

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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.

FACTUM OF THE MOVING PARTY

OVERVIEW

1. This has been a long, drawn out, litigious and extraordinarily expensive CCAA proceeding that now stands at a cross roads.
2. Over the next 13 weeks, Unique Broadband Systems, Inc. ("UBS"), and UBS Wireless Services Inc. ("UBS Wireless" and collectively with UBS, the "CCAA Debtors") intend to sell half of their holdings in LOOK Communications, Inc. ("LOOK") and pay \$1.3 million to professionals to continue down the litigation path with no resolution in sight and no assurance of a successful result.¹
3. In this motion, Niketo Co. Ltd. ("Niketo") asks this Court to direct the CCAA Debtors to take the path of compromise that would bring a successful conclusion to these seemingly endless proceedings by sponsoring a plan of arrangement (the "Plan") that will:

¹ Motion Record of the Moving Party, Volume 3, Tab A, p. 554-555

- (a) settle or eliminate outstanding contingent claims against the CCAA Debtors;
 - (b) pay all creditors of the CCAA Debtors in full; and
 - (c) preserve the CCAA Debtors and their assets intact for the benefit of all their stakeholders.²
4. By funding the Plan, Niketo would absorb all of the financial risk now borne by the creditors of the CCAA Debtors. The loan provided by Niketo would pay all of the CCAA Debtors' accrued post filing expenses and all of their pre-filing creditors' claims in full. The terms of loan would be more than fair to the CCAA Debtors, requiring no payments of principal or interest for 2 years and bearing an interest rate of only prime plus 2%.³
5. As a consequence of the implementation of the Plan, the unique asset of the CCAA debtors, a control block of the shares of LOOK (the "LOOK Shares") and the favourable tax characteristics of the CCAA Debtors would be preserved for the benefit of their shareholders.
6. Simply put, the Plan fulfills the essential purpose and function of the CCAA.
7. Instead of accepting and promoting the complete solution offered by Niketo, management of the CCAA Debtors wish to break the control block of LOOK shares owned by the CCAA Debtors and liquidate assets in order to continue litigating claims that would be settled if the plan were accepted and implemented.

² Motion Record of Moving Party Volume 1, Tab II, pages 13-26

³ Motion Record of Moving Party, page 205 and following (amended loan agreement to be provided to satisfy concerns raised on cross-examination)

8. The CCAA Debtors' objections to the Plan boil down to one substantive objection and one procedural objection.⁴
9. Substantively, management of the CCAA Debtors asserts that the settlement of the disputed claims of Gerald McGoeey and Jolian Investments Ltd. (the "Jolian Claims") which would be implemented as part of the Plan is too rich and that more money and time spent on further litigation could reduce or eliminate the Jolian Claims.
10. Procedurally, management of the CCAA Debtors asserts that, ironically because the Plan preserves value for the shareholders of which Niketo is the largest, the Plan should not be presented for a vote by the creditors of the CCAA Debtors unless the Plan is also presented to shareholders for approval.
11. Dealing with the substantive objection first, the Plan proposes to settle the Jolian Claims of approximately \$10 million⁵ for \$2 million⁶ plus interest and costs⁷. By settling and implementing the Plan, all stakeholders benefit by avoiding continued litigation and administration costs. Additionally, by settling, all stakeholders will benefit by avoiding the risk of an adverse outcome of the litigation.⁸
12. By comparison, continuing the litigation means paying the cost of a trial plus continued CCAA expenses including those charged by the CCAA Debtors' own CCAA counsel, the Monitor and counsel to the Monitor. Based on the cash flow forecasts filed by the CCAA

⁴ Cross examination of Ken Taylor (to be provided)

⁵ Jolian Settlement Agreement, Schedule "A" to the Notice of Motion of the Plan Sponsor, Schedule 1 p. 28 (of record) and following

⁶ Jolian Settlement Agreement, supra at p. 6 (33 of record)

⁷ Jolian Settlement Agreement, supra at [p.7]

⁸ Management itself acknowledges the uncertainty and risk and that an adverse outcome of the litigation will be prejudicial to the CCAA Debtors in its public disclosure – see Motion Record of the Moving Party at pp 554 and 555.

Debtors, these costs will exceed \$1.3 million in the coming 13 weeks⁹ and will not result in a payment to the unsecured creditors or any distribution to shareholders. These costs will continue beyond the 13 week period of the cash flow projections filed by the CCAA Debtors.¹⁰

13. The further “cost” to the CCAA Debtors and their stakeholders is the break-up of the control block to sell half of the LOOK Shares at a small premium over the price at which shares of LOOK trade on the exchange.¹¹ The CCAA Debtors propose to incur this “cost” simply to fund ongoing litigation and CCAA administrative costs that would be avoided if the Plan were implemented.
14. In sum on the substantive point, Niketo, as the largest shareholder of UBS, believes that the best interests of the shareholders of the CCAA Debtors is served by the Plan and in the Plan, Niketo backs up that conviction by agreeing to fund the payment of the creditors in full, including the settled Jolian Claims, to preserve and unlock the value embodied in the CCAA Debtors for the benefit of its shareholders.¹²
15. Dealing with the procedural objection, it is important to remember that the CCAA is an “Act to facilitate *compromises and arrangements* between companies and their *creditors*”¹³. In that context, using the CCAA to perpetuate expensive litigation, risking creditor recovery

⁹ Exhibits 1 and 6 of cross examination of Grant McCutcheon (see Exhibit Book)

¹⁰ Mr. Taylor testified that, with costs of appeal, cost could easily be in the range of 2 million dollars and he had not received any information or considered the extent and effect of the delay, and further costs of the monitor and its counsel.

¹¹ Mr. Taylor confirmed that the effect of dividing up the control block would diminish the value of the remaining shares.

¹² On cross examination, Mr. Zorbas confirmed that even if the costs were 30% more, Niketo would fund the further amount if required.

¹³ CCAA, preamble, emphasis added.

and liquidating assets along the way, in order to pursue a speculative recovery for shareholders is contrary to the essential purpose of the CCAA.

16. Legally, the shareholders are not entitled to a veto over the Plan:

- (a) the shareholders' vote is not required, even if they potentially would benefit from the Plan or its refusal;¹⁴ and
- (b) whether they vote for or against the Plan, the Court may still sanction the Plan and the Plan may be implemented.¹⁵

17. In fairness, the shareholders should not have a veto over the Plan:

- (a) Since the Plan would pay the creditors in full, continued litigation cannot benefit the creditors;
- (b) The creditors are entitled to priority over the shareholders and, therefore, have a prior interest in the assets;
- (c) The shareholders should not be entitled to force the liquidation of the CCAA Debtors to pay expenses that cannot benefit creditors and which risk the creditors' recovery;
- (d) Given the enormous cost of continued litigation, the potential benefit of successfully defending the Jolian Claims is small for shareholders when compared to the benefits they would receive under the Plan; and

¹⁴ CCAA, ss. 4 and 5 permit but do not require the court to order shareholder meetings to consider a plan of arrangement or compromise.

¹⁵ CCAA, s. 6, permits the court to sanction a plan of arrangement or compromise if the creditors approve it. S. 6 does not require approval of shareholders even if a shareholder meeting is held pursuant to s. 4 or 5.

- (e) As the shareholders are not funding the on-going litigation and CCAA expenses of CCAA Debtors, in the words of Farley, J. in the Stelco case, the shareholders should not be allowed to gamble someone else's farm without using any of their own chips.¹⁶
- (f) Unlike creditors, if the shareholders do not wish to be part of the plan, they have an exit strategy. They can sell their shares.¹⁷
- (g) Any concerned shareholder may attend the sanction order hearing and voice their concerns.
- (h) As the equity presently existing in UBS has no value due to its insolvency,¹⁸ the shareholders have no economic interest to protect, so they have no claim to a right under the proposed plan.¹⁹

18. The benefit, if any, of a shareholder meeting is outweighed by the cost and delay:

- (a) The costs would be substantial because UBS is a widely held public company;
- (b) The costs would be significantly increased because the disclosure would have to explain and attempt to provide the means to evaluate the Jolian Claims without disclosing privileged information such as opinions of counsel;
- (c) The speculative and incomplete nature of the disclosure (both as to merits of the Jolian Claims and as to the cost of continued litigation) will make it useless to

¹⁶ *Re Stelco Inc.*, [2006] O.J. 276, para 18

¹⁷ Cross examination of Victor Wells, page 62-63, question 304-307.

¹⁸ See cross examination of Grant McCutcheon and Ken Taylor.

¹⁹ *Re Stelco*, *supra*, paras 16-17.

shareholders and, as a consequence, the results of the meeting will be of little assistance to the Court;

- (d) There is no source of funding of the additional costs as the plan sponsor will not provide funds for a shareholder's meeting;²⁰ and
- (e) The interests of the shareholders, derivative as they are of the interests of the CCAA Debtors, will be considered at the sanction hearing.

19. The information relied upon by the Monitor comes from the UBS board and CEO, and the solicitor Patrick Shea. The evidence that has been provided by Mr. Wells under oath demonstrates that it cannot be relied upon by the Court and should not be relied upon by the Monitor.²¹ This includes, for example:

- (a) Paragraph 13 that alleges 2.1 million only was spent on professional fees for CCAA proceedings and all litigation. In fact, it is significantly more than that, approaching 4 million dollars. It was not disclosed that this incorrect information came from Shea.²²
- (b) That the claim of Mr. Minaki for 92,861 dollars was admitted by the Monitor. This again was information from Mr. Shea and the monitor has confirmed that it has not admitted this claim.

²⁰ Affidavit of John Zorbas para. 12 p. 497, and para. 4 p. 547.

²¹ Note that Mr. Wells admitted that at least 11 paragraphs were not his knowledge but rather information from Mr. Shea, but he failed to mention that it was based on information.

²² Mr. Wells confirmed that there is only a small amount to be gained by UBS in the Jolian litigation, likely around \$150,000 (Cross examination of Wells, page 44, question 201).

(c) Mr. Wells suggests under oath that the purpose of the sale process was not to address liquidity (see paragraph 29), but he admits otherwise on cross-examination, which is confirmed by Mr. Taylor on his examination.²³

(d) Although in his affidavit in support of the sale of shares, he states “the UBS board has, however, considered the Jolian claim and believes that it is without merit”, on cross-examination he confirmed that the board has not done that when he has been a director and that that information came from Mr. Shea. He stated that Mr. Wells stands behind the disclosure to the shareholders as set out in the MDNA dated November 29, 2012 at page 555.²⁴

20. The UBS company and management have accomplished nothing for the benefit of shareholders for over a 2.5 year period, other than going through 8 million dollars.

21. The ability to obtain funding by exercising the rights as a shareholder of LOOK has not been utilized by the UBS board. UBS owns almost 40% of the shares of LOOK, and at the annual general meeting of LOOK scheduled for February 28, 2013 could use that voting power to change the board and have LOOK issue a dividend by distributing part of the in excess of 17 million dollars that LOOK has available in cash or cash equivalents. Instead of carrying this out, this plan was rejected, and instead a decision was made to sell part of the control block and thereby diminish the value of the remaining shares owned by UBS.

22. It was revealed on cross examination that the CEO Mr. McCutcheon stated that the Monitor and the board are managing the CCAA process. The chairman Mr. Ulicki testified that the

²³ See also page 53, Question 260 where Mr. Wells admits that the litigation contributes to the drain on cash available to UBS.

²⁴ Cross examination of Wells, Page 62, Question 301.

CEO is managing the CCAA process. Mr. Wells has admitted, as did Mr. Taylor that the CEO has not provided any input to the special committee with regard to the sales process.²⁵

FACTS

23. The CCAA Debtors applied and obtained relief under the CCAA by an Initial Order made on July 5, 2011.²⁶ In support of the CCAA Debtors' application, Mr. Robert Ulicki, then a director of each of the CCAA Debtors, testified that relief under the CCAA was required to "facilitate the determination and compromise or arrangement of creditor claims against UBS to permit the company to propose a plan to realize value from the company's assets, including its shareholdings in [LOOK], and its accumulated tax losses and public listing..."²⁷ At that time, Mr. Ulicki also testified that one of the reasons for CCAA was the concern that because of the cash shortfalls, that the LOOK shares would have to be sold to finance litigation, and the intent was clearly to use CCAA not to do this.^{28 29}
24. From and after May, 2010, the CCAA Debtors have held a "non-controlling 37.6% voting interest and a 39.2% economic interest in LOOK."³⁰ While the interest of the CCAA

²⁵ The CEO of UBS, Mr. McCutcheon, is also the CEO of Look. They agreed to provide a support agreement to the Chairman Mr. Ulicki with regard to a public tender for Look shares, whereby if the share price is greater than 11 cents, Mr. Ulicki can receive a fee of \$225,000 if he doesn't meet a higher bid. Approximately 40% of this "fee" is being paid by UBS indirectly, as confirmed by Mr. Wells. When the support agreement was executed, the UBS board received a number of expressions of interest or offers that were greater than 11 cents outside of and long prior to the sales process.

²⁶ Initial Order of Wilton-Siegel, J., made July 5, 2011

²⁷ Affidavit of Robert Ulicki, sworn July 5, 201, para 4

²⁸ Ibid, para. 79.

²⁹ Note that no independent valuation of the LOOK shares owned by UBS has been obtained, nor has there been any valuation of what effect or the value of the remaining shares would be if the sale of half the shares was approved (The cross examinations of Wells, Ulicki, Taylor, and McCutcheon all confirm that the only "independent" opinion not in writing was from the Monitor, represented by Mr. Kofman, who has no qualifications to do so).

³⁰ Ibid, para 10

Debtors in LOOK are non-controlling, at least at the time of filing, UBS played “a key role in the management of LOOK”³¹

25. In addition to the LOOK shares, the CCAA Debtors held some cash and approximately (i) \$11.4 million in non-capital income tax losses and (ii) \$22.5 million in capital tax losses and (iii) 2.67 million in income tax credits (which would shelter income based on a 30% tax rate, approximately 8-9 million)^{32, 33}
26. At the time of its filing, the cost of litigating the Jolian Claims, was “causing a serious strain on UBS’s cash flow.”³⁴ Mr. Ulicki expressed his concern on behalf of UBS that the litigation claims asserted against the CCAA Debtors, including the Jolian Claims, would “swamp” the claims of other creditors.³⁵
27. The CCAA Debtors conducted a claims process to identify all creditor claims. Through the claims process and the efforts of the CCAA Debtors to resolve and/or settle claims, the only remaining creditor claims are as follows:

Creditor	Claim	Status
Jolian Investments	\$10,122,688	Disputed. Proposed to be settled by Niketo Plan.
Gerald McGoey	Contingent	Disputed. Proposed to be settled by Niketo Plan.

³¹ Ibid, para 26.

³² Cross examination of Victor Wells.

³³ Ibid, para 68-71

³⁴ Ibid, para 53

³⁵ Ibid

Creditor	Claim	Status
Douglas Reeson	\$585,000	Disputed. Proposed to be settled by Niketo Plan.
DOL Technologies	\$8,042,716	Settled by UBS.
Alex Dolgonos ³⁶	Contingent	Settled by UBS.
2064818 Ontario	Contingent	Settled by UBS.
Gorrison Federspiel	DKK177,146.58	Admitted.
Goldman Sloan Nash & Haber	\$22,397.59	Admitted.
Heenan Blaikie	\$6,149.48	Admitted. Assigned to Niketo.
Stellarbridge Management	\$150,000	Admitted
Peter Minaki	\$92,861	Admitted (confirmed by Monitor not approved, Wells affidavit incorrect) ³⁷
Henry Eaton	Contingent	Contingent – No amount ever claimed, at best a post-filing claim
Robert Ulicki	Contingent	Contingent – No amount ever claimed, at best a post-filing claim
Grant McCutcheon	Contingent	Contingent – No amount ever claimed, at best a post-filing claim
LOOK Communications	Contingent	No longer has a claim

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28. The claims of Robert Ulicki, Henry Eaton and Grant McCutcheon are for indemnity for costs incurred in connection with their positions as directors of the CCAA Debtors. As a

³⁶ It is submitted that Dolgonos is entitled to vote as a creditor, as the agreement only dealt with his status as a shareholder. It should also be noted that for the Dolgonos settlement, there was no need for a creditor's meeting to approve it, or a shareholders meeting to approve it, but simply court approval.

³⁷ Wells cross examination.

³⁸ Affidavit of Victor Wells, sworn January 25, 2013

consequence of the implementation of the Plan, their existing claims under such indemnities would be satisfied as post filing claims and they would incur no future entitlements under such indemnities in respect of the claims settled by the Plan. They are not affected by the Plan and are not entitled to vote on it.

29. The CCAA Debtors have already spent approximately \$2.6 million on the costs of disputing creditor claims and the administration of the CCAA case, as of January 23, 2013, and the legal fees appear to be approximately \$2 million for the litigation up to January 23, 2013.³⁹ If the CCAA Plan is not implemented, the CCAA Debtors plan to spend another \$1.3 million in litigation and CCAA administration expenses in the next 13 weeks.⁴⁰
30. The Plan addresses the concerns originally expressed by Mr. Ulicki on July 5, 2011 in support of the granting of the Initial Order. Instead of permitting the claims against the CCAA Debtors to swamp other creditor claims, the Plan provides for payment in full of all creditor claims. This result is only certain through the implementation of the Plan and cannot be assured by continuing the litigation of the Jolian Claims.⁴¹
31. The Plan achieves the objectives of preserving the influential block of LOOK Shares held by the CCAA Debtors while using their value to fund the immediate payment of creditor claims in full.
32. The Plan preserves the opportunity described in Mr. Ulicki's July 5, 2011 affidavit to use the tax losses of the CCAA Debtors to enhance the recovery of its stakeholders.

³⁹ Exhibits A and 6 of Grant McCutcheon.

⁴⁰ Exhibits 1 and 6 of Grant McCutcheon.

⁴¹ Motion Record of Moving Party at pp. 554 - 555

33. The Plan provides for the on-going governance of the CCAA Debtors by a responsible and representative board of directors.
34. The funding for the payments promised in the Plan will be placed into trust promptly after the Plan is filed.
35. The professional and other costs associated with calling a meeting of the shareholders of UBS to consider the Plan are estimated to be \$250,000 to \$500,000.⁴²
36. Any technical omissions or corrections can easily be made to the plan in order to satisfy all legal requirements.

ISSUES

37. There are two principal issues in this motion:
 - (a) Should the Plan (with any amendments as may be required by the Court) be presented to the Affected Creditors of the CCAA Debtors for their vote in accordance with section 4 of the CCAA?
 - (b) Should a shareholder meeting be called to consider and vote on the Plan?
38. Niketo urges the court to answer yes to the first question and no to the second.

⁴² Affidavit of John Zorbas, sworn January 24, 2013, p. 547.

LAW

39. The CCAA Debtors do not have the exclusive right to present a plan of compromise or arrangement for consideration by their creditors. A plan of compromise or arrangement may be proposed by a creditor.⁴³
40. Niketo is a creditor and is entitled to present the Plan for consideration by the creditors of the CCAA Debtors.
41. The CCAA, in sections 4 and 5, confers a discretion on the Court to order meetings of creditors. That discretion should be exercised in favour of calling meetings of creditors if the the Plan is reasonably acceptable to creditors. The Plan, in this case, is clearly in the best interests of creditors in that it will pay them in full and in cash.
42. The objections raised by the CCAA Debtors do not affect the creditors of the CCAA Debtors as they will be paid in full in cash when the Plan is implemented.
43. While acceptance of a plan of arrangement or compromise by creditors voting by class is a necessary condition of the sanction and implementation of a plan, a shareholder meeting and acceptance by shareholders is not a requirement under the CCAA, even if a shareholder meeting is called.⁴⁴

⁴³ CCAA, s. 4 and 5

Enterprise Capital Management Inc. v. Semi-Tech Corp. (1999), 10 C.B.R. (4th) 133 (Ont. S.C.)

⁴⁴ CCAA, s. 4 which permits the court to call meetings of shareholders and s. 6 which permits the court to sanction a plan of arrangement or compromise provided that the creditors approve it, not requiring shareholder approval.

44. The court has a discretion to summon a meeting of shareholders.⁴⁵ In this case, Niketo submits that the court should not summon the shareholders to a meeting for the following reasons:

- (a) Shareholder meetings are unusual in CCAA proceedings because, in order to qualify, a debtor company must be insolvent or have committed an act of bankruptcy;⁴⁶
- (b) The CCAA Debtors admitted their insolvency and sought an opportunity to file a plan of compromise or arrangement with their creditors;
- (c) At no time prior to the presentation of the Plan by Niketo did the CCAA Debtors contemplate a meeting of shareholders and, in fact, they consented to an order that no shareholder meeting would be called;⁴⁷
- (d) Although the Plan provides the best opportunity for the shareholders to benefit from these proceedings, even a positive result in the continued litigation will generate only a small recovery after payment of the costs of continuing litigation, including CCAA administration costs which will not be recoverable;
- (e) The additional cost of calling a meeting of shareholders and providing them with disclosure appropriate to the matters to be addressed in the meeting can only be funded by an increase of Niketo's loan and will significantly eat into any potential recovery of shareholders no matter what the result of the meeting;

⁴⁵ CCAA, s. 4 and 5.

⁴⁶ CCAA, s. 2, definition of "debtor company"

⁴⁷ Order of Justice Campbell, July 6, 2012, Motion Record of the Moving Party p. 507

- (f) The issue for consideration is not appropriate for shareholders because the information necessary to assess the Jolian Claims is privileged as is the advice of counsel which would be necessary to evaluate the choice of continuing litigation or settling the Jolian Claims;
- (g) The disclosure already available to shareholders describes the outstanding litigation in the following terms:

“Certain statements in this MD&A, other than statements of historical fact, may include forward-looking information that involves various risks and uncertainties...These risks and uncertainties include,...(vii) the outcome of litigation and legal matters...More specifically, UBS faces risks and uncertainties in connection with the ongoing *Companies Creditors' Arrangement Act* (“CCAA”) claims process and ongoing litigation described under the section entitled “Provisions and contingencies – Contingencies”. In particular, there can be no assurance that UBS will not be found liable for payments to certain parties in the course of this litigation nor can there be any assurance that UBS will be able to recover any of the amounts sought in its counterclaims. An award of damages against UBS and the ongoing costs of this litigation could, independently or collectively, have a material adverse effect on the financial condition and solvency of UBS.”⁴⁸

- (h) As the disclosure made by the CCAA Debtors demonstrates, the continued litigation is uncertain of success and further, not only the unsuccessful conclusion of the

⁴⁸ Motion Record of Moving Party Volume III Tab IV(A), pp 554-555

litigation, but also and independently, the “ongoing costs of this litigation” could have a material adverse effect on the financial condition and *solvency* of UBS.

45. As admitted by the CCAA Debtors, continued litigation is risky and speculative, not only in the sense that the outcome of the trial is uncertain but also in the sense that the continued costs of pursuing the litigation (more than \$1.3 million in the next 13 weeks) when compared to the complete solution proposed in the Plan puts at risk the recovery that would be available to the creditors under the Plan.
46. Calling a shareholder meeting and putting the Plan in the hands of the shareholders would unfairly disregard the interests of the creditors who are entitled to payment in priority to the shareholders.
47. In any event, the fact that Niketo, as plan sponsor, is the largest shareholder of UBS and is entirely aligned with shareholders in the sense that the return on its investment in the Plan comes from its recovery as a shareholder, provides comfort to the court that the Plan is fair to shareholders.
48. If the Plan is accepted, sanctioned and implemented, the creditors would receive payment in full. If the litigation continues, the creditors’ recovery would be put at risk with no upside for them. Allowing the shareholders to decide between the Plan and continued risky litigation would be allowing the shareholders to gamble someone else’s farm without using any of their own chips.⁴⁹

⁴⁹ *Re Stelco Inc.*, supra at para 18

49. All of the elements of the reorganization of the CCAA Debtors contemplated by the Plan can be implemented by a combination of the terms of the Plan itself, the acceptance of the Plan by the creditors voting by classes pursuant to the CCAA, and the Sanction Order. Together, the reorganization can become fully effective without a shareholder vote through the application of the reorganization provisions of the *Business Corporations Act* (Ontario)⁵⁰
50. The substantive objections to the Plan raised by the CCAA Debtors do not further the interests of creditors or could be addressed by open minded discussion. Those objections listed below and set out fully in Mr. Wells January 25th affidavit at paragraph 47, may be addressed as follows:
- (a) No requirement of Shareholder Approval – this is addressed elsewhere in this factum.
 - (b) Niketo Controls the UBS Board – The appointment of directors is properly a matter for the Plan⁵¹ and the question of whether these appointments are appropriate and fair can be addressed at the Sanction hearing. However, the proposed influence of Niketo on the board of restructured UBS is appropriate. The interests of Niketo, as the largest shareholder, and the other shareholders are aligned. There is no reason to believe and no evidence submitted that the new directors would not perform their statutory duties in the best interests of UBS. Further, it is appropriate that, given the extent of the financial commitment of Niketo in the restructured UBS, that it have strong representation on the Board.

⁵⁰ Business Corporations Act, s. 186
Re Canadian Airlines Corporation [2000] A.J. No. 771

⁵¹ OBCA, s. 186(3)(b)

- (c) Settlement of Jolian Claims without Adequate or any Consideration of the Merits - It is obvious that any rational business person would seriously consider settling a \$10 million claim for \$2 million plus interest and costs before spending another \$1.3 million to defend that claim. In the present case, the CCAA Debtors have acknowledged that continued litigation is uncertain of success and the risks associated with the litigation threaten the solvency of the CCAA Debtors (that is, their ability to pay creditor claims). In that context and at this point, it is more accurate to say that UBS and its management has not given adequate or any consideration to settling the outstanding disputed claims and their failure to do so is and will continue to prejudice the creditors and the shareholders of UBS.
- (d) Niketo to have Control of UBS – In this complaint, Mr. Wells incorrectly assumes that shareholder approval is necessary for UBS to borrow money or to pledge its assets to secure such a loan. He also comments that the terms of the pledge grant Niketo, as secured creditor, rights to protect its interest in that capacity. Clearly, while not in default, UBS will control its pledged assets and, accordingly, will control the LOOK Shares. The Pledge does not transfer control to Niketo. Even on default, Niketo has agreed that it would not be entitled to foreclose on the LOOK Shares. In any event, if UBS or the Monitor have comments on the draft Pledge or General Security Documents, a productive and open minded approach would have led them to provide comments for consideration by Niketo.
- (e) No Going-forward Business Plan for UBS - This complaint is astonishing given the lack of any current business plan for the CCAA Debtors other than continued litigation and liquidation of UBS' assets to pay for litigation and administration

expenses. The Plan provides for the appointment of a board which, when appointed, will meet and consider appropriate steps to be taken in the 2 years of calm that the Plan affords UBS.

- (f) Niketo Loan Transaction is Flawed – Again, if UBS has comments on the proposed security agreement, a constructive and open minded approach would be to provide such comments to Niketo so that any issues with the drafting could be ironed out.
- (g) Not Sufficient funds Available to Implement Niketo Plan – Niketo simply disagrees with this comment which can be addressed at the Sanction Hearing.
- (h) Distribution to Shareholders Restricted – It is not surprising that shareholders would not receive distributions before the creditors of UBS are paid. That is true now and would be true for restructured UBS until such time as it repays the loan to Niketo.
- (i) Unequal Treatment of Creditors – This is simply not the case and, in any event, it is an issue for the creditors to consider when they vote on the Plan or for the court to consider when it hears the motion to Sanction the Plan. It is not correct to say that claims settled by the Plan include interest or costs. They are settlements at amounts substantially discounted from the face amount of the claims. How the parties reached consensus on the settlement amount is irrelevant so long as the settlement amount is less (in this case much less) than the face amount of the claim. On the indemnities, the settling parties already have indemnities that are forward looking as do Mr. Ulicki, Mr. McCutcheon and Mr. Eaton. The Plan is intended to settle pre-

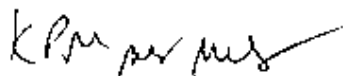
filing claims. Appropriately and is always the case, post filing and future claims are unaffected by the Plan.⁵²

ORDER SOUGHT

51. Niketo therefore submits that the Court should call meetings of creditors of the CCAA Debtors in the form annexed as Schedule "C" to this factum, to consider and vote on the Plan in accordance with the Meeting Order presented by Niketo with costs payable by the CCAA Debtors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY CO-COUNSEL FOR NIKETO.

January 30, 2013



Kevin P. McElcheran
McCarthy Tétrault LLP



Melvyn L. Solmon
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⁵² UBS has not sought to disclaim any of the indemnities pursuant to section 32 of the CCAA. Accordingly, continuing rights under the indemnities are unaffected by the Plan and must be satisfied in priority to the shareholders of UBS.

SCHEDULE "C"

Court File No. CV-11-9283-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
MR. JUSTICE WILTON-SIEGEL

THURSDAY, THE 31st DAY
OF JANUARY, 2013.

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.

MEETING ORDER

THIS MOTION made by Niketo Co. Ltd. ("Niketo") for an order, among other things, authorizing Niketo to file the Plan (as defined herein) with the Court and directing Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. ("UBS Wireless" and collectively with UBS, the "Companies") to call, hold and conduct meetings of certain of their creditors to consider and approve the Arrangement Resolution (as defined herein), was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING (i) the Notice of Motion, (ii) the Affidavits of John Zorbos sworn January 22, 24 and 28, 2013, respectively, (iii) the Affidavit of Victor Wells sworn January 25, 2013 and (iv) the Twelfth Report of Duff & Phelps Canada Restructuring Inc. as monitor of the Companies (the "Monitor"); and upon hearing the submissions of counsel for Niketo, the Companies and the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record herein be and it is hereby abridged so that the motion is properly returnable today and, further, that service of the Notice of Motion and Motion Record herein upon any interested party not served is hereby dispensed with.

DEFINED TERMS AND INTERPRETATION

2. THIS COURT ORDERS that capitalized terms not otherwise defined in this Order have the meanings given to them in **Schedule "A"** attached hereto.
3. THIS COURT ORDERS that all references in this Order to the word "including" shall mean "including without limitation".
4. THIS COURT ORDERS that references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.
5. THIS COURT ORDERS that all references to time herein shall mean local time in Toronto, Ontario, Canada and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

FILING OF THE PLAN

6. THIS COURT ORDERS that Niketo is hereby authorized and directed to file the Plan with this Court and, with the cooperation and assistance of the Companies and the Monitor, to present the Plan to the Affected Creditors for their consideration at the Creditor Meetings in accordance with the terms of this Order.

7. THIS COURT ORDERS that Niketo may at any time and from time to time before and during the Creditor Meetings amend, modify and/or supplement the Plan by written instrument, provided that:
- (a) such amendment, modification or supplement must be contained in a written document that is filed with the Court,
 - (b) notice is given to all Affected Creditors prior to, or to those present at, the applicable Creditor Meeting (or any adjournment thereof) of the details of any such amendment, modification or supplement prior to the vote being taken to approve the Plan, and
 - (c) such amendment, modification or supplement complies with the procedures for amendments as set out in the Plan.

NOTICES AND DISTRIBUTION OF MEETING MATERIALS

8. THIS COURT ORDERS that the Monitor shall send a copy of the Meeting Materials by prepaid ordinary mail, courier, fax or e-mail:
- (a) on or before ●, 2013, to each Affected Creditor that has filed a Proof of Claim, at the address set out in the Proof of Claim for such Affected Creditor or such other address subsequently provided to the Monitor by such Affected Creditor; and
 - (b) to any Person claiming to be an Affected Creditor, within three Business Days of receipt of a request from such a Person, provided that the Monitor shall not be required to send the Meeting Materials to any Person whose Claim has been barred by the Claims Bar Procedure Order.

9. THIS COURT ORDERS that the Monitor shall post a copy of the Meeting Materials to the Website as soon as practicable after the making of this Order.
10. THIS COURT ORDERS that the Monitor shall cause the Notice to Shareholders to be published in *The Globe and Mail, National Edition* on a Business Day prior to ●, 2013.
11. THIS COURT ORDERS that service of the Meeting Materials upon the Affected Creditors, posting of the Meeting Materials on the Website and delivery of the Notice to Shareholders in accordance with paragraphs [8 to 10] hereof shall constitute good and sufficient service of this Order and the Plan, and good and sufficient notice of the Creditor Meetings on all Persons who may be entitled to receive notice thereof or of these proceedings, or who may wish to be present in person or by proxy at the Creditor Meetings, or who may wish to appear in these proceedings, and no other form of notice or service need be made on such Persons, and subject to paragraphs [29 to 30] hereof, no other document or material need be served on such Persons in respect of these proceedings. Service shall be effective, in the case of mailing, three days after the date of mailing, in the case of service by courier, on the day after the courier package was sent and, in the case of service by fax or e-mail, on the day the fax or e-mail was transmitted, unless such day is not a Business Day, or the fax or e-mail transmission was made after 5:00 p.m., in which case, on the next Business Day.

CREDITOR MEETINGS

12. THIS COURT ORDERS that, for purposes of considering and voting on the Plan there shall be three classes of Affected Creditors: (i) the Ordinary Creditors, (ii) Jolian and (iii) Reeson, as established in the Plan (the "Classes"), and such classification is hereby approved.

13. THIS COURT ORDERS that the Companies shall call, hold and conduct Creditor Meetings of the Affected Creditors by Class, on the dates and at the times and locations set out in the form of Notice to Creditors attached hereto as Appendix "2", to enable the Affected Creditors to consider the Plan and to enable Niketo to seek approval by the Affected Creditors of the Arrangement Resolution.
14. THIS COURT ORDERS that a representative of the Monitor shall preside as the chair (the "Chair") of the Creditor Meetings and, subject to this Order and any further Order of the Court, shall decide all matters relating to the rules and procedures at and the conduct of the Creditor Meetings and the validity of Proxies. The Chair may adjourn a Creditor Meeting with the consent of Niketo.
15. THIS COURT ORDERS that the Monitor may appoint scrutineers (the "Scrutineers") for the supervision and tabulation of the attendance, quorum, and votes cast at each Creditor Meeting, and that a person designated by the Monitor shall act as secretary at each Creditor Meeting (the "Secretary").
16. THIS COURT ORDERS that the only Persons entitled to notice of or to attend or speak at the Creditor Meetings are Ordinary Creditors with Proven Claims (and, if applicable, Unresolved Claims), Jolian and Reeson and their respective proxy holders and legal counsel; representatives of Niketo, the Companies and the Monitor and their respective legal counsel; the Scrutineers; and the Secretary. Any other Person may be admitted to a Creditor Meeting only on invitation of Niketo or the Chair with the consent of the other.
17. THIS COURT ORDERS that the quorum required at a Creditor Meeting shall be one Affected Creditor who is entitled to vote on the Plan, present in person or by proxy. If the

requisite quorum is not present at a Creditor Meeting, then the Creditor Meeting shall be adjourned by the Chair to such time and place as the Chair with the consent of Niketo deems necessary or desirable.

18. THIS COURT ORDERS that, at each Creditor Meeting, the Chair shall direct a vote by written ballot on the Arrangement Resolution to approve the Plan and any amendments thereto as Niketo may consider appropriate (in accordance with the provisions of this Order).

19. THIS COURT ORDERS that the only Persons entitled to vote at a Creditor Meeting, in person or by proxy, are:

- (a) Ordinary Creditors with Proven Claims, Jolian and Reeson; and
- (b) Ordinary Creditors who have Unresolved Claims, but only to the extent of the portion, if any, of that Unresolved Claim has been accepted or determined to be a Proven Claim.

Subject to clause (b) above, Ordinary Creditors with Unresolved Claims (if any) will only be entitled to have their voting intentions in respect of the Unresolved Claim recorded in accordance with paragraph [24].

20. Each Affected Creditor entitled to vote on the Plan shall have one vote, which vote shall have, for voting purposes only:

- (a) in the case of an Ordinary Creditor, the value of its Proven Claim;
- (b) in the case of Jolian, the value of \$10,112,648; and
- (c) in the case of Reeson, the value of \$585,000.

21. If an Affected Creditor transfers all of its Claim and, not later than two Business Days prior to the applicable Creditor Meeting, the transferee delivers evidence reasonably satisfactory to the Monitor of its ownership of such Claim and a written request to the Monitor that such transferee be entitled to vote at the applicable Creditor Meeting, then such transferee shall be entitled to attend and vote, either in person or by proxy, in lieu of the transferor.
22. THIS COURT ORDERS that any proxy that any Affected Creditor wishes to submit in respect of a Creditor Meeting (or any adjournment thereof) must be substantially in the form attached hereto as Appendix "3", or in such other form acceptable to the Monitor or the Chair and be received by 5:00 p.m. on the Business Day immediately prior to the day on which the Creditor Meeting (or any adjournment thereof) is to be held. Proxies may also be deposited with the Chair at a Creditor Meeting (or any adjournment thereof) prior to the commencement of such Creditor Meeting (or any such adjournment).
23. A Creditor Meeting may be adjourned by the vote of Affected Creditors, either present in person or by proxy, holding a majority in value of the Affected Claims voting in respect of such adjournment. Any adjourned Creditor Meeting shall be adjourned by the Chair to such date, time and place as may be determined by the Chair with the consent of Niketo. None of the Companies, the Monitor and Niketo shall be required to give notice of any adjourned Creditor Meeting, other than announcing the adjournment or posting the notice thereof at the place of the Creditor Meeting being adjourned.
24. THIS COURT ORDERS that Ordinary Creditors with Unresolved Claims (if any) shall have their voting intentions with respect to such Unresolved Claims recorded by the Monitor and reported to the Court in accordance with paragraphs [25 and 27].

25. THIS COURT ORDERS that the votes in respect of Unresolved Claims shall be tabulated separately from votes in respect of Proven Claims and the Monitor shall report the results of such votes to the Court at the Sanction Hearing to the extent that approval or non-approval of the Plan would have been determined by votes cast in respect of Unresolved Claims.
26. THIS COURT ORDERS that the results of all votes conducted at each Creditor Meeting shall be binding on all Affected Creditors, whether or not any such Affected Creditor was present or voted at the applicable Creditor Meeting.

HEARING FOR SANCTION ORDER

27. THIS COURT ORDERS that the Monitor shall file a report to the Court no later than three Business Days after the Creditor Meetings (or any adjournment thereof) with respect to:
 - (c) the results of the voting of Ordinary Creditors with Proven Claims, Jolian and Reeson on the Plan; and
 - (d) the effect on the results of the voting if the Unresolved Claims in respect of which the holders thereof expressed their voting intentions had been included, on the basis of those intentions, in the voting results.
28. THIS COURT ORDERS that, if the Plan is approved by the required majorities of Affected Creditors at each of the Creditor Meetings pursuant to the CCAA, Niketo shall seek Court approval of the Plan at a motion for the Sanction Order, which motion shall be returnable before this Court at 10:00 a.m. on ●, 2013, or as soon after that date as the matter can be heard (the "Sanction Hearing").
29. THIS COURT ORDERS that service of the Notice to Creditors and this Order pursuant to paragraph [8] hereof and publication of the Notice to Shareholders pursuant to paragraph

[10] shall constitute good and sufficient service of notice of the Sanction Hearing upon all Persons who are entitled to receive such service and no other form of service need be made and, unless they are on the Service List or have filed and served a notice of appearance in accordance with paragraph [30], no other materials need be served on such Persons in respect of the Sanction Hearing.

30. THIS COURT ORDERS that any Person wishing to receive materials and appear at the motion for the Sanction Order who is not on the Service List shall serve upon the solicitors for Niketo, the Companies and the Monitor, and file with this Court, a notice of appearance by no later than 5:00 p.m. on ●, 2013.
31. THIS COURT ORDERS that, if the Sanction Hearing is adjourned, only those Persons who are on the Service List or who have served and filed a notice of appearance in accordance with paragraph [30] shall be served with notice of the adjourned date.

STAY OF LITIGATION

32. THIS COURT ORDERS that no proceedings between the Companies and Jolian or Reeson or in respect of the Jolian Claim or the Reeson Claim (including the proceedings before the Court having file number ●) may be commenced or continued until further Order of the Court.

GENERAL PROVISIONS

33. THIS COURT ORDERS that the Companies and the Monitor shall provide reasonable cooperation and assistance to Niketo in connection with the Creditor Meetings and other matters governed by this Order. Any of Niketo, the Companies and the Monitor may apply

to Court for directions in respect of the implementation of this Order on not less than three Business Days' notice to the others or such other notice as the Court may order.

34. THIS COURT ORDERS that this Order and any other order in these proceedings shall have full force and effect in all provinces and territories in Canada and abroad as against all Persons against whom they may otherwise be enforceable.
 35. THIS COURT ORDERS AND REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and be complimentary to this Court in carrying out the terms of this Order.
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SCHEDULE "A"

DEFINITIONS

In this Order, the following terms shall have the following meanings:

- (e) **"Administration Claims"** means all professional fees of counsel to the Companies, professional fees of the Monitor and counsel to the Monitor, and professional fees of counsel to the Board of Directors of the Companies;
- (f) **"Affected Claims"** means all Proven Claims, excluding Unaffected Claims;
- (g) **"Affected Creditors"** means all Ordinary Creditors and Settlement Creditors with Proven Claims;
- (h) **"Arrangement Resolution"** means the resolution for consideration by Affected Creditors at the Creditor Meetings to approve the Plan, the text of which must be in form and content reasonably satisfactory to Niketo and the Monitor;
- (i) **"Business Day"** means a day, other than Saturday, Sunday or a statutory holiday, on which banks and/or the Court are generally open for business in Toronto, Ontario;
- (j) **"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (k) **"CCAA Proceedings"** means the proceedings commenced by the Companies under the CCAA pursuant to the Initial Order;
- (l) **"Claim"** means any right or claim of any Person that may be asserted or made in whole or in part against UBS or UBS Wireless, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning

of the *Bankruptcy and Insolvency Act* (Canada) had UBS or UBS Wireless, as the case may be, become bankrupt;

- (m) **"Claims Bar Procedure Order"** means the Order dated August 5, 2011 in the CCAA Proceedings, governing the procedure for the filing and determination of Claims;
- (n) **"Companies"** means UBS and UBS Wireless;
- (o) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (p) **"Creditor"** means each Person with a Claim;
- (q) **"Creditor Meeting"** means each meeting of Affected Creditors called for the purpose of considering and approving the Plan pursuant to this Order, and includes any adjournment of such meeting;
- (r) **"DOL"** means Alex Dolgonos and DOL Technologies Inc.;
- (s) **"DOL Claim"** means \$500,000, as determined pursuant to the DOL Settlement Agreement;
- (t) **"DOL Settlement"** means the settlement agreement between DOL and the Companies dated July 5, 2012;
- (u) **"Filing Date"** means July 5, 2011, the date of the Initial Order;
- (v) **"Initial Order"** means the Order of the Honourable Justice Wilton-Siegel dated July 5, 2011;
- (w) **"Letter and Instructions to Creditors"** means the letter and instructions to Creditors substantially in the form attached hereto as **Appendix "1"**;
- (x) **"Jolian"** means Gerald McGoey and Jolian Investments Limited;
- (y) **"Jolian Claim"** means all Claims of Jolian, including the unliquidated and contingent claims of Jolian that are subject to litigation with the Companies, in the asserted amount of \$10,112,648.00 (plus legal fees), and all indemnity claims;
- (z) **"Jolian Settlement"** means the settlement of the Jolian Claim for a payment of \$2,000,000 (plus applicable GST/HST, applicable interest, and legal and accounting fees), and the other terms and conditions set out in the Jolian Settlement Agreement;
- (aa) **"Jolian Settlement Agreement"** means the settlement and indemnity agreement dated January 21, 2013 between Jolian and Niketo in favour of the Companies;
- (bb) **"Meeting Materials"** means a copy of each of the Letter and Instructions to Creditors, the Notice to Creditors, the form of Proxy, the Plan and this Order;
- (cc) **"Notice to Creditors"** means the notice to creditors of the Creditor Meetings substantially in the form attached hereto as **Appendix "2"**;

- (dd) **"Notice to Shareholders"** means the notice to holders of UBS Shares substantially in the form attached hereto as **Appendix "4"**;
- (ee) **"Ordinary Claims"** means all Claims other than the Settlement Claims and Unaffected Claims;
- (ff) **"Ordinary Creditors"** means all Creditors with Ordinary Claims whose claims are approved, which includes among others Niketo, DOL, Stellarbridge Management Inc., Gorrissen Federspiel and Goldman Sloan Nash & Haber LLP;
- (gg) **"Person"** means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled;
- (hh) **"Plan"** means this plan of compromise and arrangement in respect of UBS and UBS Wireless under the *CCAA*, as supplemented or amended from time to time, and which includes the rights, benefits and obligations set out in the agreements and consents that are schedules to this Plan;
- (ii) **"Plan Sanction Order"** means an Order of the Court approving this Plan, to be granted pursuant to the provisions of the *CCAA*, if and as may be necessary, and shall include provisions as may be necessary or appropriate to give effect to this Plan as such Order may be amended or modified by any court of competent jurisdiction provided that such Order, if this Plan is amended or modified, is approved, as set out herein, by McGoey and Reeson, and further, will not be a final Order until after (i) the expiry of applicable appeal periods and (ii) in the event of an appeal or application for leave to appeal, final determination by the applicable appellate tribunal;
- (jj) **"Proven Claims"** means all Claims against either of the Companies as finally determined in accordance with the Claims Bar Procedure Order, or in the case of the Julian Claim and Reeson Claim, as settled pursuant to the Plan, or in the case of DOL, as settled pursuant to the DOL Settlement Agreement;
- (kk) **"Proxy"** means a proxy for an Affected Creditor in respect of a Creditor Meeting substantially in the form attached as **Appendix "5"**;
- (ll) **"Reeson"** means Douglas Reeson;
- (mm) **"Reeson Claim"** means all Claims of Reeson, including the unliquidated and contingent claims of Reeson claimed in the proof of claim filed by Reeson in the *CCAA* proceedings in the asserted amount of \$585,000.00, and all indemnity claims;
- (nn) **"Reeson Settlement"** means the settlement of the Reeson Claim for a payment of \$75,000 (and other terms and conditions), set out in the Reeson Settlement Agreement;
- (oo) **"Reeson Settlement Agreement"** means the settlement and indemnity agreement dated January 21, 2013, between Reeson and Niketo in favour of the Companies;

- (pp) **"Settlement Claims"** means the Jolian Claim and Reeson Claim;
- (qq) **"Settlement Creditors"** means Jolian and Reeson;
- (rr) **"UBS"** means Unique Broadband Systems Inc;
- (ss) **"UBS Shares"** means shares in the capital of UBS;
- (tt) **"UBS Wireless"** means UBS Wireless Service Inc, the owned subsidiary of UBS;
- (uu) **"Unaffected Claims"** means Administration Claims, inter-company claims (ie. amounts owing between UBS and UBS Wireless), and indemnity claims of Dolgonos, solely to the extent preserved by the DOL Settlement Agreement
- (vv) **"Unresolved Claim"** means the Claim of an Ordinary Creditor that has not been finally determined as a Proven Claim in accordance with the Claims Bar Procedure Order but that has not been extinguished or barred pursuant to the Claims Bar Procedure Order;
- (ww) **"Unsecured Claim"** means any Claim or portion thereof that is not a Secured Claim or an Excluded Claim; and
- (xx) **"Website"** means the website at:

www.duffandphelps.com/services/restructuring/pages/restructuringcases.aspx
maintained by the Monitor in respect of these proceedings.

APPENDIX "1"

UNIQUE BROADBAND SYSTEMS, INC. AND UBS WIRELESS SERVICES INC. (the "Companies")

LETTER AND INSTRUCTIONS TO AFFECTED CREDITORS

February •, 2013

TO: AFFECTED CREDITORS OF THE COMPANIES

RE: Meeting of Affected Creditors of the Companies to consider and vote on a resolution to approve the Plan of Compromise and Arrangement proposed by Niketo Co. Ltd. ("Niketo") in respect of the Companies dated January 22, 2013 pursuant to the Companies' Creditors Arrangement Act (Canada) (the "Plan")

On July 5, 2011, Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. (collectively, the "Companies") filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court"). Pursuant to the Initial Order, RSM Richter Inc., and later by the further Order of the Court, Duff & Phelps Canada Restructuring Inc. was appointed by the court as monitor in the CCAA proceedings (the "Monitor").

On January 31, 2013, Niketo Co. Ltd. ("Niketo"), both a creditor and shareholder of the Companies, sought and obtained an Order from the Court (the "Meeting Order") authorizing it to file with the Court the plan of compromise and arrangement dated January 22, 2013 proposed by Niketo in respect of the Companies (as may be amended, the "Plan"). The Meeting Order directed the Companies to call, hold and conduct meetings (the "Creditor Meetings") of Affected Creditors on •, 2013 to enable them to consider and vote on the Plan. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Meeting Order.

We enclose in this package copies of the following documents for your review and consideration:

- a Notice to Creditors
- the Plan
- the Meeting Order
- a blank form of Proxy and completion instructions

The purpose of these materials is to provide you with the documents required to enable you to consider the Plan and vote to accept or reject the Plan at the meeting of Affected Creditors to be held on •, 2013 at the offices of • located at •.

PROXY

If an Affected Creditor wishes to vote at the applicable Creditor Meeting and is not an individual or is an individual who will not be attending the Creditor Meeting in person, please complete the enclosed Proxy and provide it to the Monitor so that it is received by the Monitor no later than 5:00 p.m. on • **[Note: the Business Day prior to the Creditor Meetings]**. You are required to provide the Proxy to the Monitor by this deadline or to the Chair prior to the commencement of the applicable Creditor Meeting if you wish to appoint a proxy to cast your vote at the Creditor Meeting. Further instructions can be found on the form of Proxy. Please note that, your failure to vote at the applicable Creditor Meeting will not affect any right you have to receive any distribution that may be made to Affected Creditors under the Plan.

FURTHER INFORMATION

If you have any questions regarding the process or any of the enclosed documents, please contact Duff & Phelps Canada Restructuring Inc. at the following address:

Duff & Phelps Canada Restructuring Inc.
Bay Adelaide Centre
333 Bay Street
14th Floor
Toronto ON M5H 2R2

Attention: Mr. Mitch Vininsky
Telephone: (416) 932-6013
Fax: (647) 497-9477
Email: Mitch.Vininsky@duffandphelps.com

You may view copies of the documents relating to this process on the Monitor's website at:

www.duffandphelps.com/services/restructuring/pages/restructuringcases.aspx

APPENDIX "2"

NOTICE TO CREDITORS OF UNIQUE BROADBAND SYSTEMS, INC. AND UBS WIRELESS SERVICES INC.

On July 5, 2011, Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. (collectively, the "Companies") filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court"). Pursuant to the Initial Order, RSM Richter Inc., and later by the further Order of the Court, Duff & Phelps Canada Restructuring Inc. was appointed by the court as monitor in the CCAA proceedings (the "Monitor").

On January 31, 2013, Niketo Co. Ltd. ("Niketo"), both a creditor and shareholder of the Companies, sought and obtained an Order from the Court (the "Meeting Order") authorizing it to file with the Court the plan of compromise and arrangement dated January 22, 2013 proposed by Niketo in respect of the Companies (as may be amended, the "Plan"). The Meeting Order directed the Companies to call, hold and conduct meetings (the "Creditor Meetings") of Affected Creditors on •, 2013 to enable them to consider and vote on the Plan.

A copy of the Initial Order, the Plan, the Meeting Order and the other Court materials filed by Niketo, the Companies and the Monitor in respect of the Plan, the Meeting Order and the CCAA proceedings can be obtained from the following website:

www.duffandphelps.com/services/restructuring/pages/restructuringcases.aspx

or may be obtained by contacting the Monitor at the address below. Capitalized terms used in this notice are as defined in the Meeting Order unless otherwise noted.

Among other things, the Plan provides for the following:

- the payment in full of the Claims of Ordinary Creditors
- the settlement of the Jolian Claim (in the asserted amount of \$10,112,648) and the related litigation between Jolian and the Companies on the basis set out in the Plan and the Jolian Settlement Agreement, a copy of which is attached to the Plan, including a payment to Jolian of \$2 million (plus applicable GST/HST, applicable interest, and legal and accounting fees)
- the settlement of the Reeson Claim (in the asserted amount of \$585,000) and the related litigation between Reeson and the Companies on the basis set out in the Plan and the Reeson Settlement Agreement, a copy of which is attached to the Plan, including a payment to Reeson of \$75,000
- a term loan by Niketo to the Companies to fund the payments under the Plan to Ordinary Creditors, Jolian and Reeson in the principal amount of \$•, secured by a pledge of the shares in the capital of Look Communications Inc. owned by UBS Wireless (but without foreclosure rights in favour of Niketo). The loan bears interest at the rate of •. No other

compensation or fees are payable to Niketo under the loan agreement that will govern the loan.

Any additional information required may be obtained from the Monitor at the address below:

Duff & Phelps Canada Limited
Bay Adelaide Centre
333 Bay Street
14th Floor
Toronto ON M5H 2R2

Attention: Mr. Mitch Vininsky
Telephone: (416) 932-6013
Fax: (647) 497-9477
Email: Mitch.Vininsky@duffandphelps.com

MEETING OF CREDITORS

NOTICE IS HEREBY GIVEN that meetings of Affected Creditors shall be held at the offices of ● located at ● on ●, 2013 at the following times for the purpose of considering and, if thought advisable, approving the Plan:

- (a) Reeson - 9:00 a.m.
- (b) Jolian - 9:15 a.m.
- (c) Ordinary Creditors - 11:00 a.m.

SANCTION HEARING

NOTICE IS HEREBY GIVEN that if the Plan is approved by the required majorities of Affected Creditors at each of the Creditor Meetings pursuant to the CCAA, Niketo will seek court approval of the Plan at a motion for the Sanction Order, which motion shall be returnable at 361 University Avenue, Toronto, Ontario at 10:00 a.m. on ●, 2013, or as soon after that date as the matter can be heard.

Any person (other than Niketo, the Companies and the Monitor) who wishes to receive motion materials and appear at the Sanction Hearing must be on the Service List maintained by the Monitor for the CCAA proceedings or serve upon the solicitors for Niketo, the Companies and the Monitor, and file with the Court, a Notice of Appearance by no later than 5:00 p.m. (Toronto time) on ●, 2013.

APPENDIX "3"

UNIQUE BROADBAND SYSTEMS, INC. AND UBS WIRELESS SERVICES INC. (the "Companies")

PROXY FOR USE BY AFFECTED CREDITORS

The undersigned Affected Creditor of the Companies hereby revokes all proxies previously given and nominates, constitutes and appoints _____ of **[Mr. John Zorbos]** of Niketo, or _____ of _____ on behalf of the undersigned at the Creditor Meeting which is to be held on •, 2013 at **[the offices of • at •, Toronto, Ontario]**, and at any adjournment thereof, to the same extent and with the same powers as the undersigned would have if personally present thereat, to attend, vote, and act and the undersigned hereby grants authorization to vote as follows, namely:

1. Passing a resolution approving the form of plan of compromise or arrangement in respect of the Companies dated January 22, 2013 (the "Plan"), with or without variation.

☐ FOR ☐ AGAINST

2. At the nominee's discretion:

- (a) on any variations or amendments to any of the above matters (including any variation or amendment to the Plan) proposed at such Creditor Meeting or any adjournment thereof, including the authority to sign any written instruments relating thereto; and
- (b) on any other matters that may properly come before the Creditor Meeting or any adjournment thereof.

Please note that paragraph 2 of the proxy provides the nominee with discretionary authority, including the authority to sign any written instruments relating to the matters referred to above or any variations or amendments thereto. The nominee has the right to exercise such discretionary authority to authorize the matters referred to above which require approval by the Affected Creditor.

DATED this _____ day of _____, 2013.

NAME OF AFFECTED CREDITOR: _____

By: _____
(Duly authorized Signatory)

Name and Title: _____

Telephone No.: _____

AGGREGATE VALUE OF CLAIM HELD: _____

Return of Proxy Please return this proxy by facsimile, or by courier to the address set out below:

Duff & Phelps Canada Limited
Bay Adelaide Centre
333 Bay Street
14th Floor
Toronto ON M5H 2R2

Attention: Mr. Mitch Vininsky
Telephone: (416) 932-6013
Fax: (647) 497-9477
Email: Mitch.Vininsky@duffandphelps.com

Notes:

- (i) This proxy is solicited by and on behalf of Niketo.
- (ii) Any Affected Creditor has the right to appoint a person (who need not be an Affected Creditor) other than the person designated in this proxy to attend and vote and act for and on behalf of such Affected Creditor at the Creditor Meeting and in order to do so the Affected Creditor may insert the name of such person in the blank space provided in the proxy or may use another appropriate form of proxy.
- (iii) Where an Affected Creditor fails to specify a choice with respect to its vote on the Plan and a representative of Niketo (being the person specified in this proxy) is appointed as proxy holder, the Affected Claim represented by such proxy will be voted FOR the Plan.
- (iv) An Affected Creditor may delete or amend the discretionary authority granted in paragraph 2 of this proxy if such holder is not desirous of providing discretionary authority in that manner.
- (v) If the Affected Creditor is a corporation, the proxy must be executed by an officer or attorney thereof duly authorized with an indication of title of such officer or attorney and with the corporation's name appearing above the signature line. A person signing on behalf of an Affected Creditor must provide satisfactory proof of such person's authority with the proxy.
- (vi) If the proxy is not dated, it is deemed to be dated as of the date of receipt by the Monitor.

Invalidity of proxies: This proxy will not be valid or acted upon or voted unless it is completed as specified herein. In order to be acted upon, a proxy must be sent by telecopier or by courier so that it is received by the Monitor at Bay Adelaide Centre, 333 Bay Street, 14th Floor, Toronto ON M5H 2R2; Attention: Mr. Mitch Vininsky, Fax No. (647) 497-9477; e-mail at Mitch.Vininsky@duffandphelps.com, by no later than 5:00 p.m. (Toronto time) on the Business Day immediately before the Creditor Meeting or any adjournment thereof, or with the Chair of the Creditor Meeting prior to the commencement thereof.

APPENDIX "4"

NOTICE TO SHAREHOLDERS OF UNIQUE BROADBAND SYSTEMS, INC.

On July 5, 2011, Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. (collectively, the "Companies") filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (the "Court"). Pursuant to the Initial Order, RSM Richter Inc., and later by the further Order of the Court, Duff & Phelps Canada Restructuring Inc. was appointed by the court as monitor in the CCAA proceedings (the "Monitor").

On January 31, 2013, Niketo Co. Ltd. ("Niketo"), both a creditor and shareholder of the Companies, sought and obtained an Order from the Court (the "Meeting Order") authorizing it to file with the Court the plan of compromise and arrangement dated January 22, 2013 proposed by Niketo in respect of the Companies (as may be amended, the "Plan"). The Meeting Order directed the Companies to call, hold and conduct meetings (the "Creditor Meetings") of Affected Creditors on •, 2013 to enable them to consider and vote on the Plan.

A copy of the Initial Order, the Plan, the Meeting Order and the other Court materials filed by Niketo, the Companies and the Monitor in respect of the Plan, the Meeting Order and the CCAA proceedings can be obtained from the following website:

www.duffandphelps.com/services/restructuring/pages/restructuringcases.aspx

or may be obtained by contacting the Monitor at the address below. Capitalized terms used in this notice are as defined in the Meeting Order unless otherwise noted.

Among other things, the Plan provides for the following:

- the payment in full of the Claims of Ordinary Creditors
- the settlement of the Jolian Claim (in the asserted amount of \$10,112,648) and the related litigation between Jolian and the Companies on the basis set out in the Plan and the Jolian Settlement Agreement, a copy of which is attached to the Plan, including a payment to Jolian of \$2 million (plus applicable GST/HST, applicable interest, and legal and accounting fees)
- the settlement of the Reeson Claim (in the asserted amount of \$585,000) and the related litigation between Reeson and the Companies on the basis set out in the Plan and the Reeson Settlement Agreement, a copy of which is attached to the Plan, including a payment to Reeson of \$75,000
- a term loan by Niketo to the Companies to fund the payments under the Plan to Ordinary Creditors, Jolian and Reeson in the principal amount of \$•, secured by a pledge of the shares in the capital of Look Communications Inc. owned by UBS Wireless (but without

foreclosure rights in favour of Niketo). The loan bears interest at the rate of •. No other compensation or fees are payable to Niketo under the loan agreement that will govern the loan.

The Plan does not involve or contemplate any new UBS Shares being issued that would dilute the holdings of current shareholders of UBS or any change to the terms of the UBS Shares outstanding or to the articles of UBS.

Any additional information required may be obtained from the Monitor at the address below:

Duff & Phelps Canada Limited
Bay Adelaide Centre
333 Bay Street
14th Floor
Toronto ON M5H 2R2

Attention: Mr. Mitch Vininsky
Telephone: (416) 932-6013
Fax: (647) 497-9477
Email: Mitch.Vininsky@duffandphelps.com

SANCTION HEARING

If the Plan is approved by the Affected Creditors at the Creditor Meetings, the Plan must be approved by the Court before it will be implemented and become binding on the Companies, the Affected Creditors and all other Persons.

NOTICE IS HEREBY GIVEN that, if the Plan is approved by the required majorities of Affected Creditors at each of the Creditor Meetings pursuant to the CCAA, Niketo will seek Court approval of the Plan at a motion for the Sanction Order, which motion shall be returnable at 361 University Avenue, Toronto, Ontario at 10:00 a.m. on •, 2013, or as soon after that date as the matter can be heard.

Any person (other than Niketo, the Companies and the Monitor) who wishes to receive motion materials and appear at the Sanction Hearing must be on the Service List maintained by the Monitor for the CCAA proceedings or serve upon the solicitors for Niketo, the Companies and the Monitor, and file with the Court, a Notice of Appearance by no later than 5:00 p.m. (Toronto time) on •, 2013.

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.

Court File No. CV-11-9283-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Proceedings commenced in Toronto

MEETING ORDER

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Lawyers for Niketo Co. Ltd.

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.

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