46,203,650.83	
Note Payable	1,500,000.00	
Other (Itemize)	(0.01)	
Total Pre-petition Liabilities		47,840,560.72
TOTAL LIABILITIES		48,510,526.77
EQUITY:		
Pre-petition Owners' Equity	(43,740,684.06)	
Post-petition Profit/(Loss)	(454,697.10)	
Post- petition Owners' Equity	100,000.00	
TOTAL EQUITY		(44,095,381.16)
TOTAL LIABILITIES & EQUITY		4,415,145.61

Current Month End

Other Assets (Net of Amortization):

Other (Itemize)

Due from affiliates	0.00
Deposit	5,395.00
Investment - Xepa	202,207.69
Investment - Apex Shanghai	<u>2,762,500.00</u>
	<u><u>2,970,102.69</u></u>

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EXHIBIT “G”

[Cash Flow Projections]

APEX Digital, Inc.
 Projected Cash Flow
 As of 12/03/2012

	4	5	6	7	8	9	10	11	12	1	2	3	
Week Ending/Month Week Number	Plan Month 1	Plan Month 2	Plan Month 3	Plan Month 4	Plan Month 5	Plan Month 6	Plan Month 7	Plan Month 8	Plan Month 9	Plan Month 10	Plan Month 11	Plan Month 12	2013-2014
Beginning Cash Balance	\$46,338	\$74,489	\$78,995	\$74,281	\$19,867	\$38,114	\$48,765	\$64,586	\$82,020	\$58,809	\$185,809	\$205,370	\$46,338
RECEIPTS													
Collection of AR - lighting (Note1)	115,000	50,000	252,000	120,000	175,000	192,500	320,000	370,000	280,000	420,000	420,000	210,000	2,924,500
Services (Note 2)	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	720,000
Others Income - financing	-	-	100,000	-	-	200,000	-	-	-	300,000	-	150,000	750,000
Total Receipts	175,000	110,000	412,000	180,000	235,000	452,500	380,000	430,000	340,000	780,000	480,000	420,000	4,394,500
DISBURSEMENTS													
Purchases (Note 3)													
Vendors	37,500	-	291,000	119,345	95,600	126,305	224,000	259,000	196,000	224,000	294,000	147,000	2,013,750
Freight In	2,500	-	5,100	-	3,500	-	3,500	14,000	3,500	3,500	24,500	26,500	86,600
Broker's Fee & Duties	480	-	3,000	-	4,159	-	8,610	13,372	42,917	9,710	12,745	6,372	101,366
Others	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Purchases	40,480	-	299,100	119,345	103,259	126,305	236,110	286,372	242,417	237,210	331,245	179,872	2,201,716
Operating Expenses													
Advertising / Promotion	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Alarm / Security	99	99	99	99	99	99	99	99	99	99	99	99	1,188
Auto Expenses / Travel	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
Commission (Note 4)	3,000	3,000	15,120	7,200	10,500	11,550	19,200	22,200	16,800	25,200	25,200	12,600	171,570
Computer - Tech Support / Parts	-	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	27,500
Development R & D	3,500	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	58,500
EDI & Internet	300	300	300	300	300	300	300	300	300	300	300	300	3,600
Freight In & Out	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Insurance	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Interest (Note 5)	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	75,000
Legal Fee	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
License & Registration	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Office Expenses/Supplies/Postages	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
Outside Service (Note 6)	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	42,000
Payroll Services	150	150	150	150	150	150	150	150	150	150	150	150	1,800
Professional / Consultant Fee (Note 7)	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
Rent - Building (Note 8)	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	24,000
Rent - Equipment & Auto (Note 9)	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
Repair & Maintenance	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-
Royalty Premium	-	-	-	-	-	-	-	-	-	-	-	-	-
Salary & Wages / Retirement	41,000	41,000	41,000	41,000	41,000	41,000	41,000	41,000	41,000	41,000	41,000	41,000	492,000
Taxes	4,920	4,920	4,920	4,920	4,920	4,920	4,920	4,920	4,920	4,920	4,920	4,920	59,040
Telephone	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	15,600
Trade Show	875	875	875	875	875	875	875	875	875	875	875	875	10,500
Warehouse (Note 10)	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	16,800
Warranty (Note 11)	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
Utilities	500	500	500	500	500	2,000	2,000	2,000	2,000	2,000	2,000	2,000	16,500
Others	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Total Operating Expenses	96,494	100,494	112,614	104,694	107,994	110,544	118,194	121,194	115,794	124,194	124,194	111,594	1,347,998
Restructuring													
Adequate Protection Payment	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Distribution to Trust - Operations (Note 12)	-	-	-	-	-	200,000	-	-	-	275,000	-	275,000	750,000
U.S. Trustee Fees	4,875	-	-	4,875	-	-	4,875	-	-	4,875	-	-	19,500
Total Restructuring	9,875	5,000	5,000	10,375	5,500	205,000	9,875	5,000	5,000	291,595	5,000	280,000	837,220
Total Disbursements	146,849	105,494	416,714	234,414	216,753	441,849	364,179	412,566	363,211	652,999	460,439	571,466	4,386,934
Period Net Cash Flow	\$28,151	\$4,506	\$(4,714)	\$(54,414)	\$18,247	\$10,651	\$15,821	\$17,434	\$(23,211)	\$127,001	\$19,561	\$(151,466)	7,566
Ending Cash Balance	\$74,489	\$78,995	\$74,281	\$19,867	\$38,114	\$48,765	\$64,586	\$82,020	\$58,809	\$185,809	\$205,370	\$53,904	985,005

APEX Digital, Inc.
 Projected Cash Flow
 As of 12/03/2012

	4	5	6	7	8	9	10	11	12	1	2	3	
Week Ending/Month Week Number	Plan Month 13	Plan Month 14	Plan Month 15	Plan Month 16	Plan Month 17	Plan Month 18	Plan Month 19	Plan Month 20	Plan Month 21	Plan Month 22	Plan Month 23	Plan Month 24	2014-2015
Beginning Cash Balance	\$53,904	\$35,425	\$53,521	\$54,117	\$57,639	\$43,517	\$50,913	\$35,157	\$24,239	\$32,715	\$36,745	\$66,909	\$53,904
RECEIPTS													
Collection of AR - lighting (Note1)	220,000	250,000	250,000	245,000	245,000	245,000	245,000	320,000	320,000	320,000	564,665	213,504	3,438,169
Services (Note 2)	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	720,000
Others Income - financing	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	280,000	310,000	310,000	305,000	305,000	305,000	305,000	380,000	380,000	380,000	624,665	273,504	4,158,169
DISBURSEMENTS													
Purchases (Note 3)													
Vendors	147,400	147,400	147,400	147,400	147,400	147,400	151,500	224,000	224,000	215,000	395,266	149,453	2,243,618
Freight In	14,000	10,500	28,000	14,000	14,000	14,000	28,000	-	3,500	3,500	-	3,500	133,000
Broker's Fee & Duties	6,390	6,390	6,390	6,390	6,390	6,390	6,568	9,710	9,710	9,320	17,135	6,479	97,261
Others	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Purchases	167,790	164,290	181,790	167,790	167,790	167,790	186,068	233,710	237,210	227,820	412,400	159,432	2,473,879
Operating Expenses													
Advertising / Promotion	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Alarm / Security	99	99	99	99	99	99	99	99	99	99	99	99	1,188
Auto Expenses / Travel	3,000	3,000	3,000	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	49,500
Commission (Note 4)	13,200	15,000	15,000	14,700	14,700	14,700	14,700	19,200	19,200	19,200	33,880	12,810	206,290
Computer - Tech Support / Parts	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	27,500
Development R & D	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	50,400
EDI & Internet	300	300	300	300	300	300	300	300	300	300	300	300	3,600
Freight In & Out	5,000	5,000	5,000	5,000	5,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	67,000
Insurance	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
Interest (Note 5)	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	75,000
Legal Fee	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
License & Registration	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Office Expenses/Supplies/Postages	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
Outside Service (Note 6)	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	42,000
Payroll Services	150	150	150	150	150	150	150	150	150	150	150	150	1,800
Professional / Consultant Fee (Note 7)	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Rent - Building (Note 8)	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Rent - Equipment & Auto (Note 9)	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
Repair & Maintenance	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-
Royalty Premium	-	-	-	-	-	-	-	-	-	-	-	-	-
Salary & Wages / Retirement	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	55,000	55,000	55,000	588,000
Taxes	5,640	5,640	5,640	5,640	5,640	5,640	5,640	5,640	5,640	6,600	6,600	6,600	70,560
Telephone	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	15,600
Trade Show	875	875	875	875	875	875	875	875	875	875	875	875	10,500
Warehouse (Note 10)	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	16,800
Warranty (Note 11)	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
Utilities	700	700	700	700	700	700	700	700	700	700	700	700	8,400
Others	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Total Operating Expenses	120,814	122,614	122,614	123,814	123,814	124,814	124,814	129,314	129,314	138,274	150,454	131,884	1,542,538
Restructuring													
Adequate Protection Payment	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Distribution to Trust - Operations (Note 12)	-	-	-	-	22,518	-	-	22,893	-	-	26,647	-	72,058
U.S. Trustee Fees	4,875	-	-	4,875	-	-	4,875	-	-	4,875	-	-	19,500
Total Restructuring	9,875	5,000	5,000	9,875	27,518	5,000	9,875	27,893	5,000	9,875	31,647	5,000	151,558
Total Disbursements	298,479	291,904	309,404	301,479	319,122	297,604	320,757	390,917	371,524	375,969	594,501	296,316	4,167,975
Period Net Cash Flow	\$(18,479)	\$18,096	\$596	\$3,521	\$(14,122)	\$7,396	\$(15,757)	\$(10,917)	\$8,476	\$4,031	\$30,164	\$(22,812)	(9,806)
Ending Cash Balance	\$35,425	\$53,521	\$54,117	\$57,639	\$43,517	\$50,913	\$35,157	\$24,239	\$32,715	\$36,745	\$66,909	\$44,098	534,995

APEX Digital, Inc.
 Projected Cash Flow
 As of 12/03/2012

	4	5	6	7	8	9	10	11	12	1	2	3	2015-2016
Week Ending/Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Plan Month	Total
Week Number	25	26	27	28	29	30	31	32	33	34	35	36	
Beginning Cash Balance	\$44,098	\$53,510	\$28,901	\$44,374	\$59,023	\$47,022	\$53,046	\$296,195	\$263,442	\$257,966	\$271,544	\$285,122	\$44,098
RECEIPTS													
Collection of AR – lighting (Note1)	330,000	330,000	320,000	350,000	350,000	350,000	350,000	350,000	350,000	350,000	350,000	350,000	4,130,000
Services (Note 2)	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	720,000
Others Income - financing	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	390,000	390,000	380,000	410,000	410,000	410,000	410,000	410,000	410,000	410,000	410,000	410,000	4,850,000
DISBURSEMENTS													
Purchases (Note 3)													
Vendors	214,500	214,500	201,000	227,500	227,500	227,500	227,500	227,500	227,500	227,500	227,500	227,500	2,677,500
Freight In	3,500	10,500	7,000	3,500	6,000	6,000	14,000	14,000	17,500	9,953	9,953	9,953	111,859
Broker's Fee & Duties	9,299	9,299	8,713	9,862	9,862	9,862	9,862	9,862	9,862	3,355	3,355	3,355	96,548
Others	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Purchases	227,299	234,299	216,713	240,862	243,362	243,362	251,362	251,362	254,862	240,808	240,808	240,808	2,885,907
Operating Expenses													
Advertising / Promotion	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Alarm / Security	99	99	99	99	99	99	99	99	99	99	99	99	1,188
Auto Expenses / Travel	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	54,000
Commission (Note 4)	19,800	19,800	19,200	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	247,800
Computer - Tech Support / Parts	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Development R & D	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	50,400
EDI & Internet	300	300	300	300	300	300	300	300	300	300	300	300	3,600
Freight In & Out	5,000	5,000	5,000	5,000	5,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	109,000
Insurance	3,000	3,000	3,000	3,000	3,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	50,000
Interest (Note 5)	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	75,000
Legal Fee	3,000	3,000	3,000	3,000	3,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	50,000
License & Registration	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Office Expenses/Supplies/Postages	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
Outside Service (Note 6)	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	42,000
Payroll Services	150	150	150	150	150	150	150	150	150	150	150	150	1,800
Professional / Consultant Fee (Note 7)	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Rent - Building (Note 8)	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Rent - Equipment & Auto (Note 9)	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
Repair & Maintenance	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-
Royalty Premium	-	-	-	-	-	-	-	-	-	-	-	-	-
Salary & Wages / Retirement	62,000	62,000	62,000	62,000	62,000	62,000	62,000	62,000	62,000	62,000	62,000	62,000	744,000
Taxes	7,440	7,440	7,440	7,440	7,440	7,440	7,440	7,440	7,440	7,440	7,440	7,440	89,280
Telephone	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	15,600
Trade Show	875	875	875	875	875	875	875	875	875	875	875	875	10,500
Warehouse (Note 10)	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	16,800
Warranty (Note 11)	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	16,800
Utilities	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	24,000
Others	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Total Operating Expenses	143,414	143,414	142,814	144,614	144,614	155,614	155,614	155,614	155,614	155,614	155,614	155,614	1,808,168
Restructuring													
Adequate Protection Payment	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Distribution to Trust - Operations (Note 12)	-	31,896	-	-	-	29,025	-	-	30,776	-	-	30,776	122,473
U.S. Trustee Fees	4,875	-	-	4,875	-	-	-	4,875	-	4,875	-	-	19,500
Total Restructuring	9,875	36,896	5,000	9,875	34,025	5,000	9,875	35,776	5,000	9,875	5,000	9,875	151,322
Total Disbursements	380,588	414,609	364,527	395,351	422,001	403,976	416,851	442,752	415,476	396,422	396,422	396,422	4,845,397
Period Net Cash Flow	\$9,412	\$(24,609)	\$15,473	\$14,649	\$(12,001)	\$6,024	\$(6,851)	\$(32,752)	\$(5,476)	\$13,578	\$13,578	\$13,578	4,603
Ending Cash Balance	\$53,510	\$28,901	\$44,374	\$59,023	\$47,022	\$53,046	\$296,195	\$263,442	\$257,966	\$271,544	\$285,122	\$298,700	1,958,846

APEX Digital, Inc.
 Projected Cash Flow
 As of 12/03/2012

Week Ending/Month Week Number	4	5	6	7	8	9	10	11	12	1	2	3	4	2016-2017 Total
Plan Month 37	Plan Month 38	Plan Month 39	Plan Month 40	Plan Month 41	Plan Month 42	Plan Month 43	Plan Month 44	Plan Month 45	Plan Month 46	Plan Month 47	Plan Month 48	Plan Month 49	Plan Month 50	
Beginning Cash Balance	\$298,700	\$277,264	\$218,155	\$188,344	\$166,908	\$107,696	\$74,385	\$292,448	\$246,664	\$223,280	\$209,772	\$196,263	\$182,755	\$298,700
RECEIPTS														
Collection of AR - lighting (Note1)	350,000	350,000	350,000	350,000	350,000	350,000	350,000	420,000	420,000	420,000	420,000	420,000	420,000	4,550,000
Services (Note 2)	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	720,000
Others Income - financing	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	410,000	410,000	410,000	410,000	410,000	410,000	410,000	480,000	480,000	480,000	480,000	480,000	480,000	5,270,000
DISBURSEMENTS														
Purchases (Note 3)														
Vendors	227,500	227,500	227,500	227,500	227,500	227,500	227,500	273,000	273,000	273,000	273,000	273,000	273,000	2,957,500
Freight In	3,500	10,500	7,000	3,500	10,500	10,500	14,000	14,000	17,500	17,500	17,500	17,500	17,500	143,500
Broker's Fee & Duties	9,862	9,862	9,862	9,862	9,862	9,862	9,862	11,835	11,835	11,835	11,835	11,835	11,835	128,208
Others	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Purchases	240,862	247,862	244,362	240,862	247,862	247,862	251,362	298,835	302,335	302,335	302,335	302,335	302,335	3,229,208
Operating Expenses														
Advertising / Promotion	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	42,000
Alarm / Security	99	99	99	99	99	99	99	99	99	99	99	99	99	1,188
Auto Expenses / Travel	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Commission (Note 4)	28,000	28,000	28,000	28,000	28,000	28,000	28,000	33,600	33,600	33,600	33,600	33,600	33,600	364,000
Computer - Tech Support / Parts	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Development R & D	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
EDI & Internet	300	300	300	300	300	300	300	300	300	300	300	300	300	3,600
Freight In & Out	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	144,000
Insurance	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Interest (Note 5)	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	75,000
Legal Fee	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
License & Registration	500	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Office Expenses/Supplies/Postages	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
Outside Service (Note 6)	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	90,000
Payroll Services	150	150	150	150	150	150	150	150	150	150	150	150	150	1,800
Professional / Consultant Fee (Note 7)	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Rent - Building (Note 8)	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Rent - Equipment & Auto (Note 9)	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
Repair & Maintenance	500	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Royalty Premium	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Salary & Wages / Retirement	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	900,000
Taxes	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	90,000
Telephone	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	15,600
Trade Show	875	875	875	875	875	875	875	875	875	875	875	875	875	10,500
Warehouse (Note 10)	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	16,800
Warranty (Note 11)	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Utilities	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	24,000
Others	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Total Operating Expenses	185,574	185,574	185,574	185,574	185,574	185,574	185,574	191,174	191,174	191,174	191,174	191,174	191,174	2,254,888
Restructuring														
Adequate Protection Payment	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Distribution to Trust - Operations (Note 12)	-	30,673	-	-	30,776	-	-	30,776	-	-	34,280	-	35,918	162,423
U.S. Trustee Fees	-	-	4,875	-	-	4,875	-	-	4,875	-	-	4,875	-	19,500
Total Restructuring	5,000	35,673	9,875	5,000	35,776	9,875	5,000	35,776	9,875	9,875	9,875	9,875	9,875	151,850
Total Disbursements	431,436	469,109	439,811	431,436	469,212	443,311	441,936	525,785	503,384	493,509	493,509	493,509	493,509	5,635,946
Period Net Cash Flow	\$(21,436)	\$(59,109)	\$(29,811)	\$(21,436)	\$(59,212)	\$(33,311)	\$(31,936)	\$(45,785)	\$(23,384)	\$(13,509)	\$(13,509)	\$(13,509)	\$(13,509)	(365,946)
Ending Cash Balance	\$277,264	\$218,155	\$188,344	\$166,908	\$107,696	\$74,385	\$292,448	\$246,664	\$223,280	\$209,772	\$196,263	\$182,755	\$182,755	2,383,933

Assumptions to Plan Operating Projections

1. Amounts shown are projection of collection of revenues from sale of lighting products, before payment of commissions and other charges, which are shown as Disbursements below. The amount and timing of projected collections are based on discussions with customers and potential customers regarding anticipated interest and necessary payment terms, industry experience of management, and comparison to other similar products in the market.
2. Service revenues represent payments from TMAX for consulting services relating to assistance to TMAX Digital Inc. in marketing "APEX DIGITAL" trademark products, as to which TMAX is the current licensee.
3. Purchases Disbursements are projected based on projected sales, component sourcing, existing cost structure and prior experience.
4. Commissions are projected based on a 3% commission to China Telecom (Americas) Corporation, for acting as vendor of record and collecting proceeds of lighting sales, and also 5% commissions to sales representatives.
5. Interest charges are projected based on the tentative agreement of Avision to accept interest only payments at 5% per annum.
6. Outside Services represents charges by an outside call center, for customer service.
7. Professional/Consultant Fee includes charges for outside professional public relations and accounting services.
8. The Debtor will pay \$1,500 per month on its subleased premises, reflecting the relative amount of space utilized by the Debtor. The balance of the \$17,150 monthly rental will be paid direct by TMAX.
9. Equipment rental includes monthly charges for a copy machine and company autos.
10. Warehouse projected expenses consist of supplies for the warehouse.
11. Warranty projected expense involves projected cost of customer service and replacement parts, based on experience and product expectations.
12. Distribution to Trust – Operations reflects payments to unsecured creditors' Trust under Plan – from operations only. Other sources of payments to unsecured creditors' Trust in accord with Plan are not reflected in these projections, which project income and disbursements from operations only, in order to provide a more clear picture of results of projected operations. Similarly, Plan disbursements from sources other than operating revenues are not shown in these projections. Other Plan disbursements will be made from other Plan funding sources, and will be shown separately.

APEX DIGITAL CREDITORS' TRUST SOURCE OF FUNDS -- PROJECTED

Ji Deposit	100,000	
Payable by Ji on Effective Date	650,000	
D&O Insurance proceeds settlement	125,000	
Turnover of Phillips settlement proceeds	35,000	
TOTAL AVAILABLE ON EFFECTIVE DATE		910,000
Payable by Ji 90days after Effective Date	250,000	
Payable by Reorganized Debtor 6 months after Effective Date	200,000	
Payable by Reorganized Debtor 10 months after Effective Date	275,000	
Payable by Reorganized Debtor 12 months after Effective Date (may be deferred 2 months with interest)	275,000	
TOTAL AVAILABLE 12 MONTHS AFTER EFFECTIVE DATE		1,910,000
Payable by Debtor 2.5% net sales 16.5 months after Effective Date	22,518	
Payable by Debtor 2.5% net sales 19.5 months after Effective Date	22,893	
Payable by Debtor 2.5% net sales 22.5 months after Effective Date	26,647	
Payable by Debtor 2.5% net sales 25.5 months after Effective Date	31,896	
Payable by Debtor 2.5% net sales 28.5 months after Effective Date	29,025	
Payable by Debtor 2.5% net sales 31.5 months after Effective Date	30,776	
Payable by Debtor 2.5% net sales 34.5 months after Effective Date	30,776	
Payable by Debtor 2.5% net sales 37.5 months after Effective Date	30,673	
Payable by Debtor 2.5% net sales 40.5 months after Effective Date	30,776	
Payable by Debtor 2.5% net sales 43.5 months after Effective Date	30,776	
Payable by Debtor 2.5% net sales 46.5 months after Effective Date	34,280	
Payable by Debtor 2.5% net sales 49.5 months after Effective Date	<u>35,918</u>	
Total Estimated payments based on 2.5% net sales:	\$356,954 ¹	
TOTAL ESTIMATED RECOVERIES BEFORE ADDITIONAL CONTINGENT RECOVERIES:		2,266,954²

¹ Based on projected net sales. Actual net sales may be higher or lower.

² Does not include additional recoveries, if any, from other avoidance actions, share of Sears recovery, other collection actions, sales exceeding projected net sales, and payment from excess after tax net revenue [see Plan for details].

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document described as **PROPONENTS' AMENDED DISCLOSURE STATEMENT DESCRIBING CHAPTER 11 PLAN OF REORGANIZATION (DATED FEBRUARY 1, 2013)** be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 4, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Shawn M Christianson cmcintire@buchalter.com
- Philip A Gasteier pag@lnbrb.com
- Michelle S Grimberg msg@lnbrb.com, angela@lnbrb.com
- Michelle S Grimberg msg@lnbyb.com, angela@lnbrb.com
- John W Kim jkim@nossaman.com
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- Melanie C Scott Melanie.Scott@usdoj.gov
- David B Shemano dshemano@peitzmanweg.com
- Lindsey L Smith lls@lnbyb.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

On **February 4, 2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

None.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL
(state method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **February 4, 2013**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

By Personal Delivery via Attorney Service

Hon. Peter H. Carroll
U. S. Bankruptcy Court/Los Angeles Div.
Edward R. Roybal Fed. Bldg. & Courthouse
255 E. Temple Street, Suite 1539
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 4, 2013	Stephanie Reichert	/s/ Stephanie Reichert
<u>Date</u>	<u>Type Name</u>	<u>Signature</u>