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EAGLE BROADBAND, INC.

FILED

FEB 7 - 2007

KIRI TORRE
Chief Executive Officer
Superior Court of California, County of Santa Clara
BY _____ DEPUTY

JUDITH CASTILLO

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

ORIGINAL

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EAGLE BROADBAND, INC.,
Plaintiff,
vs.
DOES 1 through 25, inclusive,
Defendants.

CASE NO. 1-05-CV-050179
DECLARATION OF JEFFREY M. RATINOFF IN SUPPORT OF PLAINTIFF EAGLE BROADBAND'S CONSOLIDATED OPPOSITION TO DEFENDANT THOMAS MOULD'S MOTION FOR ASSIGNMENT OF RIGHTS AND RELATED RELIEF AND MOTION FOR BOND PURSUANT TO CODE OF CIVIL PROCEDURE § 1030

Date: February 22, 2007
Time: 9:00 a.m.
Dept: 22
Judge: Hon. Kevin J. Murphy
Complaint filed: October 5, 2005

I, Jeffrey M. Ratinoff, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California. I am an attorney with the firm of Buchanan Ingersoll & Rooney LLP, attorneys for Plaintiff Eagle Broadband, Inc. ("Plaintiff").
2. If called upon to testify as to the matters set forth herein, I could and would

1 competently testify thereto, as the matters set forth in this declaration that are personally known
2 to me to be true. As to those matters stated on information and belief, I would competently
3 testify thereto as I believe those matters to be true.

4 3. I make this declaration in support of Eagle's Motion for an Order Recalling and
5 Quashing, or in the Alternative, Staying the Writ of Execution Obtained by Defendant Thomas
6 Mould.

7 4. Attached hereto as Exhibit 1, is a true and correct copy of a letter from Karineh
8 Khachatourian to Mark Goldowitz, dated March 30, 2006.

9 5. Attached hereto as Exhibit 2, is a true and correct copy of the transcript from the
10 hearing before the Honorable William J. Elfving on August 8, 2006.

11 6. Attached hereto as Exhibit 3, is a true and correct copy of a Notice of Levy Under
12 Writ of Execution to Calpine Corporation, dated December 11, 2006, with an attached copy of a
13 Writ of Execution issued on November 30, 2006.

14 7. Attached hereto as Exhibit 4, is a true and correct copy of a Notice of Levy Under
15 Writ of Execution to Hewlett-Packard Co., dated December 11, 2006, with an attached copy of a
16 Writ of Execution issued on November 30, 2006.

17 8. Attached hereto as Exhibit 5, is a true and correct copy of a UCC Financing
18 Statement filed on behalf of Dutchess Private Equities Fund, L.P. ("Dutchess") with respect to
19 Eagle Broadband, Inc., dated February 13, 2006.

20 9. Attached hereto as Exhibit 6, is a true and correct copy of the results of a Westlaw
21 UCC filings search for Eagle Broadband, Inc. consisting of a UCC Financing Statement filed on
22 behalf of Dutchess Private Equities with respect to Eagle Broadband, Inc. This search took me
23 approximately 5 minutes to complete.

24 10. Attached hereto as Exhibit 7, is a true and correct copy of the relevant pages from
25 Eagle Broadband, Inc.'s Form S-1, filed with the SEC on February 2, 2006.

26 11. Attached hereto as Exhibit 8, is a true and correct copy of the transcript from a
27 hearing before the Honorable Kevin E. McKenney on December 26, 2006.

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1 12. Attached hereto as Exhibit 9, is the Declaration of Jeffrey Adams in Support of
2 Eagle Broadband's Motion for an Order Recalling, Quashing, or in the Alternative, Staying the
3 Writ of Execution Obtained by Defendant Thomas Mould, dated January 4, 2007.

4 13. Attached hereto as Exhibit 10, is a true and correct copy of Defendant DOE 5's
5 Opposition to Plaintiff's Motion for an Order Recalling, Quashing, or in the Alternative, Staying
6 the Writs of Execution Obtained by Defendant Thomas Mould, dated January 3, 2006.

7 14. Attached hereto as Exhibit 11, is a true and correct copy of the Reply in Support
8 of Plaintiff's Motion for an Order Recalling, Quashing, or in the Alternative, Staying the Writ of
9 Execution Obtained by Defendant Thomas Mould, dated January 4, 2006.

10 15. Attached hereto as Exhibit 12, is a true and correct copy of Dutchess' Notice of
11 and Verified Third Party Claim of Superior Security Interest or Lien Re: Hewlett-Packard Co.,
12 filed with the Santa Clara County Sheriff's Office on January 26, 2006.

13 16. Attached hereto as Exhibit 13, is a true and correct copy of Dutchess' Notice of
14 and Verified Third Party Claim of Superior Security Interest or Lien Re: Calpine Corporation,
15 filed with the Santa Clara County Sheriff's Office on January 26, 2006.

16 17. Attached hereto as Exhibit 14, is a true and correct copy of the Proof of Service
17 for Defendant Thomas Mould's motion for an order of assignment and other relief.

18 18. In or about November and December 2006 counsel for Mould began to aggressive
19 pursue collection activities. Such activities included serving Notices of Levy on Hewlett-
20 Packard Co. or Calpine Corporation. While Mould served this on Eagle, they did not serve my
21 office.

22 19. On December 22, 2006, I provided timely notice of Eagle's intent to seek *ex parte*
23 relief from the Court at 8:30 a.m. on December 26, 2006 to counsel for Mould, Mark Goldowitz
24 and Paul Clifford. Shortly after providing such notice, on December 22, 2006, I received a call
25 from Mr. Clifford informing me that either Mr. Goldowitz would appear in person or that Mr.
26 Goldowitz or Mr. Clifford would appear by telephone.

27 20. During my conversation with Mr. Clifford, he asked the basis for the relief Eagle
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1 was seeking. I explained that his office had hastily sought the issuance of a writ of execution
2 and improperly attempted to levy monies owing to Eagle that were subject to the interests of
3 superior secured creditors without providing notice to those creditors. Mr. Clifford seemed
4 surprised and apparently was unaware of any such creditors or any UCC-1 filings that would
5 indicate the existence of a secured creditor with a superior interest in the property subject to the
6 Writ of Execution obtained by Mould.

7 21. With the deadline for Hewlett-Packard Co. and Calpine Corporation to respond to
8 the Notices of Levy on December 26, 2006, and the fact that this deadline fell immediately after
9 the Christmas Holiday weekend, Dutchess did not have a reasonable amount of time to respond
10 to Mould's notices of levy and writs of execution.

11 22. On December 26, 2006, due to the Honorable William J. Elfving's unavailability,
12 the Honorable Kevin E. McKenney heard Eagle's Ex Parte Application. At the hearing, I argued
13 that the Court should quash and recall the Writ of Execution issued on Mould's behalf, or in the
14 alternative, stay the Writ because counsel for Mould had failed to provide Dutchess with proper
15 notice of the Writ of Execution and subsequent Notices of Levy on Calpine. Mr. Goldowitz,
16 appearing on behalf of Mould, did not deny that his office had failed to notify Dutchess of the
17 Writ of Execution and the Notices of Levy served on Hewlett-Packard Co. and Calpine
18 Corporation.

19 23. As of the time of this declaration, I am unaware of Mould contesting that
20 Dutchess has a superior secured interest in the same property that is subject to Mould's collection
21 efforts.

22 I declare under penalty of perjury under the laws of California that the foregoing
23 statements are true and correct. Executed this 27th day of December 2006, at Redwood Shores,
24 California.

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27 JEFFREY M. RATINOFF
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