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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In re	/	Case No. 13-30340
	/	(Case No. 13-30341)
GABRIEL TECHNOLOGIES CORP.	/	
<i>et al</i> ,	/	
	/	Chapter 11
Debtors.	/	
	/	Date: July 30, 2013
E.I.N.s 22-3062052; 20-1711149	/	Time: 01:30 p.m.
	/	Ctrm: Ctrm. 22 - Hon. Dennis Montali

**UNITED STATES TRUSTEE'S OBJECTION TO  
DEBTORS' PROPOSED DISCLOSURE STATEMENT**

August B. Landis, Acting United States Trustee for the Northern District of California - Region 17 ("the United States Trustee"), submits this objection to approval of Debtors' [Proposed] Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization (June 7, 2013) ("Debtors' Proposed Disclosure Statement"). The Debtors' Proposed Disclosure Statement should not be approved because it does not contain adequate information to enable a hypothetical investor to make an informed decision about the plan in accordance with 11 U.S.C. §1125.

The following areas of the Debtors' Proposed Disclosure Statement contain inadequate information to enable a hypothetical investor to make an informed decision about the plan:

- Information about Debtors' history;

- Information about pre-filing and post-filing tax returns and reports;
- Information about factual basis for substantive consolidation;
- Liquidation analyses;
- Intention to operate in the future;
- Miscellaneous sections.

## **I. PRELIMINARY STATEMENT**

Gabriel Technologies Corporation, a Delaware corporation, and Trace Technologies, LLC, a Nevada limited liability company (“Debtors”), have been debtors in possession under chapter 11 since they filed voluntary petitions under chapter 11 on February 14, 2013. On February 25, 2013, the court granted the Debtors’ motion for joint administration. On June 7, 2013, the Debtors filed the Debtors’ Proposed Disclosure Statement in support of Debtors’ First Amended Joint Plan of Reorganization (June 7, 2013) (“Debtors’ Proposed Plan”). Since the commencement of the cases, there have been numerous contested matters litigated between the Debtors and Qualcomm Incorporated. While the United States Trustee acknowledges that the parties have generated a relatively large body of information about the Debtors interspersed throughout the record, in order to proceed to confirmation the Debtors must provide adequate information in their disclosure statements to satisfy the requirements of Section 1125.

## **II. STANDARDS**

Before a proponent of a plan may solicit acceptances or rejections of its plan, the court must approve a written disclosure statement as containing adequate information. See 11 U.S.C. § 1125(b). In re Kelley, 199 B.R. 698, 703 (B.A.P. 9th Cir. 1996). “Adequate information” is defined as information that is in sufficient detail to enable “a hypothetical reasonable investor” to make an informed judgment about the Plan. See 11 U.S.C. § 1125(a); In re Commercial Western Finance Corp., 761 F.2d 1329, 1331 n.1 (9th Cir. 1985).

The term “adequate information”

...means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor,

1 and a hypothetical investor typical of the holders of claims or  
2 interests in the case, that would enable such a hypothetical investor  
3 of the relevant class to make an informed judgment about the  
4 plan...and in determining whether a disclosure statement provides  
5 adequate information, the court shall consider the complexity of  
6 the case, the benefit of additional information to creditors and  
7 other parties in interest, and the cost of providing additional  
8 information...

9 11 U.S.C. § 1125(a)(1).

10 While the size, complexity, and circumstances of the case should inform the court as to  
11 the appropriate level of information required in a disclosure statement, Collier has identified  
12 what some courts have stated to be minimal information:

- 13 · a description of the business;
- 14 · its history;
- 15 · financial information;
- 16 · description of the plan;
- 17 · facts respecting its execution;
- 18 · a liquidation analysis;
- 19 · identification of management and its compensation;
- 20 · transactions with insiders; and
- 21 · tax consequences of the plan.

22 7 Collier on Bankruptcy ¶ 1125.02[2] (Alan N. Resnick and Henry J. Sommers, eds., 16th ed.)

### 23 **III. OBJECTIONS.**

24 The following areas of the Debtors Proposed Disclosure Statement are inadequate:

#### 25 **A. Insufficient Information About Debtors' History.**

26 The Debtors omit information about the Debtors' history which would be of interest to  
27 a hypothetical reasonable investor considering the plan. The following are examples:

- 28 1) There is a reference to the date when Gabriel was "founded," but nothing  
about Trace. See Debtors' Proposed Disclosure Statement, p. 8. What is  
meant by being "founded"?
- 2) Other facts which are missing, which would be useful to providing historical  
context, are:

- a. What is the formation date for Trace?
- b. What did Gabriel and Trace do when they operated?
- c. When did Gabriel cease operating?
- d. When did Trace cease operating?
- e. When did Gabriel acquire Trace?

**B. Insufficient Information About Pre-Filing and Post-Filing Tax Returns and Other Reports.**

The United States Trustee is informed and believes that the last tax return filed by Gabriel Technologies was filed for the tax year 2004. It is not known if Trace Technologies has filed a tax return. It appears that Gabriel Technologies, a publicly traded company, has not filed audited financial statements with the Securities and Exchange Commission since 2006. For these reasons, the Debtors should provide the following:

- 1) If delinquent, what reports are due to what agency;
- 2) An explanation for the failure to file reports;
- 3) Whether the Debtors will make attempts to come current regarding required reporting requirements before confirming a plan;
- 4) If the Debtors do not intend to come current, why not.

**C. Insufficient Information About Factual Basis for Substantive Consolidation.**

Debtors state the creditors “have historically dealt with the Debtors as if they were the same, and the affairs and obligations of the two Debtors are so integrally mixed as to make it infeasible to separate them.” Debtors’ Proposed Disclosure Statement, p. 22:6-8. While the Debtors have correctly cited to Ninth Circuit authority governing substantive consolidation, it is unclear whether the Debtors intend to file evidence in support of substantive consolidation.

The conclusory statement that they satisfy the requirements would not appear to be sufficient, and the Debtors’ Proposed Disclosure Statement should outline some of the facts which they will prove in support of confirmation to satisfy Ninth Circuit standards. See Alexander et al v. Compton (In re Bonham), 229 F.3d 750 (9<sup>th</sup> Cir. 2000); see also, In re Central European Industrial Development Company, LLC, 288 B.R. 572 (Bankr. N.D. Cal. 2003). For

1 example, which creditors are the Debtors claiming have relied upon them as one entity? What is  
2 the time frame involved? How did the Debtors affairs become so “integrally mixed” that they  
3 cannot be separated, in light of the stringent regulatory requirements applicable at least to  
4 Gabriel Technologies? The Debtors should at least provide asset and debt structures of the  
5 respective estates. In this regard, the hypothetical reasonable investor could determine who are  
6 the winners and who are the losers as a result of substantive consolidation.

7 The Debtors should also explain the timing of their proposal to consolidate the cases. In  
8 the Debtors’ Proposed Plan, p. 13, ¶ 7.2, Debtors state that, “[i]mmediately prior to the Effective  
9 Date, the asset and Estate of the Debtors shall be deemed substantively consolidated into the  
10 Chapter 11 Estate of Gabriel...” The Debtors’ Proposed Disclosure Statement announces that  
11 “[a]s of the Effective Date, all of the assets of Gabriel and Trace will be substantively  
12 consolidated into Gabriel’s estate, and Gabriel will become the Reorganized Debtor.” Debtors’  
13 Proposed Disclosure Statement, p. 22:4-6. What do they mean by “immediately prior to,” and  
14 what is the reason for the timing of this provision?

#### 15 **D. Liquidation Analyses.**

16 The Debtors have not provided a liquidation analysis for each estate. It is unclear  
17 whether some creditors may benefit from conversion to chapter 7. Have the Debtors conducted  
18 an investigation regarding the perfection of security interests for all purported secured creditors?  
19 Have the Debtors investigated whether there are legal or equitable bases to challenge the validity  
20 of the Note Purchase Agreement (as defined in Exhibit “A” of Debtors’ Proposed Plan). What  
21 are the asset and debt structures of each debtor? Providing a liquidation analysis is a  
22 fundamental feature to a chapter 11 disclosure statement, and the absence of a liquidation  
23 analysis renders the Debtors’ Proposed Disclosure Statement as inadequate.

#### 24 **E. Intention to Operate in the Future.**

25 While the Debtors’ Proposed Plan appears to provide details regarding winding down of  
26 the Debtors’ affairs, the Debtors should provide a simple statement whether they ever intend to  
27 operate in business again. For example, is this something they are considering in the event of  
28 prevailing in litigation?

1           **F. Miscellaneous Points.**

- 2           1. Priority Claims. There appear to be two tiers set forth in Debtors' Proposed Plan for  
3           tax priority claims and "non-classified" priority claims. Debtors' Proposed Plan, p.  
4           6:5-14 and 6:18-26; Debtors' Proposed Disclosure Statement, p. 29:19-25 and 29:29-  
5           30. Debtors state that they estimate "no significant Priority Claims." Debtors'  
6           Proposed Disclosure Statement, p. 18:27. It is difficult to gauge what "significant"  
7           means. Debtors should specifically identify what claims fall within these categories.
- 8           2. Executory Contracts. While the Debtors' Proposed Plan, pp. 10-12, provides for  
9           treatment of executory contracts, the Debtors' Proposed Disclosure Statement does  
10          not appear to address executory contracts. The plan provisions appear to  
11          contemplate that the Debtors will identify executory contracts to be assumed before  
12          the Effective Date of the plan. Debtors' Proposed Plan, p. 10:9-16. Certain  
13          executory contracts are "deem rejected" as of the Effective Date. Id. at 10:17-23.  
14          Further provisions address the cure amounts, Id. at 11:2-20, and a potential bar date  
15          for rejection, Id. at 12:8-17. However, it is unclear which executory contracts would  
16          be subject to these provisions. The Debtors' Proposed Disclosure Statement should  
17          address whether the Debtors anticipate that there are such executory contracts which  
18          might be subject to these provisions. If the Debtors are unaware of contracts which  
19          fall within the treatment described, it would be helpful to provide such a statement.
- 20          3. Definition of Terms. It is unclear whether the Debtors have re-defined the meaning  
21          of terms which are already defined in the Bankruptcy Code. Debtors' Proposed  
22          Plan, Exhibit "A," Schedule of Definitions, Debtors' Proposed Plan, pp. 36-44. If it  
23          is the Debtors' intention to deviate from the Bankruptcy Code definition, the Debtors  
24          should affirmatively indicate their intention and provide an explanation for the  
25          deviation. To avoid confusion, to the extent Bankruptcy Code definitions can be  
26          used without straining substance, the Debtors should adhere to them.
- 27          4. Reference to United States Trustee in connection with management. The Debtors  
28          state that they have "managed the affairs of the Debtors, in consultation with the

Committee and the United States Trustee.” Debtors’ Proposed Disclosure Statement, p. 11:10-11. The United States Trustee objects to this reference to the extent it may impart more involvement or support from the United States Trustee than what has occurred in connection with the United States Trustee’s oversight functions. The United States Trustee does not support the Debtors’ plan and does not endorse the Debtors’ management of these cases. To the extent provisions in the Debtors’ Proposed Disclosure Statement would suggest such support or endorsement, they should be eliminated.

5. Quarterly Fees and Monthly Reports. Gabriel Technologies is current in the filing of monthly reports of operations. Gabriel’s last report was filed for the month of June 2013. No reports have been filed for Trace Technologies, LLC. Both Gabriel and Trace have paid \$325, the minimum amount for quarterly fees, each quarter and appear to be current. However, the fees for Trace have been estimated because of the lack of reports filed on behalf of Trace.

#### IV. CONCLUSION

For all of the above reasons, the Court should decline to approve the Debtors’ Proposed Disclosure Statement in its present form.

Dated: July 26, 2013

Respectfully submitted,

August B. Landis,  
Acting United States Trustee

By: /s/ Donna S. Tamanaha  
Assistant United States Trustee