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COUNSEL FOR JEFFREY BARON

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: §
§
ONDOVA LIMITED COMPANY, § **CASE NO. 09-34784-SGJ-11**
§
Debtor. § **Chapter 11**

**JEFFREY BARON’S OBJECTION TO PROOF OF CLAIM NO. 2
OF RANDAL C. SHAFFER D/B/A THE LAW OFFICE OF RANDAL C. SHAFFER**

Jeffrey Baron (“Baron”), a creditor and party in interest in this case, hereby files his *Objection to Proof of Claim No. 2 of Randal C. Shaffer d/b/a The Law Office of Randal C. Shaffer* (the “Objection”), and in support thereof respectfully represents as follows:

I. JURISDICTION

1. The Court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 157 and 1334. Venue over the Objection is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Objection is a core proceeding under 11 U.S.C. § 157(b)(2).

II. FACTUAL BACKGROUND

2. On July 27, 2009 (the “Petition Date”), the Debtor filed for bankruptcy protection

under chapter 11 of title 11 of the Bankruptcy Code.

3. On September 17, 2009, the Court entered an order approving the appointment of a chapter 11 trustee (Docket No. 98).

4. The Court set the bar date for filing proofs of claim for all creditors other than governmental units as November 25, 2009 (the "Bar Date").

5. Baron files this Objection pursuant to Section 502 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

III. OBJECTION TO CLAIM

6. Pursuant to Section 502 of the Bankruptcy Code, Baron objects to Randall C. Shaffer d/b/a The Law Office of Randal C. Shaffer's ("Shaffer") Proof of Claim. 11 U.S.C.A. § 502(b)(1). Attached to Shaffer's Proof of Claim are invoices which have previously been paid, as reflected upon those invoices, as well as invoices based upon an hourly rate that the Debtor had not agreed to.

7. A claimant's Proof of Claim is deemed allowed unless a party in interest objects. 11 U.S.C.A. § 502(a). A creditor is a party in interest. *Id.*; *see also, Industrial Bank, N.A. v. City Bank*, 549 U.S. 1019 (2005). An objection, upon filing, initiates a contested matter by notifying the parties that litigation is required to determine the allowance or disallowance of a claim. *Matter of Taylor*, 132 F.3d 256, 260 (5th Cir. 1998). Once filed, the bankruptcy judge may examine the conscionability of a claim asserted against the estate and to disallow it if the claim is without lawful existence. *In re Hinkley*, 58 B.R. 339, 343 (Bankr. S.D.Tex. 1986).

8. Section 101 of the Bankruptcy Code defines a "creditor" as an "entity that has a claim against the debtor." U.S.C.A. § 101(10)(A). "To be a creditor in bankruptcy, the debtor

must owe a debt to the claimant.” *In re Internet Navigator, Inc.*, 289 B.R. 133, 136 (Bankr. N.D. Iowa 2003); *see also, In re Colonial Poultry Farms*, 177 B.R. 291, 299 (Bankr. W.D. Mo. 1995); *Diasonics v. Ingalls*, 121 B.R. 626, 630 (Bankr. N.D. Fla. 1990). There was no formal fee agreement between Shaffer and the Debtor. Rather, the parties had contemplated a monthly flat fee. Later, Shaffer proposed a contingency fee agreement that included Shaffer associating with another firm, but the Debtor never entered into such agreement. As reflected in the invoices attached to Shaffer’s Proof of Claim, the Debtor paid Shaffer \$27,000.00 in 2006. After those payments were made, Shaffer sent invoices based on an hourly rate. However, the Debtor never agreed to the rate, or hourly billing at such rate. Accordingly, Shaffer’s claim should be disallowed.

WHEREFORE, PREMISES CONSIDERED, Baron requests that the Court enter an order sustaining his objection to Shaffer’s Proof of Claim and granting Baron such other and further relief, general or special, at law or in equity, to which he may show himself justly entitled.

Dated: February 22, 2010

Respectfully submitted

By: /s/ Gerrit M. Pronske
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on February 22, 2010 I caused to be served the foregoing pleading upon the service list attached hereto via the Court's electronic transmission facilities and/or United States mail, first class delivery.

/s/ Gerrit M. Pronske
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