

1 CHRISTOPHER ASHWORTH (SBN 54889)
SILICON VALLEY LAW GROUP
2 A Law Corporation
25 Metro Drive, Suite 600
3 San Jose, CA 95110
Telephone: (408) 573-5700
4 Facsimile: (408) 573-5701
Email: ca@svlg.com

RECEIVED AND FILED
10 NOV -3 AM 10:38
U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK

5 Attorneys for Movant Aimee Kline
6

7 UNITED STATES BANKRUPTCY COURT
8 DISTRICT OF NEVADA
9

10 In re: HI-FIVE ENTERPRISES, LLC) CASE NO. BK: 10-54013
11)
12) Adv. #: N/A
13) Chapter 11
14 Debtor(s))
15)

16
17 DECLARATION OF CHRISTOPHER ASHWORTH IN SUPPORT OF (1) MOTION TO
18 FILE ON PAPER (2) APPLICATION FOR ORDER SHORTENING TIME, AND (3)
19 MOTION FOR RELIEF FROM AUTOMATIC STAY
20

21 Christopher Ashworth Declares:

22 1. My name is Christopher Ashworth. I am an attorney at law authorized to practice before all
23 of the courts in the State of California. I am also admitted to practice before the United States
24 Supreme Court, several Circuit Courts of Appeal, and the Southern, Central and Northern Districts of
California.

25 2. Movant Aimee Kline [Kline] is the plaintiff in a case pending in the Santa Clara Superior
26 Court of the State of California. The case is styled *Kline v. Sysco Food Services of Sacramento, Inc.*
27 [*Sysco*] and *Wild Game Ng, LLC [W/G]* in Case Number 108 CV 104899 filed July 30, 2008 [Santa
Clara Action].

1 3. W/G filed for protection under the Bankruptcy Act on July 21, 2010 in Case Number 10-
2 48272 then pending in the Northern District of California. I have personally reviewed the original
3 petition retrieved from PACER. Kline was not listed on the schedule of creditors and has received no
4 notice of W/G's filing. The W/G California bankruptcy was transferred to this court in October, 2010
5 and is evidently consolidated with, *inter alia*, the above-captioned matter.

6 4. Kline's Santa Clara Action is set for trial on November 8, 2010, six days hence.

7 5. Counsel for Kline, the undersigned, did not discover the existence of the W/G bankruptcy
8 until November 1, 2010. If the matter had proceeded to trial on November 8, the result would be a
9 void judgment against W/G and the casting of the entire burden of liability on Sysco.

10 6. The trial in the Santa Clara Action has already been continued twice and the matter has been
11 pending nearly a year longer than cases of like kind in Santa Clara County.

12 7. W/G is insured against liability in the Santa Clara Action by Fireman's Fund Insurance
13 Company (policy # 8-17-MXC-80430093) for the asserted liability creating events (strict product
14 liability). No issues relating to a deductible amount are implicated. Kline will waive any amount in
15 excess of the policy limit (\$5,000,000). Indeed, no conceivable judgment in the case would come
16 within the proverbial cannon shot of policy limits.

17 8. All of the parties to the Santa Clara Action are prepared to try this long-overdue matter.

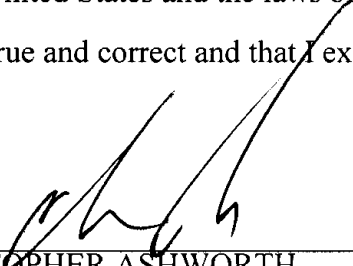
18 9. Kline would suffer significant prejudice if her Santa Clara Action cannot be tried. Without
19 relief from the automatic stay, the Santa Clara Action will be stayed by the Santa Clara Superior Court
20 and await an indefinite time to move again to a trial setting calendar. A delay of at least six months is
21 likely to eventuate.

22 10. **Efforts to Obtain Stipulation.** On November 1, 2010 counsel for Kline contacted Andy
23 Sung Kong of Arent Fox LLP bankruptcy counsel for W/G. Mr. Kong would not stipulate to relief
24 from stay on his own authority. Mr. Kong indicated that he would "have to check" with the client
25 (presumably the trustee) and Mr. Barney Ng (not a party) and "the committee" (presumably the
26 creditors committee). Mr. Kong suggested that counsel for Kline "circulate" a proposed stipulation.
27 As a matter of form, this has been done. Counsel for Kline (the undersigned) perceives that the
invitation to circulate a stipulation would entail (a) more time than is available and (b) a strategic
denial.

11. Neither Kline nor her counsel are a "regular filer" within the meaning of LR 5005(a)(1).

1 12. W/G is represented in the Santa Clara Action by Heidi Quan, Esq. and Guy Gruppie, Esq.
2 of the firm of Murchison & Cumming, 2010 Crow Canyon Place, Suite 380, San Ramon CA 94583.
3 Sysco is represented by the Law Office of Scott D. Miller, 17701 Cowan, Suite 150, Irvine CA 92614.
4

5 I declare under penalty of perjury under the laws of the United States and the laws of the State
6 of Nevada that all of the foregoing is of my own knowledge, is true and correct and that I executed this
7 declaration at San Jose, California on November 2, 2010.

8 
9 _____
10 CHRISTOPHER ASHWORTH

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 **In re: HIGH-FIVE ENTERPRISES, LLC**
2 **U. S. Bankruptcy Court, District of Nevada, Case No. BK 10-54013**

3
4 **CERTIFICATE OF SERVICE**

5 On November 2, 2010, I served the following document(s):

6 **DECLARATION OF CHRISTOPHER ASHWORTH IN SUPPORT OF (1) MOTION**
7 **TO FILE ON PAPER (2) APPLICATION FOR ORDER SHORTENING TIME, AND (3)**
8 **MOTION FOR RELIEF FROM AUTOMATIC STAY**

9 I served the above-named document(s) by the following means to the persons as listed below:

10 a. **ECF System** (*You must attach the "Notice of Electronic Filing", or list all persons*
11 *and addresses and attach additional paper if necessary*)

12 x b. **United States mail, postage fully prepaid** (*List persons and addresses. Attach*
13 *additional paper if necessary*)

14 Scott D. Miller 15 Law Offices of Scott D. Miller 16 17701 Cowan, Ste. 150 17 Irvine, CA 92614 <i>Attorney for Defendant Sysco</i> <i>Food Systems of Sacramento,</i> <i>Inc.</i>	14 Andy Sung Kong 15 Arent Fox LLP 16 555 W. 5 th St., 48 th Floor 17 Los Angeles, CA 90013 <i>Attorney for Debtor Wild</i> <i>Game Ng, LLC</i>	14 Heidi C. Quan 15 Murchison & Cumming, LLP 16 2010 Crow Canyon Pl., Ste. 17 380 San Ramon, CA 94583 <i>Attorney for Defendant Wild</i> <i>Game Ng, LLC</i>
--	--	--

18
19 c. **Personal Service** (*List persons and addresses. Attach additional paper if necessary*)

20 I personally delivered the document(s) to the persons at these addresses:

21 For a party represented by an attorney, delivery was made by handing the
22 document(s) to the attorney or by leaving the document(s) at the attorney's office with
23 a clerk or other person in charge, or if no one is in charge by leaving the document(s)
24 in a conspicuous place in the office.

25 For a party, delivery was made by handing the document(s) to the party or by
26 leaving the document(s) at the person's dwelling house or usual place of abode with
27 someone of suitable age and discretion residing there.

d. By direct email (as opposed to through the ECF System)

(List persons and email addresses. Attach additional paper if necessary)

Based upon written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful:

Scott D. Miller: <u>smiller@sdmillerlaw.com</u>	Andy Sung Kong: <u>kong.andy@arentfox.com</u>	Heidi C. Quan: <u>hquan@murchisonlaw.com</u>
--	--	---

 e. By fax transmission *(List persons and fax numbers. Attach additional papers if necessary)*

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

 f. By messenger *(List persons and addresses. Attach additional paper if necessary)*

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. *(A declaration by the messenger must be attached to this Certificate of Service).*

I declare under penalty of perjury that the foregoing is true and correct.

Signed on (date): November 2, 2010

Alyssa Torres

Alyssa Torres
Signature of Declarant

NV_7005 (crt_svc)