HEARING DATE AND TIME: September 15, 2009 at 10:00 a.m.
OBJECTION DEADLINE: September 10, 2009 at 5:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	**Chapter 11**
GRAPHICS PROPERTIES HOLDINGS, INC., *et al.*,	**Case No. 09-11701 (MG)**
Debtors.	**(Jointly Administered)**

OBJECTION OF THE DEBTORS TO CLAIM OF ELIOT I. BERNSTEIN

TO THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

Graphics Properties Holdings, Inc. (f/k/a Silicon Graphics, Inc.) ("Graphics Properties"), on behalf of itself and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), hereby submits this objection (the "Objection") to proof of claim number 225 filed by Eliot I. Bernstein on June 18, 2009 (the "Claim"), and respectfully represents and sets forth as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Objection is a

which approved the (a) Sale to a designee and wholly owned subsidiary of Rackable, SGI International, Inc. (the "Buyer"), and (b) Asset Purchase Agreement dated as of March 31, 2009, by and among the Debtors and Rackable, as amended by the Amendment to the Asset Purchase Agreement, dated as of April 30, 2009 (collectively, the "Asset Purchase Agreement").

6. On May 8, 2009 this Court entered an *Order (A) Establishing Deadlines for Filing Proofs of Claim, (B) Approving the Form and Manner of Notice Thereof, and (C) Authorizing Payment of Related Publication Expenses* (the "Bar Date Order") [Docket No. 373], which established June 23, 2009, as the bar date (the "General Bar Date") for non-governmental creditors to file prepetition proofs of claim in these chapter 11 cases. For claims affected by the amended Schedules filed on July 31, 2009, the applicable bar date is August 31, 2009.

The Debtors' 2006 Reorganization

7. On May 8, 2006, Silicon Graphics, Inc.[1] and its affiliated debtors and debtors in possession (collectively, the "2006 Debtors") commenced voluntary chapter 11 bankruptcy proceedings in this Court, which were jointly administered under Case No. 06-10977 (BRL) (Jointly Administered) (the "2006 Reorganization"). On September 15, 2006, the 2006 Debtors filed the *Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, As Modified* (the "2006 Plan") [Docket No. 607]. On September 19, 2006, this Court entered an *Order Confirming the Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated July 27, 2006, As Modified* (the "2006 Confirmation Order") [Docket No. 632]. The 2006 Plan became effective on October 17, 2006 (the "2006 Effective Date").

[1] The entity known as Silicon Graphics, Inc. is now known as Graphics Properties Holdings, Inc.

10. On May 12, 2008, the Litigants filed an amended complaint (the "Amended Complaint"), a copy of which is attached as Exhibit B hereto,[3] against approximately 190 named defendants, plus John and Jane Does. The Amended Complaint named Silicon Graphics as a defendant, but none of the other Debtors.[4] In the Amended Complaint, the Litigants allege that Silicon Graphics was an equity holder, along with Intel Corporation ("Intel") and Lockheed Martin, in a company known as Real 3D, Inc. ("Real"). (Amended Compl. ¶ 142). The Litigants further allege that, after Real was wholly acquired by Intel, Real began to use the technologies invented by the Litigants in violation of their intellectual property rights. (Amended Compl. ¶ 278).

11. On May 28, 2008, May 30, 2008, and June 3, 2008, certain of the defendants named in the Amended Complaint filed motions to dismiss the amended complaint. On August, 8, 2008, the District Court entered an opinion and order (the "District Court Order"), a copy of which is attached as Exhibit D hereto, dismissing all claims against all defendants for failure to state a "legally cognizable federal claim against a single defendant" despite over a thousand paragraphs of allegations and declining to exercise supplemental jurisdiction over the remaining state law claims. *See* District Court Order at p. 45, ¶ F.

12. On September 4 and 5, 2008, the Litigants appealed the District Court Order to the United States Court of Appeals for the Second Circuit, where the appeal is pending.

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[3] The Debtors were unable to locate the Amended Complaint at the District Court and were not served with the Amended Complaint. The copy of the Amended Complaint attached as Exhibit B was obtained by counsel to the Debtors from Bernstein's website at www.ivewit.tv and is being provided solely to offer background information to the Court.

[4] As set forth in the Declaration of Elena Ramirez in Support of the Debtors' Objection to the Bernstein Emergency Motion, a copy of which is attached hereto as Exhibit C hereto, to the best of its knowledge, Silicon Graphics was never served with the Amended Complaint.

Argument

16. A claim filed in a bankruptcy case is deemed allowed, unless it is objected to by a party in interest. 11 U.S.C. §502(a); Bankruptcy Rule 3001(f). A debtor may object to a claim on any ground that would be reason to deny the claim outside of bankruptcy. 11 U.S.C. § 502(b)(1); *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450 (2007). A party objecting to a claim must introduce evidence sufficient to rebut the presumption of validity afforded a properly filed proof of claim. *See In re Fidelity Holding Co.*, 837 F.2d 696, 698 (5th Cir. 1988); *In re Rockefeller Ctr. Props.*, 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000). Once sufficient evidence is introduced, the burden shifts to the claimant to prove its claim by a preponderance of the evidence. *Id. See also Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000); *see generally* 9 *Collier on Bankruptcy* ¶ 3001.09 (15th ed. rev. 2006).

The Claim Should be Disallowed

A. The 2006 Reorganization Effectuated a Discharge

17. The 2006 Plan effectuated a discharge of all claims, rights, and liabilities of the 2006 Debtors that arose prior to the 2006 Effective Date. "Subsection 1141(d) of the Bankruptcy Code states that. . . the 'confirmation of a plan [of reorganization]. . . discharges the debtor from any debt that arose before the date of such confirmation." *FCC v. NextWave Pers. Communs. Inc.,* 537 U.S. 293, 303 (2003). *See In re Chateaugay Corp.*, 944 F.2d 997, 1003 (2d Cir. 1991). Although neither the Bankruptcy Code nor the Bankruptcy Rules provide for any exceptions to the discharge provided in section 1141 due to a creditor's lack of notice, due process mandates that creditors receive sufficient notice of a bankruptcy case before their debts can be discharged. *Paging Network, Inc. v. Nationwide Paging, Inc. (In re Arch Wireless, Inc.)*, 534 F.3d 76, 83 (1st Cir. 2008), *citing Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir.

Exhibit F, the 2006 Debtors enacted controls to ensure that they accurately recorded and reconciled all claims submitted by creditors and interest holders in the 2006 Reorganization. A diligence search of the 2006 Debtors' records revealed no evidence of Bernstein or the Claim, and the 2006 Debtors did not have any business dealings with Bernstein or communications with Bernstein prior to receiving certain emails he sent to the Debtors in March 2009. *Id.* Thus, the 2006 Debtors had no reason to suspect that Bernstein had a claim against them. *Id.* As such, Bernstein was, at best, an unknown creditor of the 2006 Debtors during the 2006 Reorganization.

21. Because Bernstein was an unknown creditor, Bernstein's due process rights were satisfied with publication notice of the 2006 Debtors' 2006 Reorganization milestones. As stated in the Gibson Declaration, the 2006 Debtors gave such notice by publishing[6]:

- Notice of Chapter 11 Cases, Meeting of Creditors, and Deadlines, filed in the May 16, 2006 issue of The Wall Street Journal;
- Notice of Chapter 11 Bankruptcy Cases, Meeting of Creditors, and Deadlines, filed in the May 16, 2006 issue of The New York Times;
- Notice of Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates in the May 16, 2006 issue of The New York Times;
- Notice of Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates in the May 16, 2006 issue of The Wall Street Journal;
- Notice of Hearing to Consider Approval of Disclosure Statement with Respect to Debtors' First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code in the July 3, 2006 issue of The New York Times;
- Notice of Deadline for Filing Proofs of Claim in the July 7, 2006 issue of The New York Times; and
- Notice of (i) Approval of Disclosure Statement; (ii) Establishment of Record Dates; (iii) Hearing on Confirmation of the Plan and Procedures for Objecting to Confirmation of the Plan; and (iv) Procedures and Deadline for Voting on the Plan in the August 4, 2006 issue of The New York Times.

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[6] Copies of these notices are annexed to this Objection as Exhibit G.

WHEREFORE the Debtors respectfully request the Court enter an order, in substantially the form attached hereto as Exhibit H, (i) sustaining the Objection on the grounds set forth herein, (ii) disallowing and expunging the Claim in its entirety, and (iii) granting such other and further relief as is just and proper.

Dated: New York, New York
August 14, 2009

Respectfully submitted,

ROPES & GRAY LLP

/s/ Mark R. Somerstein

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and Debtors in Possession

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Bernstein Objection and the relief requested therein shall be made in writing, shall conform to the Case Management & Scheduling Order #1 entered in these cases [Docket No. 297], the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Southern District of New York, shall set forth the name of the objecting party, the basis for the objection, and the specific grounds thereof, shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (which can be found at http://www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's case filing systems and by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), Wordperfect, or any other Windows-based word processing format (with two hard copies delivered directly to Chambers), so as to be received no later than **September 10, 2009, at 5:00 p.m. (prevailing Eastern time)** by: (i) the chambers of the Honorable Martin Glenn ("Chambers"), One Bowling Green, New York, New York 10004, Courtroom 501; (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Andy Velez-Rivera); (iii) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036 (Attn: Mark R. Somerstein), attorneys for the Debtors; and (iv) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036 (Attn: Abbe L. Dienstag), attorneys for the agent for the Debtors' prepetition secured lenders. Only those responses that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order sustaining the Bernstein Objection as requested by the Debtors.

Dated: New York, New York
August 14, 2009

ROPES & GRAY LLP

/s/ Mark R. Somerstein

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
GRAPHICS PROPERTIES HOLDINGS, INC., *et al.*,	:	**Case No. 09-11701 (MG)**
	:	**(Jointly Administered)**
Debtors.	:	

NOTICE OF HEARING ON OBJECTION OF THE DEBTORS TO CLAIM OF ELIOT I. BERNSTEIN

PLEASE TAKE NOTICE that a hearing (the "Hearing") to consider the relief requested in the Objection of the Debtors to Claim of Eliot I. Bernstein (the "Bernstein Objection"), dated August 14, 2009, filed by Graphics Properties Holdings, Inc. (f/k/a Silicon Graphics, Inc.) and certain of its subsidiaries and affiliates (collectively, the "Debtors"), as debtors and debtors in possession, shall be held before the Honorable Martin Glenn, United States Bankruptcy Judge for the Southern District of New York, Courtroom 501, One Bowling Green, New York, New York 10004 (the "Bankruptcy Court") on **September 15, 2009, at 10:00 a.m. (prevailing Eastern time)** or as soon thereafter as counsel may be heard.

Since Bernstein received adequate notice of the 2006 Reorganization, any claim he may have had against the 2006 Debtors prior to the 2006 Petition Date was discharged on and as of the 2006 Effective Date. Thus, the Claim must be disallowed.

Reservation of Rights

22. Notwithstanding anything contained herein to the contrary, the Debtors hereby reserve all rights and defenses to the Claim, including, without limitation, the right to seek estimation of the Claim pursuant to Bankruptcy Code § 502(c).

Notice

23. The Debtors served notice of the Objection on: (i) the Office of the United States Trustee for the Southern District of New York; (ii) counsel to the agent for the Secured Lenders; (iii) the creditors holding the 50 largest unsecured claims against the Debtors' estates (on a consolidated basis); (iv) all other persons that have formally appeared and requested notice or copies of pleadings filed in the Debtors' cases under Bankruptcy Rule 2002; and (v) Bernstein. In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.

No Prior Request

24. No prior request for the relief sought herein has been made by or granted to the Debtors in this or any other court.

1995). Thus, any claim arising before the 2006 Effective Date is discharged, subject to sufficient notice having been provided to the claim-holder.

18. Although creditors who are known or should have been known to a debtor must receive actual notice of certain milestones in a bankruptcy case, unknown creditors are only entitled to constructive notice, which is satisfied by publication notice. *See Paging Network, Inc. v. Nationwide Paging, Inc. (In re Arch Wireless, Inc.)*, 534 F.3d 76, 80 (1st Cir. 2008), *citing City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 296 (1953); *DePippo v. Kmart Corp.*, 335 B.R. 290, 296 (S.D.N.Y. 2005); *Envirodyne Indus., Inc. v. Clear Shield Nat'l, Inc.*, 214 B.R. 338, 348-49 (N.D. Ill. 1997). An unknown creditor is one whose "interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor]." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317, (1950); *In re XO Communs., Inc.*, 301 B.R. 782, 793 (Bankr. S.D.N.Y. 2003) (holding that an unknown creditor is a claimant whose identity is not "reasonably ascertainable" or whose claim is "merely conceivable, conjectural or speculative"). For a claim to be reasonably ascertainable, a debtor must have had in its possession "some specific information that reasonably suggests both the claim for which the debtor may be liable and the entity to whom [it] would be liable." *In re Crystal Oil Co.*, 158 F.3d 291, 297 (5th Cir. 1998).

19. Bernstein alleges that acts giving rise to the Claim occurred approximately seven years prior to the 2006 Petition Date. Thus, such claims were prepetition claims in the 2006 Reorganization. *See generally* District Court Order at pp. 4-6 (discussing Real's role in the facts Bernstein alleged in the Amended Complaint as having occurred sometime around 1998).

20. As stated in the Declaration of Diane Gibson in Support of the Objection of the Debtors to Claim of Eliot I. Bernstein (the "Gibson Declaration") attached hereto as

Bernstein's Filings in This Case

13. On April 17, 2009, Bernstein filed the *Emergency Motion of Eliot I. Bernstein to Establish Proof of Claim; Vacate or Modify Order of Sale; Injunction; Priority of Claims; and Other Relief* (the "Bernstein Emergency Motion") [Docket No. 102]. On May 5, 2009, the Debtors filed their *Objection of the Debtors to Emergency Motion of Eliot I. Bernstein to Establish Proof of Claim; Vacate or Modify Order of Sale; Injunction; Priority of Claims; and Other Relief.* The Court held a hearing on the matter on May 8, 2009 and entered an order denying the Bernstein Emergency Motion on May 8, 2009.

14. On June 18, 2009, Bernstein filed the Claim, a copy of which is attached as Exhibit E hereto, in which he seeks payment in the amount of "millions to billions" on account of "theft of intellectual property, infringement, RICO, attempted murder." Bernstein states in the Claim that the bases for the Claim are the same allegations he made in the Bernstein Emergency Motion.[5] These allegations include theft by more than one hundred parties of Bernstein's "holy grail" technologies, leading to a "Trillion dollar federal lawsuit." Bernstein claims that Silicon Graphics was a minority shareholder of Real, See Bernstein Emergency Mot. at 46, which was retained by Proskauer Rose LLP to analyze the "holy grail" technologies and which subsequently stole the technologies.

Relief Requested

15. The Court should disallow the Claim because any claim Bernstein may have had against any of the Debtors was discharged in the 2006 Debtors' 2006 Reorganization.

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[5] Like the Amended Complaint, Bernstein's Claim-supporting documentation is vague, and the allegations contained therein are nearly impossible to discern. The Debtors' representations in this Objection regarding Bernstein's filings are based on the Debtors' best reading of the relevant documents.

8. Section 12.4 of the 2006 Plan provides that all claims, rights, and liabilities of the 2006 Debtors that arose prior to the 2006 Effective Date have been fully waived, released, and discharged:

> Upon the Effective Date, in consideration of the distributions to be made under the Plan and except as otherwise expressly provided in the Plan, each holder (as well as any trustees and agents on behalf of each holder) of a Claim or Old Equity Interest and any Affiliate of such holder shall be deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Old Equity Interests, rights and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Old Equity Interest in the Debtors.

See 2006 Plan at pp. 52-53, § 12.4.

The Bernstein Lawsuit

9. On December 12, 2007, Eliot I. Bernstein ("Bernstein") and P. Stephen Lamont, both *pro se* litigants (the "Litigants"), filed a civil complaint (the "Original Complaint"), a copy of which is attached as Exhibit A hereto,[2] in the United States District Court for the Southern District of New York (the "District Court") against approximately 42 named defendants, plus John Does, alleging a massive conspiracy of fraud, deception, and misrepresentation to violate the Litigants' constitutional and intellectual property rights relating to their so-called "holy grail" technologies. None of the Debtors were named in the Original Complaint.

[2] The Debtors were unable to locate the Original Complaint at the District Court and were not served with the Original Complaint. The copy of the Original Complaint attached as Exhibit A was obtained by counsel to the Debtors from Bernstein's website at www.ivewit.tv and is being provided solely to offer background information to the Court.

core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 501 and 502 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

Background

2. On April 1, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in the Debtors' chapter 11 cases.

3. On April 3, 2009, this Court entered an *Order Approving Bid Procedures and Bid Protections and the Form and Manner of Notices Thereof* [Dockets No. 55 and 65], which approved bidding procedures for the sale of substantially all of the Debtors' assets (a "Sale") through an auction in chapter 11 pursuant to Bankruptcy Code section 363. Rackable Systems, Inc. ("Rackable") served as the stalking horse bidder for the Sale.

4. On April 21, 2009, the Debtors filed their schedules of assets and liabilities and statements of financial affairs, which were amended on April 29, 2009, and July 31, 2009 (collectively, the "Schedules").

5. On April 30, 2009, this Court entered an *Order (A) Approving Asset Purchase Agreement Between the Debtors and the Successful Bidder; (B) Authorizing the Sale of All or Substantially All of the Assets of the Debtors Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (C) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith* (the "Sale Order") [Docket No. 292],