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Objection Date: May 30, 2013

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
ARCAPITA BANK B.S.C. (C), <i>et al.</i> ,)	Case No. 12-11076 (SHL)
)	
Debtors.)	(Jointly Administered)
)	

**ORACLE’S OBJECTION TO, AND RIGHTS RESERVATION REGARDING,
DEBTORS’ NOTICE OF (I) ASSUMPTION AND POSSIBLE ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) CURE
AMOUNTS, AND (III) DEADLINE TO OBJECT TO CURE AMOUNTS AND
ASSUMPTION AND ASSIGNMENT (“OBJECTION”)**

Oracle America, Inc., successor in interest to Oracle USA, Inc. (“Oracle”), a creditor and contract counter-party in the above-captioned jointly administered Chapter 11 cases, submits this Objection to Arcapita Bank B.S.C. (C), et al.’s (“Debtors”) **two** Notices of (I) Assumption and Possible Assignment of Executory Contracts and Unexpired Leases, (II) Cure Amounts and (II) Deadline to Object to Cure Amounts and Assumption and Assignment (“Assumption Notices”). In support of the Objection, Oracle states as follows:

I. INTRODUCTION

1. In connection with the Debtors’ Second Amended Joint Plan of Reorganization (“Plan”), the Debtors filed and served Assumption Notices on contract counter-parties whose contracts will be assumed, and possibly assigned, through the Plan.

2. Exhibit 1 to each of the Assumption Notices Oracle received lists one contract, both with a stated \$0.00 cure. The listed Oracle agreements are described as “IMAL Banking System DB Licenses – Contract #2518131 – Dated 6/01/2011,” and “CBM & Payroll DB Licenses – Contract #2105625 – Dated 6/01/2011”.

3. The Assumption Notices further state that both Oracle contracts are with Arcapita Bank B.S.C. (C) and will be assigned to AIM Group Limited (“AIM”).

4. Neither Assumption Notice provides a specific contract name, nor the nature of the subject agreement. Specifically, they fail to identify whether they pertain to support renewals, or correlate to and/or comprise underlying and governing license agreements.

5. While the number 2518131 on one of the Assumption Notices tracks a support contract in Oracle’s records, the second Assumption Notice exhibit includes a reference number Oracle, as of yet, has been unable to identify.

6. For the Debtors to assume and assign any Oracle contracts, they must describe the contracts at issue with enough specificity, at a minimum, to allow identification, including both licenses and support renewals.

7. Based on the very general descriptions in the Assumption Notices, Oracle cannot, at this time, determine the appropriate cure amount owed under either of the listed Oracle agreements.

8. Oracle accordingly reserves its rights to object regarding the cure amount and the scope of the Debtors’ proposed assumptions and assignments until all Oracle contracts are described by Debtors with the requisite specificity to at least allow for identification and analysis of resulting cure sums owed.

9. As described below, Debtors may not assume and assign any Oracle agreement without Oracle's consent, as such contracts involve the licensing of patented and/or copyrighted materials.

10. In the absence of more information regarding the Debtors' intentions, Oracle cannot consent to the proposed assumptions and assignments.

11. If the Debtors intend to assume and assign any Oracle agreement via the Plan, in order to ensure adequate assurance of future performance by the proposed assignee AIM, Oracle requests that Debtors, at a minimum, provide to Oracle the following information: (a) financial bona fides; and (b) confirmation of AIM's willingness to execute an Oracle Assignment Agreement and related documentation, identifying succinctly and specifically, all of the executory contracts to be assigned.

12. Without this information, Oracle is unable to determine the assignee's creditworthiness or suitability/ability to adequately perform. Until these intentions are clear, Oracle reserves all rights to object to AIM as its eventual customer and assignee.

13. Oracle requests that the Court deny any contemplated assignment of Oracle's software via the Plan and Assumption Notices.

14. To the extent the Debtors seek assumption and assignment of any Oracle agreements, Debtors also must pay the correct cure amounts due and owing, and confirm AIM's ability to perform.

15. For these reasons, Oracle requests that the Court deny, at this time, any contemplated assumption and assignment of the Oracle agreement (or agreements) targeted by the Assumption Notices.

II. ARGUMENT

A. **The Debtors May Not Assume And Assign Oracle's Agreements As They Pertain To A License Of Intellectual Property And Oracle Does Not Consent To The Proposed Assignments At This Time.**

16. Section 365(c)(1) of the Bankruptcy Code provides, in relevant part:

The trustee may not assume or assign any executory contract ... of the debtor ... if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor ..., whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

17. Federal law makes non-exclusive patent licenses non-assignable absent consent of the licensor. In re Catapult Entertainment, Inc., 165 F.3d 747 (9th Cir. 1999), *cert. dismissed*, 528 U.S. 924 (1999). *See, In re Patient Educ. Media*, 210 B.R. 237, 243 (Bankr. S.D.N.Y 1997); *See, In re Adelphia Communications Corp, et al.*, 359 B.R. 65 (Bankr. S.D.N.Y. 2007).

18. Oracle's agreements involve the licensing of non-exclusive, patented software, and with the scant information provided to date, Oracle cannot consent to the proposed assignments.

19. Accordingly, at this time, the potential assumptions and assignments by Debtors should be denied with respect to any Oracle agreements.

B. **The Assumptions And Assignments Proposed In The Assumption Notices Should Be Denied With Respect To Oracle's Agreements Because They May Fail To Provide For Payment Of Appropriate Amounts Required In Cure.**

20. Since assumption and assignment of one or more Oracle contracts is contemplated, the Debtors cannot assign the listed agreements until any arrearages are tendered, for Oracle will not consent to the assignment of contracts in payment default.

21. At this time, Oracle does not have adequate assurance that the Debtors intend to

pay all amounts owed, nor enough certainty on the targeted contracts to allow for clarity on the correctness of the stated cure shown in the Assumption Notice.

22. For this reason, Oracle also withholds its consent to any assumption and/or assignment of the Oracle agreements. *See* 11 U.S.C. § 365(b)(1)(A).

23. Absent payment of the appropriate amounts owed to Oracle, the Oracle agreements may not be assumed, assumed and assigned or otherwise transferred.

24. Oracle reserves its right to object to the cure until more certainty on the contract or contracts at issue is provided.

C. The Proposed Assumptions And Assignments Should Be Denied With Respect To The Oracle Agreements Because The Assumption Notices Fail To Provide Adequate Assurance Regarding The Assignee.

25. Section 365(b) of the Bankruptcy Code sets forth specific prerequisites that must be met before a trustee/debtor can assume and assign an executory contract, including: (a) curing (or providing adequate assurance of a prompt cure of) any defaults under the subject contracts; and (b) providing adequate assurance of future performance.

26. Absent the foregoing, the executory contracts may not be assumed, or assumed and assigned.

27. At this time, Oracle cannot determine whether AIM: (a) is capable of providing adequate assurance of future performance, including its intention of acquiring supported licenses; (b) is willing to enter into a standard form of Oracle Assignment Agreement and related documentation, reflecting the terms, post-assignment, of the parties' relationship; and (c) intends to pay, or to ensure Debtors have paid, any sums owing in cure.

28. Until at least the information identified above is provided, Oracle is unable to determine whether Debtors have complied, or will comply, with the protections of section 365(b)(1)(C).

III. CONCLUSION

29. Debtors are prohibited from assuming and assigning any Oracle agreements in the absence of first obtaining Oracle's consent pursuant to section 365(c) and applicable case law.

30. The Debtors have failed to comply with the statutory prerequisites for assumption and assignment of the targeted Oracle contract (or contracts) by failing to: (a) identify the contract or contracts at issue with specificity so as to permit an evaluation of their assignability and the accuracy of the resultant cure payment; and (b) provide adequate assurance of future performance.

31. For these reasons, and all those set forth above, Oracle respectfully requests that the Court deny, at this time, any effort via Debtors' Plan and Assumption Notices to assume and assign any Oracle agreements, in the absence of obtaining Oracle's prior consent..

Dated: May 30, 2013
Huntington, New York

Respectfully Submitted,

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