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Counsel for Virium BV, VFR  
Holding B.V., Mas Arbos Invest BV,  
Piet Mazereeuw Beheer B.V.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

<b>In re:</b>	)	
	)	<b>No. 14-14527</b>
<b>LITHIUM TECHNOLOGY CORP.,</b>	)	
<b>Debtor</b>	)	
<hr/>	)	
<b>VIRIUM BV, VFR HOLDING B.V.,</b>	)	<b>Chapter 11</b>
<b>MAS ARBOS INVEST BV, PIET</b>	)	
<b>MAZEREEUW BEHEER B.V.</b>	)	
<b>Movants,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Contested matter</b>
<b>LITHIUM TECHNOLOGY CORP.,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr/>		

**MOTION FOR ENTRY OF ORDER GRANTING RELIEF  
FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362**

**NOTICE**

Your rights may be affected. You should read these papers carefully discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the Court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then **within 14 days** from the date of service of this motion, you must file a written response explaining your position with the Court and serve a copy on the movant. Unless a written response is filed and served within this 14-day period, the

Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the 14-day period.

You will be notified separately of the hearing date on the motion.

\* \* \*

Virium BV, VFR Holding B.V., Mas Arbos Invest BV, Piet Mazereeuw Beheer B.V. ("Movants") are creditors and interested parties herein and through their undersigned counsel, pursuant to 11 U.S.C. § 362(d)(2), Rule 4001(A) of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 4001(A)-(1), hereby move for entry of an order granting relief from the automatic stay to permit Movants to continue with contempt proceedings against the Debtor, Lithium Technology Corporation ("Lithium" or the "Debtor"), pending in the United States District Court for the District of Delaware. In support of this Motion, Movants respectfully state as follows:

### **Introduction**

Movants are secured creditors of the Debtor. At the time of the Debtor's petition, the Debtor, as defendant, and Movants, as plaintiffs, were parties to a civil action (the "Civil Action") in the U.S. District Court for the District of Delaware (the "District Court"). In the Civil Action, after a trial held on July 25, 2014, the Movants obtained a multi-million dollar judgment against the Debtor and injunctions (the "Injunctions") (1) affirmatively obligating the Debtor to grant a security interest in its assets including, but not limited to, its equity interest in its wholly owned subsidiary, and (2) prohibiting the Debtor from granting security interests in its assets to others. Immediately after the conclusion of the trial on Friday, July 25, 2014, the District Court entered a status quo order (the "Status Quo Order") which prevented the Debtor from taking any action which, among other things, would perfect, transfer or grant a security

interest in its assets to any other persons pending the entry of a permanent injunction. A copy of the Status Quo Order is attached hereto as **Exhibit A**. The District Court entered the Injunctions by written order dated the following Monday, July 28, 2014, a copy of which is attached hereto as **Exhibit B**. Immediately after the entry of the Injunctions, Movants effectuated and perfected the security interest.

Prior to the time Movants perfected their security interests, and while the Status Quo Order was in effect, the Debtor, in conspiracy with certain of its shareholders and creditors (the "Conspirators"), induced and assisted those creditors to file UCC Financing Statements effectively priming the Movants in direct violation of the District Court's Status Quo Order. Movants brought contempt proceedings ("Contempt Proceedings") in the Civil Action against the Debtor and the Conspirators by Motion for Order to Show Cause dated September 5, 2014. A copy of the Motion for Order to Show Cause, together with certain supporting papers submitted therewith, is attached hereto as **Exhibit C**. The District Court set the Contempt Proceedings for a hearing on January 6, 2015.

The Debtor filed its bare-bones petition on the day that it had been ordered to disclose and produce information regarding its assets, and one business day prior to depositions that had been scheduled in the Contempt Proceedings. A hearing on the Movants' Motion For Order to Show Cause why Lithium and the Conspirators should not be held in Contempt for violation of the Court's injunction is scheduled to be heard on January 6, 2015. The Debtor filed its Chapter 11 Petition as a litigation tactic to avoid disclosing its violation of the Status Quo Order and Injunctions and to stop the Contempt Proceedings.

At issue in the Contempt Proceedings are, among other things, the attempts by the Conspirators and the Debtor to perfect the Conspirators' purported security interest in the

Debtor's assets in violation of the Status Quo Order. The relief sought by Movants in the Contempt Proceedings is to expunge the UCC financing statements filed by the Conspirators and for sanctions against the Conspirators and the Debtor, among other relief. The factual and legal issues in the Contempt Proceedings relate solely to whether the Conspirators and the Debtor violated the Status Quo Order and the Injunctions. These factual and legal issues are squarely before the District Court, which is uniquely situated to make such determinations and enter the appropriate relief to enforce its own Status Quo Order. The prosecution and resolution of the Contempt Proceedings are thus necessary to determine the priority of Movants' security interests and the amount of Movants' claim. As such, there is cause to lift the automatic stay to allow the District Court litigation to proceed.

### **Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 137 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

### **Facts**

2. Movants obtained a judgment in the Civil Action in an amount in excess of \$3,000,000, which judgment arose out of the Debtor's promissory notes. In addition to the monetary judgment, the District Court per The Honorable Leonard P. Stark, Chief United States District Judge, found that Lithium had breached its obligation to grant a security interest in its general tangible and intangible assets to the Movants as well as other note holders as defined in the District Court's Order of July 28, 2014.

3. On the issuance of the District Court's ruling in open court on Friday, July 25, 2014, Lithium claimed that it needed time to review injunction language proposed by the Movants and specifically requested time to negotiate the terms of the injunction. In light of its

intended ruling to grant an injunction, at the request of the Movants the District Court issued its Status Quo Order to preserve the positions of the parties until such time as a permanent injunction may issue.

4. Despite Lithium's representation through its Chief Executive Officer, Graham Norten-Standen, that it was trying to preserve the equal status of other similarly situated noteholders, it is now clear that Lithium was devising a scheme to prefer the Conspirators in violation of the Status Quo Order.

5. Despite Lithium's request to negotiate language of the injunction, late in the afternoon of Sunday, July 27, 2014, Lithium ultimately provided no competing language and agreed to accept the language originally proposed on Friday, July 25, 2014, in open court. Pursuant to the District Court's direction, a proposed injunction was submitted to the Court at 3:00 p.m. on Monday, July 28, 2014, which was ultimately issued thereafter with minor revision.

6. Just prior to the 3:00 p.m. deadline for the submission of the proposed final injunction, and while the Status Quo Order was still in effect, a series of ten (10) UCC-1 financing statements were filed by a single attorney, David K. Bowles of Bowles Lutzer & Newman LLP of New York, New York, on behalf of the Conspirators (a group of creditors led by Inventa Ltd, which is Lithium's largest creditor and an equity holder and insider).

7. It is now clear that at the time Lithium asked the District Court for time to review and negotiate the form of the injunction, it had already communicated with the Conspirators that it expected an unfavorable ruling and potential injunction from the District Court and that it fully intended at the time it agreed to the Status Quo Order to induce, assist and prompt the Conspirators to file UCC-1 financing statements in an attempt to prime the security interest that the District Court was about to order granted to the Movants.

8. Both the Conspirators and Lithium have published, in separate documents, false reports of the District Court's decision purporting to recognize the Conspirators as secured creditors by virtue of its decision. This can only be characterized as a fraudulent representation of the District Court's decision as the District Court made no findings with respect to the security interest of the Conspirators and, moreover, on identical language that the Movants presented to the District Court, found that no security interest had been granted and ordered that Movants be granted a security interest. Moreover, Lithium's own counsel argued quite vigorously, both in its Pretrial Brief and before the District Court in oral argument, that no such security interest had been granted. Lithium's goal was to interfere with the Injunctions by unlawfully attempting to grant the Conspirators a prior security interest and prompting them to "perfect" before the Movants could.

9. On September 5, 2014, after Lithium refused the Movants' demand for a turnover of its collateral, Movants filed their Motion For Order to Show Cause as to why the Debtor Lithium, its Chief Executive Officer, Martin Koster, and its Chairman of the Board, Graham Norten-Standen, and non-parties, Inventa (Luxembourg) S.A., its Managing Director, John Dercksen, and Inventa, should not be held in contempt and, *inter alia*, why the District Court should not expunge or terminate by decree the UCC filings made during the period in which the Status Quo Order was in effect. Copies of the UCC filings are attached as **Exhibit D**.

10. During an October 31, 2014 status conference on the Motion for Order to Show Cause, the District Court heard preliminary argument by Lithium's counsel as to why the Motion for Order to Show Cause should not proceed. The District Court denied Lithium's request, scheduled a hearing for January 6, 2015, and made findings that the Motion For Order to Show Cause set forth a prima facie case of contempt. Chief Judge Stark stated:

I'm concerned that the conduct that I have already heard about borders on and may, in fact, be contemptuous of the Court's order. I'm not making a finding on that, although I am making a finding at this time that it sounds as if there is at minimum a prima facie case. There is at minimum a reason to allow discovery sought by the plaintiffs. And I am going to schedule a hearing. I'm not at all convinced that this is a frivolous allegation or that the plaintiffs won't, at the end of the day, be able to show by clear and convincing evidence that there was a clear effort to violate the Court's injunction orders.

A copy of the Transcript of October 31, 2014 is attached hereto as **Exhibit E**.

11. In the context of prehearing discovery disputes, the District Court found that Lithium failed to comply with discovery requests and sanctioned Lithium by awarding the Movants their attorneys' fees in connection with their efforts to obtain such discovery. The District Court further ordered that the Movants' discovery be complied with by December 5, 2014. Lithium did not produce discovery responses on December 5, 2014. Rather, it filed its Chapter 11 petition. A copy of the District Court's December 1, 2014 Order is attached hereto as **Exhibit F**.

12. In addition, the District Court ordered that the depositions of Martin Koster, Chief Executive Officer of the Debtor, and Graham Norten-Standen, the Chairman of the Board of the Debtor, proceed. Said depositions were scheduled for Tuesday, December 9, 2014, but were adjourned in light of Lithium's bankruptcy petition.<sup>1</sup>

13. Furthermore, the deposition of Attorney David Bowles, the New York attorney who filed the UCC financing statement while the Status Quo Order was in effect, was initially

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<sup>1</sup> The bankruptcy petition also stayed other proceedings. After Movants recorded the judgment in the United States District Court for the Eastern District of Virginia, Virium B.V. moved for a writ of garnishment over a deposit account at Wells Fargo owned by Lithium. The writ was served on Wells Fargo on November 17, 2014. The return date on the writ is December 12, 2014. On December 11, 2014, Virium B.V. filed a Suggestion of Bankruptcy with the United States District Court. As the service of the writ on Wells Fargo perfected a lien on the account, any funds in the account as of the date of service of the writ are Virium B.V.'s cash collateral pursuant to 11 U.S.C. § 363. Virium B.V. objects to any use of its cash collateral unless it is provided adequate protection.

scheduled for December 2, 2014, and postponed when objections were raised by Attorney Bowles' New York counsel with respect to production requests, which objections were summarily overruled by the District Court.

**Relief Requested**

14. By this Motion Movants seek the entry of an Order modifying the automatic stay to permit Movants to prosecute the Contempt Proceedings, including discovery and a hearing.

15. Section 362(d) provides, in relevant part, as follows:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

11 U.S.C. § 362(d)(1).

16. The Fourth Circuit has identified three factors that are to be considered when evaluating whether "cause" exists to lift the stay as to pending litigation:

(1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary;

(2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and

(3) whether the estate can be protected by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

*In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992); *see also In re Huffman*, 989 F.2d 493 (4th Cir. 1993). Each of these factors supports granting relief from the automatic stay to prosecute the Contempt Proceedings.



17. The first factor weighs strongly in favor of granting relief from stay. While the Contempt Proceedings are in the U.S. District Court, not state court, the District Court is uniquely situated, and is the proper court to enforce its own orders. The Contempt Proceedings do not involve any application of bankruptcy law. Thus, not only is the bankruptcy court's expertise unnecessary, the bankruptcy court is not the proper court to adjudicate the issues raised in resolution of the Contempt Proceedings.

18. The second factor, whether lifting the automatic stay will promote judicial economy, also supports lifting the automatic stay. The Civil Action has gone to trial and the District Court has entered a money judgment and injunctions in favor of Movants. The District Court has ruled on post-judgment matters, including discovery, heard Debtor's argument that the Contempt Proceedings should be dismissed and has direct knowledge of the facts pertaining to the Contempt Proceedings. Lifting the automatic stay to allow Movants to prosecute the Contempt Proceedings will promote judicial efficiency. *See, e.g., In re McCullough*, 495 B.R. 692, 698 (Bankr. W.D.N.C. 2013) (lifting the automatic stay to allow for liquidation of claims in state court promotes judicial economy and minimizes interference in bankruptcy case because it minimizes the litigation required in bankruptcy court); *see also In re Hudgins*, 102 B.R. 495, 497 (Bankr. E.D. Va. 1989) (finding that the "best way to bring about a prompt and effective reorganization of the debtor's financial affairs, if such reorganization is possible, is to liquidate, as soon as possible," the claimant's claim).

19. Moreover, judicial economy supports granting the motion for relief from stay in order to provide complete relief to the parties to the Contempt Proceedings. The dispute between the Movants and the Conspirators is a dispute between non-debtor parties. The bankruptcy court,

as an Article I Court, does not have the authority to enter final judgment in such a dispute.

*Stern v. Marshall*, 131 S. Ct. 2594 (2011).<sup>2</sup>

20. The third factor also supports lifting the automatic stay. The other creditors and the estate as a whole will still be protected if the relief is granted. Allowing Movants to prosecute the Contempt Proceedings will determine, among other things, the priority of Movants' security interests and the amount of Movants' claim, which is a necessary predicate to any plan of reorganization or sale of the Debtor's property. Movants are not seeking to enforce rights against any property of the estate outside of the bankruptcy court. Although these circumstances are unusual, under analogous circumstances, courts routinely grant relief from the automatic stay. *In re Qimonda AG*, 09-14766-RGM, 2009 WL 2210771 (Bankr. E.D. Va. July 16, 2009) (noting that it is common for courts to grant relief from the automatic stay to allow litigation in other courts to proceed, particularly where "a case is ready for trial, the trial is ready to commence, the debtor is one of a number of defendants, there are common claims or defenses and it is clear that the claim must be liquidated at some point"). *See also Access Enterprise, Inc.*, 2012 WL 734164 (Bankr. E.D.N.C.) (relief from stay granted to allow enforcement of a non-monetary injunction).

21. Relief from the automatic stay pursuant to Section 362 is appropriate because all of the applicable factors support granting relief from the automatic stay.

Dated: December 15, 2014

Respectfully submitted,

/s/ J. David Folds

J. David Folds, VSB No. 44068

Baker, Donelson, Bearman, Caldwell &

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<sup>2</sup> Movants would not consent to the entry of final judgment by the bankruptcy court.

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- and-

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*Pro Hac Vice Applications Pending*

**CERTIFICATE OF SERVICE**

This will certify that on December 15, 2014, I served a true copy of the foregoing upon the following persons and entities by first-class United States mail, postage prepaid, which are required to receive notice under Local Rule 4001(a)(1)(F)(1):

Lithium Technology Corporation  
10660 Page Ave., Ste. 1222  
Fairfax, VA 22038

Michael E. Hastings, Esq. (and by email)  
Whiteford Taylor & Preston LLP  
114 Market Street, Suite 210  
Roanoke, VA 24011

Dated: December 15, 2014

/s/ J. David Folds  
\_\_\_\_\_  
J. David Folds

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

**VIRIUM BV,  
VFR HOLDING B.V.,  
MAS ARBOS INVEST BV AND  
PIET MAZEREEUW BEHEER B.V.,**

**Plaintiffs,**

**vs.**

**LITHIUM TECHNOLOGY  
CORPORATION,**

**Defendant.**

**CIVIL ACTION**

**CASE NO. 1:13-cv-00500-LPS**

**ORDER**

At Wilmington, this 25<sup>th</sup> day of July, 2014,

After hearing all of the evidence and arguments submitted by the parties during the bench trial,

IT IS HEREBY ORDERED that:

1. Judgment is entered in favor of Virium BV and against the Defendant, Lithium Technology Corporation, on Count I, in the amount of \$584,593.48, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

2. Judgment is entered in favor of Virium BV and against the Defendant, Lithium Technology Corporation, on Count II, in the amount of \$569,896.76, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

3. Judgment is entered in favor of VFR Holding B.V., and against the Defendant, Lithium Technology Corporation, on Count III, in the amount of \$594,335.31, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

4. Judgment is entered in favor of VFR Holding B.V., and against the Defendant, Lithium Technology Corporation, on Count IV, in the amount of \$237,734.12, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

5. Judgment is entered in favor of Mas Arbos Invest BV, and against the Defendant, Lithium Technology Corporation, on Count V, in the amount of \$591,983.83, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

6. Judgment is entered in favor of Piet Mazereeuw Beheer B.V., and against the Defendant, Lithium Technology Corporation, on Count VI, in the amount of \$591,060.04, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

The Court having heard the evidence with respect to Plaintiffs' claim for injunctive relief finds that the Plaintiffs have established by clear and convincing evidence that they are entitled to injunctive relief,

IT IS FURTHER ORDERED:

7. That the Defendant, Lithium Technology Corporation, grant a security interest to the Plaintiffs herein in its general intangible and tangible assets, which security interest shall also be in favor of the holders of that certain convertible promissory note arising out of a €7,500,000.00 subscription made by Lithium Technology Corporation (the "Subscription"); and

8. The Defendant, Lithium Technology Corporation, is also not to grant any security interest in any form or fashion for any other note without the prior written consent of the holders of the Subscription.

The status quo is preserved.

The parties shall submit a revised form of judgment order by Monday, July 28, 2014 at 3:00 p.m.

Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

**VIRIUM BV,  
VFR HOLDING B.V.,  
MAS ARBOS INVEST BV AND  
PIET MAZEREEUW BEHEER B.V.,  
Plaintiffs,**

**vs.**

**LITHIUM TECHNOLOGY  
CORPORATION,  
Defendant.**

**CIVIL ACTION**

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**ORDER**

At Wilmington, this 25<sup>th</sup> day of July, 2014,

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IT IS HEREBY ORDERED that:

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2. Judgment is entered in favor of Virium BV and against the Defendant, Lithium Technology Corporation, on Count II, in the amount of \$569,896.76, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.
3. Judgment is entered in favor of VFR Holding B.V., and against the Defendant, Lithium Technology Corporation, on Count III, in the amount of \$594,335.31, plus attorney's

fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

4. Judgment is entered in favor of VFR Holding B.V., and against the Defendant, Lithium Technology Corporation, on Count IV, in the amount of \$237,734.12, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

5. Judgment is entered in favor of Mas Arbos Invest BV, and against the Defendant, Lithium Technology Corporation, on Count V, in the amount of \$591,983.83, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

6. Judgment is entered in favor of Piet Mazereeuw Beheer B.V., and against the Defendant, Lithium Technology Corporation, on Count VI, in the amount of \$591,060.04, plus attorney's fees in the amount of \$26,522.25, with post judgment interest at the contract rate of 18% per annum.

The Court having heard the evidence with respect to Plaintiffs' claim for injunctive relief finds that the Plaintiffs have established by clear and convincing evidence that they are entitled to injunctive relief,

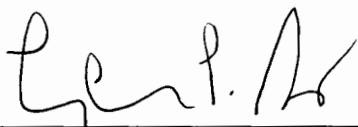
IT IS FURTHER ORDERED:

7. That the Defendant, Lithium Technology Corporation, grant a security interest to the Plaintiffs herein in its general intangibles and tangible assets, which security interest shall also be in favor of the Holders, as defined below, of that certain convertible promissory note arising out of a €7,500,000.00 subscription made by Lithium Technology Corporation. Holders shall be defined as any payee or assignee or successor of those certain subscription notes



evidencing an aggregate sum of €7,500,000 made by Lithium Technology Corporation between June 12, 2008 and September 6, 2010 (the "Subscription Notes"); but for clarification shall not include any such Subscription Note to the extent that such specific note has been replaced, amended, released or modified in any manner wherein the first priority security interest referenced therein has been eliminated, released or subordinated.

8. The Defendant, Lithium Technology Corporation, is also not to grant any security interest in any form or fashion for any other note without the prior written consent of the Holders of the Subscription Notes.

  
\_\_\_\_\_  
Chief United States District Judge

July 28,  
2014

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**VIRIUM BV,  
VFR HOLDING B.V.,  
MAS ARBOS INVEST BV AND  
PIET MAZEREEUW BEHEER B.V.,**

**Plaintiffs,**

**vs.**

**LITHIUM TECHNOLOGY  
CORPORATION,**

**Defendant.**

**CIVIL ACTION**

**CASE NO. 1:13-cv-00500-LPS**

**MOTION FOR ORDER TO SHOW CAUSE**

The Plaintiffs, Virium BV, VFR Holding B.V., Mas Arbos Invest BV and Piet Mazereeuw Beheer B.V., by their undersigned counsel hereby move for an order to show cause as to (i) why the Defendant, Lithium Technology Corporation (“Lithium” or “Corporation”) and its Chief Executive Officer, Martin Koster, and its Chairman of the Board, Graham Norton-Standen and non-parties Inventa (Luxembourg) S.A. (“Inventa Luxembourg”), its Managing Director, John Dercksen, and Inventa Ltd. (“Inventa”) should not be held in contempt for violation of the Status Quo Order and Injunction issued by this Court on July 25 and July 28, 2014, (ii) why UCC financing statements filed by non-parties, Inventa Ltd. of St. Peter Port, Gurnesy; Herman Wiegerink of Baam, Netherlands; Geurt Gerritsen of Schilde, Belgium; Tiram Investments Luxembourg of Breda, Netherlands; Benno de Leeuw Holding B.V. of Den Bosch, Netherlands; Leo Holla of Gelee, Netherlands; Black Ocean Ltd. of Tortola, British Virgin Islands; Green Desert N.V. of Willemstad, Curacao; Bauke Bakhuizen of Soest, Netherlands; and John Heerschap of Heythusen, Netherlands, should not be expunged or terminated by decree of this Court on the grounds that such filings were made during the period in which the Status

Quo Order was in effect, (iii) why Lithium, Martin Koster and Graham Norton-Standen should not be ordered to refrain from granting security interests in Lithium's assets without consent of the Plaintiffs, and (iv) why Inventa (Luxembourg) S.A., Inventa Ltd. and John Dercksen should not be ordered to withdraw the Control Agreement and Default Instruction. The Plaintiffs have submitted herewith an Opening Brief in Support of Motion for Order to Show Cause and Appendix thereto more fully setting forth the grounds for the relief requested herein and proposed forms of the Order to Show Cause and Order for Contempt. The Plaintiffs further represent as follows:

1. The Plaintiffs commenced this action and proceeded to trial on July 25, 2014, after which the Court, per the Honorable Leonard P. Stark, Chief United States District Judge for the District of Delaware, rendered its ruling, *inter alia*, finding that the Defendant Lithium, had breached its obligation to grant a Security Interest in its general intangible and tangible assets to the Plaintiffs as well as other note holders as defined in the Court's Order of July 28, 2014.

2. On the issuance of the Court's decision in open court, the Defendant claimed that it needed time to review the injunction language proposed by the Plaintiffs and specifically requested time to negotiate the terms of the injunction. At the request of the Plaintiffs, the Court, in light of its intended ruling, issued a Status Quo Order to preserve the positions of the parties until such time as the Injunction may issue.

3. Despite Defendant Lithium's representation through its CEO, Graham Norton-Standen, that it was trying to preserve the equal status of the other similarly situated note holders, it is now clear that it was devising a scheme to prefer others in violation of the Status Quo Order.

4. Despite the request to negotiate language, late in the afternoon of Sunday, July 27, 2014, Lithium ultimately agreed to accept the language that was originally proposed on Friday,

July 25, 2014 in open court. Pursuant to the Court's direction, a proposed injunction was submitted to the Court at 3:00 p.m. on Monday, July 28, 2014, which was ultimately issued thereafter with a minor revision.

5. Just prior to the 3:00 p.m. deadline for submission of the proposed final injunction, a series of ten UCC-1 Financing Statements were filed by a single attorney, David K. Bowles of Bowles Lutzer & Newman LLP, on behalf of a group of creditors led by Inventa, Lithium's largest creditor and a major stock holder. The group of creditors is hereafter referred to as the "Inventa Group" and are fully described in the Plaintiffs' Opening Brief.

6. It is now clear that by Monday, July 28, 2014, Lithium had arrived at a theory to undermine the Court's Injunction. In its Form 8-K dated July 28, 2014 and filed with the Securities and Exchange Commission on August 3, 2014, Lithium sets forth its newly crafted legal theory by deceptively mischaracterizing and misrepresenting the substance of this Court's Order in the following statement: "The action was resolved by confirming the uncontested indebtedness, ordering registrant [LTC] to re-grant a limited security interest covering a subset of the assets the minority holders had alleged were covered by the original security interest grant and confirming a commitment of registrant contained in the notes not to grant any new security interest in the same collateral without the note holder's consent." (emphasis supplied) Lithium's report is false and misleading. Nowhere in the Court's opinion is there reference to re-granting a security interest and Plaintiffs never claimed that they had been granted a security interest in the notes. The new theory was clearly devised to give cover, explicit or implicit, for the Inventa Group's filings in violation of the Status Quo Order.

7. Lithium's Form 8-K with its revisionist theory was publicly filed on August 3, 2014, but one week earlier Inventa Luxembourg and the Inventa Group relied on the

mischaracterization of the Court's Order to provide the ostensible authority upon which they filed their UCC financing statements. In the absence of authorization from Lithium, which was clearly prohibited by the Court, or a previously granted security interest, which does not exist, their authority to file the financing statements is lacking. There is clear and convincing evidence that Inventa Luxembourg did not act alone but instead worked with Lithium to file financing statements during the period the Status Quo Order was in effect. Lithium admitted in open Court that it was working with its other creditors at the time of trial. Lithium did not publicly file its Form 8-K until August 3, 2014, yet Inventa Luxembourg's Managing Director, John Derckesen, claimed the identical rationale articulated in the Form 8-K as support for filing the UCC financing statements a week before, i.e., that the original notes constitute a security agreement. There is no rational explanation for the severely flawed common theory developed by both Lithium and Inventa mischaracterizing this Court's ruling other than a concerted conspiracy to avoid this Court's Orders.

8. Why would Lithium benefit from the Inventa Group's priority status over the Plaintiffs herein? Inventa Luxembourg (which is an affiliate of and represents Inventa) and Inventa are affiliates of Fidessa Asset Management S.A. ("Fidessa"), a Netherlands based brokerage firm who placed the original convertible promissory notes and represents the other creditors who filed their financing statements. It is the Inventa Group who is repeatedly referred to in Lithium's SEC filings as having amended their notes. They are "friendly" creditors with a substantial equity interest in Lithium. The Defendant and Inventa have a common motive to avoid Lithium's obligation to the Plaintiffs.

9. Among the creditors who filed financing statements are note holders, who the Plaintiffs have direct evidence amended their notes such that they do not enjoy the status of a

note holder as defined in the Court's Injunction. Furthermore, Lithium in its 10-Q for the Quarter ended September 30, 2011 reported facts that, upon information and belief, establish that the Inventa Group modified their notes, which also eliminates the Inventa Group from Holder status under this Court's Order of July 28, 2014. Yet, notwithstanding, the Inventa Group went forward during the period the Status Quo Order was in effect to file UCC financing statements with the explicit and tacit blessing of Lithium and are now claiming security interests prior to the Plaintiffs under this Court's ruling.

10. The Inventa Group does not enjoy equal status under the Court's Order, had no authority to file financing statements and, but for the tortured and contemptuous attempt to re-write this Court's ruling that only Lithium could have devised, would never have arrived at a position whereby it could file a financing statement purportedly based on Lithium's notes issued years ago.

11. The Plaintiffs herein became aware of the filings shortly after they filed their own financing statements; but it was not until the Plaintiffs demanded that Defendant assemble the GAIA Holdings, B.V. ("GAIA") shares that it learned of Defendant's scheme to ignore this Court's Order by claiming that the Inventa Group enjoys priority status.

12. On August 25, 2014, Lithium counsel, Attorney John Crow, corresponded with the undersigned informing the Plaintiffs of Lithium's acquiescence in the demands of Inventa not to turn over the GAIA shares and its blatantly false position that the Convertible Notes had granted security interests ipso facto; and that this Court merely ordered Lithium to re-grant a security interest in certain collateral. In further derogation of this Court's permanent injunction, Lithium now claims that it recognizes Inventa and others as secured creditors who have

instructed them not to turn over the GAIA shares, the very collateral this Court ordered granted to the Plaintiffs.

13. The conduct of the Defendant and its Officers in conspiring with Inventa Luxembourg and Inventa to implement a scheme which purports to authorize the filing of UCC financing statements during the pendency of the Status Quo Order is contemptuous of this Court's Order that was clearly intended to preserve the rights of the parties until such time as the permanent Injunction could issue.

14. Moreover, to the extent that Lithium is conceding the grant of a security interest to Inventa with priority over the Plaintiffs herein, notwithstanding the very clear language of the Notes on which the Plaintiffs' claims are based and the Order of this Court that specifically enjoined the granting of a security interest to any other note holders except those of the original €7.5 million subscription whose notes were not amended, released or modified, is likewise contemptuous of this Court's Order.

15. The Defendant Lithium and its Officers, Martin Koster and Graham Norton-Standen and non-parties, with Inventa Luxembourg, its Managing Director, John Dercksen, and Inventa should be summoned before the Court to show cause as to why they should not be held in contempt and be held to pay such other sanctions available under the powers of contempt inherent in the District Court's jurisdiction including the fees and costs associated with this Motion. Furthermore, the Inventa Group should be summoned before this Court to show cause why their UCC financing statement should not be expunged or terminated.

16. Pursuant to D. Del. LR 7.1.1, undersigned counsel has made a reasonable effort to reach agreement with the opposing parties on the matters set forth in the motion, but such an agreement has not been reached.

WHEREFORE, the Plaintiffs pray for the issuance of an Order to Show Cause as to (i) why the Defendant and its CEO, Martin Koster, and Chairman of the Board, Graham Norton-Standen and Inventa (Luxembourg) S.A., its Managing Director, John Dercksen, and Inventa should not be held in contempt of Court, (ii) why UCC financing statements filed by the Inventa Group, should not be expunged or terminated by decree of this Court, (iii) why Lithium, Martin Koster and Graham Norton-Standen should not be ordered to refrain from granting security interests in Lithium's assets without consent of the Plaintiffs, and (iv) why Inventa (Luxembourg), Inventa and John Dercksen should not be ordered to withdraw the Control Agreement and Default Instruction; and granting such other relief as this Court deems appropriate.

Dated: September 5, 2014

Melvin A. Simon, Esq.  
Cohn Birnbaum & Shea P.C.  
100 Pearl Street, 12<sup>th</sup> Floor  
Hartford, CT 06103  
[msimon@cbshealaw.com](mailto:msimon@cbshealaw.com)

- and -

FERRY, JOSEPH & PEARCE, P.A.

/s/ Theodore J. Tacconelli  
Theodore J. Tacconelli (No. 2678)  
Rick S. Miller (No. 3418)  
824 Market Street, Suite 1000  
Wilmington, DE 19801  
Tel: (302) 575-1555  
[ttacconelli@ferryjoseph.com](mailto:ttacconelli@ferryjoseph.com)  
[rmiller@ferryjoseph.com](mailto:rmiller@ferryjoseph.com)

*Counsel for Plaintiffs*



## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address)  <b>David K. Bowles, Esq.</b> <b>Bowles Lutzer &amp; Newman LLP</b> <b>54 West 21st Street, Suite 1007</b> <b>New York, NY 10010</b>

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
FILED 02:46 PM 07/28/2014  
INITIAL FILING # 2014 2997476

SRV: 141004052

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Lithium Technology Corporation</b>	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 1b. INDIVIDUAL'S SURNAME				
1c. MAILING ADDRESS <b>10397B Democracy Lane</b>	CITY <b>Fairfax</b>	STATE <b>VA</b>	POSTAL CODE <b>22030</b>	COUNTRY <b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 2b. INDIVIDUAL'S SURNAME				
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Inventa Ltd.</b>	FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 3b. INDIVIDUAL'S SURNAME				
3c. MAILING ADDRESS <b>13, North Esplanade</b>	CITY <b>St. Peter Port</b>	STATE	POSTAL CODE <b>GY1 2LQ</b>	COUNTRY <b>GG</b>

4. COLLATERAL: This financing statement covers the following collateral:

**All of the tangible and intangible fixed assets of the Debtor and its subsidiaries, including, but not limited to, real estate, production machinery, office equipment, office furniture, testing and laboratory equipment, patents and trademarks, that Debtor owns now or will own in the future.**

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and Instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	6b. Check <u>only</u> if applicable and check <u>only</u> one box:
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	<input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA:	

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@bllnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address)  <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
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SRV: 141004176

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Lithium Technology Corporation</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS <b>10397B Democracy Lane</b>		CITY <b>Fairfax</b>	STATE <b>VA</b>	POSTAL CODE <b>22030</b>
			COUNTRY <b>USA</b>	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS <b>Waldeck Pyrmontlaan 15</b>		CITY <b>3747 DD Baam</b>	STATE <b>F.M.</b>	POSTAL CODE <b>0000</b>
			COUNTRY <b>NL</b>	

4. COLLATERAL: This financing statement covers the following collateral:

**All of the tangible and intangible fixed assets of the Debtor and its subsidiaries, including but not limited to, real estate, production machinery, office equipment, office furniture, testing and laboratory equipment, patents and trademarks, that Debtor owns now or will own in the future.**

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (If applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA:	

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

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SRV: 141004150

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Lithium Technology Corporation</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>10397B Democracy Lane</b>	<b>Fairfax</b>	<b>VA</b>	<b>22030</b>	<b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>Gerritsen</b>	<b>Geurt</b>			<b>Mr.</b>
<b>Rode dreef 14</b>	<b>2970 Schilde</b>		<b>2970</b>	<b>BE</b>

4. COLLATERAL: This financing statement covers the following collateral:

**All of the tangible and intangible fixed assets of the Debtor and its subsidiaries, including, but not limited to, real estate, production machinery, office equipment, office furniture, testing and laboratory equipment, patents and trademarks, that Debtor owns now or will own in the future.**

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6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	
6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licenser	
8. OPTIONAL FILER REFERENCE DATA:	

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address)  <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

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1a. ORGANIZATION'S NAME <b>Lithium Technology Corporation</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>10397B Democracy Lane</b>	<b>Fairfax</b>	<b>VA</b>	<b>22030</b>	<b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Tiram Investments Luxembourg</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>p/a Claudius Prinsenlaan 144</b>	<b>4848 CP Breda</b>		<b>0000</b>	<b>NL</b>

4. COLLATERAL: This financing statement covers the following collateral:

**All of the tangible and intangible fixed assets of the Debtor and its subsidiaries, including, but not limited to, real estate, production machinery, office equipment, office furniture, testing and laboratory equipment, patents and trademarks, that Debtor owns now or will own in the future.**

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7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA:	

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address)  <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

DELAWARE DEPARTMENT OF STATE  
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FILED 02:51 PM 07/28/2014  
INITIAL FILING # 2014 2997757

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1a. ORGANIZATION'S NAME <b>Lithium Technology Corporation</b>	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 1b. INDIVIDUAL'S SURNAME			
1c. MAILING ADDRESS <b>10397B Democracy Lane</b>	CITY <b>Fairfax</b>	STATE <b>VA</b>	POSTAL CODE <b>22030</b>
			COUNTRY <b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 2b. INDIVIDUAL'S SURNAME			
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE
			COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Benno de Leeuw Holding B.V.</b>	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
OR 3b. INDIVIDUAL'S SURNAME			
3c. MAILING ADDRESS <b>Leunweg 13</b>	CITY <b>5221 BC Den Bosch</b>	STATE	POSTAL CODE <b>0000</b>
			COUNTRY <b>NL</b>

4. COLLATERAL: This financing statement covers the following collateral:

**All of the tangible and intangible fixed assets of the Debtor and its subsidiaries, including, but not limited to, real estate, production machinery, office equipment, office furniture, testing and laboratory equipment, patents and trademarks, that Debtor owns now or will own in the future.**

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6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licenser	
8. OPTIONAL FILER REFERENCE DATA:	

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@bblaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

DELAWARE DEPARTMENT OF STATE  
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FILED 02:49 PM 07/28/2014  
INITIAL FILING # 2014 2997955

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1a. ORGANIZATION'S NAME <b>Lithium Technology Corporation</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>10397B Democracy Lane</b>	<b>Fairfax</b>	<b>VA</b>	<b>22030</b>	<b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

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3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>Holla</b>	<b>Leo</b>	<b>J.J.</b>	<b>0000</b>	<b>Mr.</b>
<b>Jonasstraat 8</b>	<b>6165 AN Geleen</b>			<b>NL</b>

4. COLLATERAL: This financing statement covers the following collateral:

**All of the tangible and intangible fixed assets of the Debtor and its subsidiaries, including but not limited to, real estate, production machinery, office equipment, office furniture, testing and laboratory equipment, patents and trademarks, that Debtor owns now or will own in the future.**

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7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA:	

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
FILED 02:47 PM 07/28/2014  
INITIAL FILING # 2014 2998011

SRV: 141004081

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Lithium Technology Corporation</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>10397B Democracy Lane</b>	<b>Fairfax</b>	<b>VA</b>	<b>22030</b>	<b>USA</b>

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Black Ocean Ltd.</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>Columbus Center, Pelican Drive</b>	<b>Road Town, Tortola</b>		<b>0000</b>	<b>BVI</b>

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7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA:	

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FOLLOW INSTRUCTIONS

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B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address)  <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
FILED 02:47 PM 07/28/2014  
INITIAL FILING # 2014 2998318

SRV: 141004067

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

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OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>10397B Democracy Lane</b>	<b>Fairfax</b>	<b>VA</b>	<b>22030</b>	<b>USA</b>

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2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Green Desert N.V.</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>14, Kaya W.F.G. Mensing</b>	<b>Willemstad</b>		<b>0000</b>	<b>CW</b>

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8. OPTIONAL FILER REFERENCE DATA:	



## UCC FINANCING STATEMENT

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B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
FILED 02:54 PM 07/28/2014  
INITIAL FILING # 2014 2998458

SRV: 141004165

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

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OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>10397B Democracy Lane</b>	<b>Fairfax</b>	<b>VA</b>	<b>22030</b>	<b>USA</b>

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2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
	<b>Bakhuizen</b>	<b>Bauke</b>	<b>A.</b>	<b>Mr.</b>
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>Wieksloterweg 69 Oostzijde</b>	<b>3766 LT Soest</b>		<b>0000</b>	<b>NL</b>

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8. OPTIONAL FILER REFERENCE DATA:	

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
FILED 02:50 PM 07/28/2014  
INITIAL FILING # 2014 2998748

SRV: 141004107

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>David K. Bowles</b>
B. E-MAIL CONTACT AT FILER (optional) <b>dbowles@blnlaw.com</b>
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <b>David K. Bowles, Esq. Bowles Lutzer &amp; Newman LLP 54 West 21st Street, Suite 1007 New York, NY 10010</b>

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1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
<b>10397B Democracy Lane</b>	<b>Fairfax</b>	<b>VA</b>	<b>22030</b>	<b>USA</b>

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<b>Heerschap</b>	<b>John</b>	<b>F.G.M.</b>	<b>0000</b>	<b>Mr.</b>
<b>Vlasstraat 29</b>	<b>6093 EE Heythuysen</b>			<b>NL</b>

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8. OPTIONAL FILER REFERENCE DATA:	

1

11:35:05 1

IN THE UNITED STATES DISTRICT COURT

2

IN AND FOR THE DISTRICT OF DELAWARE

3

- - -

4

IRIUM BV, VFR HOLDING B.V.,  
MAS ARBOS INVEST B.V. and PIET  
MAZEREEUW BEHEER, B.V.,

: CIVIL ACTION

:

:

:

6

Plaintiffs,

:

v.

:

7

:

LITHIUM TECHNOLOGY CORPORATION,

:

8

:

NO. 13-500-LPS

Defendant.

9

- - -

10

Wilmington, Delaware

Friday, October 31, 2014

11

*Telephone Conference*

12

- - -

13

BEFORE: HONORABLE **LEONARD P. STARK**, Chief Judge

14

APPEARANCES:

- - -

15

FERRY, JOSEPH & PEARCE, P.A.

16

BY: THEODORE J. TACONELLI, ESQ.

17

-and-

18

COHN, BIRNBAUM & SHEA, P.A.

04:20:48

19

BY: MELVIN A. SIMON, ESQ., and  
NICHOLAS P. VIGLIANTE, ESQ.  
(Hartford, Connecticut)

20

Counsel for Plaintiffs

21

22

THE ROSNER LAW GROUP, LLC

23

BY: FREDERICK ROSNER, ESQ.

24

and

25

Brian P. Gaffigan  
Official Court Reporter

1 APPEARANCES: (Continued)  
2  
3 JONES MORRISON, LLP  
4 BY: JOHN C. CROW, ESQ.  
5 (Scarsdale, New York)  
6  
7 Counsel for Defendant  
8  
9 - oOo -  
10 P R O C E E D I N G S  
11 (REPORTER'S NOTE: The following telephone  
12 conference was held in open court, beginning at 11:37 a.m.)  
13 THE COURT: Good morning, everybody. This is  
14 Judge Stark. Who is there, please?  
15 MR. TACONELLI: Good morning, Your Honor.  
16 Theodore Taconelli, Delaware counsel for the plaintiffs.  
17 And on the phone with me for the plaintiffs is Mel Simon who  
18 is primary counsel for the plaintiffs.  
19 THE COURT: Okay.  
20 MR. SIMON: Good morning, Your Honor. I have  
21 in my office with me as well an associate by the name of  
22 Nicholas Vigliante who is not admitted pro hac vice in this  
23 matter.  
24 THE COURT: Thank you.  
25 MR. ROSNER: Good morning, Your Honor. On the  
defendant's side, for Delaware counsel, Fred Rosner of the  
Rosner Law Group; and I have primary counsel John Crow on

11:39:18 1 the appendix make out a clear and compelling record of  
11:39:24 2 contemptuous conduct. You will recall that Your Honor found  
11:39:30 3 that there was a contractual commitment to grant a security  
11:39:35 4 interest to our clients. You ordered the defendants to  
11:39:36 5 grant such a security interest. You also ordered them not  
11:39:39 6 to grant security interests to others who were not similarly  
11:39:43 7 situated. And at the request of the defendants, just at the  
11:39:52 8 close of the court day on July 25, you delayed in entering  
11:39:57 9 the actual injunction to allow them an opportunity to review  
11:40:00 10 the papers and ordered me to submit to Your Honor a final  
11:40:03 11 injunction on or before 3:00 p.m. on July 28th.  
11:40:07 12 As is reflected in our papers, approximately ten  
11:40:11 13 minutes before 3:00 p.m., that deadline that you set for my  
11:40:16 14 office to file a proposed injunction, 10 UCCs were filed by  
11:40:20 15 Inventa and nine others in violation of the status quo.  
11:40:24 16 The record is clear that Inventa was following  
11:40:28 17 the court proceeding. They were communicating with the  
11:40:31 18 defendant. The defendant admits direct communications on  
11:40:36 19 the afternoon of July 25, prior to the issuance of the  
11:40:40 20 status quo order. It does not respond to our contention  
11:40:43 21 that there were communications that followed the issuance  
11:40:47 22 of the status quo order. We think the silence on the part  
11:40:50 23 of defendant in that regard is telling.  
11:40:54 24 But, more importantly, it is clear through the  
11:40:57 25 discovery that we have conducted since the entry of the

11:37:49 1 for the defendant.  
11:37:49 2 THE COURT: Okay.  
11:37:50 3 MR. CROW: Good morning, Your Honor.  
11:37:51 4 THE COURT: Good morning. I have my court  
11:37:53 5 reporter here with me. For the record, it is our case of  
11:37:57 6 Virium, BV, et al versus Lithium Technology Corporation,  
11:38:03 7 Civil Action No. 13-500-LPS.  
11:38:07 8 I scheduled today's call because I need to decide  
11:38:11 9 whether to schedule a hearing to determine if defendant acted  
11:38:16 10 in contempt of the Court's earlier order, and if I am going to  
11:38:20 11 schedule it, what the timing is going to be for that hearing,  
11:38:24 12 and whether any additional or alternative relief should be  
11:38:30 13 considered.  
11:38:30 14 Let me hear first from the plaintiff on those  
11:38:34 15 issues, please.  
11:38:35 16 MR. SIMON: Your Honor, we filed our motion  
11:38:38 17 for wanting to show cause on September 5, 2014 with respect  
11:38:43 18 to the activities of Lithium Technology Corporation, its  
11:38:48 19 officers, who were present in court, as well as nonparties,  
11:38:53 20 Inventa and its managing director, John Dercksen, as well  
11:38:57 21 as nine other secured or alleged secured creditors who made  
11:39:02 22 filings during the status quo period following the entry of  
11:39:05 23 judgment on July 25, 2014 in this matter.  
11:39:09 24 The papers that we have submitted together with  
11:39:13 25 both the motion, the supporting briefs, our reply as well

11:41:01 1 judgment, postjudgment discovery that we issued that the  
11:41:04 2 defendant Inventa has granted security interests to Inventa  
11:41:10 3 and these nine others purportedly under the premise that  
11:41:16 4 this Court authorized them to do so, which could not by  
11:41:19 5 further from the truth.  
11:41:21 6 You will recall, Your Honor, there was  
11:41:22 7 discussion on the day of trial with respect to whether there  
11:41:27 8 were similarly situated noteholders. In fact, that became the  
11:41:32 9 subject of some of the revisions to the proposed injunction  
11:41:34 10 that we issued.  
11:41:36 11 The discovery has made it very clear that  
11:41:38 12 Inventa and the nine others amended their notes. They did  
11:41:43 13 so in a manner to subordinate their interest in, you will  
11:41:46 14 recall the term "intangible fixed assets." Clearly, that  
11:41:51 15 has been produced by Lithium since the entry of judgment.  
11:41:57 16 We have the notes now that reflect they were subordinating  
11:42:01 17 their interest at the time.  
11:42:03 18 More telling, from the time that they entered  
11:42:05 19 into those amended notes between 2010 and 2012 right up to  
11:42:11 20 the date that Your Honor entered judgment, they filed no  
11:42:14 21 UCCs. So they took no action to perfect the position that  
11:42:18 22 they now claim they could have perfected at any time for  
11:42:21 23 two years prior to this Court's ruling.  
11:42:24 24 It wasn't until this Court issued its final  
11:42:27 25 decision and opinion in which it held that the plaintiffs

1 were entitled to the security interest, others similarly  
2 situated, that is, who held the identical notes also enjoy  
3 that status, and any others who had amended their notes to  
4 reflect subordinated interest did not.

5 What happened between the time we left court on  
6 Friday after Your Honor entered judgment and relief fully in  
7 favor of the plaintiffs is that Inventa made filings. We  
8 believe the record is very clear that those filings were  
9 with the explicit consent of Lithium, even though Lithium  
10 now claims that the UCC provides consent ipso facto. The  
11 point is that they wouldn't have known they were a secured  
12 creditor, they couldn't have known they were a secured  
13 creditor based on this Court's ruling unless Lithium  
14 communicated to them. And,

15 What we have is Lithium's filing with the SEC  
16 that mischaracterizes falsely, we submit fraudulently,  
17 characterizes your decision as concluding that there were  
18 UCC and security interests granted from the outset.

19 That is clearly not the case. We didn't argue  
20 that at trial. Lithium expressly argued against any such  
21 contention. And Your Honor found that there was simply a  
22 commitment and not a grant of the security interest. So we  
23 ask --

24 THE COURT: All right. Let me stop you there  
25 because I've got to get focused on what I need to decide

1 orders to have Lithium consent to discovery. We submitted  
2 discovery to them on October 14 to Mr. Crow. Mr. Crow  
3 rejected any notion that he would agree to submit to  
4 discovery and refused to meet and confer to discuss the  
5 issues, suggesting that it would be a futile meeting and  
6 conference. Thus, we are asking the Court for permission to  
7 conduct discovery.

8 We think the written discovery will take 30 days.  
9 We do think we should take the deposition of both Mr. Koster  
10 and Mr. Norton-Standen. We could be ready, provided the  
11 defendants cooperate in responding to discovery, by December  
12 15.

13 It is important that this occur on an expedited  
14 basis because what we now know, Your Honor, is that Lithium  
15 itself, other than the asset it holds in GAIA, owns  
16 virtually no assets. Their disclosure to us in postjudgment  
17 discovery reflects approximately \$9,000 in the bank and  
18 other miscellaneous assets of no value.

19 THE COURT: All right. Thank you very much.

20 Let me give defendant a chance to speak. Go  
21 ahead, please.

22 MR. CROW: Judge, we don't see any basis for  
23 holding a hearing. We see two allegations that were raised  
24 against Lithium, both of which we have answered. The  
25 majority of the allegations here deal with Inventa. They

7

1 today.

2 It seemed pretty clear from your papers,  
3 notwithstanding some of your language today, that you don't  
4 think you're entitled right now, on the papers at least, to  
5 a contempt finding and you want a hearing. Is that correct?

6 MR. SIMON: That is correct, Your Honor.

7 THE COURT: Now, from your client's perspective,  
8 how urgent is it that you have a hearing? When could you be  
9 ready for it? Do you need time for more discovery? And how  
10 long of a hearing are you looking for?

11 MR. SIMON: The hearing would last no longer  
12 than a day. Your Honor, mindful of your scheduling  
13 procedure that you brought to my attention during the trial,  
14 I think we can do it in less than a day.

15 I frankly think that we have established a prima  
16 facie case. The reason we requested a hearing, Your Honor,  
17 is because there are nonparties against whom we seek relief  
18 who are entitled to actual notice, not necessarily formal  
19 service of process but an actual notice and opportunity to  
20 be heard to explain themselves as to how they came to the  
21 results that they did without being in contempt of Court.

22 My answer is I think we can conduct this hearing  
23 in less than a day.

24 We do think that discovery would be helpful. We  
25 in fact attempted through the directions under your standing

9

1 are nonparties. We really don't have anything to say on  
2 that. It, to us, appears to be a dispute between two  
3 creditors over their relative priority. The plaintiffs sued  
4 for a money judgment and for a grant of a security interest.  
5 They got that, and we think we're done at that point.

6 THE COURT: Is that Mr. Crow then?

7 MR. CROW: Yes. Excuse me, Judge. It's  
8 Mr. Crow.

9 THE COURT: Mr. Crow, does your client deny  
10 having any contact with Inventa after we entered the status  
11 quo order?

12 MR. CROW: No.

13 THE COURT: So does your client admit to having  
14 contact with Inventa after we entered the status quo order?

15 MR. CROW: We had contact with Inventa later in  
16 the week.

17 THE COURT: So let's be precise. We entered our  
18 status quo order late in the day on July 25th.

19 MR. CROW: Correct.

20 THE COURT: Does your client admit to having  
21 contact with Inventa from the time after I entered the  
22 status quo order on July 25th until -- between that time  
23 and when we entered our order on July 28th?

24 MR. CROW: I had one request to refer counsel,  
25 which I did.

1 THE COURT: I'm not quite sure what that means.  
2 Does your client admit to having contact with Inventa during  
3 that time frame?  
4 MR. CROW: We received a request from Inventa  
5 for the name of U.S. counsel, which we gave them.  
6 THE COURT: So I'm not quite sure on what basis  
7 you're contending that I don't need a hearing. I should  
8 just, what, from your perspective keep this case closed and  
9 not worry about any of this?  
10 MR. CROW: Yes, Judge. I mean to the extent  
11 that they have raised contempt allegations against LTC, we  
12 did advise Inventa on the afternoon when we broke, as we  
13 stated in our papers, what would be happening. And at that  
14 point, Inventa took its own course.  
15 THE COURT: Right. But you have now admitted to  
16 a further contact that you had with Inventa. And "you," I  
17 mean on behalf of your client, of course, that you had with  
18 Inventa.  
19 MR. CROW: That's correct.  
20 THE COURT: Notwithstanding a status quo order;  
21 right?  
22 MR. CROW: That's correct. I had a request to  
23 refer counsel, which I did.  
24 THE COURT: All right. Are you able to  
25 affirmatively state at this time on behalf of your client as

1 somewhere?  
2 MR. CROW: They're not parties in this action.  
3 We see this as a separate dispute.  
4 THE COURT: So, again, your client's position  
5 is I should not have any concern at this point and take no  
6 further action in my case other than to deny the order to  
7 show cause?  
8 MR. CROW: That's the relief that we requested.  
9 I should also note we have been quite explicit in our papers  
10 that as to the ultimate relief Mr. Simon seeks regarding the  
11 UCC-1 filings, we take no position.  
12 THE COURT: Is there anything else, Mr. Crow?  
13 MR. CROW: Not at this time, Judge.  
14 THE COURT: Mr. Simon, do you want to respond?  
15 MR. SIMON: Yes. Just very briefly, Your Honor.  
16 Mr. Crow would submit that this is a priority  
17 dispute between Inventa and the plaintiffs in this action.  
18 But for the fact that the Court entered injunctive relief  
19 both on Friday, July 25th and Monday, July 28th he would be  
20 right. But given that the Court entered injunctive relief  
21 precluding certain conduct, and it's clear now that not  
22 only did Lithium but Lithium's counsel communicated with  
23 Inventa, if they did so, with a common scheme to thwart the  
24 injunctive relief that this Court entered, which we submit  
25 that they did and the record is clear that the injunctions

11  
1 to whether they had any direct additional contact with  
2 Inventa?  
3 MR. CROW: No, I'm not.  
4 THE COURT: So why shouldn't I have discovery on  
5 that and have this hearing?  
6 MR. CROW: Again, because we're mostly dealing  
7 with nonparties here; and I think we've got some fairly  
8 fanciful contempt allegations. Inventa is our largest  
9 creditor. I think as we also stated at the hearing, of  
10 course, we have been in contact with them. People did want  
11 to know what was going on. In fact, we had Fraser and Ash,  
12 who is a litigant against us in another proceeding, contact  
13 us on that day saying: This is interesting. What is going  
14 on? There certainly wasn't a gag order in place.  
15 In terms of this notion of having to have our  
16 permission or authorization to file the UCC-1, that may have  
17 been the case when we were all in law school. It certainly  
18 is not now. And as to the mystery about filing UCC-1s,  
19 well, Mr. Simon stated nobody had filed a UCC-1 for years.  
20 I just, I don't see a basis.  
21 If their dispute is really with Inventa, okay,  
22 fine, it's with Inventa.  
23 THE COURT: If you are right that this is simply  
24 a dispute with Inventa, amongst creditors, do you see that  
25 as part of my action or that would require some other filing

13  
1 were violated, now, on that basis, the Court should conduct  
2 a hearing.  
3 Frankly, the hearing should really be not so  
4 much about the plaintiffs' prima facie claim that contempt  
5 has occurred here but giving the defendants an opportunity  
6 to explain themselves, and that is the reason that we should  
7 have a hearing and, likewise, the reason that this Court  
8 should permit us to propound written discovery and ultimately  
9 take the depositions of both Mr. Koster and Mr. Norton-Standen.  
10 THE COURT: Okay. Thank you. Mr. Crow, is  
11 there anything else?  
12 MR. CROW: Yes. The burden the plaintiffs have  
13 here is one of clear and convincing against Lithium, and they  
14 have cited all these other nonparties. As to Lithium, and I  
15 can only speak as to Lithium, we don't think their burden has  
16 been met. The best that we have got here is a fairly fanciful  
17 set of conspiracy theories that assume their own conclusion  
18 for their validity.  
19 We did respond to Mr. Simon's inquiries. We  
20 certainly didn't make any secret about it. And we don't feel  
21 that that gives a basis to hold a hearing. And really with  
22 the proposed discovery, frankly, we viewed this as really it's  
23 bordering on harassment. I've been trying very hard to take  
24 the high road on this, but we view this matter with quite a  
25 bit of consternation.

1 THE COURT: Well, I do as well, but I'm  
2 afraid I don't view it at this time as anything bordering  
3 on harassment. I'm concerned that the conduct that I have  
4 already heard about borders on and may, in fact, be  
5 contemptuous of the Court's order.  
6 I'm not making a finding on that, although I am  
7 making a finding at this time that it sounds as if there is  
8 at minimum a prima facie case. There is at minimum a reason  
9 to allow discovery sought by the plaintiffs. And I am going  
10 to schedule a hearing.  
11 I'm not at all convinced that this is a  
12 frivolous allegation or that the plaintiffs won't, at the  
13 end of the day, be able to show by clear and convincing  
14 evidence that there was a clear effort to violate the  
15 Court's injunction orders.  
16 We'll see how the evidence plays out. But,  
17 certainly, I think we would all agree that when the Court  
18 enters an order it needs to be followed. And I'm troubled  
19 by what I have already seen in the record here to this point.  
20 There are others that need to be given formal  
21 notice of the proceeding I'm going to schedule. We need  
22 to use the tools of litigation to get to the bottom of what  
23 really happened and determine if, in fact, it was contempt  
24 or if, for any other reason, any additional relief is  
25 warranted.

15

1 So that said, I can't do this in mid-December,  
2 but I can do it in early January. I'm going to hold aside  
3 for you all the afternoon of Tuesday, January 6th, 2015.  
4 That's January 6, 2015. I'm available beginning at 12:30  
5 p.m.  
6 What I need you to do is to meet and confer and  
7 get me a proposed schedule, let's do it by next Tuesday.  
8 So a proposed schedule by next Tuesday giving me whatever  
9 interim dates either side thinks is necessary between now  
10 and January 6th.  
11 I am authorizing the plaintiff to take  
12 discovery. It sounds like the discovery that they have  
13 proposed is reasonable, but I'm hopeful you will be able  
14 to work out an agreement as to the timing and nature of  
15 discovery that either side may need.  
16 There also needs to be some process by which  
17 Inventa and these others who have filed UCCs are given  
18 formal notice of this proceeding, so I'm hopeful you will  
19 work that all out.  
20 At a minimum, you need to give me your proposals  
21 for that and anything else related to this proceeding, you  
22 need to get me your proposals for that in the proposed order  
23 that you submit to me next Tuesday.  
24 Are there any questions about any of that,  
25 Mr. Simon?

1 MR. SIMON: No, Your Honor. Thank you.  
2 THE COURT: Mr. Crow?  
3 MR. CROW: I guess the real question is on how  
4 notice as to nonparties is going to work, but I think that  
5 is more of an issue for plaintiffs.  
6 THE COURT: Right. Well, you are going to  
7 report back to me on Tuesday whether you have reached an  
8 agreement on that and anything else related to my hearing  
9 that I have scheduled. If you haven't reached agreement,  
10 you are going to give me your position on that in the filing  
11 on Tuesday. Do you understand that?  
12 MR. CROW: Okay. I do.  
13 THE COURT: Is there any other question, Mr. Crow?  
14 MR. CROW: I don't have any at this point.  
15 A VOICE: No, Your Honor.  
16 THE COURT: Was that somebody else?  
17 MR. SIMON: This is Mel Simon. The only thing I  
18 would mention, I have done extensive research on the notice  
19 requirements for a civil contempt motion and am prepared to  
20 discuss the substance of those with Mr. Crow.  
21 THE COURT: Well, I am directing that you all  
22 meet and confer on that and everything else related to the  
23 hearing on January 6th. I trust you will do that, and I  
24 will look at your filing next Tuesday.  
25 Is there anything else, anybody?

17

1 MR. CROW: I'm sorry. Just to be clear, I'm not  
2 sure I heard clearly. Was it January 5th or 6th?  
3 THE COURT: 6th. It's a Tuesday, January 6th.  
4 MR. CROW: 6th. Okay. Got it.  
5 THE COURT: Thank you all very much. Good-bye.  
6 (Telephone conference ends at 12:00 p.m.)  
7

8 I hereby certify the foregoing is a true and accurate  
9 transcript from my stenographic notes in the proceeding.

10 /s/ Brian P. Gaffigan  
11 Official Court Reporter  
12 U.S. District Court  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

**VIRIUM BV,  
VFR HOLDING B.V.,  
MAS ARBOS INVEST BV AND  
PIET MAZEREEUW BEHEER B.V.,**

**Plaintiffs,**

**vs.**

**LITHIUM TECHNOLOGY  
CORPORATION,**

**Defendant.**

**CIVIL ACTION**

**CASE NO. 1:13-cv-00500-LPS**

**ORDER**

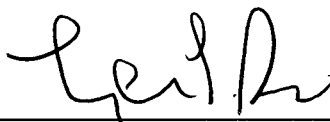
The parties having come before this Court in a telephonic on-the-record conference with respect to Requests For Interrogatories and Requests For Production propounded by the Plaintiffs on September 12, 2014, and the parties having submitted to this Court their Joint Statement with regard to matters in dispute on November 17, 2014, and their respective letters outlining the issues in dispute and positions on November 20 and 21, 2014, and the Court having heard the arguments of the parties, through their respective counsel;

IT IS HEREBY ORDERED that:

1. The Defendant, Lithium Technology Corporation provide responses to the Requests For Production without objection no later than December 5, 2014;
2. The Defendant's objections to the Request for Interrogatories Nos. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 21, 23 and 25 are hereby overruled and that responses thereto shall be served no later than December 5, 2014;

3. Plaintiffs are awarded the reasonable attorneys' fees of bringing these discovery matters before the Court which fees shall be determined upon submission by the Plaintiffs and any responses thereto by the Defendant.

Dated this 1st <sup>December</sup> day of ~~November~~, 2014.



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Leonard P. Stark  
UNITED STATES CHIEF DISTRICT JUDGE