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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 In re:

Cases Substantively Consolidated

14 **ATI LIQUIDATING, INC.,**
15 formerly known as
16 Aviza Technology, Inc.,
17 Employer's Tax ID No.: 20-1979646

Case No. 09-54511- SLJ-11

18 **AI LIQUIDATING, INC.,**
19 formerly known as Aviza, Inc.,
20 Employer's Tax ID No.: 20-0249205

Case No. 09-54514-SLJ-11

21 **TTI LIQUIDATING, INC.,**
22 formerly known as
23 Trikon Technologies, Inc.,
24 Employer's Tax ID No.: 95-4054321

Case No. 09-54515-SLJ-11

Debtor(s).

25 440 Kings Village Road
26 Scotts Valley, CA 95066

27 Date: May 13, 2015
28 Time: 2:00 p.m.
Place: 280 S. First Street, Room 3099
San Jose, CA 95113
Judge: The Honorable Stephen L. Johnson

29 **MOTION BY SHAREHOLDERS PURSUANT TO 11 U.S.C. §§ 105(a) AND 1142**
30 **AND BANKRUPTCY RULE 3020(d), FOR AN ORDER IN AID OF**
31 **IMPLEMENTATION OF CONFIRMED CHAPTER 11 PLAN REGARDING**
32 **DISTRIBUTIONS TO BENEFICIAL OWNERS OF PUBLICLY TRADED STOCK**

1 **To: THE HONORABLE STEPHEN L. JOHNSON, CHIEF JUDGE, UNITED STATES BANKRUPTCY COURT;**
2 **PATRICK C. O’CONNOR, THE RESPONSIBLE PERSON FOR THE REORGANIZED DEBTOR UNDER THE**
3 **PLAN; AND ALL RECORD HOLDERS, AND BENEFICIAL OWNERS, OF THE DEBTORS’ COMMON STOCK**
4 **[OTC: AVIZA [AVZAQ]] (THE “STOCK”):**

5 Dvir Weinberg and Yehuda Weinberg (together, “Weinbergs”), beneficial owners of
6 4,353,456 shares of Stock (the “Weinberg Shares”), hereby file this *Motion By Shareholders Pursuant*
7 *to 11 U.S.C. §§ 105(a) and 1142 and Bankruptcy Rule 3020(d), For an Order In Aid of*
8 *Implementation of Confirmed Chapter 11 Plan Regarding Distributions to Beneficial Owners of*
9 *Publicly Traded Stock* (the “Motion”). The Motion is supported by the accompanying Declaration of
10 Dvir Weinberg (the “Weinberg Decl.”), and the accompanying Declaration of Jerrold L. Bregman (the
11 “Bregman Decl.”).

12 **PRELIMINARY STATEMENT**

13 The Motion seeks an order that enforces the letter and spirit of the Plan with respect to the
14 distributions under the Plan to certain holders of the Debtor’s Stock. This Motion concerns the non-
15 certificated shares of the Debtor’s stock that were publicly traded, and which continued to trade in the
16 public markets for more than 1,000 days after the Plan Record Date.¹

17 During this “gap period,” after the Plan Record Date and before the Debtors stopped the public
18 trading, more than five million shares of Stock were traded in the public market. The first, and as yet
19 only distribution under the Plan in respect of the Stock, was during November 2013, made more than
20 250 days after the Stock stopped trading.

21 The Plan facilitated the continued public trading of the Stock by not cancelling the Stock, and
22 by providing that all of the “legal and equitable” rights associated with the Stock were preserved and
23 not altered by the Plan. The Disclosure Statement noted the Stock was continuing to trade publicly,
24 and nothing in the Plan purported to halt or impair the public trading of the Stock.
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¹ Terms not defined in the Preliminary Statement shall have the meanings ascribed to them below.
28

1 DTC was the record holder for all of the non-certificated shares of Stock, which were the
2 shares available for trading in the public stock market after the Plan Record Date. Once the Debtor's
3 stock transfer Ledgers were closed, only shares registered to DTC as the record holder could be traded
4 publicly.

5 Section 3.5 of the Plan strictly governs distributions under the Plan in a way that insures
6 distributions would flow unimpaired to any beneficial owners who purchased Stock in the public
7 market after the Plan Record Date and who held such stock as of the distribution date. Specifically,
8 pursuant to Section 3.5 of the Plan, distributions are to be made "only" to "record holders" as of the
9 Plan Record Date. DTC, as the record holder of the Stock and clearing house for stock sales and
10 related transactions, held such non-certificated shares for its member "participants", including brokers
11 who held for their own account and in street name for other brokers and clients. In the ordinary course
12 of business, consistent with the normal workings of the public markets, DTC makes distributions it
13 receives for securities it holds (such as dividends) to the participants based on their positions as of the
14 distribution date, unless the security trades with an "ex dividend" notification or other notice that the
15 purchaser of the security is not entitled to receive particular distributions associated with the security.
16 No such notice traded with the Gap Shares.
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19 The Debtor materially deviated from the Plan by making the Gap Shares Distribution to
20 persons who were not record holders as of the Plan Record Date. The Debtor made the Gap Share
21 Distribution to, or for the benefit of, the Gap Sellers who had no commercially reasonable or legally
22 cognizable expectation of receiving any portion of such distribution. The Gap Sellers were, therefore,
23 unjustly enriched by such distribution. Conversely, the Gap Buyers, who did have a commercially
24 reasonable expectation of receiving the Gap Share Distribution, received no portion of this First
25 Distribution.
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1 By the Motion, the Weinbergs seek an order clarifying the mechanics for distributions under
2 the Plan in respect of the Gap Shares, and providing equitable relief for parties in interest under the
3 circumstances. This Motion is being made upon notice to all parties in interest, each of whom has an
4 opportunity to present any different views to the Court.

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and
7 1334. Additionally, Article X. of the Plan (defined below) specifically provide this Court with retained
8 jurisdiction to consider the Motion. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
9 Venue of this matter is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10 **FACTUAL BACKGROUND**

11 **A. Bankruptcy Plan Confirmed**

12 2. On April 8, 2010, the Court entered its *Order* (the “Confirmation Order) *Confirming the*
13 *Debtors’ Joint Plan of Liquidation* (Dated March 2, 2010) (the “Plan”). The Debtors’ bankruptcy
14 estates were substantively consolidated pursuant to the Plan and the Confirmation Order. The Plan
15 became effective on April 23, 2010. The Confirmation Order establishes May 24, 2010 as the Record
16 Date for distributions in respect of the Stock (the “Plan Record Date”).

17 3. On June 9, 2009, the debtors filed their respective petitions for voluntary relief under
18 Chapter 11 of Title 11, United States Code, as amended (the “Bankruptcy Code”). An Official
19 Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee on
20 June 23, 2009.

21 4. On April 8, 2010, the Court entered its *Order* (the “Confirmation Order) *Confirming the*
22 *Debtors’ Joint Plan of Liquidation* (Dated March 2, 2010) (the “Plan”). The Debtors’ bankruptcy
23 estates were substantively consolidated pursuant to the Plan and the Confirmation Order. The Plan
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1 became effective on April 23, 2010. The Confirmation Order establishes May 24, 2010 as the Record
2 Date for distributions in respect of the Stock (the “Plan Record Date”).

3 5. The debtors, as substantively consolidated and reorganized pursuant to the Plan (the
4 “Debtor”), have paid in full, or otherwise provided for the satisfaction, of all claims that were allowed
5 under the Plan. The Plan was modified by the Court’s Order entered November 5, 2012 (Dkt. 690),
6 which, among other things, revised the definition of Notice Parties (section 1.58 of the Plan) to provide
7 that “any stockholder interested in monitoring the post-confirmation activity of the Debtor’s case may
8 do so” (motion to modify the Plan (Dkt. 686) (the “Modification Motion”) at ¶. 13). In this regard, the
9 Plan was amended to provide as follows:
10

11 [after] all Creditors have been paid in full ... the Reorganized Debtors shall
12 cause any notice required to be mailed to the Notice Parties to be posted on
13 its website prior to mailing notice to the Notice Parties, and such notice shall
14 remain on its website for a period of not less than 90 days from the date such
15 notice was mailed to the Notice parties

16 Modification Motion at ¶. 13.

17 **B. Continued Public Trading of the Stock**

18 6. The Stock continued to trade in the public stock markets after the Effective Date as it
19 had throughout the Debtors’ Chapter 11 cases before the Effective Date. The continued trading of the
20 Stock during the plan confirmation process was acknowledged as follows in the *Disclosure Statement*
21 *for Debtors’ Joint Plan of Liquidation (Dated March 2, 2010)* (the “Disclosure Statement”):

22 “Presently, the [Debtors’] stock is traded only on the ‘pink sheets.’” (Disclosure Statement § 5.2.)

23 7. As shown in Section 3.5 of the Plan, quoted below, the Plan preserved all of the legal
24 and equitable rights associated with the Stock. The Plan did not cancel the public trading of the Stock.

25 8. The Plan provided for the closing, and freezing, of the Debtors’ stock transfer ledgers
26 (the “Ledgers”) as of the record date of May 24, 2010 (the “Plan Record Date”).
27
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1 9. As of the Plan Record Date, the Ledgers reflect that the non-certificated shares of the
2 Stock were registered in the name of the Depository Trust Company or its affiliate “Cede and Co.” or
3 “Cede & Co.” (“DTC”) as the record holder.² DTC held such non-certificated shares for its
4 “participants” who were its members, including brokers and others, who held positions for themselves
5 and in “street name” for their clients who were the beneficial owners.³

6 10. During the 1,000+-day gap period, between the Plan Record Date and the Trading End
7 Date (as defined below), the Weinberg Shares and other non-certificated shares of the Debtors’ stock
8 (the “Gap Shares”) traded hands in the public market.⁴

10 ² This fact may be confirmed with reference to the Ledgers, which the Weinbergs’ counsel requested in
11 writing form the Debtors’ counsel, who did not produce them on the grounds the Debtors do not have
12 access to them though they are held by the Debtors’ own agents. See Bregman Decl. ¶¶ 4, 5 and Exs. A
and B.

13 ³ DTC is the “record holder” of the shares held in “street name,” which DTC holds as custodian for
14 brokers and others, which is explained as follows:

15 Cede & Co. -- Definition: Nominee name for The Depository Trust Company, a
16 large clearing house that **holds shares in its name** for banks, brokers and institutions in
order to expedite the sale and transfer of stock. Read more:

17 <http://www.nasdaq.com/investing/glossary/c/cede#ixzz3UKuyLjdn>

18 Available at: <http://www.nasdaq.com/investing/glossary/c/cede> (March 13, 2015) (emphasis
added).

19 DTC further explains on its Website that:

20 DTC, through its nominee Cede & Co., is the registered holder of the securities,
21 routinely processing dividend and interest payments and managing the electronic
22 “book-entry” transfer of interests in securities among participants. . . . If a
23 reorganization such as a corporate merger or tender offer occurs, DTC handles the
transfer of cash and stock to the appropriate investment bank or broker/dealer, which
then passes it on to their investors. By maintaining custody of eligible securities, DTC
eliminates the risk of a missed election on a corporate action, or a missed dividend
payment.

24 Available at: [http://www.dtcc.com/asset-services/issuer-services/how-issuers-work-
with-dtc.aspx](http://www.dtcc.com/asset-services/issuer-services/how-issuers-work-with-dtc.aspx) (March 13, 2015).

25 ⁴ The Gap Shares consisted entirely of non-certificated shares of Stock as of the Plan Record Date
26 which were registered to DTC as the record holder. The Ledgers were frozen as of the Plan Record
27 Date, so DTC’s master certificate for the non-certificated shares could not be amended thereafter by
the Debtors’ stock transfer agents. Thus, only non-certificated shares as of the Plan Record Date, i.e.,
the shares registered to DTC, were publicly traded.

1 11. The public trading of the Gap Shares was cleared through DTC. The public trading of
2 the Gap Shares did not change the identity of the record holder of such shares as of the Plan Record
3 Date, which continued to be DTC.

4 12. The public trading of the Gap Shares did not include any notice to the buyers (each a
5 “Gap Buyer”) of the interpretation that any future return of capital, or distribution under the Plan, in
6 respect of such shares would belong to the sellers (each a “Gap Seller”) rather than be transferred with
7 the Gap Shares to the Gap Buyers.⁵

8
9 13. On or about March 4, 2013 (the “Trading End Date”), more than 1,000 days after the
10 Plan Record Date, the Debtor caused the termination of the public trading of the Stock.

11 14. During the more than 250-day period of no public trading of the Stock (the “Pre-
12 Distribution Period”), after the Trading End Date and before the First Distribution Date (as defined
13 below), certain Gap Buyers contacted the Debtors and provided credible proof of their purchase and
14 ownership of certain Gap Shares (including during June 2012, while the Stock continued to trade and
15 well before the Trading End Date), and inquired about the timing and amount of the anticipated First
16 Distribution (as defined below).

17
18 **C. Plan Provisions for Distributions to Stockholders**

19 15. The Plan classifies the Stock interests in Class 11, and provides for the following
20 treatment, as specified in Section 3.5 of the Plan. This Section 3.5 of the Plan consists of only eight (8)
21 sentences (the “Sentences”), and is stated, in full, as follows:

22 [1] The legal, equitable and contractual rights of Class 11 Interest
23 holders remain unaltered. [2] Each holder of an Allowed Interest in Class 11
24 shall receive, on account of, and in exchange for, its Allowed Class 11
25 Interest, its Pro Rata share of all Available Cash remaining, if any, after
26 payment in full of Allowed Claims in Classes 8 through 10, including

27 ⁵ This is to be contrasted with a stock sold with an “*ex dividend*” notice, which informs the
28 buyer the dividend is not included with the shares. No such notice traded with the Gap Shares.

1 interest on all Allowed Claims as provided under this Plan, and payment of
2 or reserve for the Liquidation Incentive Supplement.

3 [3] Immediately following the Record Date, the stock transfer ledgers
4 of ATI shall be closed, and there shall be no further changes made or
5 proceed in the holders of record of ATI's common stock. [4] The
6 Company's stock transfer agent or agents shall not accept or process any
7 requests or instructions for transfers of the ATI's common Stock after the
8 Record. [5] The Debtors, the Reorganized Debtors, the Disbursing Agent
9 and the Responsible Person, shall not recognize any transfer of ATI's
10 common stock after the Record Date, but shall instead be entitled to
11 recognize and deal for all purposes with only those holders of record stated
12 on the applicable transfer ledgers as of the Record Date.

13 [6] Distribution payments shall also be sent only to the record
14 holders of ATI's common stock as of the Record Date. [7] Distributions to a
15 beneficial owner whose shares are held in "nominee" or "street" name shall
16 be made to the applicable broker or account representative. [8] The
17 beneficial owner is responsible for assuring that its nominee transmits to
18 them any Distribution received from the Company.

19 Plan § 3.5 (Sentence numbers in brackets and emphasis added).

20 **D. Gap Shares Distribution**

21 16. The Debtor made the first, and as yet only, distribution under the Plan in respect of the
22 Stock (the "First Distribution") on or about November 13, 2013 (the "First Distribution Date"). The
23 First Distribution was in the aggregate amount of \$1,200,000, and was distributed at the rate of
24 \$0.0549036430 per share of Stock (the "First Recovery Rate").

25 17. The process the Debtor used to effectuate the distribution of the First Distribution to the
26 holders of the Gap Shares (the "Gap Shares Distribution") was as follows:⁶ (1) The Debtor attempted
27 to obtain a report showing DTC's list of participant brokers who held the Stock in "street name" as of
28 the Plan Record Date, including a list of the beneficial owners who had not objected to the disclosure

⁶ This process is subject to further explication by the Debtor, who declined the Weinbergs' counsel's written request for a description of the process used to identify each recipient of the Gap Shares Distribution. See Bregman Decl. ¶ 12.

1 of their personally identifiable information, as well as different account information for the beneficial
2 owners who had objected to the disclosure of their personally identifiable information; (2) The Debtors
3 made the distribution by check directly in respect of the beneficial owners as of the Plan Record Date
4 who had not objected to the disclosure of their personally identifiable information, and by check to the
5 brokers for the beneficial owners who had objected to the disclosure of their personally identifiable
6 information.

7
8 18. The Debtors sent the Gap Shares Distribution to brokers under cover of the Debtors'
9 letter dated November 13, 2013 (the "Broker Letter"), with instructions to deliver the distributions to
10 each "current beneficial owner of Record." (Emphasis added.) Enclosed with the Broker Letter was
11 the Debtors' letter addressed to "Aviza Stockholders," stating, among other things, the distribution was
12 "to stockholders on the Record Date of May 24, 2010", and then quoting Sentences 7, 8, and 9. *See*
13 Bregman Decl. at ¶¶ 6-7, Ex. "C", and Ex. "D"..

14
15 19. It is conceivable that certain of the brokers who received a portion of the Gap Shares
16 Distribution may have not distributed all or some portion of such distribution (the "Undistributed
17 Portion") for various reasons, including, for example, that the broker read the Broker Letter as
18 requiring the distribution to be made to the "current" beneficial owner which such broker was unable
19 to locate, or the "stockholders as of the Record Date" may have closed their accounts. Some brokers
20 may have negotiated the Gap Shares Distribution check but not yet returned the Undistributed Portion
21 to the Debtors.

22
23 20. The First Distribution constituted a "return of capital", and "not a dividend", to the
24 stockholders.⁷

25
26 ⁷ Each of the checks the Responsible Person sent to the brokers with the First Distribution for
27 the Gap Shares included the following inscription on its stub: "This distribution is a return of capital,
28 not a dividend. Stock name: AVIZA TECHNOLOGY INC." (Emphasis added.) (*See* copy of the
check stub annexed to the Bregman Decl. at as Exhibit E, and see ¶ 8.

1 Debtors by the Validation Date, as such date may be extended by the terms of this paragraph,
2 shall be deemed to be a Qualified Gap Buyer unless the Debtors, within 10 days of receiving
3 such documentation, deliver a letter to such Gap Buyer describing any reason the Debtors
4 believe such documentation is not acceptable. Any Gap Buyer who fails to provide any such
5 apparently *bona fide* documentation by the Validation Date shall be forever barred from
6 receiving any return of capital, or distribution under the Plan, in respect of such Gap Shares.

7 e. Any future distributions under the Plan in respect of the non-certificated shares
8 shall be made through DTC with instructions that such distribution(s) belong to the beneficial
9 owners as of the Trading End Date.

10 f. The Bankruptcy Court, or other court with jurisdiction over the Debtors' chapter
11 11 cases, shall retain the exclusive jurisdiction to interpret and enforce this Order, and to
12 adjudicate any claims against anyone arising from the facts upon which the Motion was made.

13 **BASIS FOR RELIEF**

14 **A. Legal Basis for Relief**

15 24. Both the Bankruptcy Code and the Bankruptcy Rules provide the Court with the
16 authority to grant the relief requested by this Motion. Section 105 of the Bankruptcy Code provides
17 that the bankruptcy court "may issue any order . . . that is necessary or appropriate to carry out the
18 provisions" of Title 11. 11 U.S.C. § 105(a). Section 1142 of the Bankruptcy Code provides that the
19 bankruptcy court may direct any necessary party to perform any act necessary for the consummation
20 of a plan of reorganization. 11 U.S.C. § 1142(b); In re Terracor, 86 B.R. 671, 676 (D. Utah 1988)
21 ("The clear intent of section 1142(b) is for the court to retain its jurisdiction to assure that the terms
22 and provisions of the confirmed Chapter 11 plan are carried out until the plan is completed and a final
23 decree is entered closing the case."). Furthermore, Bankruptcy Rule 3020(d) provides that,
24 notwithstanding the entry of an order confirming a Chapter 11 plan of reorganization, "the court may
25 issue any other order necessary to administer the estate." Fed. R. Bankr. P. 3020(d). See In re
26 Resorts Int'l, Inc., 199 B.R. 113, 118-19 (Bankr. D. N.J. 1996) (where debtor had previously agreed
27 to deposit cash into litigation trust in lieu of letter of credit as provided under plan, court authorized
28 distribution of interest on funds deposited under Bankruptcy Rule 3020(d)).

1 25. Article X of the Plan provides that the Court has the “exclusive” jurisdiction to
2 adjudicate controversies under the Plan, enforce or interpret its terms, to decide any proposed
3 modifications of or amendments to the Plan to the extent permitted by Section 1127 of the Bankruptcy
4 Code. Additionally, the Court has the inherent jurisdiction to interpret and enforce the Confirmation
5 Order. See In re Chateaugay Corp., 201 B.R. 48, 62 (Bankr. S.D.N.Y. 1996) (noting that “bankruptcy
6 courts have inherent or ancillary jurisdiction to interpret and enforce their own orders wholly
7 independent of the statutory grant of jurisdiction under 28 U.S.C. § 1334”).

8 26. To be sure, Section 1127(b) of the Bankruptcy Code prohibits the modification of a
9 confirmed chapter 11 plan of reorganization once the plan has been substantially consummated. This
10 Motion does not, however, seek to substantively modify the rights of parties under the Plan and thus
11 does not violate Section 1127(b) of the Bankruptcy Code. The relief sought in the Motion instead
12 seeks to preserve the rights of stockholders and effect the distribution contemplated by the Plan in a
13 fair and equitable way, consistent with the reasonable expectations of market participants and all other
14 parties in interest, under the facts and circumstances as they exist today and in accordance with the
15 Plan.

16 27. Moreover, the relief sought herein is fair and equitable. It is also consistent with the
17 way distributions are made in other cases that have similar provisions regarding distributions only to
18 record holders as of the record date, where the stock has continued to trade in the public markets
19 thereafter. Distributions in those cases were effected through DTC for the beneficial owner as of the
20 distribution date. See e.g., In re President Casinos, Inc., Case No. 02-53005-659 (Bankr. E.D. Mo.,
21 Eastern Div., Oct. 3, 2014) (Doc. 2156). In President Casinos, the plan had similar language to ATI’s
22 regarding distributions to record holders as of the record date. Despite that the stock was cancelled
23 under that plan, the stock nevertheless continued to trade. The court approved the distribution under
24 the plan to DTC in respect of the non-certificated shares. DTC routed the distribution to shareholders
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1 as of the distribution date. The bankruptcy court approved the trustee's distribution to DTC
2 retroactively as well as for future distributions, over the objection of a beneficial owners who had sold
3 his stock and was seeking nevertheless to obtain the plan distribution for such shares. The appeal of
4 that decision has been argued but not decided. Similarly, in In re: National R.V. Holdings, Inc., No.
5 6:07-17937-DS (Bankr. C.D. Cal., Riverside), the Plan contained similar language about closing the
6 stock transfer ledger and providing for distributions to record holders; however, the stock continued to
7 trade in the public markets after the record date. The liquidating trustee effected the distribution to
8 DTC as record holder, which was then allocated to the shareholders as of the plan distribution date.

9
10 **B. Factual and Equitable Bases for Relief**

11 28. The relief requested is further supported by the fact that with the Debtors' knowledge,
12 the Stock continued to trade in the public markets after the Plan Record Date until trading was
13 stopped, more than 1,000 days later.

14 29. The provisions of Plan § 3.5 make sense only when they are read literally, and in the
15 context that the Gap Shares continued to trade in the public stock market, and the reader is mindful of
16 the distinction between a "record holder" and a "beneficial owner", as follows:
17

18 [NOTE: Each of the 8 Sentences is quoted below followed by the Weinbergs' understanding
19 of each of the Sentences, stated within brackets in raised capital letters:]

20 [1] The legal, equitable and contractual rights of Class 11 Interest holders remain
21 unaltered.

22 [THE PLAN PRESERVES THE RIGHTS OF THE BENEFICIAL OWNERS
23 OF THE SHARES. PLAN COULD HAVE, BUT DID NOT, HALT THE
24 PUBLIC TRADING OF STOCK. THIS MEANS, AMONG OTHER
25 RETAINED RIGHTS, THE STOCKHOLDER WAS FREE TO SELL INTO
26 THE PUBLIC MARKETS, AND THE STOCK BUYER ACQUIRED THE
27 SHARES WITH ALL OF THEIR "LEGAL, EQUITABLE, AND
28 CONTRACTURAL RIGHTS," INCLUDING TO RECEIVE ANY RETURN
OF CAPITAL OR DISTRIBUTION CONSISTENT WITH SENTENCE 6
BELOW (LIMITING DISTRIBUTIONS TO ONLY RECORD HOLDERS AS
OF THE RECORD DATE).]

1 [2] Each holder of an Allowed Interest in Class 11 shall receive, on account of, and
2 in exchange for, its Allowed Class 11 Interest, its Pro Rata share of all Available
3 Cash remaining, if any, after payment in full of Allowed Claims in Classes 8
4 through 10, including interest on all Allowed Claims as provided under this
5 Plan, and payment of or reserve for the Liquidation Incentive Supplement.

6 [NOTHING HERE REQUIRES A BENEFICIAL OWNER TO HOLD ITS
7 BENEFICIAL OWNERSHIP AS OF THE PLAN RECORD DATE OR ANY
8 OTHER DATE.]

9 [3] Immediately following the Record Date, the stock transfer ledgers of ATI
10 shall be closed, and there shall be no further changes made or proceed in the
11 holders of record of ATI's common stock.

12 [(Emphasis added.) THIS (A) FREEZES ONLY RECORD OWNERSHIP
13 AS REFLECTED ON THE DEBTORS' LEDGERS; IT DOES NOT
14 FREEZE BENEFICIAL OWNERSHIP OR RESTRICT THE TRANSFER
15 OF BENEFICIAL OWNERSHIP; (B) INSURES THE PUBLICLY
16 TRADED NON-CERTIFICATED SHARES WOULD REMAIN
17 UNCHANGED, AS HELD BY DTC, AND; (C) RELIEVES THE DEBTOR
18 OF THE EXPENSE OF PAYING THEIR TRANSFER AGENTS.]

19 [4] The Company's stock transfer agent or agents shall not accept or process any
20 requests or instructions for transfers of the ATI's common Stock after the
21 Record.

22 [THIS SENTENCE IS ONLY PERTINENT TO CERTIFICATED
23 SHARES, WHICH ARE THE ONLY SHARES FOR WHICH THE
24 DEBTORS' STOCK TRANSFER AGENTS PROCESS TRANSFERS.
25 TRANSFERS OF NON-CERTIFICATED SHARES ARE PROCESSED
26 BY DTC.]

27 [5] The Debtors, the Reorganized Debtors, the Disbursing Agent and the
28 Responsible Person, shall not recognize any transfer of ATI's common stock
after the Record Date, but shall instead be entitled to recognize and deal for
all purposes with only those holders of record stated on the applicable
transfer ledgers as of the Record Date.

[(Emphasis added.) THE FIRST PART OF THIS CLAUSE MAKES
CLEAR THE DEBTORS' REPRESENTATIVES ALSO MAY (MUST)
DEAL ONLY WITH THE RECORD HOLDERS. WITH RESPECT TO
THE NON-CERTIFICATED SHARES, THIS MEANS THAT THE
DEBTORS WERE DIRECTED TO DEAL ONLY WITH DTC.]

[6] Distribution payments shall also be sent *only to the record holders* of ATI's
common stock as of the Record Date.

[(Emphasis added.) **NB:** THE DISTRIBUTIONS WERE REQUIRED TO
BE MADE **"ONLY" TO THE "RECORD HOLDERS."** THERE IS NO

1 PROVISION ALLOWING DISTRIBUTION TO ANYONE WHO WAS
2 NOT A RECORD HOLDER AS OF THE PLAN RECORD DATE.]

3 [7] Distributions to a beneficial owner whose shares are held in “nominee” or
4 “street” name shall be made to the applicable broker or account
5 representative.

6 [THIS INFORMATIONAL SENTENCE IS CONSISTENT WITH
7 SENTENCE 6; THE “BROKER” MAY BE THE RECORD HOLDER,
8 AND FOR NON-CERTIFICATED SHARES DTC WAS THE “ACCOUNT
9 REPRESENTATIVE.” NOTHING HERE CHANGES THE DIRECTIVE
10 OF SENTENCE 6, THAT DISTRIBUTIONS BE MADE “ONLY” TO THE
11 “RECORD HOLDER”. THIS SENTENCE DOES NOT, FOR EXAMPLE,
12 ALLOW A DISTRIBUTION TO A BENEFICIAL OWNER WHO WAS
13 NOT A RECORD HOLDER AS OF THE PLAN RECORD DATE.]

14 [8] The beneficial owner is responsible for assuring that its nominee transmits to
15 them any Distribution received from the Company.

16 [THIS PLACES THE OBLIGATION TO TRACK DISTRIBUTIONS
17 UPON THE BENEFICIAL OWNERS, WHICH HAS NO IMPACT ON
18 NON-CERTIFICATED SHARES, WHICH WERE PUBLICLY TRADED,
19 BECAUSE DTC HANDLES THE RECORD KEEPING AND LOGISTICS
20 OF ROUTING DISTRIBUTIONS.]

21 **CONCLUSION**

22 For the reasons set forth above, the Weinbergs respectfully request that this Court grant the
23 relief requested herein, and grant the Weinbergs such other and further relief as this Court deems just
24 and appropriate.

25 Dated: April 3, 2015

26 **EZRA BRUTZKUS GUBNER LLP**

27 By: /s/ Jerrold L. Bregman
28 Jerrold L. Bregman
Attorneys for Dvir Weinberg
and Yehuda Weinberg