EXHIBIT B

Stephen R. Cochell
The Cochell Law Firm, P.C.
7026 Old Katy Road, Ste. 259
Houston, Texas 77096
Telephone: (713)980-8796
Facsimile: (214) 980-1179
srcochell@cochellfirm.com

ATTORNEY FOR JEFFREY BARON

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

IN RE:	§	
	§	
JEFFREY BARON,	§	**Bankruptcy Case No. 12-37921**
	§	
DEBTOR.	§	
	§	
	§	
JEFFREY BARON,	§	
	§	
***Movant*,**	§	
	§	
vs.	§	
	§	
GERRIT PRONSKE, et al.,	§	
	§	
***Respondents*.**	§	

MOTION FOR EMERGENCY HEARING ON MOTION TO STAY ORDER FOR RELIEF IN INVOLUNTARY CASE PENDING APPEAL AND APPOINTMENT OF INTERIM TRUSTEE

COMES NOW Jeffrey Baron ("Baron") and files this Motion for an Emergency Hearing (the "Emergency Hearing Motion") on the Motion to Stay (the "Stay Motion") the Order for Relief in Involuntary Case (NDTX Bankr. Case No. 12-37921-sgj7 Dkt ("Bankr. Dkt.") 240). In support hereof, Baron would respectfully show as follows:

1. On December 18, 2012 (the "Petition Date"), several parties ("Petitioning Creditors") filed an involuntary chapter 7 bankruptcy petition (the "Involuntary Petition")

against Baron in this Bankruptcy Court. (Bankr. Dkt. 1.)

2. This involuntary proceeding was filed approximately two hours after the Fifth Circuit Court of Appeals (the "Fifth Circuit") entered an order (the "Reversal Order") on the same date: (a) reversing an earlier order appointing a receiver (the "Receiver") over all of Mr. Baron's personal assets (the "Receivership Order"), previously entered by the United States District Court for the Northern District of Texas (the "District Court") on November 10, 2010, in a separate lawsuit styled *Netsphere, Inc. v. Baron*, 703 F.3d 296 (5th Cir 2012) (the "Lawsuit") and (b) instructing the District Court to wind down the receivership estate and direct the receiver, after satisfaction of certain expenses incurred by the receiver, to expeditiously return the property held and managed by the receiver (the "Receivership Property") to Baron. *See Netsphere, Inc*., 703 F.3d at 313. This never happened. In point of fact, it has been 8 months since the Reversal Order and the Receiver is still in possession of the Receivership Property, including property that is exempt from the bankruptcy estate. (*See* Bankr. Dkt. Nos. 239 and 240.)

3. On June 26, 2013, after an evidentiary hearing where Baron was represented by an attorney with a limited engagement agreement, the Bankruptcy Court entered the Order for Relief which effectively terminated Baron's legal representation when it adjudicated the involuntary chapter 7 proceeding against Baron as appropriate and subjected Baron to such proceedings. (*See* Bankr. Dkt. Nos. 239, 240, 241 and 243.)

4. The Receiver is now seeking direction from the Bankruptcy Court to turn over all the property in his possession to a chapter 7 trustee (the "Trustee"), despite the Fifth Circuit's clear direction to turn over property to Baron. The Receiver is even seeking direction from the Bankruptcy Court, without ever filing an adversary proceeding, to turn over property that does

not belong to Baron and therefore never entered into the bankruptcy estate. All of these efforts are transparent and aimed solely at contravening the Reversal Order and making sure that Baron has absolutely no funds in which to hire counsel to represent him in any proceeding, including this involuntary case, the Lawsuit and the appeal of the Order for Relief, as discussed below.

5. On July 8, 2013, Baron filed a Notice of Appeal, commencing the appeal of the Order of Relief, pursuant to 28 U.S.C. § 158(a). (Bankr. Dkt. 253.) Baron currently has two other requests for interlocutory appeals pending before the District Court for Northern District of Texas regarding the Bankruptcy Court's prior orders ruling that (a) the Petitioning Creditors—nonjudgment creditors—had standing to initiate the involuntary bankruptcy, and (b) the bankruptcy court had jurisdiction to adjudicate the involuntary case. (Bankr. Dkt. Nos. 111, Case No. 3:13-cv-01745, and Docket 112, Case No. 3:13-cv-01746.) Baron expects to consolidate all of the appeals in the District Court.

6. On July 14, 2013, Baron filed the Stay Motion, seeking a stay of the Order of Relief. (Bankr. Dkt. 287.) In the Stay Motion, Baron informed the Court that, ever since the commencement of this involuntary case (Petition Date), he has not been able to hire competent bankruptcy counsel to adequately represent him because his money and assets are in the possession of the Receiver and the least expensive quote he received was $250,000 for bankruptcy counsel. *Id.* The Stay Motion reveals that Baron will be substantially prejudiced if he is forced to proceed with the involuntary proceeding, including the appeal of the Order of Relief, without competent counsel. There are serious due process concerns, because Baron has been stripped of his property without due process of law, and the bankruptcy Court appears positioned to disallow Baron to access his property to hire an attorney while it approves attorney fees to his adversaries in violation of his equal protection rights. Indeed, the Petitioning Creditors have

turned due process on its head by (a) using Baron's assets to prosecute unliquidated claims in the Lawsuit and in this involuntary case against him and (b) leaving Baron without means to adequately defend himself.

7. On July 15, 2013, one of the Petitioning Creditors, without any authority from Baron and after Baron requested the Bankruptcy Court allow him funds to hire a bankruptcy attorney (Bankr. Dkt. 288), filed what appeared to be bankruptcy schedules and statement of financial affairs for Baron, purporting to adequately represent Baron's property interests. (Bankr. Dkt. 289.) Whatever these schedules or statements reflect, they were not authorized, prepared or signed by Baron.

8. On July 15, 2013, in front of the Receiver, the Trustee, the Petitioning Creditors and a crowd full of other attorneys that are seeking to strip Baron of every last penny to his name (including his 401k), Baron appeared without any counsel at a status hearing before the Bankruptcy Court. He told the Bankruptcy Court that he has been unable to find bankruptcy counsel because most counsel would require a substantial retainer in a complicated case such as the instant case. Baron also informed the Bankruptcy Court that, because of lack of counsel, accountants and other professionals (which he cannot hire) and because the Receiver is in possession of his records, he was unable to complete the 7 day deadlines under the Order for Relief, including filing bankruptcy schedules and statement of financial affairs, which could easily (a) prejudice Baron's property rights and (b) subject Baron to criminal sanctions, if improperly prepared. (See, e.g., Bankr. Dkt. 288.)

9. Interestingly and likely because of the fact that she had not had a full opportunity to consider the arguments in the Stay Motion, at the July 15, 2013 status conference, the

Bankruptcy Court told Baron, on the record, that he did not need counsel to represent him in this involuntary case because it was a civil matter and there are plenty of chapter 7 cases where no counsel is present. The Bankruptcy Court further stated that she planned to proceed "full steam ahead" with the involuntary case, including the adjudication of property interests and any related title 18 criminal proceedings, whether or not Baron was represented.

10. As previously mentioned in the Stay Motion, the right to hire competent professionals has been a great necessity, as demonstrated by the fact that the appointed receiver—which the Fifth Circuit Court of Appeals determined was wrongfully appointed—and his professionals have accrued approximately $5.2 million in counsel fees during the receivership while paying alleged creditors nothing. Moreover, the strategy employed by the Petitioning Creditors—nonjudgment creditors—to freeze all of Baron's assets and use it against him in civil and potentially criminal proceedings, directly flies in the face of the letter and spirit of the Fifth Circuit's determination in the Reversal Order.

29. **Each day that Baron remains in bankruptcy is a day that Baron's Fifth and Fourteenth amendment rights to liberty and property are being violated.** Before the Order of Relief becomes effective, a higher court should evaluate whether the Petitioning Creditors' strategy in the Lawsuit and this involuntary case, and other orders entered by this Court, effectively deprive Baron of his constitutional due process rights. Accordingly, in accordance with the Local Rules for the Bankruptcy Court for the Northern District of Texas, Baron requests an emergency hearing on the Stay Motion **within 7 days of filing this Emergency Hearing Motion.** Any notice of the hearing will be given instantly to the US Trustee, the Receiver, the Trustee, the Petitioning Creditors, and any other party in interest.

WHEREFORE, PREMISES CONSIDERED, Baron requests an emergency hearing on the Stay Motion within 7 days and any further relief to which he may be entitled to under the law and equity.

Dated: July 19, 2013

Very respectfully,

The Cochell Law Firm, P.C.

By: /s/ Stephen R. Cochell
Stephen R. Cochell
Texas Bar No. 24044255
7026 Old Katy Rd., Ste 259
Houston, Texas 77096
(713)980-8796 (phone)
(713)980-1179 (facsimile)
srcochell@cochellfirm.com

CERTIFICATE OF SERVICE

On this date, I electronically submitted the foregoing document with the Bankruptcy Clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties who receive notification through the electronic filing system.

/s/ Stephen R. Cochell
Stephen R. Cochell

Stephen R. Cochell
The Cochell Law Firm, P.C.
7026 Old Katy Road, Ste. 259
Houston, Texas 77024
Telephone: (713)980-8796
Facsimile: (214) 980-1179
srcochell@gmail

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AMENDED EMERGENCY MOTION TO STAY
ORDER FOR RELIEF IN INVOLUNTARY CASE PENDING APPEAL
AND APPOINTMENT OF INTERIM TRUSTEE

COMES NOW Jeffrey Baron ("Baron") and, pursuant to Rule 8005 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), files this emergency motion (the "Motion") to stay the Order for Relief in Involuntary Case (Dkt. No. 240), entered on June 26, 2013 (the "Order for Relief") and to stay the appointment of an Interim Trustee.

The Fifth Circuit Court of Appeals issued a ruling on December 18, 2012 that reversed a District Court's order placing Baron into a receivership. The Fifth Circuit determined that Baron's assets should be "expeditiously released" to him after a wind down period.

Approximately two hours after entry of the Fifth Circuit Order, however, the same alleged creditors identified in the reversed receivership filed a petition to place Baron in involuntary bankruptcy. The receivership assets were never returned to Baron, and they are now subject to being turned over to the bankruptcy estate and liquidated. In support of this Motion to stay all actions in the bankruptcy court, Mr. Baron would respectfully show the Court as follows:

I.
PRELIMINARY STATEMENT

1. Since November 2010, Baron was placed into a receivership which effectively (a) seized all his assets, (b) restricted him from managing his financial affairs, entering into agreements, traveling, hiring attorneys or other professionals to represent his interests and (c) denied Baron other basic freedoms, like the right to a jury trial and due process of law in connection with defending against non-judgment creditor claims. (*See, e.g.*, Attached Exh. A, NDTX Case 3:09-cv-00988-F, Dkt 124: Receivership Order, dated Nov. 24, 2010).

2. The right to hire competent professionals has been a great necessity, as demonstrated by the fact that the appointed receiver—which the Fifth Circuit Court of Appeals determined was wrongfully appointed—and his professionals have accrued approximately $5.2 million in counsel fees during the receivership while paying alleged creditors nothing. (*See* Attached Exh. C, NDTX Case 3:09-cv-00988-F, Dkt 1287: the "Receivership Fee Order"; *See, also, Netsphere, Inc. v. Baron*, 703 F.3d 296 (5th Cir 2012)(the "Reversal Order").

3. Baron's misery, however, does not end there. The attorneys seeking to benefit from the receivership filed a petition to force Baron into an involuntary bankruptcy in the same court that originally recommended the receivership. *See Netsphere, Inc*, 703 F.3d at 312 ("the bankruptcy court recommended a receiver, and the trustee then moved in the district court for the appointment as recommended"); (*See, also*, Attached Exh. D, NDTX Bankr. Ct., Case 12-37921-

sgj-7 Dkt 1 and attached Exh. E, NDTX Bankr. Ct. Case 12-37921-sgj-7 Dkt 239: "Findings" at ¶ 48). Based on the *same* disputed claims that led to the receiver being appointed, the Bankruptcy Court has determined that Baron should be placed in an involuntary chapter 7 bankruptcy proceeding to pay these attorneys (the "Petitioning Creditors"). (*See* Exh. E, Findings). This determination contravenes the Fifth Circuit's decision in *Netsphere.*

4. The Fifth Circuit in *Netsphere* held that receiverships cannot be used to freeze an alleged debtor's assets pending a determination of the validity of the debt. *70*3 F.3d at 309; *see, also, In re Fredeman Litig*., 843 F.2d 821, 824 (5th Cir. 1988)(court injunction that froze assets in pending civil lawsuit set aside as an improper exercise of the court's equitable powers). In reaching its determination, the *Netsphere* Court found that the debts of the Petitioning Creditors in this case had not been reduced to judgment and could not be the subject of a receivership proceeding:

> The receivership ordered in this case encompassed all of Baron's personal property, none of which was sought in the Netsphere lawsuit or the Ondova bankruptcy order than as a possible fund for paying the **unsecured claims of Baron's current and former attorneys that had not been reduced to judgment**.

Netsphere, Inc., 703 F.3d at 310 (emphasis added).

5. The Fifth Circuit Court's findings and ruling are binding on the district court and the bankruptcy courts; moreover, when a higher court decides upon a rule of law, then that decision should continue to govern the same issues in subsequent stages in the same case or related cases. *See Arizona v. California*, 460 U.S. 605, 615 (1982). This rule of practice, called the law of the case doctrine, promotes the finality and efficiency of the judicial process by protecting against the agitation of settled issues. *Christian v. Colt Indus. Operating Corp*., 486 U.S. 800, 817 (1988). In the instant case, despite the Fifth Circuit's findings that the claims of Baron's current and former attorneys had not been reduced to judgment, the Bankruptcy Court

held that a ruling of the District Court compromising the claims somehow *did* constitute a final judgment. (*See* Exh. E, Order at pg. 24: "[t]his bankruptcy court, on balance, believed and still believes that the May 18, 2011 Fee Order is tantamount to a final judgment that forecloses an argument of a bona fide dispute.") Even *assuming* the law of the case doctrine did not apply, the Court should apply the doctrine of collateral estoppel, because the issue of whether the Petitioning Creditors' claims were fully and finally litigated in the Netsphere case was determined by the Fifth Circuit. As previously stated, the Fifth Circuit held that the claims were not reduced to judgment and therefore, disputed.

6. The bankruptcy court's conclusion is contrary to the Fifth Circuit's decision that the claimants in the receivership---now Petitioning Creditors in the involuntary bankruptcy---did not have a claim reduced to a final judgment and were simply nonjudgment creditors that needed to pursue their claims in a proper forum. The bankruptcy court, however, is not the proper forum because the Bankruptcy Code prohibits imposition of an involuntary bankruptcy based on claims filed by nonjudgment creditors. Seizure of Mr. Baron's property through an involuntary bankruptcy proceeding violates his Fifth Amendment right to due process of law. . The Fifth Circuit determined, "everything subject to the receivership other than cash currently in the receivership…should be expeditiously released to Baron…" *Netsphere, Inc*., 703 F.3d. at 313. However, the Bankruptcy Court in this matter instead held that all such assets must be *turned over to the involun*tary bankruptcy trustee. (Exh. E, Order at pg. 38: "Further, based on the foregoing, a separate order will be issued henceforth regarding the turnover of assets from the Receiver to the Bankruptcy Trustee.*") Baron's initial bankruptcy counsel*, Mark Stromberg, had a limited engagement that terminated when Petitioning Creditors were granted relief by the Bankruptcy Court, but the Bankruptcy Court denied Baron's *pro se* request for an extension of

the imminent deadlines to find another attorney. (*See* Attached Ex*h.* F, NDTX Bankr. Ct., Case 12-379*21*-sgj-7 Dkt 266). The Bankruptcy Court cites lack of good cause as the reason it denied Baron's request for counsel. *Id.* As such, and although the receivership was reversed, Baron still does not have access to funds sufficient to hire the attorneys necessary to adequately represent his interests.

7. Where representation in both the involuntary bankruptcy and appellate matters would be inefficient and cost prohibitive for Baron, and where he has been unsuccessful in securing bankruptcy counsel, Baron should be allowed limited access to his assets so that he can properly hire counsel to assist with the prosecution of his appeal of the merits of this involuntary bankruptcy. As demonstrated below, and as instructed by the U.S. Supreme Court and the Fifth Circuit (which vacated the appointment of the receiver), there is a serious legal question as to whether a federal court can essentially freeze a party's assets b*ased on claims* made by non-judgment creditors. The Bankruptcy Code recognizes non-judgment creditors have no right to place a citizen into involuntary bankruptcy where, as here, the Bankruptcy Code itself mandates that claims subject to a bona fide dispute as to liability or amount (a) disqualify petitioning creditors from commencing an involuntary proceeding and (b) cannot be taken into account in determining whether an alleged debtor is insolvent. *See* 11 U.S.C. § 303(b)(1), (h).

8. A stay should be granted pending appeal because Baron: (a) will likely succe*ed on* the merits in light of the Fifth Circuit's findings in *Netsphere*; (b) will be ir*rep*arably harmed if this proceeding is allowed to move forward, (c) will suffer a harm far greater than any other party; and (d) can show that public policy favors the *imp*osition of a stay in this case. Accordingly, the Bankruptcy Court should grant a stay of the order for relief pursuant to Bankruptcy Rule 8005.

II.
BACKGROUND

1. The issues in this case have their genesis in parallel proceedings against Jeff Baron in a separate corporate bankruptcy case, In re Ondova, as well as *Netsphere*. In these proceedings, Baron was deprived of any right to hire his own counsel for over two years, when District Judge Furgeson appointed the undersigned counsel. Unfortunately, counsel was denied compensation for the same types of fees expenses that were later granted to the Receiver. Simply stated, Baron cannot fully and effectively defend himself against seizure of property when the judicial system grants millions in defense to a Receiver and a minute fraction of that amount to Baron for his defense. Simply stated, this sort of double standard violates due process. Moreover, despite the seizure of all his property, and allegations of criminal conduct against him, the Receiver threatened Baron with contempt if he attempted to hire his own attorney.[1]. On December 2., 2010, the receiver sent the following letter to Mr. Baron:

> As you know, I am counsel for the Receiver, Peter Vogel. The Receiver forwarded to me your email below.
> …
>
> Based on the powers and duties provided to the Receiver within the Receiver Order, the Receiver has retained me and others at my firm to serve as counsel. Furthermore, based on the obligations imposed upon you under the Receiver Order, you – and that means you, personally, and not indirectly through any lawyer, agent, or any third party individual – shall cooperate and assist me and others at my law firm and provide us with information that we deem necessary to effectuate the Receiver Order.
>
> The Receiver is furthermore instructing you as follows:
>
> First, **you are expressly prohibited from retaining any legal counsel**. **Should you retain any legal counsel, the Receiver may move the Court to find you in contempt** of the Receiver Order.

(Attached Exh. B, 5th Cir. Ct. App. Case 10-11202, Dkt. 00511388248: Email from Barry

[1] After nearly 2 years after the receivership order, The District Court ultimately allowed Baron to hire the undersigned attorney, where it approved payment of $50,000 over the Receiver's objections.

Golden, Gardere Wynne Sewell LLP to Baron, dated Dec. 2, 2010)(emphasis added). After two years of Mr. Baron being in the receivership, the Fifth Circuit reversed the receivership order. While the Court did not specifically use the words "due process", it is readily apparent that the Court found that the freezing and seizure of property through a receivership proceeding violated due process. That conclusion is no less valid when the same alleged creditors come to bankruptcy court with the same unsecured claims that have not been reduced to judgment. Martin Thomas was appointed as bankruptcy counsel to Mr. Baron in the Ondova case and was purportedly instructed by either the receiver or Judge Jernigan that he could not file pleadings.or make any statements to the court to represent Baron's interest . Judge Furgeson became irate when he learned that Martin Thomas had been instructed not to file any pleadings to defend Mr. Baron's interests in the Ondova case, telling Mr. Thomas that he did not agree to Thomas $10,000 a month to be a "potted plant." [Exhibit B-1, September 27, 2010 hearing]. Judge Furgeson understood that the judiciary cannot appoint lawyers who create only the appearance, but not the reality of representation by counsel.

2. On December 18, 2012 (the "Petition Date"), several parties ("Petitioning Creditors") who had just been rebuffed by the Fifth Circuit in the receivership appeal, filed an involuntary chapter 7 bankruptcy petition (the "Involuntary Petition") against Baron in this Bankruptcy Court. This involuntary proceeding was filed approximately two hours after the Fifth Circuit Court of Appeals (the "Fifth Circuit") entered an order (the "Reversal Order") on the same date: (a) reversing an earlier order appointing a receiver over all of Mr. Baron's personal assets (the "Receivership Order"), previously entered by the United States District Court for the Northern District of Texas (the "District Court") on November 10, 2010, in a separate lawsuit styled *Netsphere, Inc., et al. v. Jeffrey Baron*, Civil Action No. 3:09-cv-0988-L

(the "Lawsuit") and (b) instructing the District Court to wind down the receivership estate and direct the receiver, after satisfaction of certain expenses incurred by the receiver, to expeditiously return the property held and managed by the receiver (the "Receivership Property") to Baron. *See Netsphere, Inc*., 703 F.3d at 313. This never happened.

3. Rather, on June 17 and 18, 2013, the Bankruptcy Court held an evidentiary hearing regarding the Involuntary Petition. (*See* Attached Exh. G & G-1, *In re Jeffrey Baron*, Case No. 12-37921-sgj7, Trial Transcript of June 17, 2013.) Then, on June 26, 2013, the Bankruptcy Court entered the Order for Relief, adjudicating that the involuntary chapter 7 proceeding against Baron was appropriate and subjected Baron to such proceedings. (Attached Exh. H, NDTX Bankr. Ct., Case 12-37921-sgj-7 Dkt 240: "Order for Relief".) The Order for Relief is a final judgment that can be appealed pursuant to 28 U.S.C. § 158.

4. On July 8, 2013, Baron timely filed a Notice of Appeal, appealing the Order for Relief to the District Court. (Attached Exh. U, NDTX Bankr. Case 12-37921-sgj7, Dkt 253: Notice of Appeal.) Baron's argument on appeal, in large part, centers around the Fifth circuit precedent in *Netsphere* where it found that the Receivership Order should never have been entered in the first instance. Significantly, the Fifth Circuit also found that the district court erred by creating a receivership to satisfy the debts of non-judgment creditors, which included the Petitioning Creditors in the instant case. *Netsphere, Inc. v. Baron*, 703 F.3d 296. Before the appellate court was an interlocutory order entered by Judge Furgeson on May 11, 2011 (Attached Exh. I, NDTX Case 3:09-cv-00988-F, Dkt 575) (the "Compromise Order"), after an evidentiary hearing: (a) directing that the Receiver pay twenty two (22) lawyers who previously represented Baron and other entities $870,237.19 for legal services rendered and (b) reserving Baron's right to assert claims against those lawyers. This Compromise Order was stayed by the District Court

on June 18, 2012. (Attached Exh. J, NDTX Case 3:09-cv-00988-F, Dkt 987: the "Fee Stay Order") because the Court did not wish to enter a final judgment until the Fifth Circuit ruled on the validity of the receivership. The Fifth Circuit vacated the receivership order finding that the claims being made in the receivership were unliquidated claims that had not yet been reduced to judgment and could not be the subject of a receivership. *Netsphere, Inc*., 703 F.3d at 310.

5. In subsequent proceedings, the District Court reiterated the Fifth Circuit's holding in its Receivership Fee Order entered on May 29, 2013, specifically holding that "**the Fifth Circuit found that this [District] Court could not order the payment of these fees from the Receivership estate….**" However, in contravention to both the Fifth Circuit and District Court orders, the Bankruptcy Court held that there was no *bona fide* dispute regarding the Petitioning Creditors' claims and thus (a) the Petitioning Creditors had standing to bring the Involuntary Petition and (b) the insolvency standard for the Involuntary Petition under section 303(h)(1) had been met. (*See* Exh. E, Findings.)

6. This Motion is filed because the involuntary bankruptcy process was wrongfully commenced and has denied Baron due process of law and equal protection under the law, in that all of his assets have been taken away from him (despite the Reversal Order by the Fifth Circuit), and he does not have adequate funds with which to hire counsel to defend against the Involuntary Petition while the trustee, receiver and/or opposing parties appear to have or had unfettered access to millions of dollars of Baron's assets. If a stay is granted and the Reversal Order is implemented as mandated by the Fifth Circuit, Baron will have access to funds necessary to adequately prosecute the appeal on the Involuntary Petition, as well as defend himself in the Lawsuit.

III.
RELIEF REQUESTED

Standard for Stay Pending Appeal

7. Bankruptcy Rule 8005 provides, in pertinent part:

> A motion for stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court . . . , the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief . . . may be made to the district court . . . , but the motion shall show why the relief . . . was not obtained from the bankruptcy judge.

Fed. R. Bankr. P. 8005. While Bankruptcy Rule 8005 expressly authorizes that a stay motion can also be directly filed in the district court with original jurisdiction on certain grounds, Local District Court Rule 8005.1 provides that a motion for stay pending appeal must first be made in the bankruptcy court.

8. The Fifth Circuit employs a four part test in determining whether to grant a stay pending appeal:

> (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest.

Ruiz v. Estelle, 666 F.2d 854, 856 (5th Cir. 1982); *Arnold v. Garlock, Inc.*, 278 F.3d 426, 438-39 (5th Cir. 2001); *Hunt v. Bankers Trust Co.*, 799 F. 2d 1060, 1067 (5th Cir. 1986); *In re Texas Equip. Co., Inc.*, 283 B.R. 222, 227 (Bankr. N.D. Tex. 2002). The Fifth Circuit, however, "has refused to apply these factors in a rigid mechanical fashion." *Reading & Bates Petroleum Co. v. Musslewhite*, 14 F.3d 271, 272 (5th Cir. 1994). Accordingly, courts within the Fifth Circuit have determined that "the absence of any one factor is not fatal to a successful motion for stay . . ." *In*

re Permian Producers Drilling, Inc., 263 B.R. 510, 515 (W.D. Tex. 2000) (*citing In re First Savs. Ass'n*, 820 F.2d 700, 709 n.10 (5th Cir. 1987)); *see also Garlock*, 278 F.3d at 438-39 (noting that while "each part [of the stay pending appeal test] must be met . . . the appellant need not always show a probability of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting stay") (internal citations omitted).

9. Application of the foregoing standard to the instant case warrants the imposition of a stay pending appeal to preserve Baron's due process rights and equal protection under the law, which includes a meaningful right to appeal the Order for Relief.

(1) Baron is likely to succeed on the merits.

(a) Petitioning Creditors Lack Standing

10. Section 303(b) of the Bankruptcy Code provides, in relevant part, that an involuntary chapter 7 case is properly commenced "by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability ***or*** the subject of a bona fide dispute as to liability or amount . . . if such noncontingent, undisputed claims aggregate at least $15,325 . . ." 11 U.S.C. § 303(b)(emphasis added). Unless each of the petitioning creditors comply with this provision in section 303(b), they lack standing to commence an involuntary petition. *See Whitmore v. Arkansas*, 495 US 149, 154 (1990). The holdings of the District Court and Fifth Circuit in the Lawsuit and subsequent appeal unequivocally prove that **all** of the Petitioning Creditors' claims are, at least, the subject of a *bona fide* dispute as to liability or amount and therefore such parties lack the requisite standing. The Fifth Circuit's Reversal Order effectively reversed the Compromise Order, specifically holding that a receivership cannot be used to collect or litigate disputed claims:

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> [F]or those unpaid attorneys who had filed claims, **the claims had not been reduced to judgment such that a receiver would have been proper** to "set aside allegedly fraudulent conveyances by Baron."

Netsphere, Inc., 703 F.3d at 308. The Court further held that: "Baron's former attorneys were free to make claims" or "the attorneys could file suit in a court of competent jurisdiction to collect the fees owed." *Id.* The Fifth Circuit noted that their holding was supported by the Supreme Court's decision in *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 310 (1999). *Netsphere, Inc.*, 703 F.3d at 310. In *Grupo Mexicano*, the Supreme Court held a federal district court did not have authority to issue a preliminary injunction preventing defendant from transferring assets in a more action for money damages:

> [F]ederal Courts in this country have traditionally applied the principal that courts of equity will not, as a general matter, interfere with a debtor's disposition of his property at the instance of a nonjudgment creditor.

Grupo at 329. Indeed, the Fifth Circuit found that "[T]he case before us is similar to *Grupo Mexicano* to the extent that the receivership remedy was for the purpose of controlling Baron's transferring of funds that were to be paid to attorneys—**nonjudgment creditors**." *Netsphere, Inc*., 703 F.3d at 310 (emphasis added). It is well settled that the factual findings and legal holdings of the Fifth Circuit are binding on all lower courts.

11. Judge Furgeson's ruling during the *Netsphere* receivership similarly demonstrates that there has not been a final adjudication of the Petitioning Creditors' claims. The Petitioning Creditors were initially "stayed by the Receivership Order from taking any action to establish or enforce any claim, right, or interest" against Baron or the receivership assets. (Exh. A, Receivership Order at 12.) Subsequent to entry of the Receivership Order, and without any lawsuits pending before the District Court to fully and fairly adjudicate the Petitioning Creditors' claims, the District Court entered the Compromise Order, making a *preliminary* determination that Baron owed 22 lawyers, including the Petitioning Creditors, $870,237.19, which could be paid from the Receivership

Estate.[2] (Exh. H, Compromise Order.) The district court held that Baron's counterclaims would be litigated at a later time. (*Id.* at ¶ 36.)

12. The District Court decided that the unliquidated fee claims of Baron's former attorneys had not properly adjudicated to any finality, especially given the then-pending appeal to the Fifth Circuit. In the Compromise Order, the District Court itself stated:

> [T]he Court understands that certain of the ***claimants*** of the Former Attorney Claims are claiming that, in addition to the amounts of the Former Attorney Claims, they are entitled to bring Putative Claims. Furthermore, the Court understands that eight of the ***claimants*** of the Former Attorney Claimants are seeking the amounts not being awarded to them because of the Fee Cap Reduction (and which these claimants have a right to challenge through motion before this Court or through an appeal). The Court also understands that Baron claims that certain of the claimants of the Former attorney Claims are allegedly liable for legal malpractice and other civil claims.

13. (Exh. H, Compromise Order ¶ 36.)(emphasis added). **These rulings are an objective finding that the Petitioning Creditors' fee claims were subject to a *bona fide dispute as to liability or amount***. That is precisely why the District Court held that "Baron maintains ***any and all*** rights to bring, after the end of the Receivership, the Baron Claims" (which are defined as "legal malpractice and other civil claims"). (*See* Exh. H, Compromise Order ¶¶ 35-36.)(emphasis added.) **By definition, partial interlocutory orders have no collateral estoppel effect because Baron was not allowed a full and final adjudication of his counterclaims, as well as the law firm claims.** The Bankruptcy Court relies on *Gupta v. E. Idaho Tumor Inst., Inc. (In re Gupta),* 394 F.3d 347, 351 n.4 (5th Cir. 2004) to support its proposition that collateral estoppel applied to the reversed receivership. (Exh. E, Findings at 25). However, the Fifth circuit, in *Gupta,* actually reversed the bankruptcy court and district court for erroneously according

[2] The hearing held by Judge Furgeson can only, at best, be described as a truncated hearing held only to determine the amount of the claims.

collateral estoppel effect to a state court judgment when the issue was not actually fully litigated.[3] *Gupta v. E. Idaho Tumor Inst., Inc. (In re Gupta)*, 394 F.3d 347 (5th Cir. 2004). In *Gupta*, after the appellant debtor sought bankruptcy relief following a state court judgment entered in favor of Appellee co-joint venture, the bankruptcy court found that the debtor was essentially a managing partner of the parties' joint venture. *Id.* The Fifth Circuit unequivocally held no such "finding" was litigated or made in the state court proceedings and collateral estoppel could not attach to a non-existent finding, as here. *See Id.* This Court, however, should afford collateral estoppel effect to the Fifth Circuit findings that the Petitioning Creditors' claims are unsecured claims not reduced to judgment and Bankruptcy Court lacks jurisdiction under the Code. While forcing clients to pay legal fees may, in some cases, be a proper exercise of judicial power, the bankruptcy court lacks the authority to impose an involuntary bankruptcy over an alleged debtor to achieve that goal. Moreover, the Compromise Order is void, as a matter of law, because it was based solely on the premise that a properly appointed receiver can waive an individual's (*ie*, Baron's) 7th Amendment right to a jury trial in a contractual dispute based on state law. (*See* Exh. I, Compromise Order ¶¶ 14-20.) Baron properly asserted these jury trial rights before the preliminary "assessment" of any attorney fees was made and he was denied the opportunity to fairly, properly and justly contest these assessments by the Receiver. (Attached Exh. K, NDTX Case 3:09-cv-00988-F, Baron's *Response, Objection, Motion for Leave to File, and Motion for Relief with Respect to Receiver Assessment of Former Attorney Claims*, Dkt 443 at pg. 16 ("Notably, Jeff Baron object (sic) to this process, and demands a jury trial for each and every claim against him, as his constitutional right."). When the Fifth Circuit reversed the Receivership Order, however, the Court effectively vacated the receiver's authority to enter into the Compromise Order or to waive Baron's

[3] "Dr. Gupta was essentially a managing partner of the party's joint venture. Unfortunately, no such "finding" was litigated or made in the state court proceedings, and, collateral estoppel cannot attach to a non-existent finding." *Gupta*, 394 F.3d at 351.

constitutional rights to contest a disputed claim. *Hernandez v. Ebrom*, 289 S.W.3d 316, 325 (Tex. 2009) *citing Sclafani v. Sclafani*, 870 S.W.2d 608, 611 (Tex. Ct. App. 1993)("The setting aside of an order of receivership has 'the effect of nullifying all intervening acts of the receiver…").

14. Moreover, on June 2012, recognizing the interlocutory nature of its Compromise Order, the District Court entered an Order Regarding Motion to Clarify Instruction to Receiver on Payments to Former Baron Attorneys (*See* Exh. J, Fee Stay Order), which unequivocally **stayed** the effect of the Compromise Order, including the payment of any fee claims by the former Baron attorneys, and 2 years later (on May 29, 2013) the District Court even held that this stay was to be enforced **permanently**, in light of the Reversal Order. (Exh. H, Fee Order).

15. In winding down the receivership, the District Court entertained fee applications from various law firms representing, or purporting to represent, the Receiver. On May 6, 2013, the Petitioning Creditors filed Petitioning Creditors' Omnibus Comment to Receivership Professional Fee Applications ("Omnibus Comment") (Receivership Fee Order), wherein they requested that the District Court limit the fees awarded to the Receiver and his professionals, so that there would be amounts left in the Receivership Estate to pay the Petitioning Creditors' claims. (*See* Attached Exh. L, NDTX Case 3:09-cv-00988-F, Dkt 1268: Omnibus Comment ¶ 12.)

16. On May 29, 2013, in response to the Omnibus Comment—which was interpreted as a general objection—the District Court entered an Order On Receivership Fees (Exh. C, Receivership Fee Order), wherein the District Court made the following important findings regarding the Fee Stay Order: (a) the Petitioning Creditors' "claims total approximately $1,400,000.00" (tellingly, not the amount previously allowed under the Compromise Order) and (b) the Fee Stay Order actually "***stayed*** its [Compromise O]rder and instructed the Receiver to refrain making such payments until the Fifth Circuit ruled on the Receivership." (Exh. C,

Receivership Fee Order at 44)(emphasis added). More importantly, in light of the Reversal Order, the Receivership Fee Order now **reaffirmed** the stay under the Fee Stay Order, specifically finding that that "the Fifth Circuit found that this Court could not order the payment of these fees." (Exh. C, Receivership Order at 45 and n.16.) Thus, the Compromise Order was essentially **vacated**--and properly so, as Baron, at a minimum, was denied the constitutional right to contest the disputed claims in front of a jury of his peers.

17. On February 20, 2013, given the Fifth Circuit appeal, the uncertainty of the Receivership Order and the lack of a fair trial on the merits of the Involuntary Petition, the Bankruptcy Court itself issued an oral ruling that the involuntary bankruptcy against Baron was "stayed/abated." (*See* Attached Exh. M, *Transcript of Bench Ruling Motion for Summary Judgment (Doc 52) and Status Conference before the Honorable Stacey G. Jernigan, United States Bankruptcy Judge*, dated February 20, 2013 at pg. 44) Since that time, the Fifth Circuit has affirmed its Reversal Order, but the Bankruptcy Court, instead of taking its cue from the higher court, forged forward with the involuntary proceeding against Baron.

18. To be abundantly clear, the issue here is not whether there is a dispute as to whether Baron hired almost all of the Petitioning Creditors. The issue here is whether the Petitioning Creditors performed under their contractual arrangements with Baron and if Baron paid them according to their contractual arrangements and, if not, whether their fee claims are subject to a *bona fide* dispute as to liability **or** amount. Simply stated, these amounts are disputed. The Fifth Circuit found, as fact, that the claims were disputed and not reduced to judgment. The District Court recognized that the claims were subject to a bona fide dispute in the Compromise Order, the Fee Stay Order and the Receiver Fee Order. Baron did not file lawsuits or counterclaims against the law firms (Petitioning Creditors) because he was deprived

of his right to fully defend himself due to the Receivership Order that was ruled invalid and, now, due to an involuntary bankruptcy where the **Petitioning Creditors and the Bankruptcy Court are simply repeating the same mistakes that were reversed by the Fifth Circuit**.

19. The Receivership's and professionals' recent fee applications in the District Court (Attached Exh. N, NDTX Case 3:09-cv-00988-F, Dkts 1229, 1232 and 1233) unquestionably demonstrate that (a) the Receiver has accrued approximately $5.2 million in professional fees over approximately 2 years (or an average of $200,000 per month) and (b) competent counsel is absolutely required to represent a party—especially the defendant—in a case like this. *See Id.* In light of the reality, the Bankruptcy Court's prior offer on January 16, 2013, to pay proposed bankruptcy counsel for Baron $25,000 to defend against the Involuntary Petition (for 6 months) and the District Court's prior payment of $50,000 for counsel in the Lawsuit (a matter with over 3,000 docket entries) are mere token gestures in clear contravention of due process of law and equal protection under the law. (*See* Exh. O, *Transcript of Hearing Status Conference*, dated January, 16, 2013: "I am going to issue a recommendation to Judge Furgeson that he allow 25,000 dollars to be released from the receivership … to pay counsel of Mr. Baron's choice, in connection with contesting the involuntary petition.")[4].

20. The due process clause of the U.S. Constitution reads: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Substantive due process cases inquire whether a statue or government action "'shocks the conscience' or interferes with rights 'implicit in the concept of ordered liberty.'" *United States v. Salerno*, 481 U.S. 739, 746 (1987). Baron argues that the fee limitation or restriction imposed by the Bankruptcy Court unconstitutionally interferes with Baron's substantive due

[4] In actuality, Baron's pre-involuntary counsel billed in excess of $125,000.

process rights to access the courts and to appeal by chilling qualified lawyers from taking his case. Baron's counsel requested funding on May 11, 2011. [Exhibit 0-1] Indeed, defense of Baron against multitudes of lawyers in the Bankruptcy Court is estimated to cost a minimum of $500,000 in attorney fees to Baron alone where the Bankruptcy Court's Fee limitation of $25,000 has the effect of precluding Baron from representation in the complex matter. This comparatively small retainer likely contributed to the limited engagement of Mark Stromberg and Alan Busch, Baron's pre-involuntary lawyers, both of whom filed a motion to withdraw on the Bankruptcy Court entering an Order for Relief placing Baron into involuntary proceedings. (Attached Exh. P, NDTX Bankr. Case No. 12-37921, Dkt Nos 241 and 243).

21. The Bankruptcy Court's Fee limitation further denies Baron equal protection under the law. The United States Constitution provides that no person shall be denied equal protection of the laws. U.S. Const. amend. XIV, § 2. Equal Protection. This is essentially a mandate that similarly situated individuals be treated alike, absent a sufficient reason to just*ify the disparate treatm*ent. *See City of Cleburne v. Cleburne Living Ctr., Inc*., 473 U.S. 432, 439 (1985); *Corn v. New Mexico Educators Fed. Credit Union*, 889 P.2d 234, 244 (NM Ct. App. 1994). The court in *Corn* evaluated an equal protection challenge to a fee limitation and declared the fee limitation unconstitutional because it applied only to one side of the litigation. *Id*. at 244. As applied, the Bankruptcy Court's orders denying or otherwise prohibitively restricting Baron's Fee applications for attorneys creates two classes of litigants: those who are entitled to unfettered access to Baron's funds for attorney fees (such as the receiver and the trustee); and Baron himself, whose assets are now property of the bankruptcy estate such that he cannot afford representation in the bankruptcy court.[5] In facing an army of lawyers in the Bankruptcy Court

[5] Notably, Baron does not work and has survived on an allowance he received from the court appointed receiver. As the receivership winds down, Baron will not only have issues with attorney fees, but also living expenses.

while he is unable to access funds to obtain adequate representation, Baron is being denied equal protection under the law.

22. The Petitioning Creditors and the Bankruptcy Court were, as a matter of law, bound to follow the rulings of the Fifth Circuit and the District Court. Because the Bankruptcy Court incorrectly applied the doctrine of collateral estoppel and relied on a case that reversed another bankruptcy court that incorrectly relied on the doctrine of collateral estoppel, it erred by failing to analyze the Fifth Circuit's findings and determination that the law firms' claims had not been reduced to judgment and that they could not litigate disputed state law claims in a receivership proceeding. Regardless of the amount of the Petitioning Creditors' claims, their claims are subject to a *bona fide* dispute as to liability or amount and Baron has been essentially stayed—because of the sequestration of all his assets—from filing appropriate actions to further demonstrate the legitimate dispute.

(b) Petitioning Creditors Failed to Establish the Insolvency Requirement.

23. Section 303(h) of the Code sets forth the insolvency requirement for an involuntary filing. That section provides, in relevant part, that a bankruptcy court must find, after conducting a trial, that "the debtor is generally not paying such debtor's debts as such debts become due **unless** such debts are the subject of a bona fide dispute as to liability or amount." 11 U.S.C. § 303(h)(emphasis added).

24. The Bankruptcy Court found that Baron paid all of his ordinary debts other than legal expenses as they become due. (*See* Findings ¶¶ 51, 54.) But, as discussed above, even before the Receivership Order was entered on November 10, 2010, Baron has been disputing the Petitioning Creditors' fee claims as to liability or amount. (*See, e.g.*, Exh. K, Dkt. 443). He has never had the fair opportunity to litigate or defend against these claims, because the Receiver

purported to waive Baron's jury trial rights. (Exh. I, Compromise Order ¶¶ 16-20.) Even in the summary proceeding to which Receiver agreed prior to the Compromise Order, Baron lodged objections as to the amount or liability of the Petitioning Creditors' fee claims. (Exh. K, Dist. Ct. Dkt. 443). The fact that the Fifth Circuit reviewed the legality of the Receivership Order and ruled in Baron's favor on the ground that the District Court could not appoint a receiver to protect the claims of non-judgment creditors demonstrates that there was a *bona fide* dispute as to their claims.

25. There was, and continues to exist, *bona fide* disputes as to the Petitioning Creditor and other attorney-creditor claims is the fact that many of their disputes were never resolved in state courts, for example:

(1) *Jeff Baron v. Gerritt M. Pronske, Individually and Pronske & Patel, P.C.*, District Court, Dallas, Texas, Cause No. 10-11915 removed by Gerritt Pronske to Bankruptcy Court in 2010; stayed and pending before the instant Bankruptcy Court Judge Stacey Jernigan.

(2) *David Pacione v. Jeffrey Baron*, District Court, Dallas, Texas, Cause No. DC-10-06464 (Case Type: Debt).

(3) *Jeffrey T. Hall v. Jeffrey Baron*, Dallas, Texas, In the Justice Court, Precinct 3, Place 3, Cause No. JC-10-00721N.

(4) *Freidman & Fieger, LLP Jeffrey Baron and The Village Trust, v. Freidman & Feiger, LLP, Lawrence Friedman, Individually, and Ryan Lurich, Individually*, Dallas, Texas, 44th Judicial District, Cause No. DC-10-12100 (Case Type: Debt).

(Attached Exh. Q.)

26. Moreover, even the Bankruptcy Court grappled with the fact that Baron has been prevented from paying his former lawyers' fees—the only debts at issue—since Mr. Baron's assets have been tied up in a Receivership for almost three years (a Receivership that was overturned by the Fifth Circuit). (*See* Exh. E, Findings.) After being placed in receivership, Baron had no rights nor did he personally possess assets to settle the Petitioning Creditors'

claims. (*E.g*., Exhs. A, Receivership Order and B, Corr. From Receiver's Attorneys). Baron was not allowed to file counterclaims or engage in discovery—rights afforded to individuals as a matter of due process. *Id.* Simply stated, Baron had no control whatsoever the Receivership Assets; only the District Court did, and *it* failed to pay the Petitioning Creditors during the nearly three years of receivership – not Baron. *See Id.* Even after the Fifth Circuit vacated the Receivership Order in December 2012, the District Court was still in charge of winding down the receivership. *Netsphere, Inc.*, 703 F.3d 296, 313-314. Ultimately (and as late as May 29, 2013), the District Court ordered the Receiver <u>not</u> to pay the Petitioning Creditors' claims. (Exh. C, Fee Order).

27. Baron has not had the right or the ability to generally pay his debts as they become due." (*See* Findings ¶ 58.) The Bankruptcy Court, nevertheless, found that Baron was not paying his debts timely, because "there was more than enough value from the assets in the Receivership to pay the legal fees (if Baron had wanted to pay the fees and cease the Receivership at any time.)" (*see id.*) This finding is erroneous for several reasons. Most notably, it is well settled that a federal court cannot freeze a defendant's assets on claims of a non-judgment creditor. *Netsphere, Inc.*, 703 F.3d at 309.

a. The bankruptcy court found that Baron "should have settled the case" after being placed in a receivership. First, this finding is clearly erroneous as Baron filed a wind down plan to resolve the issues consistent with the Fifth Circuit's decision. [Exhibit V, Baron's Wind-Down Plan]. The finding is also contrary to *Netsphere* and *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). Baron had no ability to settle anything because he was in a receivership and unrepresented by trial counsel until September 27, 2012.

Baron's right to settle or otherwise enter into contracts was limited and placed in the hands of a receiver.

b. The Court's finding also overlooks the fact that Mr. Baron repeatedly tried to settle the claims in the district court through a wind-down plan [Exh. H], a separate settlement plan submitted to the district court [Dist. Dkt. 1284] and actually submitted a Rule 9019 Joint Motion to Approve Compromise Agreement and Wind-Down Plan [Dkt. 228], which was rejected by this Court. In May, 2011, Mr. Baron tried to resolve the case, but his plans were rejected. [Exhibit V].

(c) Order for Relief is Automatically Stayed

29. Bankruptcy Rule 1018 provides that, "unless the [bankruptcy] court directs and except as otherwise prescribed on Part 1 of the [Bankruptcy R]ules, Bankruptcy Rule 7062 applies to all proceedings contesting an involuntary proceeding. *See* Fed. R. Bankr. P. 1018. Bankruptcy Rule 7062 incorporates Rule 62 of the Federal Rules of Civil Procedure, which provides that "no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry." Fed. R. Bankr. P. 7062.

30. Ignoring Bankruptcy Rules 1018 and 7062, the Order for Relief demands Baron file a list of creditors within 7 days after the order, and bankruptcy schedules and statement of financial affairs within 14 days after the entry of such order. (Exh. H, Order for Relief). Most disturbing is that after Baron's counsel filed a motion to withdraw the next day, the Bankruptcy Court (a) denied Baron's request for a small extension so that he could find representation for the complex involuntary proceedings, and (b) offered the Petitioning Creditors the option to "seek the imposition of sanctions" against a non-represented Baron if he failed to independently complete the complex tasks. (Exh. H). Also disturbing is that, while even the newly appointed

chapter 7 trustee has had an opportunity to engage competent bankruptcy counsel at a cost to the estate, Baron has not. There is no reason that the Order for Relief should not be stayed to allow Baron the opportunity to find counsel to properly prosecute his appeal of the Order for Relief and pending litigation.

(2) Baron will suffer irreparable injury if the stay is not granted

31. The Fifth Circuit has already held that liquidation of Baron's assets is sufficient to show the irreparable injury necessary for a stay. *See Netsphere, Inc.*, 703 F.3d 314, n.2 ("We stayed the closing on sales resulting from an auction of domain names. Our ruling means no closing may occur, and the stay is made permanent.")

32. The Northern District of Texas District Court has also previously determined that irreparable harm would occur if Receivership assets were sold or otherw*ise* liquidated prior to a full hearing. (Attached Exh. R, NDTX Case 3:12-cv-04489-L, Dkt. 5 ("Due to the urgency of the motion…and the **irreparable injury** that could occur if the sale is permitted to proceed, the court grants Jeffrey Baron's Emergency Motion for Stay Pending Appeal…").)(emphasis added.)

33. After the Receivership attorneys retain the approximately $5.2 million dollars in fees from the Receivership estate, only $300,000 or so in liquid assets will remain. (*See* Exh. C.) Should this Court fail to stay the Order for Relief, and in order to pay the nearly $5,000,000 in disputed lawyer fees the bankruptcy court will invariably allow the trustee to move forward to liquidate the same spendthrift trust assets the District and Fifth Circuit stayed them from liquidating on the eve of the Fifth Circuit's Reversal Order. An action that has already been determined to cause irreparable harm.

34. Moreover, if a stay pending appeal is not granted, Baron's right to due process of law will be eviscerated. Since the Receivership Order was entered, all of Baron's assets have

been frozen, precluding or otherwise limiting Baron's right to hire counsel to adequately defend against the disputed claims being made by various nonjudgment creditors, including the merits of the Involuntary Petition.[6] Baron has pointed this problem out to the Bankruptcy Court and District Court in motions requesting access to funds to hire counsel. (*See, e.g.* Attached Exhs. B, K, O, and S: Baron's Motions for Fees.) At best, the Bankruptcy Court has denied or otherwise strictly limited Baron's requests for fees. (Exh. O.) The Bankruptcy Court is now claiming exclusive jurisdiction over all of Baron's assets and is even looking to bring more assets into the bankruptcy estate through the assets of Novo Point, LLC and Quantec, LLC, two entities that Baron asserts are part of a spendthrift trust associated with research to cure juvenile autoimmune Type I Diabetes. (*See* attached Exh. T, Bankr. Ct. Dkt. 251: Order Setting Status Conference.) As discussed above, the Bankruptcy Court is even compelling Baron, under threat of sanctions, to actively participate in this complicated bankruptcy *pro se* and thereby waive many of his constitutional rights. (*See, e.g.*, Order for Relief ("if the debtor does not prepare and file the list of creditors [within 7 days], schedules and statement of financial affairs [within 14 days]…[t]he petitioning creditors and the bankruptcy trustee may seek the imposition of sanctions against the debtor…").)

35. Baron asserts that the involuntary bankruptcy proceeding is nothing more than a continuation of the receivership---both dedicated to collecting debts for lawyers who possess nothing more than disputed claims where, similarly, Baron has been unable to pay for bankruptcy counsel to adequately defend himself. Given the deck of cards stacked against him, and without help from a higher court, who knows how many of Baron's personal freedoms will continue to be sacrificed?

[6] After Baron's attorney of choice was denied his request for a full retainer, Baron hired Mark Stromberg, whom was the only attorney Baron could find to accept the Bankruptcy court's offer of $25,000. Stromberg only agreed to the representation if limited to matters prior to an Order for Relief.

36. Indeed, Courts have consistently held that a deprivation or violation of rights constitutes irreparable harm warranting a stay pending an appeal. *Hoekstra v. Oak Cluster Comm. Council (In re Hoekstra)*, 268 B.R. 904, 907 (Bankr. E.D. Va. 2000) (irreparable harm found when creditor stripped of potential lien rights); *In re Sphere Holding Corp.*, 162 B.R. 639 (E.D.N.Y. 1994) (irreparable harm of debtor forced to close business due to pressure by creditors); *In re Allegheny Health Education and Research Foundation*, 252 B.R. 309 (Bankr. E.D. Pa. 2002) (finding irreparable harm where party being denied rights.)

37. Moreover, the dissipation of assets by a Trustee in this case will simply result in a pyrrhic victory if Mr. Baron prevails in this appeal. The Trustee and lawyers will likely charge the same kind of fees as the Receiver and a stay of the proceedings will protect Baron's assets.

(3) <u>Granting the Stay Will Not Substantially Harm Other Parties</u>

38. The "other parties" in interest in this case are the Petitioning Creditors – all lawyers who know how to protect their rights in bankruptcy court and other courts, some even filing lawsuits against Baron. While these lawyers are claiming to be owed a substantial sum of money, none can demonstrate that his or her constitutional rights have been or will be violated, or that they will not have their day in court to adjudicate their claims without bankruptcy. And Baron even agrees, as he had in the Lawsuit numerous times, that he is willing to pay all claims that have been properly adjudicated through a trial.

39. Baron, on the other hand, has been deprived all of his assets for almost three years, and many of his constitutional rights have been taken away with respect to his alleged creditors. At the request of his creditors, a receiver was appointed to take control over all of Baron's assets, even exempt assets (like IRA plans and trusts with spendthrift clauses) that creditors could not typically touch. When the Fifth Circuit reversed the receivership, the

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creditors maneuvered to continue the lock on Baron's assets by filing an involuntary petition only hours later. Since November 2010, with little or no assets available, Baron has not been able to adequately defend him against the numerous allegations made by various parties, including the Petitioning Creditors. (*See*, *e.g*., Exh. K.) As a result, Baron has been negatively portrayed in the District Court, Bankruptcy Court and Fifth Circuit Court of Appeals and his right to fair trials against non-judgment creditors has been sacrificed. This pattern will assuredly continue if this involuntary bankruptcy is allowed to proceed and Baron is unable to hire competent counsel.

40. It is clear that Baron upset a lot of lawyers who know their way around courts and around arguments. There have been numerous claims made by the Petitioning Creditors that Baron continuously hires and fires new attorneys as delay tactics. These assertions date back to the original appointment of a Receiver and continued through the hearings leading up to the Compromise Order. However, Baron had legitimate defenses to these claims in the state court proceedings, and in the district court which were never fully or fairly litigated. Even assuming one credits these asseertions, the Fifth Circuit unequivocally stated that a human receivership was not the proper remedy, and creditors and the courts could and should rely on other remedies, none of which included involuntary bankruptcy.

41. Given there were several lawful remedies suggested by the Fifth Circuit to address Baron's alleged vexatious behavior toward his former attorneys, the Petitioning Creditors will not be prejudiced by the stay of the Order for Relief and the ability of Baron to have access to his property.

(4) <u>Public Interest Would be Served by Granting a Stay</u>

42. Fundamentally, public interest will be served if a stay of the Order for Relief was

entered because this involuntary bankruptcy appears to be geared solely toward circumventing the Fifth Circuit's Reversal Order. **The Bankruptcy Court's Order for Relief violates the public policy expressed by the Fifth Circuit in *Netsphere*.** An alleged debtor's assets cannot be frozen or tied up by a receiver based on mere claims of non-judgment creditors, including the Petitioning Creditors. The Fifth Circuit ruled that the claims of the law firms (including the Petitioning Creditors) violated fundamental principles that receiverships cannot be used to freeze funds unless or until the debts are reduced to judgment. The Bankruptcy Code also recognizes that nonjudgment creditors, or creditors' whose claims are subject to *bona fide* dispute as to liability or amount, cannot avail themselves of the involuntary bankruptcy remedy. *See* 11 U.S.C. § 303(b). The other public interest that assuredly will be undermined if a stay is not granted is Baron's due process rights to regain his property (which was wrongfully taken away) and to contest the various allegations made by the Petitioning Creditors in a proper forum. Instead, if no stay is granted, the bankruptcy will likely proceed with full steam ahead, just as the Receivership proceeded, and Baron will be forced to participate with little or no help from counsel. There is a very serious danger that he will be forced to waive many of his constitutional rights, including the right to a trial by jury and the right to challenge state law claims in front of a state court or Article III Judge, as prescribed by the Supreme Court in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

43. Moreover, the public interest and judicial economy will be served if the stay on all bankruptcy proceedings is imposed and Baron is allowed to hire professionals and counsel to finalize the Lawsuit. The Fifth Circuit Court of Appeals in the Reversal Order appears to have given Baron the tools (*i.e.*, his property) to complete this task. The intervening involuntary bankruptcy strips Baron of any right to manage any of his property, property exempt from the

bankruptcy estate. The intervening bankruptcy has even resulted in an appointment of a trustee which, like the Receiver, can again attempt to waive Baron's constitutional rights with respect to non-judgment creditors, as well as his rights to defend against claims in the underlying Lawsuit, and can even try to waive his right to have privileged conversations with his counsel.

IV.
CONCLUSION

44. For the foregoing reasons, Baron requests that the Court enter a stay of the Order for Relief pending the appeal of the same and to stay the appointment of an Interim Trustee.

Dated: July 15, 2013

Very respectfully,
The Cochell Law Firm, P.C.

By: /s/ Stephen R. Cochell
Stephen R. Cochell
Texas Bar No. 24044255
7026 Old Katy Rd., Ste 259
Houston, Texas 77024
(713)980-8796 (phone)
(713)980-1179 (facsimile)
srcochell@gmail.com

LBR 7001-1(b) CERTIFICATE OF CONFERENCE

On July 11, 2013, undersigned counsel contacted several parties in interest in this matter, including John Litzler, Gerrit Pronske, Jeffrey Fine, John MacPete, Richard Roberson and Ray Urbanik to discuss the motion and ascertain whether there will be opposition to Baron's request for stay. At the time of filing, this motion had no concurrence, and is therefore OPPOSED.

/s/ Stephen R. Cochell
Stephen R. Cochell

CERTIFICATE OF SERVICE

On this date, I electronically submitted the foregoing document with the Bankruptcy Clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties who receive notification through the electronic filing system.

/s/ Stephen R. Cochell
Stephen R. Cochell

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 26, 2013

United States Bankruptcy Judge

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

IN RE:	§	
	§	CASE NO. 12-37921-SGJ
JEFFREY BARON,	§	
	§	CHAPTER 7
DEBTOR.	§	

ORDER DENYING AMENDED EMERGENCY MOTION TO STAY ORDER FOR RELIEF IN INVOLUNTARY CASE PENDING APPEAL AND APPOINTMENT OF INTERIM TRUSTEE

On July 26, 2013, the Court conducted an emergency hearing on the *Amended Emergency Motion to Stay Order for Relief in Involuntary Case Pending Appeal and Appointment of Interim Trustee* [Dkt. No. 289] (the "Motion"). Having considered the Motion, the objections, and the arguments of counsel, and based on the Court's findings of fact and

conclusions of law announced at the hearing, which are incorporated herein by reference and made a part hereof, it is hereby:

ORDERED that the Motion shall be and is hereby DENIED.

END OF ORDER # #

Submitted by:

/s/ Kathryn G. Reid
Kevin D. McCullough
State Bar No. 00788005
Kathryn G. Reid
State Bar No. 24068126
ROCHELLE McCULLOUGH, LLP
325 N. St. Paul Street, Suite 4500
Dallas, Texas 75201
Telephone: 214-953-0182
Facsimile: 214-953-0185

COUNSEL FOR JOHN H. LITZLER,
CHAPTER 7 TRUSTEE