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10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re) Case No. 08-32514
14 HELLER EHRMAN LLP,)
Debtor.) Chapter 11
)
) **DECLARATION OF JAMES**
) **TRAMONTANA IN SUPPORT OF**
) **MOTION BY RONALD A. KATZ**
) **TECHNOLOGY LICENSING, L.P. AND**
) **A2D, L.P. FOR ORDER AUTHORIZING**
) **THE FILING UNDER SEAL OF**
) **DOCUMENTS REGARDING PROOF OF**
) **CLAIM**
)
)
) Date: June 11, 2009
) Time: 1:30 p.m.
) Place: 235 Pine Street
) San Francisco, CA
) Judge: Honorable Dennis Montali

23 I, JAMES TRAMONTANA, declare:

24 1. I am the Assistant Secretary and Counsel of A2D Corporation, the sole
25 general partner of A2D, L.P., which is the sole general partner of Ronald A. Katz
26 Technology Licensing, L.P. (A2D, L.P. and Ronald A. Katz Technology Licensing,
27 L.P. being collectively referred to herein as "RAKTL"), a creditor in the above-
28

1 entitled action. I make this declaration in support of the Motion By Ronald A. Katz
2 Technology Licensing, L.P. And A2D, L.P. For Order Authorizing The Filing
3 Under Seal Of Documents Regarding Proof Of Claim.

4 2. Ronald A. Katz Technology Licensing, L.P. is the holder of a portfolio of
5 numerous patents that it licenses through its affiliate A2D, L.P. (the "RAKTL Patents").
6 The RAKTL Patents represent pioneering work in the field of interactive call processing
7 and are widely used by businesses to improve the efficiency and usability of their
8 automated call-processing services. RAKTL has successfully licensed these patents to
9 more than 275 companies, including, among many others, Ameritrade Holding
10 Corporation, AT&T, Avon Products, Inc., Bank of America Corporation, Capital One
11 Services Inc., Chevron U.S.A. Inc., Countrywide Financial Corporation, Dell Inc., Delta
12 Air Lines, Inc., Discover Financial Services, Express Scripts, General Electric Company,
13 Hewlett-Packard Company, Hilton Hotels Corporation, Home Shopping Network Inc.,
14 International Business Machines (IBM), Merck & Co., Merrill Lynch & Co., Inc.,
15 Microsoft, Morgan Stanley, Nationwide, New York Life Insurance Company,
16 OppenheimerFunds, Inc., Prudential Financial, Inc., Qwest Communications International
17 Inc., QVC, Inc., Sprint Corporation, Sunoco, Inc., United Air Lines, Inc., The Vanguard
18 Group, Inc., Verizon California Inc. and its affiliates, Walgreen Co., Wal-Mart Stores, Inc,
19 WellPoint, Inc., Wells Fargo & Company, and West Corporation.

20 3. RAKTL retained Heller Ehrman LLP ("Debtor" or "Heller")¹ to represent it
21 in a patent infringement lawsuit in or around early 1999. Thereafter, Heller continued to
22 serve as RAKTL's counsel in various patent enforcement and licensing efforts. For that
23 early litigation and each of those additional efforts, RAKTL retained Heller on a case-by-
24 case basis and compensated the firm at hourly rates.

25 4. Debtor and RAKTL entered into a letter agreement dated August 18, 2006,
26 and amended it by letter agreements dated April 30, 2007 and June 29, 2007 (as so

27 _____
28 ¹ The Debtor also did business as Heller Ehrman White & McAuliffe LLP.

1 amended, the “Legal Services Agreement”), pursuant to which Debtor agreed to provide to
2 RAKTL all legal services, including services of attorneys and legal assistants in
3 investigative, pretrial, trial, and appellate efforts and proceedings (the “Legal Services”), in
4 connection with lawsuits and potential lawsuits against various companies believed by
5 RAKTL to have been infringing one or more of RAKTL’s patents (the “Cases”). The
6 Legal Services covered Cases against approximately forty-eight different companies.

7 5. The Cases represented a tremendous undertaking by RAKTL to enforce its
8 patent rights. Pursuant to the Legal Services Agreement, RAKTL agreed to compensate
9 Debtor through a series of fixed-fee payments and a single contingent-fee payment.

10 6. RAKTL paid all required fixed-fee payments on or before the required
11 payment dates. The Legal Services Agreement bases RAKTL’s obligation to make any
12 contingent-fee payment on RAKTL’s recovery from the entire group of Cases covered by
13 the Legal Services Agreement. It is not payable yet because Cases are still pending.

14 7. In the midst of this substantial litigation effort, with court-ordered deadlines
15 pending in various of the Cases, Debtor publicly announced on September 26, 2008 that it
16 was dissolving and would immediately begin winding down all of its business affairs.
17 RAKTL was therefore forced to find successor legal counsel who could immediately
18 represent it and enter appearances in the pending Cases.

19 8. RAKTL first sought to retain Covington & Burling LLP (“Covington”), the
20 law firm to which several Heller attorneys who had been representing RAKTL in the Cases
21 had moved. Ultimately, however, a client-conflict issue and issues concerning this
22 bankruptcy made it necessary for RAKTL to retain another firm, Cooley Godward Kronish
23 LLP (“Cooley”) to represent it in pending Cases against seven separate companies. The
24 former Heller attorneys who went to Covington continue to represent RAKTL against only
25 two of the companies covered by the Legal Services Agreement.

26 9. RAKTL has incurred, and will be forced to continue to incur, additional
27 expenses that may substantially exceed the amount it would have had to pay to Debtor
28 following the termination of all the Cases if Debtor had not breached the Legal Services

1 10. The Cases are lawsuits in which RAKTL has asserted against various companies
2 claims of patent infringement. A number of Cases have been resolved. However, at the time the
3 Debtor announced its dissolution, RAKTL had not obtained recoveries from fourteen companies
4 that were the subject of the Legal Services Agreement. As of today, Cases against nine different
5 companies are still pending.

6 11. RAKTL's Claim arises out of its agreements with its litigation counsel. Other than
7 its arrangement with Covington, which is on an hourly basis, those other agreements involve
8 contingent fees. The contingent fees are based on RAKTL's recoveries in the Cases.

9
10 I declare under penalty of perjury that the foregoing is true and correct.

11
12 April 24, 2009

13
14
15 By  _____

JAMES TRAMONTANA