

# SRG

**Solmon Rothbart Goodman LLP**  
Barristers

Melvyn L. Solmon, B.A.Sc., LL.M. (Harv) \*\*

Randall M. Rothbart, B.A., LL.B.

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Avrum D. Slodovnick, LL.B.

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Ryan R. McKeen, B.A.(Hon.), J.D.

Eric P. Borzi, B.A.(Hon.), LL.B.

Member of the New York Bar \*\*

January 28, 2013

**VIA EMAIL - [Patrick.Shea@gowlings.com](mailto:Patrick.Shea@gowlings.com)  
and [Clifford.Cole@gowlings.com](mailto:Clifford.Cole@gowlings.com)**

Gowling LaFleur Henderson LLP  
1 First Canadian Place, Suite 1600  
100 King Street West  
Toronto, Ontario M5X1G5

Attention: Mr. E. Patrick Shea and Clifford  
Cole

Dear Mr. Shea:

Re: Niketo Co. Ltd. et al. ats Unique Broadband Systems Inc.  
Court File No.: CV-11-9283-00CL  
Our File No.: 17086

---

Further and in reply to the Affidavit of Victor Wells sworn January 25, 2013, please find enclosed the Further Supplementary Affidavit of John Zorbas sworn January 28, 2013, served upon you.

Yours very truly,

SOLMON ROTHBART GOODMAN LLP



Melvyn L. Solmon/lk  
MLS/lk

CC. Matt Gottlieb - [mgottlieb@counsel-toronto.com](mailto:mgottlieb@counsel-toronto.com)  
Josheweph Groia - [jgroia@groiaco.com](mailto:jgroia@groiaco.com)  
Gavin Smyth - [gsmyth@groiaco.com](mailto:gsmyth@groiaco.com)  
Peter L. Roy - [plr@reolaw.ca](mailto:plr@reolaw.ca)  
S. Michael Citak - [mcitak@mcleankerr.com](mailto:mcitak@mcleankerr.com)

**[msolmon@srglegal.com](mailto:msolmon@srglegal.com)**

375 University Ave., Suite 701, Toronto, ON M5G 2J5  
T 416 947.1093 F 416 947.0079

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**IN THE MATTER OF *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
UNIQUE BROADBAND SYSTEMS, INC. and UBS WIRELESS SERVICES INC.**

**FURTHER SUPPLEMENTARY AFFIDAVIT OF JOHN ZORBAS**

I, John Zorbas, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

1. This affidavit is sworn further to my Affidavits sworn January 22 and 24, 2013 (my "Prior Affidavits", and I adopt the definitions set out therein, as well as the definitions set out in the Plan annexed as Schedule "A" to the Notice of Motion), and in reply to the Affidavit of Victor Wells sworn January 25, 2013 (the "Wells Affidavit") in response to the Plan Sponsor's motion.

2. In particular, I respond to the UBS response to the Plan, and UBS' decision to reject or not support the Plan.

**Paragraph 41(2) of the Wells Affidavit**

3. With respect to paragraph 41(2) of the Wells Affidavit, the Plan contemplates keeping the Special Committee (namely, Mr. Wells and Mr. Taylor) on the Board of UBS, and adding myself and Mr. Subotic, as well as Mr. Tsubouchi who is completely and totally independent. The implied allegations made that Mr. Tsubouchi, who is the former Solicitor-General of Ontario (I incorrectly referred to Mr. Tsubouchi in my Prior Affidavits as the former Attorney-General), is not independent, are unfounded and baseless. Given Mr. Tsubouchi's independence, the Board will not be controlled by the Plan Sponsor as alleged in the Wells Affidavit.

**Paragraph 41(3) of the Wells Affidavit**

4. With respect to paragraph 41(3) of the Wells Affidavit, based on my due diligence, the Plan Sponsor has considered the merits and defence of the Jolian Action. Every Creditor I have spoken to is in support of the Plan.

**Paragraph 41(4) of the Wells Affidavit**

5. With respect to paragraph 41(4) of the Wells Affidavit, based on my experience, it is not unusual or unreasonable for a lender to request and obtain security over the assets of the debtor, which include the Look Shares owned by UBS (through its wholly owned subsidiary, UBS Wireless.

**Paragraph 41(5) of the Wells Affidavit**

6. For the last two and a half years, the UBS Board has not generated any business revenue, nor has it carried on any business. With respect to paragraph 41(5), it is not the responsibility of Plan Sponsor to make decision about what business that will be put into UBS; it is the Board's responsibility to appoint management and make decisions with respect to the business. I advised Mr. Wells of this during our meetings.

**Paragraph 41(6) and (7) of the Wells Affidavit**

7. With respect to paragraph 41(6) and (7), with regard to the helpful comments of UBS with respect to the Plan, we have provided a letter from SRG to counsel to UBS dated January 28, 2013 in this regard, a true copy of which is annexed hereto and marked as **Exhibit "A"** to this my affidavit .

**Paragraph 41(8) of the Wells Affidavit**

8. With respect to paragraph 41(8), it is my understanding that distributions to shareholders under the *CCAA* are prohibited, given that the purpose of the *CCAA* is to protect the Creditors first. In any event, I understand that UBS has not taken any steps or made any distributions to shareholders since the current Board took over, despite having expended over \$8 Million since May 2010, including the payment for legal and professional fees related to this *CCAA* proceeding and other litigation, which today we learned was \$4.8 Million. Annexed hereto and marked as **Exhibit "B"** to this my affidavit is a true copy of a summary from UBS

**Paragraph 41(9) of the Wells Affidavit**

9. With respect to paragraph 41(9), the negotiations with Jolian and Reeson were arm length negotiations, which culminated in the Jolian Settlement Agreement and Reeson Settlement Agreement. In addition, I understand that the going forward indemnities for directors would remain regardless of the settlements, once UBS is out of *CCAA* protection.

10. Furthermore, with respect to the Claims of Messrs. McCutcheon, Ulicki and Eaton, those Claims were shown in Monitor's reports as contingent and to be determined, and never quantified. Once quantified and approved by the Monitor and the Court, they will be paid by the Plan Sponsor.

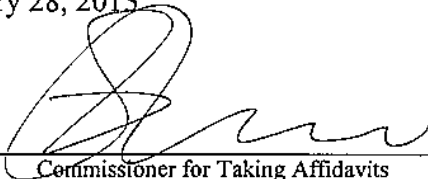
11. During a meeting with the Monitor on January 8, 2013, the Monitor advised me and I verily believe it to be true that Mr. Minaki's Claim had not been approved or accepted by UBS. This was confirmed in emails between the Monitor and SRG on January 9, 2013. Without in any way waiving privilege, and specifically reserving it, annexed hereto and marked as **Exhibit "C"** are true copies of the emails exchanged between the Monitor and SRG regarding the Claim of Mr. Minaki on January 9, 2013. It was only in the Wells Affidavit, and in particular, in the chart included at paragraph 18, that, for the first time, that the Plan Sponsor was made aware that the Claim of Mr. Minaki had now been accepted. As it has now been approved, it will be paid.

12. We requested from the Monitor if the Monitor would be supporting the Plan. The Monitor advised that it would not. We requested a summary of the reasons for the Monitor not supporting the Plan, so that we could determine and discuss if those concerns could be satisfied, before the cross-examinations. The Monitor has refused to provide such a summary. Annexed

hereto and marked as **Exhibit "D"** to this my affidavit is a true copy of emails between SRG and the Monitor.

13. I make this further supplementary affidavit in support of the Plan Sponsor's motion and for no improper purpose.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on .  
January 28, 2013

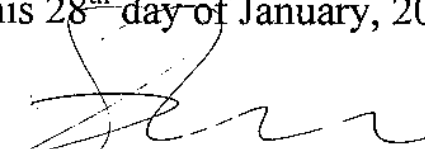
  
Commissioner for Taking Affidavits  
(or as may be)

Raffaele Spurio

}

  
JOHN ZORBAS

This is Exhibit "A" referred to in  
the Further Supplementary Affidavit of John Zorbas sworn before  
me this 28<sup>th</sup> day of January, 2013



---

*A Commissioner etc.*

January 28, 2013

**VIA EMAIL - [Patrick.Shea@gowlings.com](mailto:Patrick.Shea@gowlings.com)  
and [Clifford.Cole@gowlings.com](mailto:Clifford.Cole@gowlings.com)**

Gowling LaFleur Henderson LLP  
1 First Canadian Place, Suite 1600  
100 King Street West  
Toronto, Ontario M5X1G5

Attention: Mr. E. Patrick Shea and Clifford Cole

Dear Mr. Shea:

Re: Niketo Co. Ltd. et al. ats Unique Broadband Systems Inc.  
Court File No.: CV-11-9283-00CL  
Our File No.: 17086

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Melvyn L. Solmon, B.A.Sc., LL.M. (Hon) \*\*

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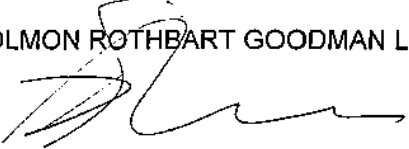
Further to the Affidavit of Victor Wells sworn January 25, 2013, our client appreciates the helpful comments, and we can advise as follows:

1. With respect to paragraph 41(6), our client will obtain the necessary regulatory or Court approvals and amend the Loan Documentation accordingly;
2. With respect to paragraph 41(7), our client will provide additional financing, as may be necessary, over and above the \$4.5 Million; and,
3. With respect to paragraph 41(9), our client has agreed and will pay 100% of all approved claims, including to Mr. Minaki;

We are seeking confirmation from Jolian, Mr. McGoey and Mr. Reeson with respect to consenting to these amendments.

Yours very truly,

SOLMON ROTHBART GOODMAN LLP

PER:   
Melvyn L. Solmon/lk  
MLS/lk

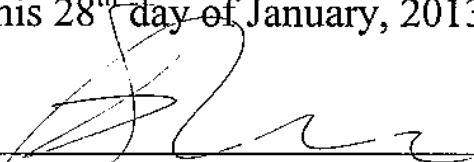
CC: Matt Gottlieb - [mgottlieb@counsel-toronto.com](mailto:mgottlieb@counsel-toronto.com)  
Joseph Groia - [jgroia@groiaco.com](mailto:jgroia@groiaco.com)  
Gavin Smyth - [gsmyth@groiaco.com](mailto:gsmyth@groiaco.com)  
Peter L. Roy - [plr@reolaw.ca](mailto:plr@reolaw.ca)  
S. Michael Citak - [mcitak@mcleankerr.com](mailto:mcitak@mcleankerr.com)

**[msolmon@srglegal.com](mailto:msolmon@srglegal.com)**

375 University Ave., Suite 701, Toronto, ON M5G 2J5  
T 416 947.1093 F 416 947.0079



This is Exhibit "B" referred to in  
the Further Supplementary Affidavit of John Zorbas sworn before  
me this 28<sup>th</sup> day of January, 2013



A Commissioner etc.

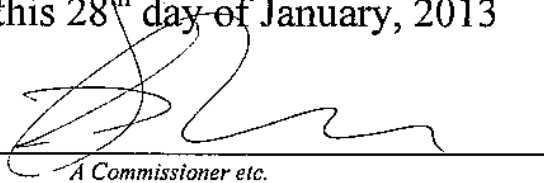
# Unique Broadband Systems, Inc.

## Summary of legal expenses

July 5, 2010 through January 23, 2013

	<u>Jul 5, '10 - Jan 23, 13</u>
9025 • CORP LEGAL - CONTINUING OPS	
77777 • CCAA	2 129 171 57
64175 • JIL and DOL Litigation	1 356 405 11
64176 • Minaki-Defence of Civil Action	82 211 12
64177 • Mitrovich settlement	79 962 51
64178 • 2064818 Ontario Inc.	54 573 64
62421 • General Corporate Advice	462 005 79
Total 9025 • CORP LEGAL - CONTINUING OPS	<u>4 164 329 74</u>
9030 • CORP LEGAL - DISCONTINUED OPS	
62424 • ScotiaCap	166 087 55
62425 • Elbau	70 949 67
62427 • Edgely Blvd	<u>400 651 63</u>
Total 9030 • CORP LEGAL - DISCONTINUED OPS	<u>637 688 85</u>
Total legal expenses	<u>4 802 018 59</u>

This is Exhibit "C" referred to in  
the Further Supplementary Affidavit of John Zorbas sworn before  
me this 28<sup>th</sup> day of January, 2013

A handwritten signature in black ink, consisting of a large, stylized 'Z' followed by a series of loops and a horizontal stroke at the end. The signature is written over a solid horizontal line.

---

*A Commissioner etc.*

## Raffaele Sparano

---

**From:** Vininsky, Mitch [Mitch.Vininsky@duffandphelps.com]  
**Sent:** January-09-13 1:30 PM  
**To:** Raffaele Sparano  
**Cc:** Mel Solmon; Kofman, Bobby  
**Subject:** RE: UBS

Our records show that Mr. Minaki's claim has not yet been determined, meaning it has not been admitted or approved.

---

Mitch Vininsky

---

**From:** Raffaele Sparano [mailto:rsparano@srglegal.com]  
**Sent:** Wednesday, January 09, 2013 11:35 AM  
**To:** Vininsky, Mitch  
**Cc:** Mel Solmon  
**Subject:** UBS

Hey Mitch,

Further to our meeting at your offices yesterday, can you please confirm whether or not the debt/claim of Peter Minaki (\$92,867.24) is an approved and accepted claim?

Thanks.

Raffaele

---

### Raffaele Sparano

Solmon Rothbart Goodman LLP  
375 University Avenue, Ste. 701  
Toronto, Ontario M6G 2S5  
Tel: (416) 947-1093 ext. 346  
Fax: (416) 947-0079

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## Raffaele Sparano

---

**From:** Vininsky, Mitch [Mitch.Vininsky@duffandphelps.com]  
**Sent:** January-09-13 4:51 PM  
**To:** Mel Solmon; Raffaele Sparano  
**Cc:** Kofman, Bobby; dsubotic@nwturanium.com; Shea, Patrick; Matt Gottlieb  
**Subject:** RE: UBS

The Monitor is unaware of the issue you raised below. UBS's stated position re the claim, as set out in UBS's letter from December, 2011, is:

Peter Minaki filed a proof of claim against UBS claiming \$92,861.24. Mr. Minaki's claim is based on an Indemnification Agreement dated 25 January 2007. Mr. Minaki's is claiming indemnification in respect of costs incurred in defending a third-party action brought against Mr. Minaki's by, inter alia, Mr. Dolgonos. Mr. Minaki's claim for indemnification is contingent. UBS's obligation to indemnify Mr. Minaki is dependent on the factual finding made in connection with the proceedings in respect of which Mr. Minaki seeks indemnification.

---

Mitch Vininsky

---

**From:** Mel Solmon [mailto:msolmon@srglegal.com]  
**Sent:** Wednesday, January 09, 2013 2:22 PM  
**To:** Vininsky, Mitch; Raffaele Sparano  
**Cc:** Kofman, Bobby; dsubotic@nwturanium.com; Mel Solmon  
**Subject:** RE: UBS

Have you received back up confirmation as to the amount charged.  
There is an issue that the amount of legal work done and delivery of the defence does not justify the \$92,000 claim.  
Thanx  
e-mel

---

**From:** Vininsky, Mitch [mailto:Mitch.Vininsky@duffandphelps.com]  
**Sent:** January-09-13 1:30 PM  
**To:** Raffaele Sparano  
**Cc:** Mel Solmon; Kofman, Bobby  
**Subject:** RE: UBS

Our records show that Mr. Minaki's claim has not yet been determined, meaning it has not been admitted or approved.

---

Mitch Vininsky

---

**From:** Raffaele Sparano [mailto:rsparano@srglegal.com]  
**Sent:** Wednesday, January 09, 2013 11:35 AM  
**To:** Vininsky, Mitch  
**Cc:** Mel Solmon  
**Subject:** UBS

Hey Mitch,

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Thanks.

Raffaele

---

**Raffaele Sparano**

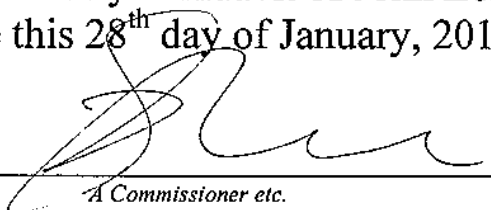
Solmon Rothbart Goodman LLP  
375 University Avenue, Ste. 701  
Toronto, Ontario M6G 2S5  
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Fax: (416) 947-0079

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This is Exhibit "D" referred to in  
the Further Supplementary Affidavit of John Zorbas sworn before  
me this 28<sup>th</sup> day of January, 2013



---

*A Commissioner etc.*

## Raffaele Sparano

---

**From:** Matt Gottlieb [mgottlieb@counsel-toronto.com]  
**Sent:** January-28-13 2:30 PM  
**To:** Mel Solmon  
**Cc:** Bobby.Kofman@duffandphelps.com; Mitch.Vininsky@duffandphelps.com; Raffaele Sparano  
**Subject:** RE: UBS

The Monitor will not agree to do that. It is preparing its report and will have it served as soon as possible. At no point did the Monitor suggest or state that your clients had addressed the Monitor's concerns or issues regarding the Plan.

---

**From:** Mel Solmon [mailto:msolmon@srglegal.com]  
**Sent:** January-28-13 2:24 PM  
**To:** Matt Gottlieb  
**Cc:** Bobby.Kofman@duffandphelps.com; Mitch.Vininsky@duffandphelps.com; Raffaele Sparano; Mel Solmon  
**Subject:** RE: UBS

Can you please give me a summary now. Perhaps there are ways to accommodate what we thought were all your concerns.

Thanx  
e-mel

---

**From:** Matt Gottlieb [mailto:mgottlieb@counsel-toronto.com]  
**Sent:** January-28-13 1:48 PM  
**To:** Mel Solmon  
**Cc:** Bobby.Kofman@duffandphelps.com; Mitch.Vininsky@duffandphelps.com; Raffaele Sparano  
**Subject:** RE: UBS

The Monitor will not be supporting the Plan. It will be serving and filing a Report to Court setting out the Monitor's views and recommendations.

---

**From:** Mel Solmon [mailto:msolmon@srglegal.com]  
**Sent:** January-28-13 1:13 PM  
**To:** Matt Gottlieb  
**Cc:** Bobby.Kofman@duffandphelps.com; Mitch.Vininsky@duffandphelps.com; Raffaele Sparano; Mel Solmon  
**Subject:** RE: UBS

Thank you Matt – but the first issue is whether the monitor will support the plan.  
If it will please advise.  
If not please advise the reasons why it will not support the plan.  
We can then decide whether it is worthwhile discussing other alternatives.  
e-mel

---

**From:** Matt Gottlieb [mailto:mgottlieb@counsel-toronto.com]  
**Sent:** January-28-13 11:54 AM  
**To:** Mel Solmon  
**Cc:** Kofman, Bobby (Bobby.Kofman@duffandphelps.com); Vininsky, Mitch (Mitch.Vininsky@duffandphelps.com)  
**Subject:** UBS  
**Importance:** High

Mel, when we were in court last week, you mentioned to His Honour (and all present) that there was a "third option" regarding UBS that your clients were considering. The Monitor is interested in learning about the additional option and would like to have a call to discuss. Can you please let us know when you can be available? Thanks.



**Matthew P. Gottlieb**  
Direct: 416 644 5353  
[mgottlieb@counsel-toronto.com](mailto:mgottlieb@counsel-toronto.com)

**Lax O'Sullivan Scott Lisus LLP**  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8 Canada  
T 416 598 1744 F 416 598 3730  
[counsel-toronto.com](http://counsel-toronto.com)

**LAX**  
**O'SULLIVAN**  
**SCOTT**  
**LISUS**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

(PROCEEDING COMMENCED AT TORONTO)

**FURTHER SUPPLEMENTARY AFFIDAVIT OF JOHN  
ZORBAS, SWORN JANUARY 28, 2013**

**SOLMON ROTHBART GOODMAN LLP**

Barristers

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Fax: 416-947-0079

Lawyers for Niketo Co. Ltd.

File Number: 17086