UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

--X	**Chapter 15**
In re:	
	Case No. 20-11354 (SHL)
PERASO TECHNOLOGIES INC.,	
Debtor in a Foreign Proceeding.	
--X	

DECLARATION OF HARTLEY NISENBAUM IN SUPPORT OF UBIQUITI INC.'S RESPONSE TO EMERGENCY MOTION OF ERNST & YOUNG INC. AS THE COURT-APPOINTED MONITOR FOR PROVISIONAL RELIEF

HARTLEY NISENBAUM, pursuant to 28 U.S.C. §1746, hereby declares as follows:

1. I am the Executive Vice President of Operations and Legal Affairs at Ubiquiti Inc. ("Ubiquiti"). I respectfully submit this declaration in support of Ubiquiti's Response to the Emergency Motion for Provisional Relief of Ernst & Young Inc. (the "Monitor"), acting as the authorized foreign representative of Peraso Technologies Inc. ("Peraso").

2. I am over 18 years of age and otherwise competent to testify to the matters in this declaration. I am fully familiar with the facts and circumstances set forth herein.

3. On December 21, 2018, Ubiquiti and Peraso entered into a License and Development Agreement (the "License Agreement").

4. The License Agreement obligated Peraso to complete the development of the chipsets exclusively licensed to Ubiquiti and to "demonstrate to the reasonable satisfaction of" Ubiquiti that each of three defined development "Milestones" had been completed by agreed to completion dates for each Milestone.

5. The first Milestone had been completed at the time that the parties entered into the License Agreement. Peraso was required to give Ubiquiti written notice of when it believed that

it had achieved each of the second and third Milestones (respectively, the "Second Tranche Development Milestones" and the "Third Tranche Development Milestones").

6. The Second Tranche Development Milestones were due on January 31, 2019. Peraso did not meet the Second Tranche Development Milestones because it provided the deliverables pursuant to the milestones after the agreed upon deadline. In an email dated March 4, 2019, Bill McLean, then-CEO of Peraso, claimed that Peraso provided the software deliverables for the Second Tranche Development Milestone "the 1st week of Feb." and the hardware deliverables the "2nd week of Feb." However, a month later Peraso still had not met the Second Tranche Development Milestones, as McLean acknowledged in an email to me on March 15, 2019, in which he recognized that a Peraso engineer ("Brad") was still working on two areas identified by a Ubiquiti engineer ("Sriram") where Peraso "failed to meet the agreed to criteria."

7. In light of the fact that it did not meet Second Tranche Development Milestones, Peraso did not earn the equity investment from Ubiquiti's Canadian subsidiary that would have been provided had the milestone been met on time. Implicitly acknowledging this fact, Peraso never demanded the Second Tranche Development Milestone equity investment.

8. Peraso also failed to achieve the Third Tranche Development Milestones by the October 31, 2019 due date. The deliverables provided to Ubiquiti by Peraso on or before October 31, 2019, whether considered individually or in the aggregate, were not adequate to demonstrate to the reasonable satisfaction of Ubiquiti that Peraso had achieved the Third Tranche Development Milestones.

9. Ubiquiti repeatedly provided Peraso with notice that the materials provided by Peraso on October 31, 2019, did not demonstrate to the reasonable satisfaction of Ubiquiti that

Peraso had achieved the Third Tranche Development Milestones and Peraso repeatedly acknowledged the shortcomings identified by Ubiquiti and repeatedly attempted to rectify those shortcomings.

10. For example, on October 31, 2019, the same day that Peraso provided its alleged deliverables, Ubiquiti responded in writing to Peraso that it had not provided "full characterization data" regarding the chipsets (an essential pre-requisite to Ubiquiti's evaluation of whether or not the milestones had been achieved). Representatives of Ubiquiti had meetings with Peraso in early November where they discussed the shortcomings of Peraso's submissions. Ubiquiti asked several times more in writing for this "full characterization data" in early November, but such data was not provided to Ubiquiti by Peraso until November 16, 2019, more than two weeks after the due date.

11. On December 11, 2019, counsel acting on behalf of Peraso gave notice to Ubiquiti that Ubiquiti was allegedly in default of a material obligation under the License Agreement (the "Default Notice"). Specifically, the Default Notice claimed that Peraso had given Ubiquiti written notice of its achievement of the Third Tranche Development Milestones on October 31, 2019 and that Ubiquiti failed to give Peraso written notice of rejection or acceptance of Peraso's alleged achievement of the Third Tranche Development Milestones within 30 days of October 31, 2019.

12. The Default Notice does not identify the document or documents that allegedly constitute the October 31, 2019, notice to Ubiquiti that Peraso had achieved the Third Tranche Development Milestones. This is not surprising, since as of December 11, 2019, Peraso had not provided Ubiquiti with notice sufficient to "demonstrate to the reasonable satisfaction of"

Ubiquiti that Peraso had achieved the Third Tranche Development Milestones by or before October 31, 2019.

13. The License Agreement provides that a party receiving a notice of default has 30 days to respond to the noticed default. On December 11, 2019, shortly before Peraso's counsel issued the Notice of Default and in furtherance of the plan to wrongfully terminate the License Agreement, McLean advised Ubiquiti that Peraso would issue the Default Notice but the Default Notice did not require a response because the Third Tranche Development Milestones had not been achieved prior to October 31, 2019. Peraso's counsel issued the Default Notice shortly after McLean advised Ubiquiti that the Default Notice did not require a response.

14. On January 16, 2020, Peraso purported to terminate the License Agreement based on Ubiquiti's alleged failure to remedy the alleged material breach set forth in the Notice of Default. The notice of termination was provided by Peraso to the US-based hardware company in an effort to facilitate a potential sale of Peraso. However, Peraso made it clear to Ubiquiti that the so-called "termination" was nothing more than a ruse to force the renegotiation of the License Agreement. In a January 24, 2020 email to me, Bill McLean stated "…[W]e want to continue working with Ubiquiti in a joint and mutually beneficial manner. We don't want the termination of this license agreement to impact that relationship, and are willing to continue to work with you to make sure that any concerns that you have arising from the termination of the license agreement are addressed."

15. On February 14, 2020, Ubiquiti filed an action in the United States District Court for the Southern District of New York seeking a declaratory judgment that the License Agreement remained in full force and effect (the "License Litigation"). Through the License

Litigation, Ubiquiti seeks a declaration that the License Agreement is still in effect, thereby preserving Peraso's most important customer relationship and most important source of revenue.

16. In the License Litigation, the court has entered a scheduling order for the parties to respond to pleadings and to begin initial discovery. The approaching deadlines in the month of June 2020 are: Peraso shall respond to Ubiquiti's second amended complaint by June 12, 2020; initial document requests and initial interrogatories shall be served by June 24, 2020; and the deadline for joining parties or filing amended pleadings is June 30, 2020.

17. Peraso has not sought to adjourn any of these deadlines in the License Litigation. Had it done so, Ubiquiti would have readily consented, obviating the need for this "emergency" application.

18. When it became aware, through this Emergency Application, that the License Litigation deadlines posed a challenge to Peraso, Ubiquiti offered to consent to the entry of the proposed Section 1519 Order with respect to Peraso (and only Peraso), coupled with a full reservation of all of Ubiquiti's rights to object at or before the Recognition Hearing to all the relief the Monitor is seeking before this Court. The Monitor has rejected that offer.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 8, 2020

Hartley Nisenbaum
HARTLEY NISENBAUM