

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

JTS CORPORATION,
Debtor.

Case No. 98-59752-MM
Chapter 7

SUZANNE L. DECKER, TRUSTEE,
Plaintiff,

Adversary No. 00-5423

vs.

ROGER W. JOHNSON, LIP-BU TAN,
JEAN D. DeLEAGE, DAVID T.
MITCHELL, JACK TRAMIEL, SIRJONG
LAL "JUGI" TANDON, AMBER
ARBITRAGE LDC, a private investment
fund incorporated in the Cayman Islands,
COOLEY GODWARD, LLP, MATTHEW
W. SONSINI, ANDREI M. MANOLIU,
ANNA B. POPE,

MEMORANDUM DECISION

Defendants.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

I. INTRODUCTION

Before the Court are the director defendants' motions to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). Because of the complexity of the issues raised, the Court severed for further briefing the issues of choice of law and whether a stock issuance constitutes a transfer of property

1 of the debtor for purposes of §§ 544 and 548. This Memorandum Decision addresses the choice of law
2 issue, and the fraudulent transfer issue is reserved for a separate decision. For the reasons stated below,
3 California choice of law rules govern, and under California's governmental interest test, Delaware law
4 determines the Trustee's breach of duty claims in the complaint. Because it is not viable as a matter of
5 law, the Thirteenth claim for relief for negligence is dismissed without leave to amend.

6 **II. FACTS**

7 **A. Background**

8 JTS Corporation designed and manufactured hard disk drives for personal computers. In July
9 1996, JTS merged with Atari Incorporated, a Nevada corporation. The merger enabled JTS to become
10 a publicly traded company. The merged company operated under JTS' corporate charter authorized by
11 the State of Delaware. The corporate charter was the merged company's sole contact with the State of
12 Delaware. JTS' primary place of business was the State of California, where it maintained its records,
13 held its board meetings, and focused its business operations. As permitted under Delaware law, JTS'
14 Amended and Restated Certificate of Incorporation at Article VI limits certain liabilities of its directors,
15 providing:

16 a. A director of the corporation shall not be personally liable to the corporation or
17 its stockholders for monetary damages for any breach of fiduciary duty as a director,
18 except for liability (i) for any breach of the director's duty of loyalty to the corporation
19 or its stockholders, (ii) for acts or omissions not in good faith or which involve
20 intentional misconduct or a knowing violation of law, (iii) under Section 174 of the
Delaware General Corporation Law, or (iv) for any transaction from which the director
derived an improper personal benefit.

21 An involuntary petition was filed against JTS on November 17, 1998, and JTS filed its own
22 involuntary petition under Chapter 11 on December 4, 1998. On January 29, 1999, the Court
23 ordered the case converted to Chapter 7. The Chapter 7 Trustee believes JTS was undercapitalized and
24 systematically looted by its directors and other fiduciaries. The Trustee filed a complaint asserting
25 claims for breach of fiduciary duty, negligence, preference, fraudulent conveyance, equitable
26 subordination, avoidance of transfers, legal malpractice, alter ego liability, unfair business practices, and
27 conspiracy, directed against three groups of defendants and an investment fund. She named as
28 defendants David Mitchell, Sirjang Lal Tandon, and Jack Tramiel, the controlling directors based on
their percentage equity interest in JTS at relevant times. She also named Jean DeLeage, Roger Johnson,

1 and Lip-Bu Tan, the passive directors. In addition, she asserts claims against JTS' attorneys Cooley,
2 Godward, LLP, Matthew Sonsini, Andrei Manoliu, and Anna Pope. The remaining defendant is Amber
3 Arbitrage LDC, a private investment fund incorporated in the Cayman Islands. The complaint targets
4 the following post-merger, prepetition transactions of the corporation.

5 **B. Transactions Targeted by the Trustee**

6 **1. Sale of Real Properties**

7 In September 1996, JTS sold to director Tramiel for \$10 million the real properties originally
8 acquired in the Atari merger. The Trustee alleges the properties had a fair market value of \$16 million.
9 Under the terms of sale, JTS had a repurchase option, which it failed to exercise. The option expired
10 in September 1997.

11 **2. Series B and Series C Floorless Convertible Financing Rounds**

12 After the merger and beginning in October 1996, JTS completed two private placements of
13 convertible preferred stock, the Series B and Series C financing rounds or issuance of the so-called
14 floorless convertible securities. The preferred shares were convertible to common shares at a 15%
15 discount. The facts underlying these rounds of financing are set forth more particularly in a written
16 opinion issued May 22, 2001 in *Decker v. Advantage Fund*, Adversary No. 00-5424.

17 **3. NationsBanc Secured Loan and Series D and Series E Financing Rounds**

18 In 1997, JTS completed another private placement of convertible preferred stock, its Series D
19 round of financing. Each Series D share was convertible to 5,000 common shares of stock at \$0.65 per
20 share. Amber Arbitrage and the controlling directors (together, the "Amber Group") participated in the

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
21 The Amber Group established an escrow account into which it deposited
22 \$25 million. JTS withdrew \$13.4 million from the escrow account, and the Amber Group received a
23 corresponding amount of Series D stock. Subsequently, the value of the common stock dropped from
24 \$0.83 per share to \$0.375 per share. The Amber Group's investment in the Series D financing round
25 became worthless.

26 In February 1998, NationsBanc provided a \$10 million line of credit to JTS. The Amber Group
27 guaranteed the line of credit and secured it with a \$10 million certificate of deposit purchased with funds
28 from the escrow account established for the Series D financing round. JTS also granted NationsBanc

1 a security interest in all of its assets.

2 JTS completed yet another private placement of convertible preferred stock, its Series E
3 financing round. The Amber Group received one Series E share for each Series D share that it owned.
4 Each Series E share was convertible to 5000 common shares at \$0.10 per share. The discount would
5 have enabled the Amber Group to recover the \$13,398,875 that it had lost on the Series D financing
6 round.

7 JTS defaulted on a \$4.3 million advance by NationsBanc pursuant to the secured line of credit.
8 NationsBanc foreclosed on the certificate of deposit pledged by the Amber Group. As a result, the
9 Amber Group asserts a right of subrogation to the extent of the collateral it lost. The Amber Group has
10 collected a portion of its secured claim from JTS.

11 **4. Secured Loan Repayment**

12 In November 1997, the Amber Group made a \$2 million loan to JTS from the escrow account
13 established in connection with the Series D financing round. The loan was secured by licenses and
14 goodwill that JTS originally acquired from Atari in the 1996 merger. When JTS sold the intangibles
15 to a subsidiary of Hasbro, Inc. in March 1998, it repaid the Amber Group from the sales proceeds.

16 **5. Debt Forgiveness**

17 In January 1996, director Mitchell purchased 3 million restricted shares of JTS common stock
18 with cash and a \$1.4 million note payable to JTS. Director Tandon purchased 1 million restricted shares
19 with no cash down and a \$1 million note payable. In June 1998, JTS forgave the obligations of Mitchell
20 and Tandon evidenced by these promissory notes.

~~UNITED STATES DISTRICT COURT~~ ~~for the District of Delaware~~

22 Delaware law allows a corporation to limit the liability of its directors for breach of the duty of
23 care, providing that the certificate of incorporation may contain:

24 A provision eliminating or limiting the personal liability of a director to the corporation
25 or its stockholders for monetary damages for breach of fiduciary duty as a director,
26 provided that such provision shall not eliminate or limit the liability of a director: (i) for
27 any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for
acts or omissions not in good faith or which involve intentional misconduct or a knowing
violation of law; (iii) under § 174 of this title; or (iv) for any transaction from which the
director derived an improper personal benefit.

28 8 DEL. C. ANN. § 102(b)(7) (West 2000).

1 The California Corporations Code has a similar provision. Section 204(a)(10) allows for:

2 Provisions eliminating or limiting the personal liability of a director for monetary
3 damages in an action brought by or in the right of the corporation for breach of a
4 director's duties to the corporation and its shareholders, as set forth in Section 309,
5 provided, however, that (A) such a provision may not eliminate or limit the liability of
6 directors (i) for acts or omissions that involve intentional misconduct or a knowing and
7 culpable violation of law, (ii) for acts or omissions that a director believes to be contrary
8 to the best interests of the corporation or its shareholders or that involve the absence of
9 good faith on the part of the director, (iii) for any transaction from which a director
10 derived an improper personal benefit, (iv) for acts or omissions that show a reckless
11 disregard for the director's duty to the corporation or its shareholders in circumstances
12 in which the director was aware, or should have been aware, in the ordinary course of
13 performing a directors' duties, of a risk of serious injury to the corporation or its
14 shareholders, (v) for acts or omissions that constitute an unexcused pattern of inattention
15 that amounts to an abdication of the director's duty to the corporation or its shareholders.

16 CAL. CORP. CODE ANN. § 204(a)(10) (West 2001).

17 **D. Contentions of the Parties**

18 The director defendants contend that Delaware law applies regardless of whether federal choice
19 of law rules or California choice of law rules govern. The defendants do, however, take the position that
20 the federal approach and not the California governmental interest test should be applied.

21 The Trustee's position is that California law is the proper law to apply under any choice of law
22 analysis because California has the most significant relationship with the dispute. She also contends that
23 in any event, the trust fund doctrine imposes upon corporate directors fiduciary duties to creditors that
24 may not be immunized by statute.

25 The parties are in agreement that the claims that the Trustee asserts are not specific claims of
26 individual creditors but belong to the corporation or are derivative of all creditors.

27 **UNITED STATES BANKRUPTCY COURT LEGAL DISCUSSION**

28 **A. Standard for Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6)**

To prevail on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), it must appear
beyond doubt that the plaintiff can prove no set of facts in support of her claim which would entitle her
to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A Rule 12(b)(6) motion allows a defendant to
challenge the legal sufficiency of a complaint. Rutman Wine Co. v. Ernest and Julio Gallo Winery, 829
F.2d 729 (9th Cir. 1987). In reviewing a motion to dismiss, the Court primarily considers the allegations
in the complaint, matters of public record, the record in the case, and any exhibits to the complaint. Hal

1 Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The Court construes
2 the complaint in the light most favorable to the plaintiff and assumes her allegations are true. In re
3 Hemmeter, 242 F.3d 1186, 1189 (9th Cir. 2001). The issue is not whether the plaintiff will ultimately
4 prevail but whether she is entitled to offer evidence in support of the claims. Scheuer v. Rhodes, 416
5 U.S. 232, 236 (1974). The complaint need only satisfy the liberal notice pleading requirement under the
6 Federal Rules of a short and plain statement of the claim showing that the pleader is entitled to relief.
7 AlliedSignal, Inc. v. City of Phoenix, 182 F.3d 692, 696 (9th Cir. 1999).

8 **B. California’s Governmental Interest Analysis Dictates the Application of Delaware Law**

9 The Trustee’s claims against JTS’ directors for breach of fiduciary duty arise under state law.
10 In cases where a federal court is exercising supplemental jurisdiction over state law claims, the court
11 should apply the forum state’s choice of law rules. Paracor Finance, Inc. v. General Electric Capital
12 Corp., 96 F.3d 1151, 1164 (9th Cir. 1996). Because the Court is exercising supplemental jurisdiction
13 over state law claims, California’s choice of law rules apply. In California, choice of law questions are
14 determined by the “governmental interest analysis.” Offshore Rental Co. v. Continental Oil Company,
15 22 Cal. 3d 157, 161 (1978)(citing Reich v. Purcell, 67 Cal. 2d 551, 553 (1967)); Hurtado v. The Superior
16 Court of Sacramento Co., 11 Cal. 3d. 574, 579-80 (1974). The federal common law approach, which
17 follows the Restatement (Second) of Conflict of Laws, and the independent judgment test apply only to
18 federal question cases. California’s governmental interest analysis is intended to determine the proper
19 law based on the interests of the litigants and the states involved. Id.

20 The governmental interest analysis consists of three steps. First, the court determines whether
21 the two states have a difference in their laws. McGhee v. Arabian American Oil Co., 871 F.2d
22 1412, 1422 (9th Cir. 1989)(quoting Offshore Rental, 67 Cal. 2d at 162). If there is no difference,
23 California law is applied. If there is a difference, the court moves to the second step and determines
24 each state’s interest in the application of its own law. If only one state has a legitimate interest, there
25 is a “false conflict” and the law of the interested state is applied. If each state has an interest, there is
26 a “true conflict” and the court must proceed to step three, the “comparative impairment” test. At this
27 stage, the court evaluates which state’s interest would be more impaired if its law were not applied. Id.

28

1 In the instant case, there is a difference between the laws of California and Delaware. The
2 statutes addressing the liability of directors are similar but not identical. The result may be the same
3 under either state’s laws, but it is difficult to predict with certainty because there is very little case law
4 applying the California statutes.

5 It is not necessary for the court to affirmatively conclude there is a difference between the two
6 states’ laws. California has expressly declared that it does not have an interest in applying its own law.
7 Section 2116 of the California Corporations Code provides:

8 The directors of a foreign corporation transacting intrastate business are liable to the
9 corporation, its shareholders, *creditors*, receiver, liquidator or *trustee in bankruptcy* for
10 the . . . violation of official duty *according to any applicable laws of the state or place*
of incorporation or organization, whether committed or done in this state or elsewhere.

11 CAL. CORP. CODE § 2116 (West 2000)(emphasis added).

12 Even before the adoption of § 2116, California applied the laws of the state of incorporation
13 when enforcing violations of directors’ official duties. Pratt v. Odell & Co., 49 Cal. App. 2d. 550, 559
14 (Cal. Ct. App. (1st Dist.)1942). California’s position is consistent with that of the United States Supreme
15 Court, which has held:

16 [the] beneficial free market system depends at its core upon the fact that a corporation – except
17 in the rarest situations – is organized under, and governed by the law of a single jurisdiction,
traditionally the corporate law of the State of its incorporation.

18 CTS Corporation v. Dynamic Corporation of America, 481 U.S. 69, 90 (1987).

19 California caselaw recognizes that Delaware has an interest in regulating the internal affairs of
20 JTS and in controlling its rights and liabilities because JTS is a creation of Delaware law. Havlicek v.

~~UNITED STATES BANKRUPTCY COURT~~

21 Coastal Bank of California, 22 Cal. App. 4th 1844, 1852 (Cal. Ct. App. (2nd Dist.)1995). In
22 Offshore Rental, the Court stated “when one of two states related to a case has a legitimate interest in
23 the application of its law and policy and the other has none . . . clearly the law of the interested state
24 should be applied.” 22 Cal. 3d at 163. As Delaware is the only state with an interest in applying its own
25 law, there is a false conflict between the states’ laws, and Delaware law should be applied.

26 The third step need not be addressed because it was determined in step two of the governmental
27 interest test that only one state has a legitimate interest in the application of its own law. Even if the
28 second step had revealed a true conflict, California’s interest is not impaired by the application of

1 Delaware law when its own policy is to apply the law of the state of incorporation.

2 The present case is distinguishable from both Wilson v. Louisiana-Pacific Resources, Inc., 138
3 Cal. App. 3d 216 (Cal. Ct. App. (1st Dist.)1982), and Havlicek v. Coast-to-Coast Analytic Services, 39
4 Cal. App. 4th 1844, in which the Courts determined California law was the proper law to apply. Neither
5 case deals with the issue of director liability. Instead, both cases address statutes that provide express
6 and limited exceptions to the general rule that the internal affairs of a corporation should be governed
7 by the law of the state of incorporation. Sections 2252, 2253, 2254, 2255, and 2256 of the California
8 Corporations Code, cited by the Trustee, are also distinguishable in that they address criminal, not civil,
9 liability of directors.

10 **C. Delaware Law Requires Dismissal of the Negligence Claim**

11 The shield from liability provided by a certificate of incorporation provision adopted pursuant
12 to 8 Delaware Code § 102(b)(7) is in the nature of an affirmative defense upon which defendants
13 normally bear the burden of establishing all applicable elements. Emerald Partners v. Berlin, 726 A.2d
14 1215, 1223-24 (Del. 1999). Where the complaint fails to plead sufficiently that the directors' conduct
15 falls within at least one of the exceptions of § 102(b)(7), the claim may be dismissed. O'Reilly v.
16 Transworld Healthcare, Inc., 745 A.2d 902, 914 (Del. Ch. 1999).

17 Delaware law distinguishes between the duty of loyalty and the duty of care. In re Reliance
18 Securities Litigation, 91 F. Supp. 2d 706, 732 (D. Del. 2000). The protections of § 102(b)(7) may
19 properly be invoked and applied to a claim that implicates a breach of the duty of care. Id. at 1224
20 (citing Zirn v. VLI Corp., 681 A.2d 1050, 1061 (Del. 1996); Arnold v. Society for Savings Bancorp, 650

UNITED STATES BANKRUPTCY COURT
21 Dismissal on a defendant's motion is appropriate when the plaintiff's
22 claims allege solely a violation of the duty of care and do not also allege the existence of circumstances
23 constituting intentional fraud or self-dealing. Reliance Securities Litigation, 91 F. Supp. 2d at 732. The
24 Thirteenth claim for relief states solely a claim based on breach of the duty of care with the result that
25 § 102(b)(7), made applicable to JTS' directors by incorporation into the Amended and Restated
26 Certificate of Incorporation, mandates dismissal of the claim.

27 The trust fund doctrine, upon which the Trustee relies, does not change this result. The doctrine
28 imposes fiduciary duties by corporate directors to creditors when the corporation becomes insolvent.

1 See In re Ben Franklin Retail Stores, Inc., 225 B.R. 646 (Bankr. N.D. Ill. 1998)(interpreting Delaware
2 law); In re Geyer, 621 A.2d 784 (Del. Ch. 1992). In Ben Franklin, a bankruptcy trustee filed a complaint
3 against directors for breach of fiduciary duty and negligence based on claims assigned to the estate by
4 some of the estate’s creditors. The Court recognized that, absent the assignments, a bankruptcy trustee
5 does not have standing to assert claims that are specific to creditors but is confined to enforcing the
6 entitlements of the corporation on behalf of creditors. Ben Franklin, 225 B.R. at 650. See also In re
7 Healthco International, Inc., 208 B.R. 288, 300 (Bankr. D. Mass. 1997)(construing Delaware law). It
8 distinguished between the scope of directors’ duties to shareholders, who have a role in the selection of
9 management, and duties to creditors, whose rights are defined by contracts with the corporation. It
10 further held that an exculpatory provision under § 102(b)(7) is limited to liability to the corporation and
11 its shareholders, and it does not shield from liability to creditors for properly pled claims. However, it
12 concluded that the complaint failed to state a claim for breach of fiduciary duty.

13 Similarly, Geyer involved the particularized claims of an individual creditor against a corporate
14 director for breach of fiduciary duty. The Court in that case expressly noted the anomaly that arises on
15 insolvency. While a director could be held liable to a creditor under the trust fund doctrine, under §
16 102(b)(7), the director would not be liable to shareholders or the corporation. Geyer, 621 A.2d at 789.

17 This case also bears similarities to Healthco, in which the trustee asserted claims of the
18 corporation against directors for breach of fiduciary duties relating to diminished value as a result of a
19 leveraged buyout. While the Court recognized that directors owe fiduciary duties to creditors of an
20 insolvent corporation, it nonetheless concluded in Healthco that § 102(b)(7) immunizes directors from

UNITED STATES BANKRUPTCY COURT
21 In re Ben Franklin Retail Stores, Inc., 225 B.R. 646 (Bankr. N.D. Ill. 1998)(interpreting Delaware law);
22 In re Geyer, 621 A.2d 784 (Del. Ch. 1992). In Ben Franklin, a bankruptcy trustee filed a complaint
23 against directors for breach of fiduciary duty and negligence based on claims assigned to the estate by
24 some of the estate’s creditors. The Court recognized that, absent the assignments, a bankruptcy trustee
does not have standing to assert claims that are specific to creditors but is confined to enforcing the
entitlements of the corporation on behalf of creditors. Ben Franklin, 225 B.R. at 650. See also In re
Healthco International, Inc., 208 B.R. 288, 300 (Bankr. D. Mass. 1997)(construing Delaware law). It
distinguished between the scope of directors’ duties to shareholders, who have a role in the selection of
management, and duties to creditors, whose rights are defined by contracts with the corporation. It
further held that an exculpatory provision under § 102(b)(7) is limited to liability to the corporation and
its shareholders, and it does not shield from liability to creditors for properly pled claims. However, it
concluded that the complaint failed to state a claim for breach of fiduciary duty.

25 **D. Immunity Under Delaware Law Does Not Extend to Directors’ Breaches of the Duty of**
26 **Loyalty or Good Faith**

27 The protections of § 102(b)(7) do not apply to violations of the fiduciary duties of good faith or
28 loyalty. Emerald Partners, 726 A.2d at 1227. To state a legally sufficient claim for breach of the duty

1 of loyalty, the plaintiff must allege facts showing that a self-interested transaction occurred and that the
2 transaction was unfair to the plaintiff. The Trustee asserts claims for breach of fiduciary duty against
3 the director defendants in the First, Third, Seventh, Eighth, Eleventh, and Seventeenth claims for relief
4 in the complaint. In each of these claims for relief, the Trustee sets forth the factual basis for her
5 allegation that the directors breached their fiduciary duties to the corporation. In addition, she asserts
6 that the acts or omissions were taken “maliciously, oppressively, fraudulently, and willfully with the
7 intent to advance their own interests over JTS.” Based on the Trustee’s allegations and for pleading
8 purposes, the Court infers that the director defendants allegedly acted in a manner that was not in good
9 faith and was unfair to the corporation so as to come within the purview of the exceptions to § 102(b)(7).
10 For these reasons, the Court declines at this time to dismiss the First, Third, Seventh, Eighth, Eleventh,
11 and Seventeenth claims for relief.

12 **IV. CONCLUSION**

13 The breaches of fiduciary duty alleged by the Chapter 7 Trustee against JTS’ directors are state
14 law claims over which this Court has supplemental jurisdiction. While it is possible that the claims
15 would be resolved differently under California law than under Delaware law, Delaware is the only state
16 with an interest in applying its own law. A false conflict arises between the two states’ laws, and
17 Delaware law should be applied. The application of 8 Delaware Code § 102(b)(7), which is adopted in
18 JTS’ certificate of incorporation, results in dismissal of the Thirteenth claim for relief for negligence.
19 The Court declines to dismiss and the Trustee may conduct discovery on the claims asserting violations
20 of the fiduciary duties of good faith and loyalty.

~~UNITED STATES BANKRUPTCY COURT~~

22
23
24
25
26
27
28

DATED: _____

UNITED STATES BANKRUPTCY JUDGE

1 Adv. Proc. No. 00-5423

2

3

4 **UNITED STATES BANKRUPTCY COURT**

5

6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

7

8 **CERTIFICATE OF SERVICE**

9

10 I, the undersigned, a regularly appointed and qualified Clerk in the office of the
11 Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California,
12 San Jose, California hereby certify:

13

14 That I am familiar with the method by which items to be dispatched in official mail from the
15 Clerk's Office of the United States Bankruptcy Court in San Jose, California processed on a daily
16 basis: all such items are placed in a designated bin in the Clerk's office in a sealed envelope bearing
17 the address of the addressee, from which they are collected at least daily, franked, and deposited in
18 the United States Mail, postage pre-paid, by the staff of the Clerk's Office of the Court;

19

20 That, in the performance of my duties, on the date set forth below, I served the
21 **MEMORANDUM DECISION** in the above case on each party listed below by depositing a copy of
22 that document in a sealed envelope, addressed as set forth, in the designated collection bin for
23 franking, and mailing:

24

25 Daniel Bergeson
26 Marily Lerner
27 Bergeson Eliopoulos LLP
28 55 Almaden Blvd., Suite 400
San Jose, CA 95113

Mark Fredkin
William Siamas
Morgan, Franich, Fredkin & Marsh
99 Almaden Boulevard, Suite 1000
San Jose, CA 95113

29

30 Christian B. Nielsen
31 Robinson & Wood, Inc.
32 227 N. First Street
33 San Jose, CA 95113

Craig S. Ritchey
David A. Kays
Ritchey Fisher Whitman & Klein
1717 Embarcadero Rd.
Palo Alto, CA 94303

34

35 Ira G. Rivin
36 Rutan & Tucker
37 ~~UNITED STATES BANKRUPTCY COURT~~
38 Costs Mesa, CA 92626

Timothy Roake
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306

~~UNITED STATES BANKRUPTCY COURT~~

39

40 Jeffrey C. Wums
41 Daniel Rapaport
42 Wendel, Rosen, Black & Dean
43 111 Broadway, 24th Floor
44 Oakland, CA 94607

45

46 In addition, I am familiar with the Court's agreed procedure for service on the United States
47 Trustee, by which a copy of any document to be served on that agency is left in a designated bin in
48 the Office of the Clerk, which bin is collected on a daily basis by the United States Trustee's
representative. In addition to placing the above envelopes in the distribution bin for mailing, I placed
a copy of the **MEMORANDUM DECISION** in the United States Trustee's collection bin on the
below date.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Executed on:

Clerk

~~UNITED STATES BANKRUPTCY COURT~~