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

In re	§	**CASE NO. 12-37921-7**
	§	**INVOLUNTARY CHAPTER 7**
JEFFREY BARON,	§	**PROCEEDING**
***Debtor*;**	§	
	§	
JEFFREY BARON,	§	
***Plaintiff*,**	§	
	§	
v.	§	
	§	**ADVERSARY NO. _____**
GERRIT M. PRONSKE, PRONSKE &	§	
PATEL, P.C., PRONSKE, GOOLSBY &	§	**JURY TRIAL DEMANDED**
KATHMAN, P.C., ELIZABETH L.	§	
MORGAN, f/k/a ELIZABETH	§	
MORGAN SCHURIG, SCHURIG	§	
JETEL BECKETT TACKETT, DEAN	§	
FERGUSON, GARY G. LYON,	§	
ROBERT J. GARREY, POWERS	§	
TAYLOR, LLP , MARK TAYLOR,	§	
JEFFREY HALL and DAVID L.	§	
PACIONE,	§	
	§	
***Defendants*.**	§	

PLAINTIFF JEFFREY BARON'S
COMPLAINT UNDER 11 U.S.C. § 303(i)

TO THE HONORABLE JUDGE OF SAID COURT:

Jeffrey Baron hereby files this Complaint under 11 U.S.C. § 303(i), and for cause, they respectfully plead:

I.

PARTIES

1. Plaintiff **JEFFEY BARON** is an individual who resides in Plano, Texas.

2. Defendant **GERRIT M. PRONSKE**, is an attorney authorized to practice law in the State of Texas, and can be issued service of process at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

3. Defendant **PRONSKE & PATEL, P.C.** is a professional corporation organized under the laws of the State of Texas, and may be served with process through its registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

4. Defendant **PRONSKE, GOOLSBY & KATHMAN, P.C.** is a professional corporation organized under the laws of the State of Texas, and may be served with process through its registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

5. Defendant **ELIZABETH L. MORGAN, f/k/a ELIZABETH MORGAN SCHURIG** is an attorney licensed to practice law in the State of Texas, and may be served with process at 10415 Morado Circle, Building 1, Suite 310, Austin, Texas 78759. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

6. Defendant **SCHURIG JETEL BECKETT TACKETT** is or was a law firm that at one time engaged in the practice of law in the State of Texas, and may be served with process through Elizabeth L. Morgan at 10415 Morado Circle, Building 1, Suite 310, Austin, Texas 78759. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

7. Defendant **DEAN W. FERGUSON** is an attorney licensed to practice law in the State of Texas, and may be served with process at 3926 Wildwood Valley Court, Kingwood, Texas 77345. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

8. Defendant **GARY G. LYON** is an attorney licensed to practice law in the State of Texas, and may be served with process at P O Box 1227, Anna, TX 75409-1227. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

9. Defendant **ROBERT J. GARREY** is an attorney licensed to practice law in the State of Texas, and may be served with process at 1201 Elm Street, Suite 5200, Dallas, TX 75270. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

10. Defendant **POWERS TAYLOR, LLP** is a law firm engaged in the practice law in the State of Texas, and may be served with process at 8150 North Central Expressway, Suite 1575, Dallas, TX 75206. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

11. Defendant **MARK TAYLOR** is an attorney licensed to practice law in the State of Texas nd may be served with process at 8150 North Central Expressway, Suite 1575, Dallas, TX 75206

12. Defendant **JEFFREY T. HALL** is an attorney licensed to practice law in the State of Texas, and may be served with process at 2200 Ross Avenue, Suite 5350, Dallas, TX 75201. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

13. Defendant **DAVID L. PACIONE** is an attorney licensed to practice law in the State of Texas, and may be served with process at 700 N. Pearl Street, Suite 425, Dallas, TX 75201. Said Defendant may also be served through Defendant's counsel of record, Pronske, Goolsby & Kathman, PC, through said firm's registered agent for service of process, Gerrit M. Pronske, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

II.

JURISDICTION & VENUE

14. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 157, 1334, and 11 U.S.C. § 303(i).

15. The relief sought in this adversary proceeding contains matters that are both core and non-core. To the extent that the Plaintiff seeks relief pursuant to 11 U.S.C. § 303(i), this is a core proceedings within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B) and (O). To the extent the Plaintiff seeks relief under causes of action recognized under state law, the proceedings are non-core. The Plaintiff does not consent to the entry of final orders by this Court and respectfully request that the Court submit proposed findings of fact and conclusions of law to the District Court pursuant to 28 U.S.C. § 157(c)(1).

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

III.

BACKGROUND

17. On May 28, 2009, Netsphere, Inc., Manila Industries Inc. and Munish Krishan, as plaintiffs, filed a lawsuit against Jeffrey Baron and Baron's company, Ondova Limited Company ("Ondova"), as defendants, in the United States United States District Court for the Northern District of Texas - Dallas Division, Cause No. 09-0988 ("*Netsphere* action"). None of the Petitioning Creditors were parties to the *Netsphere* action or ever sought to intervene in the action. They instead appeared in the case as "Movants," "Claimants," or for purposes of "Notice Only."

18. On November 24, 2010, the District Court in the captioned case entered an order establishing a receivership over the assets of Jeffrey Baron ("Baron") (the "Receivership Order"), and appointed Peter S. Vogel as the receiver (the "Receiver") at the urging of the Petitioning Creditors.

19. Pursuant to the Receivership Order and subsequent orders of the District Court, Peter S. Vogel, as a receiver, took control over and possession of all of the assets of Baron, including his assets exempt under Texas law (the "Baron Personal Assets").

20. Pursuant to the Receivership Order and subsequent orders of the District Court, Peter S. Vogel, as a receiver, took control over and possession of numerous entities (the "Entities"), including Novo Point, LLC and Quantec, LLC. Novo Point, LLC and Quantec, LLC are LLCs formed, and in good standing, under the laws of the Cook Islands. Novo Point, LLC and Quantec, LLC are owned entirely by the Village Trust. The Village Trust is a trust created under the Cook Islands pursuant to a Trust Agreement prepared by Defendant **ELIZABETH L. MORGAN, f/k/a ELIZABETH MORGAN SCHURIG** and/or Defendant **SCHURIG JETEL BECKETT TACKETT**. Baron is the principal beneficiary of the Village Trust. Novo Point, LLC and Quantec, LLC form the principal asset of the Village Trust and thus the value of Novo

Point, LLC and Quantec, LLC are of substantial import to Baron, forming the corpus from which he derives any benefit as a beneficiary of the Village Trust.

21. Seven months after the receivership was established, District Judge Furgeson entered the May 18, 2011 Fee Order in an attempt to resolve the attorney fees claims of law firms that previously represented various entities and individuals including Baron, including the fees and expenses of the Petitioning Creditors (the "May 18, 2011 Fee Order"). *See* ECF Doc 575 in District Court Case No. 09-0988. The Petitioning Creditors had been paid over $ 3 million dollars prior to making claims in the receivership, and additional amounts claimed by the Petitioning Creditors had been in dispute. The May 18, 2011 Fee Order was entered in response to a motion by the Receiver seeking the court's approval to disburse receivership funds to pay the contract claims of attorneys who represented various entities and individuals including Baron. The May 18, 2011 Fee Order was a compromise of the parties' rights, and did not constitute an adjudication of the Former Attorneys' claims against Baron or Baron's counterclaims against the Former Attorneys. At hearing on the motion to approve the Fee Order, Pronske, representative of the Petitioning Creditors, strenuously argued that that Baron should not be permitted to have trial counsel to defend himself. Unrepresented by trial counsel, Baron presented arguments to the Fifth Circuit that the claims were groundless and in some instances fraudulent.

22. Numerous appeals to the Fifth Circuit were taken regarding the receivership and related orders that were entered in the *Netsphere* action, including the May 18, 2011 Fee Order. These and other matters were resolved by the Fifth Circuit on December 18, 2012, when the Fifth Circuit Court of Appeals published its panel decision in the consolidated Baron appeals vacating the Receivership Order. *Netsphere v. Baron,* 703 F.3d 296 (5th Cir. 2012).

23. With respect to the Receivership Order, the Fifth Circuit held that the appointment of a receiver was improper and an abuse of discretion. *Id*. at 302, 310-11, 315. The Fifth Circuit explained that the district court did not have authority or jurisdiction to "[e]stablish a receivership to secure a pool of assets to pay Baron's former attorneys" because, "[a]lthough the attorneys' allegations and claims were delaying the district court and bankruptcy proceedings, they were not the subject matter of the underlying litigation." *Id.* at 308-10. The Fifth Circuit also noted that the Former Attorneys' held "unresolved claims" which "had not been reduced to judgment" and thus the more appropriate recourse for the Former Attorneys was to make a claim against the Ondova bankruptcy estate or file suit in a court of appropriate jurisdiction to collect the fees owed if they represented Baron in matters unrelated to the *Ondova* bankruptcy. *Id.* at 308.

24. Before the "ink even dried" on the Fifth Circuit's opinion, and long before the issuance of the Fifth Circuit's mandate, without prior authorization from any court, and in apparent disregard of the Receivership Order, certain former counsel of Jeffrey Baron (the "Petitioning Creditors") filed an involuntary petition, case no. 12-37291, under Chapter 7 of the Bankruptcy Code, against Jeffrey Baron (the "Involuntary Bankruptcy Case").

25. The Petitioning Creditors were various law firms assembled, led, encouraged and represented by Gerrit M. Pronske. Mr. Pronske and these other lawyers allegedly performed legal services for Mr. Baron and, in some cases, also for entities with which Mr. Baron is affiliated. Specifically, the petitioning creditors included: Pronske & Patel, P.C.; Schurig Jetel Beckett Tackett; Dean Ferguson; Gary G. Lyon; Robert J. Garrey; Powers Taylor, LLP; Jeffrey Hall; and, later by joinder, David L. Pacione (hereinafter, the "Petitioning Creditors") [Bankr. Doc. No. 239 at pp. 3-4]. The Petitioning Creditors' claims total $682,924.58.

26. Mr. Baron filed a petition for rehearing with respect to the Fifth Circuit decision, as did the Receiver and certain other parties. Mr. Baron strenuously opposed the receivership and the filing of the Involuntary Bankruptcy case. *See* Jeffrey Baron's 12(b) Motions & Provisional Answer. ECF Doc 22, in Bankruptcy Case No. 12-37921.

27. After the filing of the Involuntary Bankruptcy Case, the Petitioning Creditors, the Ondova Trustee, and the Receiver's prior counsel, Gardere Wynne Sewell LLP ("Gardere"), actively lobbied Judge Jernigan to collapse the Receivership into the Involuntary Bankruptcy filing, arguing that the Fifth Circuit appeal should be disregarded, and that the Bankruptcy Court should hear all matters regarding all claimants. All of these parties worked relentlessly to eviscerate, circumvent, and trivialize the effect of, the Fifth Circuit's decision. They argued before the Bankruptcy Court and District Court that the jurisdiction of the Bankruptcy Court created by the Involuntary Bankruptcy trumped the jurisdiction of both the District Court and even the Fifth Circuit.[1]

28. The Receiver took the position that the filing of the Involuntary Bankruptcy was contrary to the Receivership Order, the Fifth Circuit's Orders, and other orders of the District Court. Within nine days of the filing of the Involuntary Bankruptcy, on December 27, 2012, in the Receiver's Emergency Motion to Clarify Status of Mandate and Stay Pending Remand and Discharge of Receiver [Doc. No. 005120595875, Fifth Circuit Case No. 12-10489] ("Emergency Motion"), the Receiver advised the Fifth Circuit that an Involuntary Bankruptcy Case against Mr. Baron had been initiated "notwithstanding a stay of all actions against Jeffrey Baron in the original Receivership Order entered by the District Court." The Emergency Motion prompted the

[1] See Gardere Objection [ECF Doc 1202, at p 3 and Doc 1203, at p 3, in District Court Case No. 09-0988, and ECF Doc 83 in Bankruptcy Case 12-37921, at p. 3]; *See* Ondova Trustee Objection [ECF Doc 1205, at p 3, in District Court Case No. 09-0988, and ECF Doc 88 in Bankruptcy Case 12-37921, at p. 3].

Fifth Circuit to enter its Order of December 31, 2012 [Doc. No. 00512097490], pointing out that its opinion did not dissolve the Receivership and that, following the issuance of the mandate on a later date, the District Court would manage the process for ending the Receivership and vacating the Order creating it.

29. Following orders from both the Fifth Circuit and the District Court indicating that the Receivership Order was still in effect and would remain so at least until the mandate issued, on January 8, 2013, the Receiver's counsel informed the Petitioning Creditors, through their counsel, Gerrit Pronske, and the Ondova Trustee through its counsel, Raymond Urbanik, that the filing and maintenance of the Involuntary Bankruptcy Case was in violation of the Receivership Order, the Fifth Circuit's December 31, 2012 Order, and the District Court's December 20, 2012 Order and subsequent orders. In response, the Petitioning Creditors, led by Pronske, forged forward with their high-risk, head-long strategy to crush Baron by placing him into an involuntary bankruptcy proceeding.

30. On January 16, 2013, Bankruptcy Judge Jernigan conducted a three hour status conference. The next day, Judge Jernigan ordered that a summary judgment hearing would be set on February 13, 2013, to consider whether the claims of the Petitioning Creditors were subject to a bona fide dispute, with all evidence to be presented by affidavit. Judge Jernigan also ordered that if she determined that a material fact issue was raised, the parties would be permitted to conduct limited discovery and submit live testimony; otherwise no live evidence would be permitted. Judge Jernigan also ordered the US Trustee to appoint an Interim Trustee in Bankruptcy to standby and be ready to accept the assets of the receivership should a "higher court issue an order requiring delivery of Receivership assets to Mr. Baron or any other person before the Court conclude[d] the Trial." *See* order at ECF Doc 39, at p 3, in Case 12-37921. Judge Jer-

nigan also expressed her opinion that "all matters regarding Mr. Baron, including all receivership matters and the Netsphere litigation, [were] stayed during the Gap Period pursuant to 11 U.S.C. § 362". *Id.* Thus, notwithstanding the Fifth Circuit's ruling that dissolved the receivership, ordered a quick wind-down of the receivership estate and directed the distribution of the receivership assets to Baron, the Petitioning Creditors, the Ondova Trustee and Gardere had succeeded in locking down Baron's assets indefinitely.

31. As the Involuntary Bankruptcy Case proceeded forward, both Baron and the Receiver continued their efforts to prevent the Involuntary Bankruptcy Case from interfering with the Fifth Circuit's decision, to no avail. On February 12, 2013, the Receiver again pointed out to all involved parties that the Petitioning Creditors had blatantly disregarded "the still effective injunction provisions of the Receivership Order prohibiting the parties from "doing any act or thing whatsoever to interfere with the Receiver's . . . management of the assets," or from "interfer[ing] with the receiver in anyway or . . . interfer[ing] with [the District] Court's exclusive jurisdiction over the assets. . . " Receivership Order at 13. The Receiver noted that filing of the Involuntary Bankruptcy was both "premature and improper." *See* Receiver's Status Report and Wind Down Recommendations. ECF Doc 1185, District Court Case No. 09-0988 at p. 6-7.

32. On April 4, 2013, the Fifth Circuit denied all Petitions for Rehearing, and on April 19, 2013 the Fifth Circuit issued mandates with respect to its December 18, 2012, decision.

33. With the mandates now issued, the Fifth Circuit held that the appointment of a receiver was improper and an abuse of discretion. *Netsphere, Inc.*, 703 F.3d at 302, 310-11, 315. The Fifth Circuit explained that the district court did not have authority or jurisdiction to "[e]stablish a receivership to secure a pool of assets to pay Baron's former attorneys" because, "[a]lthough the attorneys' allegations and claims were delaying the district court and bankruptcy

proceedings, they were not the subject matter of the underlying litigation." *Id.* at 308-10. The Fifth Circuit also noted that the Petitioning Creditors were "unsecured contract creditors" and "for those unpaid attorneys who had filed claims, the claims had not been reduced to judgment" and thus the more appropriate recourse for the Former Attorneys was to make a claim against the Ondova bankruptcy estate or file suit in a court of appropriate jurisdiction to collect the fees owed if they represented Baron in matters unrelated to the *Ondova* bankruptcy. *Id.* at 308.

34. With knowledge of the Involuntary Bankruptcy Case, the Fifth Circuit did not alter its decision commanding the District Court to wind down the receivership expeditiously and return the assets to Jeffrey Baron.

35. On June 26, 2013, the Bankruptcy Court issued findings of fact and conclusions of law in support of its Order for Relief ("Report"), and then issued an order for relief putting Jeffrey Baron in bankruptcy. ECF Docs 239 & 240 in Bankruptcy Case 12-37921. The Bankruptcy Court concluded that Baron's former attorneys, the Petitioning Creditors, had standing under 11 U.S.C. §303(b) to file and proceed with the Involuntary Bankruptcy Case based solely on the May 18, 2011 Fee Order. The Bankruptcy Court improvidently determined, at the urging of the Petitioning Creditors, that the May 18, 2011 Fee Order was "tantamount to a final judgment that foreclosed an argument of a bona fide dispute." *Id*. at 24. The Bankruptcy Court determined that the May 18, 2011 Fee Order was akin to a final judgment, which had not been reversed or specifically set aside by the Fifth Circuit. The Bankruptcy Court therefore agreed with the Petitioning Creditors that Baron was barred by collateral estoppel under Texas law from relitigating the May 18, 2011 Fee Order.

36. On July 8, 2013, Jeffrey Baron perfected his appeal of the Order for Relief. ECF Doc 257 in Bankruptcy Case 12-37921.

37. One month later, on July 29, 2013, the bankruptcy court issued a *Sua Sponte* Report and Recommendation to the District Court Proposing Disposition of Assets Held in the Overruled Receivership of Jeffrey Baron, in Accordance with Section 541-543 of the Bankruptcy Code [ECF Doc 1304-1 in District Court Case No. 09-0988] ("*Sua Sponte* Report"). In the *Sua Sponte* Report, the bankruptcy court held that the involuntary bankruptcy proceeding created an "intervening circumstance" that required the turnover of the receivership assets to the bankruptcy trustee in accordance with 11 U.S.C. §543, notwithstanding the Fifth Circuit's decision and mandate.

38. Before the assets of the receivership could be turned over to the Trustee in Bankruptcy, however, District Judge Sam A. Lindsay issued an Amended Memorandum Opinion and Judgment on January 2, 2014, reversing the Bankruptcy Court's Order for Relief. ECF Docs 52 & 53 in District Court Case No. 13-3461. Judge Lindsay held that, in following the Fifth Circuit's opinion, "the district court lacked authority and jurisdiction to establish the receivership to secure a pool of assets to pay Baron's Former Attorneys." Therefore, Judge Lindsay reasoned that he District Court "also lacked jurisdiction to enter the May 18, 2011 Fee Order, based on the Receivership Order since the Former Attorney claims were not the subject of the underlying litigation." Judge Lindsay specifically vacated the May 18, 2011 Fee Order. Amended Memorandum Opinion, at 24.

39. The Petitioning Creditors filed a motion for stay pending appeal in the District Court, and Judge Lindsay denied same. ECF Docs 56 & 62 in District Court Case No. 13-3461.

40. The Petitioning Creditors then appealed to the Fifth Circuit Court of Appeals, and filed another motion for stay pending appeal, which was promptly denied.

41. Pursuant to the District Court's mandate in its Amended Memorandum Opinion and Judgment, the case was remanded to the Bankruptcy Court with instructions to dismiss the case and retain jurisdiction solely to consider claims pursuant to 11 U.S.C. §303(i). Accordingly, on March 14, 2014, the Bankruptcy Court dismissed the Involuntary Bankruptcy case and ordered that all applications for "fees, costs or damages" pursuant to 11 U.S.C. §303(i) be submitted within 30 days of the entry of the order. *See* Order of Dismissal entered March 14, 2014, ECF Doc 467 in Bankruptcy Case 12-37921. The deadline to appeal the order dismissing the Involuntary Bankruptcy passed on March 28, 2014, and no appeal was perfected. The fourteen day appellate period has now expired. *See* Bankruptcy Rule 8002. Thus, the Order Dismissing the Bankruptcy Case is now final and no longer subject to appeal, and it appears that the Petitioning Creditors' appeal of the Amended Memorandum Opinion and Final Judgment is now moot.

IV.

ARGUMENT AND AUTHROITIES - CLAIM UNDER 11 U.S.C. §303(i)(1)

42. Section 303(i)(1) of the Bankruptcy Code provides the Court with discretion to award attorneys' fees and costs when an involuntary petition is dismissed:

> (i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—
>
> (1) against the petitioners and in favor of the debtor for—
> (A) costs; or
> (B) a reasonable attorney's fee.

43. Baron is entitled to an award of all fees and costs incurred as a consequence of the Petitioning Creditors' unsuccessful Involuntary Petition. An allegation of bankruptcy invokes remedies not available in any ordinary debt collection procedure. It should not be invoked lightly and contrary to statutory right. *In re Nancy Lee Walden*, 781 F.2d 1121, 1123 (5th Cir. 1986);

In re SBA Factors of Miami, Inc., 13 B.R. 99, 101 (Bankr. S.D. Fla. 1981) (an involuntary bankruptcy petition "chills the alleged debtor's credit and his sources of supply. It can scare away his customers. It leaves a permanent scar, even if promptly dismissed"). Recognizing the potential harm of imprudent involuntary petitions, Congress has imposed unusual consequences on unsuccessful petitioners. Pursuant to 11 U.S.C. §303(i)(1), dismissal of a contested involuntary petition authorizes the Court to grant judgment "[a]gainst the petitioners and in favor of the debtor for. . .costs [and] reasonable attorneys fees." The statute contemplates "pure fee shifting . . . regardless of motive or purpose of the petitioners." *In re Commonwealth Securities Corp*., 2007 Bankr. LEXIS 312 (Bankr. N.D. Tex. Jan. 25, 2007) ('section 303(i) is really a fee shifting statute . . . . that creates a statutory exception to the usual `American Rule', so that the losing involuntary petitioners will pay in the context of an unsuccessful involuntary petition."). Though the relief is discretionary, the wording and legislative history of the statute raise a presumption against the unsuccessful petitioning creditor for this relief.

44. In conjunction with relaxing the standards for filing involuntary cases under the new Bankruptcy Code, Congress simultaneously made it expensive for petitioners and intervenors who fail in attempting to bring an involuntary case. Congress drafted the statute to make an award of costs and fees the norm. While the better view is that such awards are discretionary and not mandatory, courts exercise their discretion in light of two factors. First the progenitor of section 303(i)(1) is former Bankruptcy Rule 15(e), which makes such awards "routine." Second, the statute makes plain that bad faith is not relevant unless consequential and punitive damages are under consideration. Thus, any petitioning creditor in an involuntary case, whether signing the initial petition or later joining as a petitioner under section 303(c), should expect to pay the debtor's attorney fees and costs if the petition is dismissed. *In re Kelly G. Kidwell*, 158 B.R. 203,

217 (Bankr. E.D. Cal. 1993). *See also In re TRED Holdings, L.P*, 2010 Bankr. LEXIS 3109, *19 (Bankr. E.D. Tex. 2010) ("If an involuntary bankruptcy petition is dismissed, there is a rebuttable presumption the alleged debtor is entitled to reasonable fees and costs."); *In re Silverman*, 230 B.R. 46, 50-51 (Bankr. D.N.J. 1998) ("[A]lthough there is no hard and fast rule regarding the award of fees and costs, fairness dictates that attorney fees and costs should generally be awarded to the prevailing debtor."); *In re Johnston Hawks Limited*, 72 B.R. 361, 365 (Bankr. D. Hawaii 1987) ("Attorneys fees and costs, though discretionary, should be awarded as a matter of "routine."); 2 COLLIER ON BANKRUPTCY, ¶ 303.33 (endorsing presumption for award of costs and fees); *Landmark* 189 B.R. at 307 (Bankr. D.N.J. 1995) ("petitioners should generally anticipate that an award of costs and fees will be granted upon the dismissal of an involuntary petition."); *In re Advance Press & Litho, Inc.,* 46 B.R. 700, 702 (Bankr.D.Colo. 1984) ("It is not necessary that the Involuntary Petition be frivolous or meritless to award costs and fees under this subsection").

45. Further, awards of fees incurred in related proceedings and post-dismissal proceedings are routinely awarded. Federal courts have reasoned that, because the great majority of legal expenses could be incurred following the dismissal of the involuntary petition, it would "fly in the face of legislative intent and common sense" for the Bankruptcy Code not to have authorized post-dismissal fees pursuant to § 303(i). *Glannon v. Carpenter* (*In re Glannon*), 245 B.R. 882, 895 (D. Kan. 2000); *See In re Advance Press & Litho*, Inc., 46 B.R. 700, 703 (Bankr. D. Colo. 1984) ; *In re Petrosciences Intern., Inc*., 96 B.R. 661, 665 (Bankr. N.D. Tex. 1988) ; *In re Atlas Mach. and Iron Works, Inc.*, 190 B.R. 796, 803-04 (Bankr. E.D. Va. 1995); *In re John Richard; In Re Rosenberg, 471* B.R. 307 (Bankr. S.D. Florida 2012).

ACTUAL DAMAGES UNDER 11 U.S.C. §303(I)(1)

46. The following Amounts were paid and/or invoiced to Baron during the pendency of this action. Baron cannot represent that the below fees are reasonable and necessary, but does represent that the amounts have either been billed to Baron or will be a charge against the Receivership Estate that will ultimately diminish the value of Baron's residual interest in the assets of the Receivership Estate:

a. **The Fees and Expenses of Peter S. Vogel, the Receiver**. The Receiver has filed an Application for Payment Under 11 U.S.C. § 303(i) and 543(c) of Costs, Attorneys' Fees, and Damages Incurred (the "Receiver's Application"). ECF Doc 473, Bankruptcy Case No, 12-37921. In the Application, the Receiver requests damages of $900,713.32**.** Jeffrey Baron incorporates the Receiver's Application into this adversary pleading as if same, together with the exhibits attached thereto, is set forth herein *verbatim.*

b. **The Fees and Expenses of Stromberg Stock, PLLC**. Stromberg Stock, PLLC has filed a Motion for Recovery of Attorneys' Fees and Expenses on April 11, 2014. ECF Doc 471, Bankruptcy Case No, 12-37921. In the Stromberg Motion, Stromberg Stock, PLLC incorporates by reference a Final Motion for Allowance of Administrative Expense Claim filed on August 8, 2013. ECF Doc 319, Bankruptcy Case No, 12-37921. Stromberg Stock, PLLC requests fees in the amount of $168,115.00 and expenses in the amount of $957.79**.** Jeffrey Baron incorporates these filings into this adversary pleading as if same, together with exhibits, are set forth herein *verbatim.*

c. **The Fees and Expenses of Busch Ruotolo & Simpson, LLP**. Busch Ruotolo & Simpson, LLP ("Busch Ruotolo ") has filed a Motion for Recovery of Attorneys' Fees and Expenses on April 11, 2014. ECF Doc 472,, Bankruptcy Case No, 12-37921. In the Busch Ruotolo Motion, Busch Ruotolo incorporates by reference a Final Motion for Allowance of Administrative Expense Claim filed on August 8, 2013. ECF Doc 319, Bankruptcy Case No, 12-37921. Busch Ruotolo requests fees in the amount of $16,785.00 and expenses in the amount of $565.79**.** Jeffrey Baron incorporates the Busch Ruotolo Motion into this adversary pleading as if same, together with exhibits, is set forth herein *verbatim.*

d. **The Fees and Expenses of Edwin E. Wright, III**. Edwin E. Wright, III ("Wright") filed a Motion for Attorney's Fees and Expenses on May 20, 2013. On August 19, 2013, this Court entered an order striking Wright's Motion. ECF Docs 211 & 329, Bankruptcy Case No, 12-37921. In the Wright Motion, Wright requests fees in the amount of $75,560.00 and expenses in the amount of $673.80**.** Jeffrey Baron incorporates the Wright Motion into this adversary pleading as if same, together with exhibits, is set forth herein *verbatim.*

e. **The Fees and Expenses of Acosta & Associates P.C.** Acosta & Associates P.C. ("Acosta") has submitted an invoice relating to the prosecution of the appeal of the Order for Relief. Acosta claims fees and expenses in the amount $70,764.00 Copies of invoices submitted to Mr. Baron redacted to preserve the attorney-client and work product privileges shall be submitted to counsel for Defendants.

f. **The Fees and Expenses of Pendergaft & Simon, LLP**. The fees and expenses of Pendergraft & Simon, LLP are unknown at this time. Pendergraft & Simon will be prosecuting Mr.

Baron's claims pursuant to 11 U.S.C. §303(i) and will be handling the defense of the Amended Memorandum Opinion and Judgment issued by Judge Lindsay on January 2, 2014. Copies of invoices submitted to Mr. Baron redacted to preserve the attorney-client and work product privileges shall be submitted to counsel for Defendants.

g. **The Fees and Expenses of Gary Schepps.** Unknown at this time. A copy of the invoice redacted to preserve the attorney-client and work product privileges shall be submitted to counsel for Defendants when received. A copy of the invoice redacted to preserve the attorney-client and work product privileges shall be submitted to counsel for Defendants when received.

h. **The Fees and Expenses of William Gammon**. Mr. Gammon invoiced $5,000 for appearing at the deposition of Elizabeth L. Morgan..

i. **The Fees and Expenses of Stephen Cochell. Stephen Cochell has submitted invoices from January 13, 2013 through November 13, 2013 for fees and expenses of $103,81 in connection with related proceedings.** A copy of the invoices redacted to preserve the attorney-client and work product privileges shall be submitted to counsel for Defendants.

WITH THE EXCEPTION OF SUBPARAGRAPH "a", AT THIS TIME, BARON CANNOT REPRESENT WHETHER THE ABOVEMENTIONED FEES ARE REASONABLE AND NECESSARY, BUT DOES REPRESENT THAT THE AMOUNTS HAVE BEEN BILLED TO BARON.

V.

ARGUMENT AND AUTHROITIES - CLAIM UNDER 11 U.S.C. §303(i)(2)

47. Section 303(i)(2) of the Bankruptcy Code provides the Court with discretion to award attorneys' fees and costs when an involuntary petition is dismissed:

> (i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—
>
> (2) against any petitioner that filed the petition in bad faith, for—
> (A) any damages proximately caused by such filing; or
> (B) punitive damages.

48. Jeffrey Baron alleges and will prove at trial that the Petitioning Creditors have acted in bad faith.

49. As explained below, the Petitioning Creditors misled and deceived this Court into improperly issuing an Order for Relief over Baron.

50. This case is essentially a two-party dispute between Baron and each of the Petitioning Creditors. The Petitioning Creditors' claims arose from state law disputes In fact, suits to resolve the various claims between Baron and three of the Petitioning Creditors were pending in state district court and in Adversary 10-03281 at the time that the Petitioning Creditors filed their involuntary petition.

51. A bankruptcy court is an improper forum for deciding state law disputes. *See In re Mazzocone*, 183 B.R. 402, 421 (Bankr.E.D.Pa.1995); *In re Robert A. Spade*, 258 B.R. 221, 234 (Bankr. D. Colo. 2001); *In re Mountain Dairies, Inc.*, 372 B.R. 623, 634-35 (Bankr. S.D.N.Y. 2007);'s As such, the purpose of the Petitioning Creditors' filing is subject to a heightened level of scrutiny.

52. The proper purpose of a creditor filing an involuntary petition is to protect against other creditors obtaining a disproportionate share of the debtor's assets. An improper use of the Bankruptcy Code justifying a finding of bad faith will then exist any time a creditor uses an involuntary bankruptcy to obtain a disproportionate advantage to that particular creditor's position, rather than to protect against other creditors obtaining such a disproportionate advantage. This is especially true where the petitioning creditor could have obtained that advantage in an alternate forum. *In re Better Care, Ltd.*, 97 B.R. 405, 411 (Bankr. N.D. Ill. 1989).

53. Petitioning creditors may not use an impermissible means to achieve even an otherwise legitimate goal. When a petitioner misuses a bankruptcy proceeding as a "collection device," the petitioner abuses the court system and the Bankruptcy Code and acts in bad faith. *In re Johnston Hawks Limited*, 72 B.R. 361, 367 (Bankr. D. Haw. 1987). This occurs when the peti-

tioning creditor is "aware that the appropriate vehicle to resolve their dispute . . . was a contract action in a non- bankruptcy forum." *Id*.

54. In this case, the Fifth Circuit squarely addressed this issue and explained that the Petitioning Creditors' claims were "unresolved" and "for those unpaid attorneys who had filed claims, the claims had not been reduced to judgment" and thus the more appropriate recourse for the Former Attorneys was to make a claim against the *Ondova* bankruptcy estate or file suit in a court of appropriate jurisdiction to collect the fees owed if they represented Baron in matters unrelated to the *Ondova* bankruptcy. *Netsphere, Inc*., 703 F.3d at 308.

55. Not only did the Fifth Circuit specifically advise the Petitioning Creditors that the appropriate vehicle was a contract action in state court, Petitioning Creditors' attorney, Pronske, was affirmatively seeking relief in a contract action in this Court in an adversary proceeding that had been removed to this Court, Adversary 10-03281. A finding of bad faith is supported by this reasoning alone, but there is much more.

56. Clearly, the Petitioning Creditors (several of whom are bankruptcy lawyers) are fearful of taking their claims before a state court where a jury will likely reject their claims and grant Jeff Baron substantial relief on his counterclaims—their mission was to keep Jeff Baron's personal assets frozen and to continue to deprive him of his "day in court," where he might have an impartial trial by a court and jury with respect to the attorney fee claims being asserted against Mr. Baron and his claims against the attorneys. This Court has heard the continued mantra of Gerrit Pronske throughout this case disparaging his client, Mr. Baron, at every possible opportunity. Mr. Pronske testified before this Court that Mr. Baron was about to remove his assets to overseas venues, a fabrication that the Fifth Circuit debunked completely. *Netsphere, Inc*., 703

F.3d at 307[2] and 308.[3] Mr. Pronske misled this Court on numerous occasions about this and many other issues, and these misleading statements of Pronske formed the basis of this Court's recommendation to the District Court (Judge Furgeson) that a receiver be appointed. There is a message to be taken from the fact that Baron, with his underpaid rag-tag legal team of lawyers, have reversed the District Court's Receivership Order and this Court's order for relief. Baron would suggest that the "take away message" is that this Court needs to stop giving credence to the representations and arguments of Pronske. He has led this Court down paths that have ended in financial ruin for Mr. Baron and reversal of this Court's orders.

57. The remaining Petitioning Creditors have acted with equal amounts of bad faith. The Petitioning Creditors, each holding groundless claims, acted in concert, since at least the initiation of the receivership, to strip Baron of his assets and to deprive him of his "day in court," where he might have an impartial trial by a court and jury with respect to the attorney fee claims being asserted against him and his claims against the Petitioning Creditors.

58. A bankruptcy petition filed in order to frustrate legitimate court process warrants a finding of bad faith. "Use of an involuntary petition to . . . extract a litigation advantage is precisely the sort of bad faith conduct that can and should be sanctioned under § 303(i)." *In re TRED Holdings, L.P.* 2010 WL 3516171 (Bankr. E.D. Tex. 2000, Rhoades, J) (punitive damages awarded where motivation was to forestall eviction of the petitioner's family) *See also Keiter v. Stracka*, 192 B.R. 150, 160 (S.D. Tex. 1996) (finding punitive damages appropriate where petition was filed to avoid foreclosure proceedings).

[2] "Neither the trustee nor the receiver has pointed to record evidence that Baron failed to transfer the domain names in accordance with the agreement. He had other obligations, but there is no record evidence brought to our attention that any discrete assets subject to the settlement agreement were being moved beyond the reach of the court."

[3] "We do not, though, find evidence that Baron was threatening to nullify the global settlement agreement by transferring domain names outside the court's jurisdiction."

59. To support their alleged standing in filing this action, the Petitioning Creditors misled the Bankruptcy Court in representing that "the claims of the Petitioning Creditors and other attorneys against the Alleged Debtor were fully litigated" [Doc 25 ¶ 51], and "the Petitioning Creditors' claims against the Alleged Debtor were fully adjudicated by the District Court" [Doc 25 ¶ 43] in their representations to this Court about the May 18, 2011, Fee Order. Despite Petitioning Creditors' representations to this Court to the contrary, the May 18, 2011, Fee Order was stayed and affirmed stayed at least three times before being reversed and vacated. Petitioning Creditors were well aware of this fact and keenly aware that their claims were subject to a bona fide dispute. This Court relied on the Petitioning Creditors' false statements in granting the Order for Relief.

60. To dispel any doubt of whether the Petitioning Creditors knew of the falsehood of their assertions to this Court that the May 18, 2011, Fee Order was "not stayed", the Petitioning Creditors, through Pronske, filed a Motion For Reconsideration in the *Netsphere* case [Dkt 1013], stating: "Pronske Patel respectfully requests this Court to reconsider the imposition of the stay imposed by the Clarification Order" (Order Staying the Receiver Fee Order), and avers that the "Clarification Order essentially granted a "stay pending appeal" of the May 18 2011 Fee Order.

61. The suggestion that the Petitioning Creditors filed their petition for the legitimate purpose of preserving a proportionate and orderly liquidation Baron's assets is laughable. The Petitioning Creditors manipulated three courts in a transparent attempt to avoid a contractually-chosen forum and to frustrate Baron's constitutional rights to a jury trial. After filing the petition, the Petitioning Creditors used the pendency of this action to deny Baron access to his funds to hire counsel in this action and in appeals relative to this action. Meanwhile, the Petitioning

Creditors employed the collective resources of their law well-heeled firms, the Ondova Trustee and of the Baron Chapter 7 trustee to ensure that Baron would never have his day in court.

62. Pronske's abuse of process and bad faith goes on today. In 2010, Jeff Baron instituted a lawsuit in the 193rd Judicial District Court of Dallas County, Texas styled *Jeff Baron v. Gerrit M. Pronske, Individually and Pronske & Patel, P.C.*, Cause No. 10-11915. The state court action involved a dispute regarding fees. Pronske withdrew the reference to the *Ondova* bankruptcy case, and Baron filed a motion for remand. *See* ECF Docs 1 and 10, Adversary Proceeding No. 10-03281-sgj. Just recently, on March 13, 2014, Pronske filed an Application for Prejudgment Garnishment, an Emergency Motion to Lift Abatement and an Emergency Motion for Hearing. The Court denied the Motion for Emergency Hearing by order entered on March 14, 2014. ECF Docs 37 & 39, Adversary Proceeding No. 10-03281-sgj. Later that day, Pronske filed in State District Court a new lawsuit against Baron making the same claims that he had asserted in his counterclaim filed in Adversary Proceeding No. 10-03281-sgj. He simultaneously filed an Ex Parte Application for Issuance of Prejudgment Garnishment, and obtained a setting before the State District Judge on March 17, 2014. On the 17th day of March 2014, without any notice to Baron, Pronske appeared at the hearing before the State District Court, at which hearing the State District Court issued an "Order to Issue Prejudgment Writ of Garnishment". Just as Pronske had done before this Court in 2010, Pronske advised the District Court that Baron had no assets in the State of Texas, and that he was about to dispose of his assets. *See* true and correct copy of the Order to Issue Prejudgment Writ of Garnishment attached hereto as **Exhibit "1"**. Nowhere in his pleadings filed in the State District Court did Pronske advise the State District Judge that in Adversary Proceeding No. 10-03281-sgj, he was asserting the same claims, and that his emergency motion to set a hearing to consider his Application for Writ of Garnishment had

been denied by this Court. *See Pronske Goolsby & Kathman, PC v. Jeffrey Baron*, In the 69th Judicial District Court in and for Dallas County, Texas, Cause No. DC-14-02622. More telling is the fact that Pronske is attempting to prove his claim as a liquidated amount by alleging that the order issued by the Bankruptcy Court in the Ondova Bankruptcy awarding Pronske an administrative claim for "substantial contribution". In doing so, Pronske is well aware that Mr. Baron was not a debtor in the *Ondova* bankruptcy and thus not responsible for payment of such amount.

DAMAGES UNDER 11 U.S.C. §303(i)(2)

63. To the extent that the fees and expenses of the Receiver set forth above in paragraph 46a are not recoverable under 11 U.S.C. §303(i)(1), Jeffrey Baron hereby requests that such damages be awarded under 11 U.S.C. §303(i)(2). Among the reasons for such request is the simple fact that any costs or fees incurred by the Receiver obviously reduces the assets held by the Receiver – all or substantially all of which are the property of, and to be returned to, Mr. Baron or are property owned by the Village Trust, as to which Mr. Baron is the sole beneficiary. As aforesaid, Baron alleges that each of the Petitioning Creditors have acted in bad faith.

64. Jeffrey Baron also alleges that during the delay occasioned by the Involuntary Bankruptcy Case, the value of Novo Point, LLC and Quantec, LLC has diminished substantially. Novo Point, LLC and Quantec, LLC are subsidiaries of the Village Trust, as to which Jeffrey Baron is the sole beneficiary. The loss in value is unascertainable at this time, as the Receiver has only recently relinquished control over these entities.

65. Jeffrey Baron has suffered damages as a result of a loss of reputation and lost opportunities, which losses are real and substantial, but cannot be easily quantified. Therefore,

Baron claims punitive damages against the Petitioning Creditors in the amount of at least $10,000,000. Mr. Baron would show that the Petitioning Creditors have acted with malice.

VI.

REQUEST FOR JURY TRIAL

66. The Seventh Amendment of the Constitution entitles Jeffrey Baron to a right to a trial by jury, which Baron here asserts, in his claims under 11 U.S.C. §303(i). Established Supreme Court precedent holds that a jury trial right exists in causes of monetary damages. The court in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) found that a request for a money judgment strongly indicates that a jury right exists since the claim should be denominated as legal rather than equitable . *See Id.* at 47. *See also Dairy Queen Inc. v. Wood*, 369 U.S. 469, 476, (1962).

67. In *In re Glannon,* 248 B.R., 882 (D. Kan. 2000), the district court analyzed the debtor's right to a trial by jury in the context of a claim under 11 U.S.C. §303(i). The district court applied the four-part test enunciated by the Supreme Court in *Granfinanciera.* The district court concluded that the Bankruptcy Court had erred by denying the debtor his Seventh Amendment right to a jury trial. *Id.,* at 888-892. *See also,* analysis in *In re Palm Beach Finance Partners, LP,* 501 B.R. 792 (Bankr. S.D. Fla., 2013).

WHEREFORE, premises considered, Plaintiff Jeffrey Baron respectfully requests that the Defendants be summoned to appear and answer, and after a trial on the merits, that the Court grant the Plaintiff the relief requested herein, damages, and all such other relief which is just.

Respectfully submitted this 13th day of April 2014.

PENDERGRAFT & SIMON, LLP

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EXHIBIT "1"

C0852

DC-14-02622

CAUSE NO. ~~14-2619~~

479C

PRONSKE GOOLSBY & KATHMAN, PC	§	
	§	
Plaintiff,	§	
	§	**IN THE DISTRICT COURT**
v.	§	
	§	
TD AMERITRADE, THE VANGUARD GROUP, MBSC SECURITIES CORPORATION d/b/a DREYFUS INVESTMENTS, EQUITY INSTITUTIONAL f/k/a STERLING TRUST CO., MID-OHIO SECURITIES CORP., DELAWARE CHARTER GUARANTEE & TRUST d/b/a PRINCIPAL TRUST CO., AND EQUITY TRUST CO.,	§	**DALLAS COUNTY, TEXAS**
	§	
	§	68th **JUDICIAL DISTRICT COURT**
	§	
Garnishees,	§	
	§	
and	§	
	§	
JEFFREY BARON,	§	
	§	
Defendant.	§	
	§	

ORDER TO ISSUE PREJUDGMENT WRIT OF GARNISHMENT

On the 14th day of March, 2014, the application and affidavit of Pronske Goolsby & Kathman, PC, plaintiff in this cause ("Plaintiff"), for issuance of a writ of garnishment was presented *ex parte*. After considering the pleadings and other papers on file with the Court, the evidence presented and the argument of counsel, the Court finds and concludes that Plaintiff is entitled to a writ of garnishment as requested, for the reason that Plaintiff has sued for a debt that is just, due, and unpaid in the amount of $294,033.87, and that, within Plaintiff's knowledge, Defendant does not possess property in Texas subject to execution sufficient to satisfy the debt.

The Court further finds and concludes that issuance of the writ without prior notice to the debtor is justified in the circumstances for the reason that there is immediate danger that Jeffrey Baron (the "Defendant") is about to dispose of assets such that Plaintiff will not be able to satisfy any judgment that may be rendered in the underlying cause, *Pronske Goolsby & Kathman, PC v. Jeffrey Baron*, Cause No. DC 14-2619 in the 68th Judicial District Court of Dallas County, Texas.

IT IS THEREFORE ORDERED that the clerk issue a writ of garnishment that commands TD Ameritrade, The Vanguard Group, MBSC Securities Corporation d/b/a Dreyfus Investments, Equity Institutional f/k/a Sterling Trust Co., Mid-Ohio Securities Corp., Delaware Charter Guarantee & Trust d/b/a Principal Trust Co., and Equity Trust Co. as garnishees (together, the "Garnishees"), to appear as required by law and answer on oath what, if anything, the garnishee is indebted to Defendant, and was when the writ was served, and what effects, if any, of Defendant the Garnishee possesses and did possess when this writ was served, and what other persons, if any, within the garnishee's knowledge, are indebted to or have effects of Defendant.

IT IS FURTHER ORDERED that the maximum value of property or indebtedness that may be garnished is $294,033.87. Further, the writ shall command Garnishee NOT to pay to Defendant any debt or to deliver any effects, pending further order of this Court, without retaining property of Defendant in an amount sufficient to satisfy and equal the maximum value of property or indebtedness that may be garnished as above ordered.

IT IS FURTHER ORDERED that this order shall not be effective unless and until plaintiff executes and files with the clerk a bond, in conformity with the law, in the amount of Ten Thousand dollars ($ 10,000.00).

IT IS FURTHER ORDERED that Defendant, in order to replevy property garnished pursuant to writ, shall file with the officer who levied the writ a bond, in conformity with the

law, in the amount of Ten Thousand dollars ($ 10,000.00), unless Defendant files a bond in an amount otherwise provided by the law and the Texas Rules of Civil Procedure.

Signed this 17 day of March, 2014.

JUDGE PRESIDING