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5 Specially Appearing for Third Party Claimant
DUTCHESS PRIVATE EQUITIES FUND, L.P.
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SUPERIOR COURT
CIVIL SECTION
SANTA CLARA COUNTY
2007 JAN 25 AM 10:04

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 EAGLE BROADBAND, INC.,) CASE NO. 1-05-CV-050179
11)
Plaintiff,)
12) **NOTICE OF AND VERIFIED THIRD**
vs.) **PARTY CLAIM OF SUPERIOR**
13) **SECURITY INTEREST OR LIEN RE**
DOES 1 through 25, inclusive,) **HEWLETT-PACKARD CO.**
14) **[CCP § 720.230]**
Defendants.)
15) Complaint filed: October 5, 2005
16)
17)
18)

19 To the Office of the Sheriff for the County of Santa Clara, Civil Division, at 55 West
20 Younger Avenue, San Jose, CA 95110:

21 NOTICE IS HEREBY GIVEN that Third Party Claimant DUTCHESS PRIVATE
22 EQUITIES FUND, L.P. ("Dutchess") claims a superior security interest on:

23 ANY & ALL accounts, accounts receivable, rights to payment of
24 money, contingent rights, contract rights, deposit accounts, monies
25 due from third parties, due in favor of and for the benefit of
26 judgment debtor EAGLE BROADBAND, INC., or any of the
judgment debtor's business associations, partners, assignees, and
other persons acting on their behalf ...


27 that was levied upon by Defendant ROY THOMAS MOULD ("Mould") on or about December
28 11, 2006 in conjunction with the writ of execution issued by the Clerk of Santa Clara Superior

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Court on November 30, 2006. A Notice of Levy for this property was served by Mould on
Hewlett-Packard Co. Corporation on or about December 11, 2006.

Dated: January 25, 2007

Respectfully submitted by,
BUCHANAN INGERSOLL & ROONEY LLP

By 
JEFFREY M. RATINOFF
Specially Appearing for Third Party Claimant
DUTCHESS PRIVATE EQUITIES FUND, L.P.

VERIFIED THIRD PARTY CLAIM OF
SUPERIOR SECURITY INTEREST OR LIEN

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3 1. I am Douglas H. Leighton, the Managing Director of Dutchess Capital
4 Management LLC, general partner of DUTCHESS PRIVATE EQUITIES FUND, L.P. ("third
5 party claimant" or "Dutchess"), and have personal knowledge of the facts set forth herein.

6 2. Dutchess claims a superior security interest on:

7 ANY & ALL accounts, accounts receivable, rights to payment of
8 money, contingent rights, contract rights, deposit accounts, monies
9 due from third parties, due in favor of and for the benefit of
10 judgment debtor EAGLE BROADBAND, INC., or any of the
judgment debtor's business associations, partners, assignees, and
other persons acting on their behalf ...

11 that was levied upon by Defendant ROY THOMAS MOULD ("Mould") on or about December
12 11, 2006 in conjunction with the writ of execution issued by the Clerk of Santa Clara Superior
13 Court on November 30, 2006.

14 3. I am informed and believe that on or about December 11, 2006, Mould served a
15 Notice of Levy with a writ of execution for this property on Hewlett-Packard Co.

16 4. Dutchess acquired its superior security interest by virtue of entering into a series
17 of secured financing arrangements with Plaintiff EAGLE BROADBAND, INC. ("Eagle").

18 5. On or about, February 10, 2006, Dutchess provided Eagle with an \$822,500
19 convertible debenture ("February 2006 Convertible Debenture").

20 6. On or about July 24, 2006, Dutchess entered into a promissory note agreement
21 with Eagle, pursuant to which Eagle sold an \$5,500,000 promissory note ("July 2006 Promissory
22 Note").

23 7. On or about, February 10, 2006, Eagle and Dutchess entered into a security
24 agreement ("the Security Agreement"), wherein Dutchess was granted a security interest in the
25 same personal property, contract rights and general intangibles, such as Eagle's accounts
26 receivable and rights of payment from third parties, that Mould sought to levy. A true and
27 correct copy of the Security Agreement, which describes the collateral in detail, is attached
28 hereto as Exhibit A.

1 8. On or about February 13, 2006, Dutchess perfected its security interest in the
2 above-stated collateral by filing a UCC Financing Statement. A true and correct copy of this
3 statement is attached hereto as Exhibit B.

4 9. Pursuant to Article 21 of the July 2006 Promissory Note, the Security Agreement
5 was incorporated by reference therein to secure the Note and give Dutchess full right to exercise
6 the Security Agreement in conjunction with the July 2006 Promissory Note. A true and correct
7 copy of the July 2006 Promissory Note is attached hereto as Exhibit C.

8 10. The address in the State of California where service by mail may be made on
9 Dutchess is:

10 Karineh Khachatourian
11 Jeffrey M. Ratinoff
12 Buchanan Ingersoll & Rooney LLP
13 333 Twin Dolphin Dr., Suite 700
14 Redwood Shores, CA 94065

15 11. As of January 3, 2007, the total amount due to Dutchess under the February 2006
16 Convertible Note secured by the security interest and/or lien is \$38,244.07. Interest currently
17 accrues on this balance at the rate of 12% per annum.

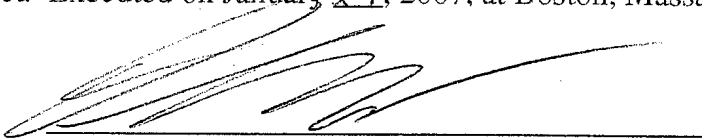
18 12. As of January 3, 2007, the total amount due to Dutchess under the July 2006
19 Promissory Note secured by the security interest is \$4,078,412. The note bears interest at 12%,
20 provides for monthly interest and principal payments of \$250,000 beginning October 31, 2006,
21 and matures on July 24, 2008.

22 13. Dutchess requests that the aforesaid property be released to Eagle.
23

24 I am the Managing Director of Dutchess Capital Management LLC, general partner of
25 Dutchess Private Equities Fund, L.P., a third party claimant in the above entitled action and am
26 authorized to make this verification for and on its behalf. I have read the foregoing Third Party
27 Claim by Secured Party and know the contents thereof. I certify that the same is true and of my
28 own knowledge, except as to those matters which are therein stated upon my information or

1 belief, and as to those matters I believe it to be true.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed on January 24, 2007, at Boston, Massachusetts.

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6 Douglas H. Leighton

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