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**PERSONAL & CONFIDENTIAL – NOT FOR FILING**

Hon. D. Lowell Jensen  
United States District Court, Northern District  
1301 Clay Street, Suite 400 C  
Oakland, CA 94612-5212

Re: ***Beigel v. Dwan – Blueberry Software***  
U.S. District Court Case No. C02 3116 DLJ  
Our File No. 9512-001

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Dear Judge Jensen:

I feel it necessary to inform the Court of a recent telephone conversation I had with David Peralta, CFO of Abortext. The Court will recall that Arbortext had made an offer of \$100,000 to buy-out the remainder of its license agreement with Blueberry. I had recommended that buyout negotiations proceed. The Court felt, however, that buyout discussions should not be had pending an audit which Steven Beigel wanted to perform regarding Blueberry royalties.

Blueberry hired Michael Kessler from New York. I have seen correspondence from Arbortext which objects to Kessler on the ground that he is not truly an independent auditor. Arbortext has proposed, instead, that a truly independent auditor be selected and indeed would be willing to pay one-half of the cost of such an audit.

In my telephone conversation with Mr. Peralta last week, he stated that Arbortext has been working to prepare for the eventuality that it might terminate its license agreement with Blueberry. He stated candidly, however, that Abortext would prefer not to terminate the license and would rather to negotiate a buyout. He did not restate a specific buyout amount but did articulate Abortext's preference to resolve matters peacefully and in a mutually satisfactory way pursuant to a license buyout.

He amplified further on Abortext's concerns regarding the audit. Apparently Arbortext does not view Mr. Kessler as "independent". Abortext is concerned that Kessler will perform an audit which would reflect a predilection towards certain findings. If Abortext and Blueberry then did not agree to the conclusions of the audit, Abortext believes that it will then end up in an arbitration on the matter, with the need, once again, for another audit to determine whether royalties are owed to Blueberry, whether Abortext has overpaid royalties to Blueberry and

Blueberry owes royalties back to Abortext, or both. I asked him whether Abortext would agree to be bound by the results of an independent audit and he said Abortext would agree to be bound.

In summary, Abortext is not unwilling to have an audit performed but is skeptical that Mr. Kessler is independent and truly neutral. Further, Abortext continues to be willing to enter into buyout discussions but it does appear that it is preparing for the eventuality that at some point it may decide to simply terminate the contract and go elsewhere.

My view of the situation is the same as it was previously. I recommend that buy-out negotiations take place with the hope that a high enough buy-out amount could be negotiated so as to satisfy each of the former partners.

I will be happy to arrange a telephone conference to discuss these matters, if the Court so desires. I do not mean to be officious but felt it important to apprise the Court and the former partners of Abortext's position pursuant to my recent conversation with Mr. Peralta.

Respectfully submitted,

MORGAN MILLER BLAIR



RICHARD G. BLAIR

RGB:cab

cc: Lawrence Bernheim (via email)  
Steven Beigel (via email)  
Kevin Dwan (via email)