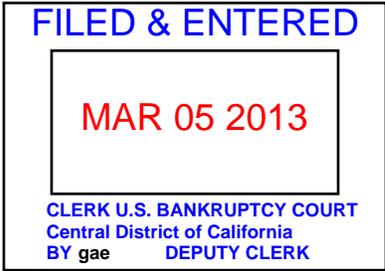


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
FLASHCOM, INC.,
a California corporation,

Debtor.

Case No. 2:12-bk-16351-RK
Chapter 11
Adv. No. 2:12-ap-01339-RK

CAROLYN A. DYE,
Liquidating Trustee,

Plaintiff,

vs.

ANDRA SACHS;
COMMUNICATIONS VENTURES III,
L.P.; COMMUNICATIONS
VENTURES III CEO &
ENTREPRENEURS FUNDS L.P.;
MAYFIELD IX, a Delaware Limited
Partnership; MAYFIELD
ASSOCIATES FUNDS IV, a Delaware
Limited Partnership; DAVID
HELFRICH; TODD BROOKS;
BRADFORD SACHS; RICHARD
RASMUS; and KEVIN FONG,

Defendants.

MEMORANDUM DECISION ON
PLAINTIFF'S MOTION FOR ENTRY OF
JUDGMENT AND ANDRA SACHS
DEFENDANTS' MOTION FOR RELIEF
FROM ORDERS PURSUANT TO FED. R.
CIV. P. 60

1 The Motion of Plaintiff Carolyn Dye, Litigating Trustee (“Trustee”) for Entry of
2 Judgment Establishing Liability of Andra Sachs, Ashby Enterprises and Max-Singer
3 Partnership (Docket No. 526, the “Judgment Motion”) and the Motion of Defendants
4 Andra Sachs, Ashby Enterprises and Max-Singer Partnership (collectively, the “Andra
5 Sachs Defendants”) for Motion for Relief from Orders Pursuant to Federal Rule of Civil
6 Procedure 60 (Docket No. 609, the “Rule 60 Motion”) came before the undersigned
7 United States Bankruptcy Judge on April 10, 2012, May 30, 2012, June 28, 2012,
8 October 31, 2012, and December 19, 2012. David R. Weinstein, of the law firm of Bryan
9 Cave LLP, appeared on behalf of Trustee. Teddy M. Kapur, of the law firm of Pachulski
10 Stang Ziehl & Jones LLP, originally appeared on behalf of the Andra Sachs Defendants.
11 Ronald E. Michelman, of the law firm of Michelman and Michelman LLP, substituted into
12 the case as new counsel for the Andra Sachs Defendants and later appeared for these
13 defendants.

14 On August 14, 2012, the court entered its Supplemental Scheduling Order, in
15 which the court deemed Trustee’s Judgment Motion a motion for summary judgment
16 under Fed. R. Civ. P. 56, Fed. R. Bankr. P. 7056 and Local Bankruptcy Rule (“LBR”)
17 7056-1. The parties’ Stipulation of Facts Concerning Plaintiff’s Motion for Entry of
18 Judgment Establishing Liability of Andra Sachs, Ashby Enterprises and Max-Singer
19 Partnership filed on June 21, 2012 (Docket No. 554, the “Stipulation of Facts”) serves as
20 the Statement of Uncontroverted Facts required by LBR 7056-1(b)(2). As required by the
21 Supplemental Scheduling Order, on September 6, 2012, the Andra Sachs Defendants
22 filed a supplemental brief and statement of genuine issues in compliance with LBR 7056-
23 1. Subsequently, the Andra Sachs Defendants filed the Rule 60 Motion on November 21,
24 2012 (the “Rule 60 Motion”). The court considers the Rule 60 Motion with Trustee’s
25 Judgment Motion because it directly affects the outcome of that motion. The court had
26 set a further hearing on these matters for March 5, 2013 after the court requested
27 supplemental briefing on the impact of the California Supreme Court’s decision and
28 opinion in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit*

1 *Association*, 55 Cal.4th 1169 (2013) on Trustee’s related motion to strike the declaration
2 of James Bastian filed in opposition to Trustee’s motion for entry of judgment now before
3 the court.

4 Having considered the oral and written arguments of the parties, the Stipulated
5 Facts, and the other papers and pleadings filed in this case, the court hereby takes the
6 pending motions under submission, vacates the further hearing on March 5, 2013 and
7 issues this memorandum decision on the motions setting forth its reasons for its rulings
8 on the motions under Rules 7056 and 9024 of the Federal Rules of Bankruptcy
9 Procedure and Rules 56 and 60 of the Federal Rules of Civil Procedure.

10 For the reasons set forth herein, the court concludes that the Andra Sachs
11 Defendants’ Rule 60 Motion should be granted, that Trustee’s summary judgment motion
12 should be granted in part and denied in part and that judgment in this adversary
13 proceeding should therefore be entered in favor of Trustee in part only.

14 **BACKGROUND**

15 The relevant facts are undisputed and can be found in the Stipulation of Facts
16 Concerning Plaintiff’s Motion for Entry of Judgment Establishing Liability of Andra Sachs,
17 Ashby Enterprises and Max-Singer Partnership (Docket No. 554), filed by the parties on
18 June 21, 2012, which facts are now adopted as the Statement of Uncontroverted Facts
19 pursuant to LBR 7056-1. On July 11, 2002, Trustee commenced this adversary
20 proceeding against Communications Ventures III, L.P., Communications Ventures III
21 CEO & Entrepreneurs’ Fund L.P., Mayfield IX, Mayfield Associates Funds IV, the Estate
22 of Todd Brooks, Kevin Fong, David Helfrich (collectively, the “VC Defendants”), the Andra
23 Sachs Defendants, Bradford Sachs, and Richard Rasmus.

24 Pursuant to its Order Authorizing Compromise of Controversies with Andra Sachs
25 and Estate of Bradford H. Sachs (Docket No. 726), entered on November 1, 2005 (the
26 “Stipulated Judgment”), the court approved the “Global Settlement Agreement” between
27 Trustee, Bradford Sachs and the Andra Sachs Defendants. The approval date of the
28 Global Settlement Agreement was June 26, 2006.

1 Pursuant to the terms of the Global Settlement Agreement, in 2006, Andra Sachs
2 made two settlement payments totaling \$750,000 to Trustee. Because the Trustee did
3 not receive at least \$2,000,000 from the VC Defendants or other defendants by June 26,
4 2009 (36 months following the Approval Date, as set forth in the Global Settlement
5 Agreement), under paragraph 10 of the Global Settlement Agreement, the Andra Sachs
6 Defendants were required to make the final settlement payment to Trustee by July 31,
7 2009.

8 The Andra Sachs Defendants did not make the final settlement payment to
9 Trustee. Upon failure to make this payment, paragraph 10(c) of the Global Settlement
10 Agreement provides that the Trustee may record the Dye Liability Judgment against the
11 Andra Sachs Defendants—a judgment for the avoidance of preferential transfers in the
12 principal sum of \$9,000,000 under 11 U.S.C. § 547(b) in favor of Trustee—and proceed
13 with execution on Andra’s assets as well as the assets of the other Andra Sachs
14 Defendants.

15 The Trustee did not demand payment, notify, or otherwise attempt to communicate
16 with any of the Andra Sachs Defendants or their counsel about the need to make the final
17 payment under the Global Settlement Agreement in July 2009, or after that, until January
18 2012. After Andra Sachs received service of Trustee’s Judgment Motion in March 2012,
19 she and her counsel offered, more than once in March 2012 and thereafter, to deliver
20 \$62,500 to Trustee. Although Andra Sachs intended that such payment would satisfy the
21 obligations of the Andra Sachs Defendants under the Global Settlement Agreement,
22 Trustee did not accept this payment tendered by Andra.

23 **DISCUSSION**

24 **I. The Rule 60 Motion**

25 Under Rule 60 of the Federal Rules of Civil Procedure, made applicable in this
26 case through Federal Rule of Bankruptcy Procedure 9024, provides in pertinent part:

27 On motion and just terms, the court may relieve a party or its legal
28 representative from a final judgment, order, or proceeding for one of the
following reasons:

1 (4) the judgment is void;

2 (5) the judgment has been satisfied, released or discharged; it is
3 based on an earlier judgment that has been reversed or vacated; or
4 applying it prospectively is no longer equitable; or

5 (6) any other reasons that justifies relief.

6 The Andra Sachs Defendants request that this court grant them relief pursuant to
7 these rules by vacating or modifying the Stipulated Judgment filed November 1, 2005 by
8 eliminating the \$9 million principal sum payment. Defendants argue in their Rule 60
9 motion, as they argue in opposition to the Judgment Motion, that the principal sum
10 payment is an unenforceable penalty under California contract law, and that enforcing
11 the Stipulated Judgment prospectively would be inequitable.

12 **A. The Rule 60 Motion Is Timely**

13 Rule 60(c) sets forth the relevant time limitations for bringing such motions. Relief
14 sought pursuant to Rule 60(b)(4)-(6) must be brought within a “reasonable” time, but no
15 specific time is stated. See Fed. R. Civ. P. 60(c)(1); *see also*, 3 *Jones and Rosen*,
16 *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶¶ 20:430-20:431 at 20-
17 85 – 20-86 (2012), *citing inter alia*, *United States v. Wyle (In re Pacific Far East Lines*,
18 *Inc.)*, 889 F.2d 242, 249 (9th Cir. 1989)(“What constitutes a reasonable time ‘depends on
19 the facts of each.’”)(citation omitted). The court finds that the Rule 60 motion was
20 brought within a reasonable time in light of the undisputed facts that the resolution of the
21 remaining part of the adversary proceeding against the VC Defendants, upon which the
22 final settlement amount was computed, took longer than anticipated under the Global
23 Settlement Agreement, that Trustee waited a longer period of time to seek enforcement
24 of the full amount of the judgment against the Andra Sachs Defendants, that there were
25 changes in counsel for Andra Sachs Defendants, and Defendants had not known of
26 Trustee’s intent to seek enforcement of the full amount of the judgment until 2012 when
27 counsel for Trustee sent an email message to an attorney who formerly represented the
28 Andra Sachs Defendants, but who was not representing them at the time, and that the

1 Andra Sachs Defendants acted with diligence after they tendered payment of the
2 settlement payment promptly when Trustee demanded payment of the full amount and
3 filed their Rule 60 motion after Trustee refused their tender of the settlement amount.
4 *In re Pacific Far East Lines, Inc.*, 889 F.2d at 249 (a major consideration of what
5 constitutes a reasonable time is having a good reason for not taking action earlier). The
6 court also finds that the Rule 60 motion will not prejudice Trustee as the nonmoving party
7 because Trustee waited a long time to make any demand for payment to the Andra
8 Sachs Defendants and can be appropriately compensated for any delay with interest on
9 the determined judgment amount. *Id.* (another major consideration of what constitutes a
10 reasonable time is lack of prejudice to the nonmoving party). Accordingly, the court will
11 not deny the Rule 60 motion on grounds that it was not brought within a reasonable time
12 and will grant the motion for the reasons stated herein.

13 **B. Under California Law, the \$9 Million Principal Sum Payment is an**
14 **Unenforceable Penalty**

15 The relevant question here is whether, in the Stipulated Judgment, the provision
16 allowing for the Trustee to enter judgment against Andra Sachs for \$9 million is a valid
17 liquidated damages provision or an illegal penalty for breach of contract settling the
18 litigation between Trustee and the Andra Sachs Defendants pursuant to California Civil
19 Code §1671. Civil Code § 1671(b) provides: “a provision in a contract liquidating
20 damages for the breach of the contract is valid unless the party seeking to invalidate the
21 provision establishes that the provision was unreasonable under the circumstances at the
22 time the contract was made.” This raises two further questions specifically relating to the
23 Stipulated Judgment, which is the settlement contract between the parties. First, did
24 Andra Sachs breach the Stipulated Judgment, or rather, as Trustee argues, did Andra
25 Sachs merely choose one “option” under the contract? If Andra Sachs breached the
26 Stipulated Judgment, is the relevant provision a valid liquidated damages clause or an
27 unenforceable penalty? The court finds that Andra Sachs breached the Stipulated
28

1 Judgment, and the relevant provision of the Global Settlement Agreement constitutes an
2 unenforceable penalty pursuant to Civil Code § 1671(b).

3 As an introductory matter, the court finds that California law is helpful and
4 applicable in this case. Trustee cites *Van Curen v. Escamilla (In re VEC Farms, LLC)*,
5 395 B.R. 674 (N.D. Cal. 2008) as contrary authority, stating that state law is instructive,
6 but not binding, authority for a bankruptcy court in determining a Rule 60 motion
7 concerning a settlement agreement approved by an order of a California bankruptcy court
8 pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. 395 B.R. at 684.
9 The court does not disagree with the court in *VEC Farms* that state law on contracts is
10 instructive, but not necessarily binding, in considering a Rule 60 motion as to an order
11 approving a settlement agreement by the federal bankruptcy court. But as the court held
12 in *Eising v. Locke (In re Wescot International, Inc.)*, 236 B.R. 27 (Bankr. N.D. Cal. 1999),
13 it would not be improper to do so. The court in *Wescot* stated: "Although [an action under
14 Rule 60 is uniquely a creature of federal law,] state law on contracts is very instructive on
15 the precise issue of whether this type of judgment can constitute an unconscionable
16 penalty. . . . Vineyard itself acknowledges that there is a dearth of federal law on
17 pointTherefore it was certainly not improper for the Bankruptcy Court to refer to
18 California law in the case at hand." 236 B.R. at 33 n. 3. This court concludes that it may
19 rely on California law interpreting the subject settlement contract reached between these
20 parties approved by this California bankruptcy court in this adversary proceeding to settle
21 their dispute, which also referred to, and incorporated, provisions of the California Civil
22 Code relating to settlements (i.e., releases of liability under Civil Code § 1542). *Id.*; see
23 also, *Global Settlement Agreement*, ¶ 17 (attached to *Stipulation of Facts as Exhibit 2 at*
24 *15-16*).

25 **1. Andra Sachs Breached the Stipulated Judgment**

26 The language of Civil Code 1671(b) governing liquidated damages in California
27 contracts, as noted by Trustee, anticipates a breach, stating: "to constitute a liquidated
28 damage clause the conduct triggering the payment must in some manner breach the

1 contract.” *In re Cellphone Termination Fee Cases*, 193 Cal. App. 4th 298, 328 (2011),
2 quoting, *Morris v. Redwood Empire Bancorp*, 128 Cal. App. 4th 1305, 1315 (2005).
3 Trustee argues that Andra did not “breach” the Stipulated Judgment, and thus her actions
4 did not trigger the protection against unreasonable penalties provided in Civil Code §
5 1671(b).

6 In this case, the pertinent terms of the Stipulated Judgment are as follows:

- 7 - Without admitting liability, Andra shall consent to entry of a judgment in the
8 principal amount of \$9 million in favor of Trustee.
- 9 - The Dye Avoidance Judgment shall not be recorded by Trustee unless and
10 until Andra and other defendants “**fail to timely exercise the Dye Buyout**
11 **Option.**” ¶ 9(c) (emphasis added).
- 12 - Andra and the other defendants “can **satisfy their liability** under [the
13 judgment] by making the payment provided for pursuant to the Dye Buyout
14 Option. Upon timely payment of the Dye Buyout Option, **Dye shall**
15 **acknowledge satisfaction by Andra . . . of any and all liability to**
16 **[Trustee] and the Flashcom bankruptcy estate under this agreement,**
17 **the Dye Liability Judgment, or otherwise.**” ¶ 9(e) (emphasis added).
- 18 - Under the Dye Buyout Option, Andra must pay the Trustee either \$50,000
19 or \$62,500 no later than July 31, 2009, the amount depending on actions of
20 the other defendants. ¶ 10.
- 21 - “In the event Andra [and the other defendants] **do not exercise the Dye**
22 **Buyout Option** by making the required payment prior to its expiration, Dye
23 may record the Dye Avoidance Judgment; and she may file, have entered
24 and record the Dye Liability Judgment,” which provides for full satisfaction
25 of the \$9 million against Andra. ¶ 10(c) (emphasis added).

26 ***

27 *Global Settlement Agreement, ¶¶ 9(a)-(c) and 10(a)-(c) (attached to Stipulation of Facts*
28 *as Exhibit 2 at 9-11)*. Trustee points to the last bit of quoted language quoted to argue

1 that Andra Sachs did not commit a breach of the Stipulated Judgment, but as Trustee
2 argues, Andra instead “simply failed to avail herself of an opportunity that was clearly
3 labeled as, and was, an ‘Option’ which had a limited duration.” *Plaintiff’s Reply*
4 *Memorandum in Support of Motion for Entry of Judgment Establishing Liability of Andra*
5 *Sachs, Ashby Enterprises and Max-Singer Partnership*, filed on May 23, 2012, at 7.
6 Trustee argues that a contractual provision “that merely provides an option of alternative
7 performance of an obligation does not impose damages and is not subject to section
8 1671 limitations. *Id.*, citing, *In re Cellphone Termination Fee Cases*, 193 Cal. App. 4th at
9 328.

10 As noted by Trustee, paragraph 10(c) of the Global Settlement Agreement, quoted
11 above, calls the required payment an “option.” But when read in conjunction with the
12 other relevant provisions of the settlement agreement, the court concludes that it is
13 certainly a breach, mainly because the payment was to constitute “full satisfaction” of any
14 liability to the Trustee or the estate. *Global Settlement Agreement* ¶ 9(e). The *Cellphone*
15 *Termination Fee Cases*, the same authority cited by Trustee for her own position, stated:
16 “When it is manifest that a contract expressed to be performed in the alternative is in fact
17 a contract contemplating but a single, definite performance with an additional charge
18 contingent on the breach of that performance, the provision cannot escape examination
19 in light of pertinent rules relative to the liquidation of damages.” *In re Cellphone*
20 *Termination Fee Cases*, 193 Cal. App. 4th at 328, quoting, *Garrett v. Coast & Southern*
21 *Fed. Sav. & Loan Assn.*, 9 Cal.3d 731, 738 (1973). Andra had two “options” only under
22 the settlement contract between her and Trustee: pay \$62,500 on time, or be subject to
23 liability for the entire \$9 million principal sum.

24 Regardless of the fact that the Stipulated Judgment terms this payment an
25 “Option,” it is clear from the face of the Global Settlement Agreement that, to satisfy her
26 obligation under the Stipulated Judgment, Andra Sachs was required to pay the sum of
27 \$62,500. Accordingly, this court considers the \$9 million an “additional charge” which, as
28 explained in *In re Cellphone Termination Fee Cases*, requires the application of Civil

1 Code § 1671(b). Thus, the court concludes that Andra breached the Stipulated
2 Judgment by failing to timely remit payment to the Trustee.

3 **2. The “Option” Is an Unenforceable Penalty**

4 In *Ridgley v. Topa Thrift & Loan Association*, 17 Cal. 4th 970 (1998), the California
5 Supreme Court explained that a liquidated damages clause for a breach of contract will
6 be considered unenforceable pursuant to Civil Code 1671(b) if it bears “no reasonable
7 relationship to the range of actual damages that the parties could have anticipated would
8 flow from a breach.” 17 Cal. 4th at 977. The amount set as liquidated damages from a
9 breach of contract must demonstrate a “reasonable endeavor by the parties to estimate a
10 fair average compensation for any loss that may be sustained.” *Id.*, citing, *Garrett v.*
11 *Coast & Southern Fed. Sav. & Loan Assn.*, 9 Cal.3d at 739.

12 In *Greentree Financial Group, Inc. v. Execute Sports, Inc.*, 163 Cal. App. 4th 495
13 (2008), a California Court of Appeal explained that under a stipulated judgment—as is the
14 case between Trustee and Andra Sachs—the court must analyze damages based on a
15 “breach of the *stipulation*, not the breach of the *underlying contract*.” 163 Cal. App. 4th at
16 499 (emphasis in original), citing, *Sybron Corp. v. Clark Hospital Supply Corp.*, 76 Cal.
17 App. 3d 896, 902 (1978).

18 The facts of *Greentree* are similar to those in the case at bar relating to the
19 Stipulated Judgment. In *Greentree*, plaintiff sued defendant for breach of contract,
20 alleging damages of \$45,000 (plus interest to be determined at trial). 163 Cal. App. 4th
21 at 498. Subsequently, the parties executed a stipulated judgment, which provided for a
22 settlement that the defendant would pay plaintiff a total of \$20,000 in two installments. *Id.*
23 In the event defendant defaulted on one of the settlement payments, plaintiff would be
24 entitled to have judgment immediately entered against defendant for all amounts prayed
25 as set forth in the complaint. *Id.* Defendant defaulted on the settlement in the stipulated
26 judgment, and immediately thereafter, the trial court entered a proposed judgment
27 submitted by plaintiff for \$61,232.50, which represented the original amount sought by
28 plaintiff in the case rather than the settlement amount. *Id.*

1 The *Greentree* court held that the judgment for the full amount imposed an
2 unenforceable penalty pursuant to Civil Code § 1671(b), explaining that the judgment did
3 not reflect the damages that the parties anticipated that might flow from breach of the
4 stipulation, but rather reflected those from a breach of the underlying contract. *Id.* at 499,
5 citing, *Sybron Corp. v. Clark Hospital Supply Corp.*, 76 Cal. App. 3d at 902. It was not
6 appropriate for plaintiff to simply select as damages in the event of breach of the
7 stipulation that equaled the total prayer for relief from the complaint. *Id.* Indeed, the
8 *Greentree* court stated that the amount bore no reasonable relationship to the range of
9 actual damages the parties could have anticipated from breach of the stipulation. *Id.*
10 “Damages for the withholding of money are easily determinable—i.e., interest at
11 prevailing rates.” *Id.* at 500, citing, *Sybron Corp. v. Clark Hospital Supply Corp.*, 76 Cal.
12 App. 3d at 900. In so holding, the court in *Greentree* drew attention to the fact that
13 plaintiff’s requested judgment amount was more than triple the amount for which the
14 parties agreed to settle the case. *Id.*

15 Similarly, under the facts of this case, Andra Sachs had one choice: timely pay
16 Trustee the amount reduced in settlement of \$62,500 in the Stipulated Judgment or be
17 subject to full liability on the entire \$9 million amount originally sought in the preference
18 action brought by Trustee against Andra Sachs and the VC Defendants. It cannot
19 reasonably be determined that upon breach of paying on time the reduced settlement
20 amount of \$62,500, the parties contemplated that damages for that breach would total \$9
21 million. Just as in *Greentree*, the \$9 million amount does not bear a reasonable
22 relationship to the agreed-upon performance in the Stipulated Judgment. This is an
23 unenforceable penalty for breach of the settlement contract, and therefore, Trustee may
24 not attempt to enforce it against the Andra Sachs Defendants simply because her efforts
25 to obtain a judgment against the VC Defendants have not been successful.

26 **II. The Judgment Motion**

27 Because the provision of the Stipulated Judgment which allows Trustee to request
28 entry of judgment against the Andra Sachs Defendants in the amount of \$9 million is an

1 unenforceable penalty pursuant to Callifornia Civil Code § 1671(b), the court concludes
2 that judgment should be entered in favor of Trustee only in part for the Andra Sachs
3 Defendants' breach of the settlement agreement by failing to timely make the final
4 installment payment under the agreement. Thus, the court concludes that the Andra
5 Sachs Defendants should be only required to tender the settlement amount of \$62,500,
6 plus interest at the applicable rate.

7 The court orders counsel for the Andra Sachs Defendants to submit a proposed
8 order granting in part and denying in part Trustee's Judgment Motion, a proposed
9 judgment in favor of Trustee and against them in the amount of \$62,500, plus applicable
10 interest on that amount, and granting their Rule 60 motion. The court further orders that
11 counsel for the Andra Sachs Defendants have counsel for Trustee review the form of the
12 proposed orders and judgment before they are submitted to the court for final review and
13 approval. Since this memorandum decision resolves the pending motions in this case,
14 the court vacates all of the further hearings currently set for March 5, 2013 at 3:30 p.m.
15 related to these motions, and no appearances are necessary.

16 IT IS SO ORDERED.

17 ###

18
19
20
21
22
23
24 Date: March 5, 2013



25 _____
26 Robert Kwan
27 United States Bankruptcy Judge
28

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM DECISION ON PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT AND ANDRA SACHS DEFENDANTS' MOTION FOR RELIEF FROM ORDERS PURSUANT TO FED. R. CIV. P. 60** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **March 4, 2013**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

Natalie C Boyajian natalie.dagbandan@bryancave.com,
raul.morales@bryancave.com;trish.penn@bryancave.com
Allen Chiu allen.chiu@lw.com
Jacquelyn H Choi jchoi@wwolawyers.com
Robert A Franklin rfranklin@murraylaw.com
Andy Kong Kong.Andy@ArentFox.com
Nhung Le nle@luce.com
Elan S Levey elan.levey@usdoj.gov, louisalin@usdoj.gov
Ronald E Michelman ronaldmichelman@sbcglobal.net
Kimberly A Posin kim.posin@lw.com
Amy Quartarolo amy.quartarolo@lw.com, laura.pumerville@lw.com
Shelly Rothschild rothschildlaw@yahoo.com
David R Weinstein david.weinstein@bryancave.com,
raul.morales@bryancave.com;trish.penn@bryancave.com

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Latham & Watkins LLP
Daniel Scott Schechter
633 W. Fifth St., Suite 4000
Los Angeles, CA 90071

Stutman Triester & Glatt
K. John Shaffer
1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

Mohamed A Malik
Jackson DeMarco Tidus & Peckenpaugh
2030 Main St., Suite 1200
Irvine, CA 92614

Teddy M. Kapur
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., Suite 1300
Los Angeles, CA 90067

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below: