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 TIER TECHNOLOGIES, INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

12	JACK SPERLING, On Behalf of Himself and All)	CASE NO.: C 03-5509 VRW
	Others Similarly Situated,)	
13		DEFENDANT TIER,
	Plaintiff,)	TECHNOLOGIES, INC.'S
14		NOTICE OF PENDENCY OF OTHER
	v.)	ACTION OR PROCEEDING
15		(Civil L.R. 3-13)
	TIER TECHNOLOGIES, INC., JAMES L.)	
16	BILDNER, LAURA B. DEPOLE and STEPHEN)	
	McCARTY,)	
17		
	Defendants.)	
18	_____)	

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1 Pursuant to Civil L.R. 3-13, defendant Tier Technologies, Inc. (“Tier”) respectfully
2 submits this Notice of Pendency of Other Action or Proceeding.

3 **1. Description Of State Court Action And Its Relation To This Action**

4 The instant case (“*Sperling*”) was filed December 8, 2003. *Sperling* is a purported
5 shareholder class action brought against Tier and three current or former Tier officers, James
6 Bildner, Laura DePole, and Stephen McCarty, for alleged violations of the federal securities
7 laws.

8 On December 10, 2003, two days after *Sperling* was filed, Elizabeth Scala filed a “tag-
9 along” purported shareholder derivative action on behalf of nominal defendant Tier against
10 certain current and former officers and directors of Tier, including Bildner, DePole, and
11 McCarty. This action is titled *Scala v. Bildner et al.*, Case No. C-03-03077. It was filed in the
12 Superior Court of the State of California, County of Contra Costa.

13 *Sperling* and *Scala* are based on substantially identical allegations. Indeed, while *Scala*
14 purports to be a derivative rather than a direct action, the gist of both lawsuits is the same:
15 plaintiffs in both *Sperling* and *Scala* allege that Tier’s financial statements were false and
16 misleading because Tier allegedly improperly recognized revenue pursuant to a contract between
17 Tier and CalPERS. Compare *Sperling* Complaint ¶¶ 13-40 with Declaration of Christopher D.
18 Catalano (“Catalano Decl.”), Ex. 1 (*Scala* Complaint) ¶¶ 34-60 (repeating substantive allegations
19 nearly verbatim).

20 In addition, in *Scala*, plaintiff alleges that, by allowing the issuance of false financial
21 statements, the defendant directors and officers breached their fiduciary duty to Tier, abused
22 their ability to control Tier, committed gross mismanagement, wasted corporate assets, and were
23 unjustly enriched. See *Scala* Complaint ¶¶ 78-100. Plaintiff in *Scala* further alleges that the
24 individual defendants in that matter caused harm to Tier through their alleged violations of
25 federal securities laws. *Id.* ¶ 25. Specifically, plaintiff in *Scala* asserts that these alleged
26 violations have exposed Tier to federal class action lawsuits, and that these lawsuits, in turn, will
27 have a negative impact on Tier’s finances, corporate image, and goodwill. *Id.* ¶¶ 25-26.

1 Plaintiff in *Scala* also alleges that two Tier executives (DePole and McCarty) sold stock
2 in breach of their fiduciary duty to Tier and in violation of California Corporations Code Section
3 25402, based on their supposed knowledge of the purportedly misleading financial statements.
4 *Id.* ¶¶ 68-77; *see also id.* ¶ 61. Similarly, the plaintiff in *Sperling* alleges that DePole and
5 McCarty sold Tier stock based on their supposed knowledge of the same purportedly misleading
6 financial statements. *See Sperling* Complaint ¶¶ 7-8, 10-12.

7 **2. Coordination and Consolidation of State Court Action, This Action, and**
8 **Declaratory Judgment Action**

9 On December 31, 2003, Tier and the defendants in *Scala* filed a declaratory judgment
10 action in this District against Ms. Scala based on the allegations in *Scala. Tier Technologies,*
11 *Inc. et al. v. Scala*, U.S. District Court, N.D. Cal., C-03-5901 (CW) (the “Declaratory Judgment
12 Action”). Pursuant to Civil L.R. 3-12, Tier and the other plaintiffs in the Declaratory Judgment
13 Action filed a Notice of Related Case in that action on December 31, 2003 and in *Sperling* on
14 January 5, 2004. This Notice of Related Case seeks assignment of the Declaratory Judgment
15 Action to the Hon. Vaughn R. Walker so that all issues in the Declaratory Judgment Action and
16 *Sperling* can be decided in one proceeding.

17 On January 12, 2004, nominal defendant Tier moved in Contra Costa County Superior
18 Court to stay proceedings in *Scala* because of its similarity to *Sperling*. Catalano Decl. Exs. 2
19 (Notice of Motion to Stay), 3 (Motion to Stay), and 4 (Memorandum In Support of Motion to
20 Stay). As Tier showed in that motion, a refusal to stay proceedings in *Scala* creates the risk of
21 conflicting rulings on identical issues, would result in a waste of valuable party and judicial
22 resources, and would impose substantial burdens on defendants in both *Scala* and *Sperling*.

23 For the same reasons that warrant a stay of proceedings in *Scala*, Tier respectfully
24 submits that this Court should coordinate proceedings in *Sperling* with any proceedings that may
25 occur in *Scala*. In addition, for the reasons set forth in its Notice of Related Case, Tier
26 respectfully submits that the Declaratory Judgment Action should be consolidated with *Sperling*.
27 Consolidating *Sperling* and the Declaratory Judgment Action in this Court (the Hon. Vaughn R.
28 Walker), and coordinating any proceedings in *Scala* with these proceedings, would avoid

1 conflicts, conserve resources, and promote an efficient determination of all three actions. *See*
2 Civil L.R. 3-13(b)(3)(C).

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Date: January 13, 2004

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Christopher D. Catalano
Christopher D. Catalano

Attorneys for Defendant
TIER TECHNOLOGIES, INC.