DECLARATION OF CHERYL GRADWOHL, MOD SYSTEMS ACCOUNTING

I. INTRODUCTION

I have been the Accounting Manager before MOD hired a Chief Financial Officer; MOD has since had three CFO in my interim David Douglass, Richard Barber & now Robert DeLucia. I have been with MOD Systems since February of 2008. I was hired by Mark Phillips and Kenn Gordon, the then MOD CEO and COO respectively. I worked with Kenn Gordon closely regarding payment of vendors, management of funds, and balancing the books including payroll. As the bookkeeper or de facto Accounting Manager, I communicate with employees on HR matters, manage employee files, and manage banking relationship & company credit card transactions.

I am in fear of my job, the company, the shareholders, the safety of the dismissed employees, the current employees and other parties who may speak adversely regarding the MOD board and its officers, and I am in fear of retaliation beyond termination such as harassment, intimidation, legal action against me, directly or indirectly, or false public accusations all of which I have been witnessed repeatedly.

This statement is being provided by my own will, in efforts and hope that it may shed light on the danger to MOD and its employees, as the result of intentional wrong doing and reckless disregard to the company.

I have had one performance review in the two years I have been at MOD it was in August 2009; it was an average to above average review from Richard Barber the current CFO at the time. I had no written or verbal warnings in my personnel file. (See attached performance review).

VCFO's David Chandler & Bob Gundersen were contracted to assist with month end financials. I worked closely with Kenn Gordon, Bob Gudersen & David Chandler on all accounting issues, A/P's, A/R's, G/L, M/E, COA, Payroll, payroll related taxes, reconciliation of G/L accounts, internal controls & policy & procedures. I worked closely with David Douglass & Bob Gundersen on & during the Series A (due diligence) for Toshiba & NCR to insure the accuracy of the due diligence.

David Douglass wanted to terminate me & replace me with a friend of his from Tatum, Mr. Phillips, Mr. Gordon & Mr. Lower would not let Mr. Douglass terminate me and he was replaced with Richard Barber. Mr. Douglass was later hired thru Tatum to investigate (audit) the lawsuit against Mr. Phillips, Mr. Gordon and Mr. Bay. I was never interviewed by Mr. Douglass as part of the investigation and I found it strange he was working on the investigation allegation since he was fired by Mr. Phillips. I saw Mr. Bay & Mr. Douglass have closed door meeting in Mr. Bay's office with no other individuals present. During the investigation he was given remote access to QuickBooks and could login anytime.

Mr. Barber was CFO until he resigned in January 2010. Mr. Barber also changed his employee stats from FTE to contractor in May or June of 2009. Mr. Barber's consulting contract states "does not get paid for vacation time" yet I was instructed to pay every months contracted fees in full when I know of times he was on vacation and/or out with back problems. Mr. Barber began singling me out about my hours worked in or around September 2009, saying "although he doesn't care Anthony Bay is complaining about me not working long enough hours and my smoke breaks". At that time I began keeping a timesheet in an excel spreadsheet for my own protection. My average weekly hours are 43 hours per week. I am an exempt salaried employee as is every employee at MOD. He pressured me numerous times as to my hours.

Mr. Barber had me change the employee evaluation for Pat (Kole) Harwood to his specification.

Robert DeLucia replaced Richard Barber as CFO in February 2010. On February 25, 2019 I received an email from Mr. Delucia it reads "I need to establish a new bank account to formally place in the $1.0 million indemnity fund per the Board Resolutions. Please look into how that takes place, what needs to be done and how quick it can be done. I will discuss it with you tomorrow at the Board meeting break" (see email #4) I left work early that day so he did not discuss it with me. I email him back asking "which bank do you want me to set the new account up at" he did not respond to my email, so I ask him in person his response was "Silicon Valley Bank, because they have been so good to us". I said OK, but I know we have had a longer standing relationship with Wells Fargo Bank & at this time only had an open account with Silicon Valley Bank for about 3 weeks. Mr. DeLucia continued to single me out about time and hours worked he actually said to me in his second week of employment "you need to work 8 hours a day" I responded "I do' I work more than 8 hours a day". Again I am an exempt salaried employee as is all employees at MOD at the time of my departure. Mr. DeLucia had very little knowledge of my history with MOD other then what he was told by Mr. Barber.

Three CFO's in two years of my two years of employment @ MOD. Each CFO changes the accounting procedures and causes extreme difficulty to produce financial statements in a timely & organized manner and goes against the GAAP principles of consistency.

Jamee Nunnelee (Human Recourses and Office Administrator) replaced Doug Lower in April 2009. Ms. Nunnelee also harassed and singled me out as to where I was and who I had lunch with. Ms. Nunnelee manages numerous calls on a daily bases for Verno, Anthony Bay's start up company. On Mr. Bay's birthday Ms. Nunnelee hung a horse head on Mr. Bays office door and put a sign on it that said "Mark Phillips".

Mr. Bay, Mr. Barber & Mr. de Bakker's Management/Accounting Irregularities.

The day of the departure of Mr. Phillips & Mr. Gordon, Mr. Bay called a company meeting. The company was told "Mr. Phillips & Mr. Gordon are on temporary administrative leave; they have been working hard on the due diligence and need some much needed rest. Mr. Bay said he was taking over temporarily until Mr. Phillips & Mr. Gordon came back in a couple of months. He also informed the company he would be gone for the first month but could be reached remotely. Prior to Mr. Bay taking over as CEO he was contracted at 200k per year; he immediately raised his contract to 500k per year. Mr. Bay received pay on multiple occasions when he was on vacation, leave, Africa sick and or working on Verno. In Mr. Bay's contract it states that pay will not be given for vacation of leave. Mr. Barber instructed me to pay the contract in full every month. Mr. Bay had numerous meeting in his office with Verno management and employees on MOD resources.

April 24, 2009 Doug Lower, Lauran Kronmiller, Adrienne Lienhart & Michelle Weis were terminated all for talking to Mark Phillips and/or Kenn Gordon. None of these employees had a disciplinary trail in their personnel folders and they were all replaced with Mr. Bay's friends. Jamee Nunnelee (a long time personal friend of the Bay family), was hired as Human Resources & Administrative Assistant (Office Manager), taking Lauren Kronmiller job (Administrative Assistant and Office Manager) & Doug Lowers job (Human Resources).

We were instructed numerous times by Mr. Bay to do not affiliate or talk to Mr. Phillips & Mr. Gordon and it was apparent if you did you would lose your job.

With Mr. Barber and Mr. Bay the 2009 and 2010 budget was never shown to me until Mr. Barber resigned and Mr. DeLucia gave me a copy to enter into the accounting system, presently QuickBooks. Much to my surprise I was on the budget spreadsheet showing me to be terminated on April 1, 2010 and to be replaced with someone at double my current wage. Numerous times I was single out about the hours I worked and I worked an average of 43 hours per week. Rich said "he was not concerned but that Mr. Bay was bringing it up to him as an ongoing issue". Other employees were not singled out and or watched.

I have witnessed Mr. Bay and Mr. Arnold on more than on occasion having closed door meeting in Mr. Bay's office.

On multiple occasions Mr. Bay would defame and use vulgarity in front of staff about Mr. Phillips.

Mr. Bay & Ms. Nunnelee calling each other honey & darling. Also letting her come in when ever she wants & talking on personal cell phone calls constantly.

Mr. Bay hired about 7 to 10 new employees (VP's) in January & February of 2010 at 118k to 200k per year with offer letters that states "if you loss your job thru no fault of your own MOD will pay you 3 to 6 month severance pay", "you will be granted 200,000 share of stock options per approval of the board of directors".

Mr. Bay giving $30k transition bonus to David Sharp for going from a contractor to an employee, yet not one female has receive a rate increase or bonus since Mr. Phillips left.

Synopsis of accounting irregularities.

1. MOD paying legal bills for Anthony & Lillian Bay's defense.
2. Mr. Bay stating in company meeting with Derek de Bakker in attendance that "MOD is paying Mr. Phillips legal bills".
3. Received refunds from Chubb's for D&O insurance in and around $1.0 million less deductible for legal fees for lawsuit against Mr. Phillips, Mr. Gordon & Mr. Bay.
4. Mr. Bay's startup company Verno, uses MOD resources, IT, Verno employees eating in MOD employee lounge, Jamee Nunnelee scheduling Mr. Bays appointments for MOD & Verno. MOD paying Verno cubicles being moved, internally.
5. Mr. Bay having numerous meeting in his office and on MOD time with Verno employees.
6. Mr. Bay's sons are contracted with MOD and paid monthly.
7. On December 15, 2009 I received an email from Mr. Barber that the Wells Fargo bank accounts had been put on a temporary freeze. Mr. Barber was in a

board meeting that day and he needed me to dig up the account contracts for the Wells Fargo Account.

8. On December 17, 2009 Mr. Bay came into the office and was screaming, yelling, threatening and intimidating me, Mr. Barber, Mr. de Bakker and other about the freeze Mr. Phillip's put on the Wells Fargo bank accounts. Mr. Bay's hostile anger against Mr. Phillips was apparent. Mr. Bay said "if Wells Fargo did not join him in a lawsuit against Mr. Phillips he would move his money out of Wells Fargo". His behavior in a professional environment made for unacceptable working conditions. I was not hired to work under such conditions and it affected my thought processes, job performance and productivity. I never had any issue of this sort with Mr. Phillips, Mr. Gordon or Mr. Lower. I called my husband in fear; I was shacking and very upset by his temper. I emailed Mr. de Bakker and cc'd Mr. Barber, my email read as follows "Derek (Mr. de Bakker), I would like to talk to you about unacceptable (hostile working environment), working conditions and Mr. Barber I would like you to join in", about 20 min passed and Mr. Barber came to my office and we went to Mr. de Bakkers office. I explained to them that Mr. Bay's behavior was unacceptable and that I or the 37 other employee working at MOD do not need to work in a hostile working environment. Mr. de Bakker assured me he would address the issue and that what was discussed here will be kept in confidence. Mr. Barber, Mr. de Bakker and Mr. Bay all went into Mr. de Bakkers office with the door closed and the yelling and screaming got loader. Mr. Barber said to me after the meeting "could you hear that" I said "YES" Mr. Barber was very agitated and left for the day.
9. On January 17, 2010 I received and email from Mr. de Bakker requesting that additional accounts be open at US Bank and Silicon Valley Bank. This email was sent to Kyleen Cane, Anthony Bay and Michael Tower and it states "that next week Bill Bromfield or I will be circulating a Board Resolution". This email also includes a factual synopsis of the activities that led to the account freeze from Russ Carson at Wells Fargo. (see email #1)

10. January 26, 2010 $3.0 million moved from Wells Fargo to US Bank. Included Articles of Incorporation & Board Resolution to set up the new US Bank account.
11. January 27, 2010 $2.0 million moved to Silicon Valley Bank. Included Article of Incorporation. DID NOT include a Board Resolution. The bank requested both, but when I ask Mr. de Bakker for the Board Resolution for this account he said "they are not getting a Board Resolution and if they have a problem with that have them call me". The account at SVB is a custodial account through US Bank and is not FDIC insured. The SVB account MOD set up is located at Silicon Valley Bank in California. Questionable Business practices and hiding of money. (see email #2)
12. On February 8th 2010 I requested a bank statement from SVB and received in an excel format January 2010 bank stmt (the account was opened on January 27th). The bank statements (in excel format) did not reflect the $2.0 million. I emailed my contact at SVB & said "the bank stmt does not reflect our $2.0 million and could she direct me to the funds", her response was "Ah I see what you mean; US Bank had a delay in posting the funds. I will re-run the statements". After that I received the same type of excel spreadsheet with the $2.0 million reflected on the statement. (see email #3)
13. I was continuously pressured to get US Bank & SVB bank accounts set up by Mr. Barber & he was pressured by Mr. Bay per the Board. I received an email from Mr. de Bakker (also included on the email were, Kyleen Cane, Anthony Bay & Michael Towers), reflecting the instruction on the new bank account per the board. This email also included an email from Russ Carson at Wells Fargo re: the investigation of Wells Fargo accounts being frozen on December 15, 2009 by Mr. Phillips. Mr. Carson provided a factual synopsis of the activities that led up to the account freeze (see email #1).
14. February 26th 2010 I was instructed to open an indemnity fund in the amount of $1.0 million per board request (see email #4).

15. Over spending: $7,000.00 to security guard for Mr. Bay, $6,000.00 for plastic cubs (paper weights) for employees, $25k for hotel suite at CES conference. Received folio (hotel invoice) with register guest as Anthony & Lillian Bay. The CES conference was over budget by $20k. MOD recently moved cubicles internally. MOD is paying the bill to move Verno's cubicles also.
16. Sports gaming on company time by, Mr. de Bakker, Mr. Harwood & Mr. Barber. This is illegal per the WSGC (Washington State Gaming Commission).
17. Payroll has increase annually by $2.0 million in a one month period (1/1/10 – 2/15/10 pay period) at the time the company has $8.0 million of the $35.0 million originally invested.
18. Employee Handbook was revised in October 2009 and was posted on the share drive for employees to view. Employees did not complete or sign the company "receipt of acknowledgement form" required for the employee personnel file folders.
19. Kyleen Cane, Cane Clark, LLC. We paid quarterly Board member fees to Kyleen Cane in the amount of $4,500.00, yet also paid an average of about $10k to $14k to Cane Clark, LLC. MOD received an invoice from Cane LLC that say's "review re: Phillips conspiracy theory", review & strategize on Phillips litigation, settlement".
20. Ms. Cane calling Nancy Devlin personally and or having a friend call Ms. Devlin. I was told by Ms. Devlin that Ms. Cane said "she is going to drop MOD".
21. Numerous harassing phone calls to MOD from Jan Wallace, I was instructed to not answer these calls. She was attempting to contact Mr. de Bakker and Mr. Bay per Ms. Nunnelee, Mr. Barber & Mr. de Bakker.
22. MOD has hired a consulting firm to review the Patents, Trademark; IP's with with Centurion Ventures owned by Dan Garrity & Mr. Garrity is a new Board Member.
23. Fenwick invoiced MOD on February 12, 2010 states "drafting affidavit Bay & Cane regarding past unapproved minutes of the Board of Directors".

24. On January 28, 2010 Mr. DeLucia requested from me per Mr. Bays request a summary of all balance sheet items related to Mr. Phillips.

On March 2, 2010 I was forced to quit my job at MOD Systems due to accounting irregularities, hostile working conditions, and unfair treatment and health issues brought on by the present Executive Team; Management Team and the actions of the current Board of Directors.

VERIFICATION

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I, Cheryl Gradwohl, having been first duly sworn on oath, depose and say: I am the __________ INDIVIDUAL; I have read the within and foregoing DECLARATION, know the contents thereof, and believe the same to be true and correct, and hereby verify that all documents and things in Cheryl Gradwohl possession or to which it has access have been or are made available for inspection by Plaintiff's attorneys.

Name: __________
Title: __________

SUBSCRIBED AND SWORN to before me this 11th day of March, 2010.

Terry B Mitchell (Printed Name) Terry B Mitchell
NOTARY PUBLIC in and for the State of Washington residing at Pierce Co
My Commission Expires: March 1st 2013

Notary Public
State of Washington
TERRY B MITCHELL
My Appointment Expires Mar 1, 2013

THE PRIMARY FOCUS OF THE MID-YEAR REVIEW IS CAREER AND PROFESSIONAL DEVELOPMENT. THIS REVIEW ALSO INCLUDES A CHECKPOINT ASSESSMENT ON PERFORMANCE AGAINST GOALS AND OBJECTIVES.

Name	Cheryl Gradwohl
Title	Accounting Manager
Department	Accounting
Manager Name	Richard Barber

Performance, Progress and Plans

These questions will help you and your manager prepare for your performance review discussion. Think about your performance, your progress, and your plans for future growth. Return completed form to your manager prior to your scheduled performance review.

1. Summarize your primary job responsibilities.

   Bank Renconciliation, Bank Signiture card changes, liason for banking issues, Month End J/E's, Recon/analyze G/L accounts for accuracy & posting, prepare monthly financial statement for CFO, Payroll preperation, payroll data entry, process payroll , Intuit related administrative functions, garnishment, 401(k) mantainance & pymts. Payroll related taxes, quarterly taxes, DOR Return, Review A/P invoices for Coding accuracy, print all A/P checks, Manage/Superviseing Staff Accountant. Intuit administrative functions, changes, question or issues. Post all deposits, track all cobra subsity credits & all aspects of the accounting manager duties/resposibilities.

2. How could your manager help you do a better job?

   Rich is a good boss, he is easy to work for and helpful, he lets me complete my task by my own trials/errors and that is the most effective way to grow.

3. Is there anything that the Company or your manager does that hinders your effectiveness?

   The accounting systems currently used at MOD work for the immediate needs. If the company grows, I think we will need something more sophisticated

4. What job changes would improve your effectiveness?

   I would like to take some training classes in Advanced excel (refresher), power point, GAAP seminars/training, so I can expand and be more knowledgable for the CFO.

5. Does your present job fully utilize your capabilities?

   Yes & I am learning new skills, knowledge & on the job experience everyday.

6. How could you become more productive for the company?

   Work harder on time management, keeping & utilizing a list to stay focused on tasks.

7. What have you accomplished in your job during the last 12 months?

Progressed form A/P, A/R & helping Bob form VCFO with Month End to analyzing/posted/reconciling & preping all month end activities for financial statements. Trained prior office manangers, and entry level Staff Accountant.

Performance and Objectives

1. **Job Knowledge**
Consider understanding of information, methods, techniques and company procedures necessary for performance of assigned duties.

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas
3	☒	☒	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

[click here and type]

Manager Evaluation:

Cheryl has adequate knowledge fo requirements for an accounting manager of a company this size and stage of maturity.

2. **Quality of Work**
The extent to which work meets the established standards of quality for the organization

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas
3	☒	☒	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

I work at being as accurate and error free as possible.

Manager Evaluation:

3. **Dependability**

The extent to which the employee can be counted on to report to work on time, stay on the job, care for Company property, and carry out instructions

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☒	Exceeds expectations in most areas
3	☒	☐	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

I take personal pride in working at MOD and part of that is being punctual and a team player and going the extra mile to get the job done.

Manager Evaluation:

Cheryl is dependable as expected.

4. **Job Attitude**

Amount of interest and enthusiasm shown and cooperation given

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☒	Exceeds expectations in most areas
3	☒	☐	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

I get excited about new challenges after all attitude is everything. I try to be as helpful as possible, with a good attitude.

Manager Evaluation:

Cheryl is pleasant to work with and exhibits a positive attitude.

5. **Meeting Assigned Work Schedules**

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas
3	☒	☒	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

I try to meet all assigned schedules and deadlines with accuracy.

Manager Evaluation:

While Cheryl generally meets her schedules, I would like to see the close happen more quickly and proactively.

6. **Adaptability**
Consider ability to grasp and adjust to new ideas, procedures, and situations

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☒	Exceeds expectations in most areas
3	☒	☐	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

I try to be very flexable and open to new ideas, procedures and diversities.

Manager Evaluation:

Cheryl's position does not require much in thee way of new ideas, situations and procedures.

7. **Judgment/Problem Solving**
Ability to decide correct course of action when choice can be made and ability to work through problems with appropriate level of supervision

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas

3	☒	☒	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

[click here and type]

Manager Evaluation:

[click here and type]

8. **Communication**
Ability to communicate with peers, subordinates and superiors

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas
3	☒	☒	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

I try to communicate effectively, but communication is always a learning and growing process.

Manager Evaluation:

Cheryl communicates well with the team. At times, she does not use proper grammar. While it doesn't bother me, it has been mentioned to me, and if she were to be in frequestn contact with customers or other parties where image is important, this would need to improve.

9. **Teamwork**
Ability to work for and with others, willingness to carry out assignments and accept responsibility, cooperation, ability to sacrifice self for the team

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☒	Exceeds expectations in most areas
3	☒	☐	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

A part of being a good team player or leading is listening to idea's, concern's & discussing it with an open mind in a respecful manner.

Manager Evaluation:

I appreciate how Cheryl will pitch in to help with the duties that are not necessarily a part of her job description.

10. Initiative

The ability to self motivate and proactively perform job responsibilities

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas
3	☒	☒	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

[click here and type]

Manager Evaluation:

Cheryl completes the core job requirements of accounting manager without significant prodding. At times I make a request that requires me to follow up multiple times rather than Cheryl following up on her own through to conclusion. EG mastercard security notification issue.

12. Leadership

Ability to guide and direct others toward a common goal and willingness to acquire knowledge in appropriate methods and procedures. Ability to train co-workers in appropriate methods and procedures

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas
3	☐	☒	Meets expectations
2	☒	☐	Below Expectations
1	☐	☐	Unsatisfactory

Employee's Comments:

Manager Evaluation:

I believe managing Kole is an area where Cheryl should strive to improve. She does not seem to have the typical manager relationship with Kole in which she knows what he is working on, follows up regularly, trains him, sets goals and expectations and takes responsibility for his work. I feel that Kole has a lot of potential if given the opportunity to grow his skill set.

ACCOMPLISHMENTS

State significant accomplishments or results you have achieved.

Employee's Comments:

[click here and type]

GOALS (6 and 12 months)

Employee's Comments:

I look forward to many years at MOD and hope to grow personally & professionally as the company grows.

Manager's Comments:

I would like to see Cheryl drive the monthly close process to 5 days. That will involve working with Vendors to get their invoices and scheduling when each close task will be completed. It will also involve recording some entries before month end.

SUMMARY

Overall performance; in your judgment how are you performing in the current job in relation to position expectations?

	MGR	EMP	
5	☐	☐	Exceeds expectations in all areas
4	☐	☐	Exceeds expectations in most areas
3	☒	☒	Meets expectations
2	☐	☐	Below Expectations
1	☐	☐	Unsatisfactory

Manager's Comments:

Cheryl meets my expectations as an accounting manager in the role she's currently in for the company in the stage that it's in. She is pleasant to work with and is reliable. I believe she will improve her opportuinty to advance in her carreer by addressing the weaknesses in her management skills and advanceing some technical skills required for the next step.

SIGNATURES:

Employee: ______________________ Date: 8/19/09

Supervisor: ______________________ Date: 8/19/09

Approval: ______________________ Date: ______________________
(HR Manager)

#1

Cheryl Gradwohl

From: Rich Barber
Sent: Monday, January 18, 2010 8:54 AM
To: Cheryl Gradwohl; Derek de Bakker
Subject: FW: Wells Fargo - Mark Phillips meeting on 12/15
Attachments: 20100112105600483.pdf

Cheryl, where are we on the applications?
Rich

From: Derek de Bakker
Sent: Sunday, January 17, 2010 3:52 PM
To: Kyleen Cane (Kcane@caneclark.com); Anthony Bay; Michael Towers (mdtowers@aol.com)
Cc: Rich Barber
Subject: FW: Wells Fargo - Mark Phillips meeting on 12/15

Directors –

In light of the email below and the situation we had to deal with last month when our accounts were frozen at Wells Fargo, the Company believes it is in its best interest to open additional accounts at US Bank and Silicon Valley Bank. Next week, Bill Bromfield or I will be circulating a Board resolution that includes a number of "housekeeping" issues and the opening of these additional accounts will be included. In the meantime, I would appreciate your email consent to opening these accounts so that we may begin submitting the paperwork etc.

From: carsonru@wellsfargo.com [carsonru@wellsfargo.com]
Sent: Tuesday, January 12, 2010 5:00 PM
To: Anthony Bay; Rich Barber; Derek de Bakker
Cc: carsonru@wellsfargo.com
Subject: Wells Fargo - Mark Phillips meeting on 12/15

Hi All-

Thank you for coming over today and for the candid conversation. As a follow up to our discussion, I wanted to provide a factual synopsis of the activities that led to the account freeze. We intend to follow up and have further dialogue regarding the three action items outlined in the meeting, and this email simply outlines the events on 12/15.

Mark first approached the branch staff in our building regarding the MOD accounts, and was referred upstairs to us in the Commercial group around 9:00 AM. Accompanying Mark were two attorneys, Dennis Mandell of Mako Strategies and Robert Anderson with Nixon Peabody (their business cards are attached). Mark met with Kari Scott (Loan Team Manager) and Sharon Ferris (Customer Service Officer) to request a freeze on MOD's account, and they brought me up to speed when I returned to the office shortly after the meeting. (Mark did not request a freeze on the Wells Capital account as I doubt that he knew about the separately managed investment account.)

Mark presented several documents, including:

- Letter from Mark Johnson dated September 28,2009 wherein Mark revoked the Trust
- Consent in Lieu of Special Meeting of the Board
- Corporation Termination of the Transition Agreement and Associated Voting Trust with Mark Phillips

- Majority Consent of Shareholders MOD Systems Incorporated - Notice of Non-Unanimous Written Consent for Shareholder Action
- Copy of Stock certificate CS-013
- MOD Systems Incorporation Schedule of Exceptions
- MOD Systems Series A Preferred Stock Purchase Agreement

He also followed up the meeting with an email later in the day with two additional attachments:

- Whistle Blower Notice of Facts
- Order granting Defendant Philips Motion to remove Kane and Bay from Review Committee

These documents were preliminarily reviewed by our team and it was determined we needed advice from counsel. We forwarded to our in-house legal counsel, Stefan Lawrence, later that morning. Stefan's guidance was that the appropriate course of action was to place a temporary freeze on the account until the documents were reviewed. Other than the email from Mark as a follow-up to the meeting, there was no additional contact through our office, and all contact with Mark's lawyers after the initial meeting went through our in-house counsel. Stefan is out until Tuesday of next week, and we will follow up with him to see what additional contact or correspondence there was between Mark or his representatives. We will also address with Stefan what his thought process was around recommending the hold be placed on the account and ask him to think about what actions the Bank may want to take against Mark and his team for interfering with the business MOD has with the Bank.

We understand the impact this had on your business, and we hope to rebuild our credibility and strengthen our relationship over time. I will circle back to you early next week with additional details-

Sincerely,
Russ

Russ Carson, CFA
Vice President
Wells Fargo Commercial Banking
999 3rd Avenue, 12th Floor Seattle, WA 98104
ph 206.292.3207 fax 206.343.6626

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DENNIS M. MANDELL
MANAGING DIRECTOR

MOD

MAKO STRATEGIES, INC.

P.O. BOX 222980 · CARMEL, CALIFORNIA 93922
415.425.8511 · DMANDELL@MAKOSTRATEGIES.COM

#2

RE: SVB Asset Management New Account Documents

Su Giang [SGiang@svb.com]

Sent: Tuesday, January 26, 2010 12:05 PM

To: Cheryl Gradwohl; Group SAM Operations [SAMOperations@svbank.com]; rberry@svb.com; Judy Lee [julee@svb.com]; Rich Barber; Derek de Bakker; roberto.cruz@epx.com

SU GIANG
OPERATIONS SPECIALIST
SVB ASSET MANAGEMENT

185 Berry St STE 3000
San Francisco California 94107
Phone (415) 512 4208
Fax (415) 856-0814

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, January 25, 2010 12:50 PM
To: Group SAM Operations; rberry@svb.com; Judy Lee; Rich Barber; Derek de Bakker; 'roberto.cruz@epx.com'
Subject: SVB Asset Management New Account Documents

Hello Judy,

I have attached the signed:

1) Corporate Authorization & Certification form.
2) SVB Asset Management form
3) RIA Custody Agreement.

The Articles of Incorporation will not email the file is too big. Would you like me to fax them over, if so please give me the fax number.

Also if you need a Board Resolution please contact Derek de Bakker at the email address above.
Let me know if you need anything else.

Thank you,
Cheryl Gradwohl

~~#2~~ #3

RE: SVB Asset Management

Cheryl Gradwohl

Sent: Monday, February 08, 2010 4:36 PM

To: Judy Lee [julee@svb.com]

Thank you, I think I have what I need.
I will not be signing up for online banking Robert is already signed up & that is all we need.
Thank you for your time & attention.
Cheryl

From: Judy Lee [mailto:julee@svb.com]
Sent: Monday, February 08, 2010 3:23 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

Hi Cheryl – attached are the updated month end reports. Thanks

Judy

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, February 08, 2010 2:35 PM
To: Judy Lee
Subject: RE: SVB Asset Management

I will get you the enrollment form shortly, I need to get Roberts approval first.

From: Judy Lee [mailto:julee@svb.com]
Sent: Monday, February 08, 2010 2:25 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

I will have them re-run the statement. I have attached some screenshots from the Clearwater reporting platform to answer some of you questions below. Can you also complete the web enrollment form so that I can have them grant you access to the site going forward?

Thank you,
Judy

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, February 08, 2010 2:10 PM
To: Judy Lee
Subject: RE: SVB Asset Management

No, but I just need kind of like a bank stmt, something that show me beginning & ending balance & any transaction in between.
When you get the new stmt please just send it my way.

And again thank you for your help.
Cheryl

From: Judy Lee [mailto:julee@svb.com]
Sent: Monday, February 08, 2010 1:56 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

Ah, I see what you mean! US Bank had a delay in posting the transaction when it was first transferred over. I would need to contact Clearwater to re-run this statement to show it. Is there specific information I can provide you in the meantime?

Thanks,
Judy

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, February 08, 2010 1:54 PM
To: Judy Lee
Subject: RE: SVB Asset Management

Ok, but it does not reflect the 2m we transferred on the stmt unless I missed it? Could you direct me to it? Please.

From: Judy Lee [mailto:julee@svb.com]
Sent: Monday, February 08, 2010 1:48 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

Cheryl – I checked with the bank side and they said that you do not have a DDA…you only have an asset management account. If that is the case, then all you have is the month end statement that I've previously provided.

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, February 08, 2010 1:44 PM
To: Judy Lee
Subject: RE: SVB Asset Management

Thank you, I wasn't sure.

From: Judy Lee [mailto:julee@svb.com]
Sent: Monday, February 08, 2010 1:42 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

The SAM account number is 19-SV581

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, February 08, 2010 1:34 PM

To: Judy Lee
Subject: RE: SVB Asset Management

Thank you what is the SAM account Number?

From: Judy Lee [mailto:julee@svb.com]
Sent: Monday, February 08, 2010 1:22 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

Sorry about that, Cheryl. Here you go!

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, February 08, 2010 1:21 PM
To: Judy Lee
Subject: RE: SVB Asset Management

Thank you but I did not get the attached copy of Jan month end report & GL?

From: Judy Lee [mailto:julee@svb.com]
Sent: Monday, February 08, 2010 1:16 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

Hi Cheryl,

Do you have access to the Clearwater reporting platform for SVB Asset Management? If not, please complete the attached and send back to me.

In the meantime, attached is a copy of the Jan month end report and GL.

Regards,
Judy

From: Cheryl Gradwohl [mailto:cheryl.gradwohl@modsystems.com]
Sent: Monday, February 08, 2010 1:09 PM
To: Judy Lee
Subject: FW: SVB Asset Management

Hello Judy,
I need to be able the print our bank stmts on the first of every month. I also need the bank stmt for the period Jan 1 – Jan 31, 10. Could you help me with this. I need asap.
Please feel free to call my direct line 206-973-1097.
Thank you
Cheryl Gradwohl

From: Robert DeLucia
Sent: Wednesday, February 03, 2010 12:19 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

Yes. Quite easy.

Robert M. DeLucia | Chief Financial Officer
MOD SYSTEMS, Inc. | modsystems.com
1201 THIRD AVE SUITE 1000 SEATTLE, WA 98101
O 206.432.3787 M 425.802.6010 F 206.973.5499
E robert.delucia@modsystems.com

From: Cheryl Gradwohl
Sent: Wednesday, February 03, 2010 12:19 PM
To: Robert DeLucia
Subject: RE: SVB Asset Management

No, not as of yet.
Does this tell me how to sign on?

From: Robert DeLucia
Sent: Wednesday, February 03, 2010 12:18 PM
To: Cheryl Gradwohl
Subject: RE: SVB Asset Management

Have you signed on to your account?

Robert M. DeLucia | Chief Financial Officer
MOD SYSTEMS, Inc. | modsystems.com
1201 THIRD AVE SUITE 1000 SEATTLE, WA 98101
O 206.432.3787 M 425.802.6010 F 206.973.5499
E robert.delucia@modsystems.com

From: Cheryl Gradwohl
Sent: Wednesday, February 03, 2010 9:07 AM
To: Robert DeLucia
Subject: RE: SVB Asset Management

Can we get a bank stmt from them for Jan 10?

From: Robert DeLucia
Sent: Wednesday, February 03, 2010 8:59 AM
To: Cheryl Gradwohl
Subject: FW: SVB Asset Management

Robert M. DeLucia | Chief Financial Officer
MOD SYSTEMS, Inc. | modsystems.com
1201 THIRD AVE SUITE 1000 SEATTLE, WA 98101
O 206.432.3787 **M** 425.802.6010 **F 206.973.5499**
E robert.delucia@modsystems.com

From: Judy Lee [mailto:julee@svb.com]
Sent: Wednesday, February 03, 2010 8:48 AM
To: Robert DeLucia
Subject: SVB Asset Management

Hi Robert,

My colleague informed me that you needed a screenshot of the $2MM going into the asset management account (please see below). Also, did you need your password reset?

Thanks,
Judy

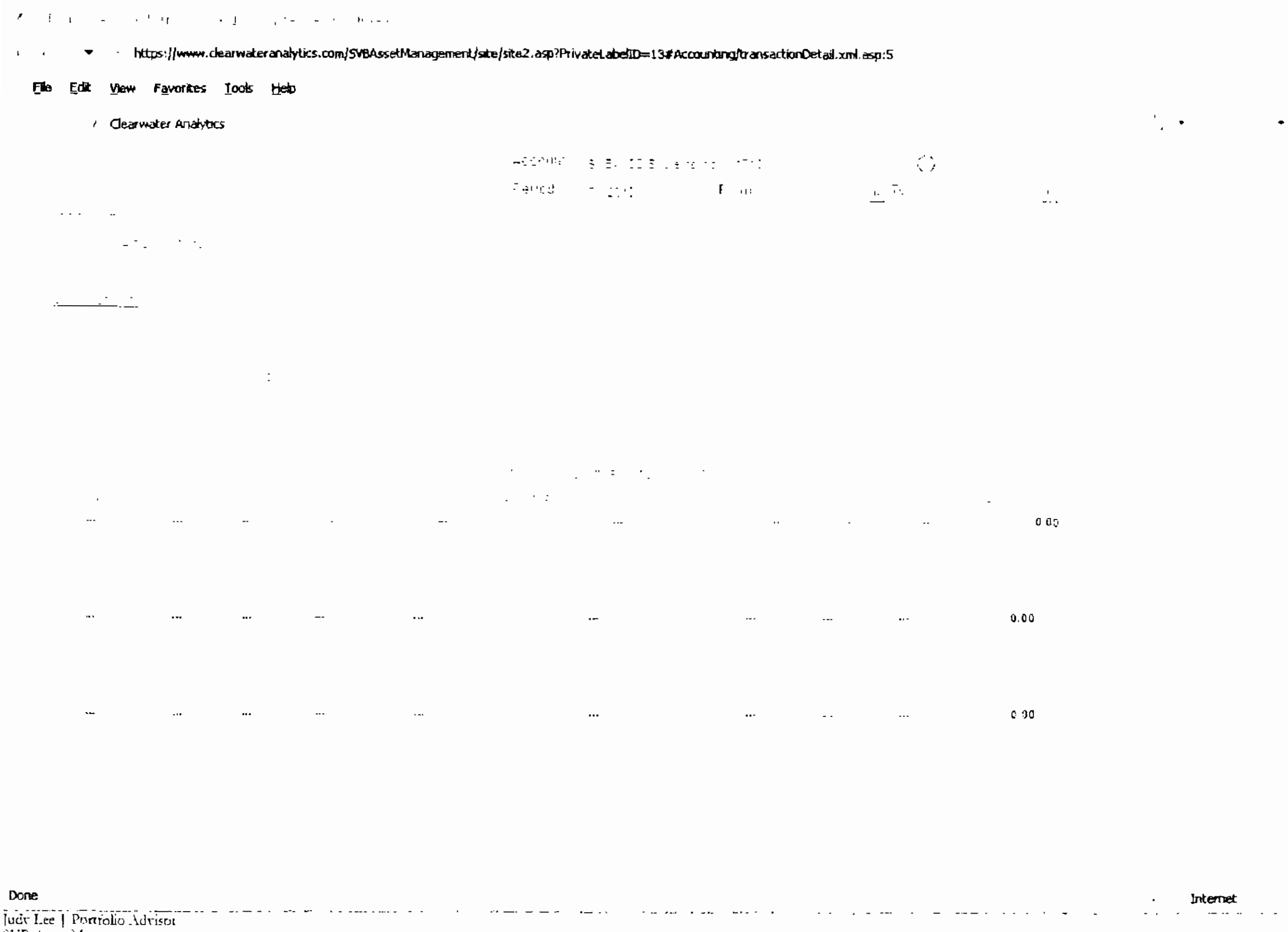
To: Cheryl Gradwohl
Subject: FW: SVB Asset Management

From: Judy Lee [mailto:julee@svb.com]
Sent: Wednesday, February 03, 2010 8:48 AM
To: Robert DeLucia
Subject: SVB Asset Management

Hi Robert,

My colleague informed me that you needed a screenshot of the $2MM going into the asset management account (please see below). Also, did you need your password reset?

Thanks,
Judy



Judy Lee | Portfolio Advisor
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P: 415.512.4257
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1=4

New Bank Account

Robert DeLucia

Sent: Thursday, February 25, 2010 4:37 PM

To: Cheryl Gradwohl

Cc: Kole Harwood

I need to establish a new bank account to formally place in the $1.0 million indemnity fund per the Board Resolutions. Please look into how that takes place, what needs to be done and how quick it can be done. I will discuss it with you tomorrow at a Board meeting break.