

**A**

**CAUSE NO. 10-11915**

JEFF BARON,	§	IN THE DISTRICT COURT,
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GERRIT M. PRONSKE, INDIVIDUALLY	§	
AND PRONSKE & PATEL, P.C.	§	
	§	
Defendants.	§	193 <sup>rd</sup> JUDICIAL DISTRICT

**PLAINTIFF’S FIRST AMENDED PETITION**

COMES NOW Jeffrey Baron (“Baron”), and files *Plaintiff’s First Amended Petition*.

and would respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff requests that this lawsuit be governed by Discovery Plan Level 2 pursuant to Tex. R. Civ. P. 190.3.

**II. SUMMARY OF THE CASE**

2. In accordance with Tex. R. Civ. P. 47(c)(5), Plaintiff, Jeffrey Baron, hereby discloses that he seeks monetary relief in excess of \$1,000,000.00.

3. Plaintiff seeks actual and exemplary damages suffered as a result of the acts of commission and omission of Defendants’ constituting negligence, gross negligence, fraud and breach of fiduciary duty engaged in while they represented Plaintiff as legal counsel. Plaintiff also seeks actual and exemplary damages for the wrongful and tortious acts committed by Defendants after the legal representation ended, including fraud, negligence, gross negligence, abuse of process and malicious prosecution. Plaintiff also seeks the full range of statutory damages for Defendants’ statutory violations of the Texas Deceptive Trade Practices Act and

the Texas Fair Debt Collection Act. Plaintiff also seeks actual damages for Defendants' breach of contract. Finally, and in the alternative, Plaintiff seeks the disgorgement of fees paid to the Defendants.

### **III. PARTIES**

4. Defendant Gerrit M. Pronske is an attorney licensed to practice law in the state of Texas. He may be served at his law office at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

5. Defendant Pronske, Goolsby & Kathman, P.C. F/K/A Pronske and Patel, P.C. ("PG&K") is a law firm with its principal place of business at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201. Pronske & Patel, P.C. may be served through its registered agent, Gerrit M. Pronske, 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

### **IV. JURISDICTION AND VENUE**

6. The amount in controversy exceeds the minimum jurisdictional limit of this court.

7. This Court has personal jurisdiction over the Defendants because the Defendants are either organized under the laws of the State of Texas or they reside in the State of Texas.

8. Venue in Dallas County is proper in this cause because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county. In addition, the Attorney Defendant entered into an agreement with Plaintiff in Dallas County at the time the attorney/client relationship was formed. In addition, the Defendants either reside in or maintain their principal place of business in Dallas County.

### **V. FACTS**

9. Effective on or about August 31, 2009, Pronske, Goolsby & Kathman, P.C. f/k/a Pronske & Patel, P.C. ("PG&K") was retained to represent Jeffrey Baron in connection with

matters related to the Ondova Limited Company in its bankruptcy case pending before Bankruptcy Judge Jernigan. The terms of such engagement were negotiated among PG&K, Baron and AsiaTrust Limited, which at the time was acting as the trustee of The Village Trust (“AsiaTrust”).<sup>1</sup> The agreement, which was never reduced to writing, required all payments to PG&K to be made by or through AsiaTrust. Pronske and PG&K failed to prepare or execute a written engagement letter. No oral or written agreement exists between PG&K and Baron for the payment of PG&K’s fees and expenses. PG&K’s engagement required the firm to represent Mr. Baron’s interests in the Ondova Chapter 11 Case, and file, prosecute and confirm a Creditor’s Plan of Reorganization and provide all bankruptcy related legal work necessary to effectuate *the* emergence of Ondova from bankruptcy and returned back to Baron’s control. Pronske and PG&K never followed through on these tasks.

10. PG&K and Pronske admit that they did not look to Baron for payments of the Firm’s fees for services rendered and expenses incurred.<sup>2</sup> Pronske informed Baron and AsiaTrust that the fee for the representation to accomplish Baron’s goals would be \$75,000.00, and told Baron and AsiaTrust that he required all fees for this engagement to be paid up front. Before commencing the representation, \$75,000.00 was deposited with PG&K to cover the legal fees and expenses for the representation.

11. Pronske and PG&K commenced the representation, but failed to prepare an engagement letter setting forth the terms of the engagement. Pronske and PG&K also failed to prepare any progress billing statements to Baron for over 10 months indicating that the fee paid

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<sup>1</sup> The Village Trust is a valid Spendthrift Trust organized under the laws of the Cook Islands in 2005, in which Jeffrey Baron is a primary beneficiary. Additional beneficiaries include organizations conducting research into a cure for juvenile diabetes.

<sup>2</sup> See Original Answer and Counterclaim of Pronske and PG&K filed on September 27, 2010, after the case was removed, at ¶¶ 50 & 51, a true and correct copy of which is attached hereto as **Exhibit “1”**.

was not a flat fee.

12. Until July 2010, Baron labored under the impression that PG&K's fee for such services rendered would be \$75,000, and that no additional fees would be incurred unless PG&K undertook additional matters for Baron, before which time a modified fee arrangement would be negotiated among PG&K, AsiaTrust and Baron prior to Pronske or PG&K undertaking such matters.

13. Pronske and PG&K did not prepare any progress billing statements for over 10 months. To Baron's knowledge, Pronske and PG&K never provided AsiaTrust with any analysis of the transactions in his trust account where the \$75,000 was allegedly deposited. Baron certainly never received any evidence of same.<sup>3</sup>

14. During the first six months of the representation, Pronske, as the attorney in charge, failed to perform the essential task for which PG&K was engaged—to prepare, file and seek confirmation of a plan of reorganization for *Ondova*, so that *Ondova* could successfully emerge from Chapter 11 bankruptcy. At that time Baron and AsiaTrust had the funds available to successfully confirm a plan of reorganization. In addition, Pronske failed to attend court hearings, left the Bankruptcy Court in the middle of at least one hearing without being excused by Judge Jernigan and failed to return, and failed to attend at least one scheduled mediation in Baron's case (advising Mr. Baron that he had been arrested and jailed) and was typically tardy to other scheduled meetings. Pronske and PG&K were, in general, negligent and apathetic in his representation of Mr. Baron.

15. In February 2010, having failed to seized the opportunity to file, prosecute and confirm a plan of reorganization sponsored by Baron, Pronske, having compromised his Baron's

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<sup>3</sup> Baron questions whether the \$75,000 retainer was ever escrowed in PG&K's Trust Account, and whether it was drawn down after issuance of invoices.

legal position by his inaction, was forced to negotiate a global settlement agreement with all parties.

16. As the months went by, and, in particular, during the month of July 2010, PG&K and Pronske's conduct became increasingly erratic, and he engaged in a series of extraordinarily egregious acts that caused material harm to Mr. Baron, beginning with a hearing on July 22, 2010, before Judge Jernigan at which the Global Settlement Agreement was being finalized.

17. During the July 22, 2010 hearing, Pronske, still representing Baron, left the court room in the middle of the proceeding and failed to return. In Pronske's absence, Judge Jernigan issued three orders commanding Baron's compliance—creating exigent circumstances for Baron—requiring Baron to provide two affidavits by July 27, 2010, regarding his hospitalization on July 22, 2010, and regarding certain complex disputed facts regarding a trust, and requiring Baron to execute by July 28, 2010, an extraordinarily complex settlement agreement consisting of approximately 140 pages and millions of dollars of interests at stake.

18. Baron desperately needed Pronske's services to enable Baron to comply with these Orders, which included drafting, reviewing documents as well as negotiating the final form of affidavits and settlement agreements.

19. The following day, July 23, 2010, Pronske and PG&K sent an invoice to Baron (the very first invoice ever provided by PG&K during the engagement) in the amount of \$292,452.70, demanding immediate payment from Baron, notwithstanding that PG&K had agreed to look to AsiaTrust for payment. Baron was shocked. He promptly called Pronske by phone to discuss the Orders and the invoice. During that conversation, Pronske's demeanor was incredibly hostile and uncompromising. He demanded immediate payment of a substantial portion of PG&K's invoice and threatened that "there would be dire consequences" if Baron did not meet his inflexible demand "within the next few days."

20. On or about July 27, 2010, Baron had another telephone conversation with Pronske in which Baron explained that he wished to have an amicable resolution of the invoice sent by PG&K, and attempted to convince Pronske to assist Baron in fulfilling the obligations imposed by Judge Jernigan relating to the three orders. Pronske again rebuffed Baron's requests and attempted reconciliation during this call and adamantly repeated his demand for immediate payment and threats of imminent harm, declaring in an uncompromising and hostile manner that he would refuse to have any further discussions with Baron (despite the exigent circumstances presented by the Court's orders), He stated that PG&K's demand for immediate payment was non-negotiable, and a precondition to the firm doing any further representation.

21. A few hours after the July 27 phone conversation, Pronske sent an email notification to Baron (two business days after sending his invoice and demanding payment), informing Baron that PG&K was abandoning Baron and refusing all representation effective immediately. Pronske's notice came hours before Baron was required to effectuate compliance with the orders imposed on Mr. Baron by Judge Jernigan. Mr. Baron was harmed and his position was severely compromised by Pronske's conduct.

22. However, despite ceasing all representation, Pronske refused to notify Judge Jernigan that PG&K was no longer representing Mr. Baron and was not assisting him in any way to comply with the orders. Pronske and PG&K's actions left Baron in an extremely compromised position with Judge Jernigan, who was left with the misimpression that Pronske and his firm were still representing Baron and assisting him to comply with its Orders.

23. In an attempt to halt the burgeoning problems that Pronske and his firm's abandonment was causing, Baron scrambled to find replacement counsel to substitute into the case. Upon beginning work on the case, Baron's replacement counsel requested that Pronske provide Baron with the firm's client files and requested that Pronske notify the Bankruptcy Court

of the substitution so that a transition could occur quickly<sup>4</sup> Instead of cooperating with Baron's replacement counsel, Pronske's response was to refuse to turnover Baron's client files and refuse to agree to a substitution of counsel prior to PG&K being paid in accordance with Pronske's demands.

24. In representing Baron, Pronske negotiated the Global Settlement Agreement which included substituting trustees for the Village Trust.. Pronske recommended and identified an "offshore" trustee to Baron, negotiated the terms of the agreement and disclosed same to Judge Jernigan in detail. Pronske was well aware of the difficulty Baron was having finding a replacement for the Trustee of The Village Trust, and he so advised Judge Jernigan on more than one occasion of such difficulties and in Pronske's participation in the same.<sup>5</sup>

25. Instead of agreeing to substitute counsel, on September 7, 2010, Pronske, on behalf of PG&K, filed an "emergency motion to withdraw" as counsel for Baron. PG&K then filed an Emergency Motion for Expedited Hearing (ECF Doc 423, in the Ondova Bankruptcy Case) in which he and the firm falsely alleged the following:

6. Expedited consideration of the Motion to Withdraw is warranted by the impending time-sensitive issues in this case. Upon information and belief, Pronske Patel has recently learned that Mr. Baron intends to transfer assets to an offshore entity over which U.S. Courts will not have jurisdiction, in order to hide those assets from legitimate creditors. Upon information and belief, Mr. Baron will be transferring such assets around

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<sup>5</sup>The Court and the Ondova Trustee were pressing Baron to identify a new trustee who would be willing to serve as trustee for The Village Trust in June and July 2010, during Pronske's representation, and Pronske appeared before the Court on more than one occasion to inform the Court that Baron was having difficulties finding a replacement trustee willing to serve. After Pronske abandoned Baron, Baron continued his attempts to find a willing replacement trustee in the Cook Islands during the month of August 2010, with no immediate success. Keenly aware of the pressure exerted by the Court and the Ondova Trustee to secure a replacement trustee immediately, Baron at one point considered recommending a replacement trustee in other jurisdictions which Pronske participated in.. Ultimately, however, Baron was able to locate a willing replacement trustee in the Cook Islands, and by Deed of Resignation of Trustee and Appointment of Successor Trustee of the Village Trust dated September 21, 2010, Stowe Protectors Ltd., then the Protector under The Village Trust, appointed Southpac Trust International, Inc. to act at the Trustee under The Village Trust. Southpac was identified and approved by the bankruptcy court as the replacement trustee.

September 15, 2010. In order to pursue state court remedies against such assets and to comply with all ethical obligations, Pronske Patel must withdraw as counsel of record for Mr. Baron by September 15, 2010. Thus, Pronske Patel must respectfully request that the Court grant relief on an expedited basis, so that Pronske Patel may withdraw prior to the transfer of assets by Mr. Baron. Accordingly, Pronske Patel respectfully requests a hearing on the Motion to Withdraw on an expedited basis, on or before September 15, 2010. Specifically, Pronske Patel requests that this matter be set before or at the same time as the expedited status conference currently set in this case on September 15, 2010 at 1:30 p.m. [Docket No. 22].

7. Pronske Patel has recently learned that Baron intends to hide his assets offshore as early as September 15, 2010. Thus, the hearing will need to move forward expeditiously to prevent Mr. Baron's unlawful activities."

*Id.* at p2, ¶6.

26. Such representations were a total fabrication and this was determined to be untrue by no less than the Fifth Circuit Court of Appeals in *Netsphere v Baron*, 703 F.3d 296 (5th Cir. 2012), where the Court, after reciting Pronske's allegations, stated:

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.

*Id.* at 307.

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. Accordingly, the receivership cannot be justified in this instance on the basis that it was needed to take control of the property that was the subject of the litigation.

*Id.* at 308.

27. Most disturbing, the "unlawful activities" alleged by Pronske and PG&K were performed under the supervision, direction and participation of Mr. Pronske, himself, as he described to the Court only a few months prior.

28. On September 15, 2010, Baron filed the captioned cause against Pronske and

PG&K. Baron sought a declaration that the amount of fees and expenses charged by PG&K was unreasonable and unconscionable, or, in the alternative, that the fee was not owed because of the poor billing practices of PG&K, the failure to enter into a written agreement with Baron, and failure to achieve the objectives of the representation. The suit also sought to enjoin Pronske and PG&K from disclosing attorney/client communications and confidential information.

29. On the same date, Pronske and PG&K removed the lawsuit to the Bankruptcy Court, where it was pending as Adversary Proceeding No. 10-03281 before Bankruptcy Judge Jernigan, related to the Ondova Chapter 11 Case. On September 29, 2010, PG&K filed an answer and counterclaim against Baron. Baron immediately moved to remand the lawsuit, but, thereafter, the adversary proceeding was abated, which abatement has as of this date, never been lifted. In May 2014, the captioned cause was remanded to this Court over PG&K and Pronske's objection.

30. Pronske, who had made it his mission to punish Baron, assembled, led and encouraged a group of lawyers, who, alongside Pronske, performed legal services for Mr. Baron and, in some cases, also for entities with which Mr. Baron is affiliated (the "Petitioning Attorneys"), to remove Baron from control of his assets.

31. Hell bent on destroying his former client, over the next several months, Pronske used privileged and confidential information he had gained during his representation of Baron to contribute to the wrongful imposition of a federal receivership over Baron and all of his assets. On November 24, 2010, District Judge Ferguson entered a Receivership Order in the Netsphere v Baron case, pending in the United States District Court for the Northern District of Texas Division, Cause No. 3:09-cv-00988-F, and appointed a receiver, Peter Vogel. Vogel, as Receiver, effectively (a) seized all Baron's assets, and (b) restricted Baron from managing his financial affairs, entering into agreements, traveling, hiring attorneys or other professionals to

represent his. (See, NDTX Case 3:09-cv-00988-F, ECF Doc 124: Receivership Order, dated Nov. 24, 2010).

32. Prior to and during the receivership, Pronske fabricated allegations to the Federal District Court that 1) Baron was “psychotic”, engaged in “criminal acts”, “wasted peoples lives” and strenuously argued for Baron to be deprived of due process in defending against his and his Petitioning Attorney’s claims. The only thing Baron was guilty of was defending himself against Pronske and others who caused a wrongful receivership and an involuntary bankruptcy.

33. Eventually, after Pronske’s repeated maliciously false representations, the courts capitulated and adopted Pronske’s repeated proclamations that Baron was “vexatious”, self-justifying Pronske’s claim for unreasonable fees.

34. Baron appealed the Receivership Order to the Fifth Circuit Court of Appeals, and after nearly two years of costly appellate litigation, on December 18, 2012, the Fifth Circuit reversed the entry of the Receivership Order and found that the imposition of the receivership was unlawful. *Netsphere, Inc. v Baron*, 703 F.3d 296, 306–07, 315 (5th Cir. 2012).<sup>6</sup> The Fifth Circuit held that receiverships could not be used to freeze an alleged debtor's assets pending a determination of the validity of the debt. *Id.* at 309. In reaching its determination, the Fifth Circuit found that the claims of Pronske and the Petitioning Attorneys were an unlawful basis for subjecting Mr. Baron to a receivership. *Id.* at 310.

35. Notwithstanding the Fifth Circuit’s admonition that that the unsecured contested claims of the Petitioning Attorneys could not be used as a basis to justify the imposition of a receivership proceeding, two hours after the Fifth Circuit reversed the receivership imposed over

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<sup>6</sup> In the interim, the Receiver unlawfully liquidated over \$5,200,000 of Baron’s assets to pay excessive Receivership professional fees and expenses.

Baron and his assets, Pronske, again carrying out his pernicious attack upon his former client, instituted an involuntary bankruptcy against Baron, representing himself and the other Petitioning Attorneys. On its face, Pronske's involuntary filing was in violation of a federal injunction imposed under the Receivership Order, and in circumvention of the Fifth Circuit's decision in the Netsphere case.<sup>7</sup>

36. The next day, December 19, 2012, Pronske filed an emergency motion for appointment of an interim trustee over Baron's assets, and Bankruptcy Judge Jernigan promptly appointed an interim trustee on January 17, 2013. For over six months, Pronske, acting for himself and the Petitioning Attorneys, litigated the involuntary bankruptcy proceeding before Bankruptcy Judge Jernigan, causing Baron to incur hundreds of thousands of dollars in legal fees to defend himself. Ultimately, in the latter part of June 2013, Bankruptcy Judge Jernigan, based on Pronske's misrepresentations, entered an Order for Relief against Baron, putting him in a chapter 7 bankruptcy.

37. Baron appealed the Order for Relief to the District Court, where, six months later, and after incurring several hundreds of thousands of dollars in legal fees, on January 2, 2014, Baron successfully reversed the Order for Relief. In the appeal to District Judge Sam Lindsay, Judge Lindsay reversed and rendered as to the Order for Relief, finding that it was improvidently granted by Bankruptcy Judge Jernigan. *See* ECF Doc 52 in Federal District Court Case 3:13-cv-03461-L. Judge Lindsay remanded the case to the Bankruptcy Court for the limited purpose of having Judge Jernigan dismiss the bankruptcy proceeding and to consider damage claims against

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<sup>7</sup> On December 18, 2012, Gerrit M. Pronske, individually, joined as a filing "creditor" in the Involuntary Petition that commenced the Baron Involuntary Bankruptcy, when it was clear that his firm, PG&K, was the alleged creditor, not Pronske. Pronske, individually, clearly did not have standing to be an involuntary filing creditor as to Baron. He and his firm, PG&K, commenced their representation of the Petitioning Attorneys in the Baron Bankruptcy Proceeding.

Pronske, PG&K and the Petitioning Attorneys under 11 U.S.C. §303(i).<sup>8</sup> Pursuant to the order of Judge Lindsay dismissing the Bankruptcy Case, and the order of Judge Jernigan, Baron has now instituted a multi-million dollar lawsuit against Pronske, PG&K and the Petitioning Attorneys for the bad faith filing of an involuntary bankruptcy against Baron. *See* Adversary Proceeding 14-03047, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

38. Stymied by two reversals, and still intent on the destruction of his former client Baron, Pronske returned to the 2010 State Court Lawsuit (DC 10-11915) he removed from this Court, pending before Bankruptcy Judge Jernigan as Adversary No. 10-0328. On March 13, 2014, Pronske filed an Application for Pre-judgment Writ of Garnishment against Baron, a Motion to Lift the Abatement of the case, and a Motion for Emergency Hearing. Judge Jernigan denied PG&K and Pronske's Emergency Motion for Hearing on March 14, 2014. (ECF Docs 37, 38 & 39 in Adversary 10-03281-sgj).

39. Three days later, having failed to obtain relief before Judge Jernigan, Pronske then filed a new state court proceeding in the 68<sup>th</sup> Judicial District Court in and for Dallas County, Texas, Cause Nos. DC14-02619 and DC14-02622, where Pronske made identical allegations as were stated in this cause. Pronske then arranged for an *ex parte* hearing before Judge Hoffman of the 68<sup>th</sup> Judicial District Court, without notice to Baron. In his pleadings before Judge Hoffman, Pronske failed to disclose to Judge Hoffman that Judge Jernigan had refused to grant PG&K and Pronske's Emergency Motion for Hearing on the prejudgment garnishment application filed days before in her court. Pronske misled Judge Hoffman into entering a prejudgment garnishment against Baron.

40. Pronske's mission to punish Baron is pathological in nature. Pronske's actions

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<sup>8</sup> 11 U.S.C. § 303(i) is the Bankruptcy Code's analogue to a malicious prosecution claim under law. *See In re Glannon*, 245 B.R. 882, 889 (D. Kan. 2000) ("a claim for § 303(i)(2) damages is analogous to the common law claim for malicious prosecution.").

have violated his ethical duties to his former client, have deprived Baron of his personal assets, including property exempt from creditors' claims under Texas law, and have deprived Baron of his constitutional right to defend himself against Pronske's claims. Pronske's actions have deprived Baron of his right to assert his own claims against Pronske and PG&K for millions of dollars in damages occasioned by Pronske's meretricious activities.<sup>9</sup>

41. Pronske and PG&K's illegal and vexatious tactics were successful in freezing, dismembering and wasting Baron's assets for over three years, while the appointed trustees/receivers in the legal actions, which Pronske and PG&K helped initiate and participated in used over \$8 million before the actions were deemed unlawful.

42. To Pronske, Baron's opposition to Pronske and PG&K's meretricious actions equals vexatious conduct on the part of Baron. Pronske has been very successful in proffering this argument before various courts, and he will continue to besmirch Mr. Baron's reputation and standing before this Court using the same rhetoric. The truth, however, is far different when the facts are examined. In this case the old adage "actions speak louder than words" rings true. Pronske has been rebuked by every tribunal he has been before, losing every single one of his meretricious legal ventures. Baron, on the other hand, has consistently been meritorious in defeating and defending against Pronske's actions at great cost to Baron, his family and his estate.

## **VI. CAUSES OF ACTION**

### **A. COUNT THREE - BREACH OF FIDUCIARY DUTY AND SELF DEALING**

43. Baron hereby incorporates by reference the above paragraphs of this pleading as if

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<sup>9</sup> As a result of the Receivership and Involuntary Bankruptcy, both of which have been reversed, Baron was in a financial lockdown from November 24, 2010, to the present, because the Receivership, although reversed, has not been wound down as of this date.

fully set forth herein.

44. Pronske & PG&K had an attorney-client relationship with Baron and therefore owed a fiduciary duty to Baron including full disclosure.

45. Pronske & PG&K breached their fiduciary duties to Baron, and, as a proximate result, Baron has sustained actual damages as described herein which are within the jurisdictional limits of this Court.

46. Pronske & PG&K breached their duties to Baron in said firm's malicious prosecution of Baron, fraud, abuse of process, violations of the Texas Deceptive Trade Practices Act, violations of the Texas Fair Debt Collection Act, conspiracy to commit unlawful acts to the detriment of Baron, of the and unreasonable collections tactics as described in this Complaint.

47. Pronske & PG&K failed to disclose the psychological and mental problems Pronske was having that would affect PG&K's representation of Baron.

48. Pronske & PG&K failed to provide a written fee agreement to AsiaTrust and never had an agreement with Baron to pay its fees and expenses. PG&K failed to provide any billing for 10 months to The AsiaTrust. Assuming arguendo that PG&K's agreement with The Village Trust was not a flat fee, as Pronske and PG&K now allege, Pronske and PG&K removed The Village Trust's funds, held in trust, without authorization. Pronske & PG&K also breached its duties by representing Baron's adversaries and disclosing confidential information to them and others.

49. Further, Pronske & PG&K misrepresented facts to at least two courts in two proceedings in which Baron was a party, accusing Baron of unlawful acts, attempting to extort money from Baron, and successfully attempting to wrongfully induce the courts to seize Baron's liquid assets for the purpose of transferring such funds to Pronske & PG&K.

50. Pronske & PG&K's acts constitute an intentional and serious breach of its

affirmative fiduciary duty owed to PG&K's client, Baron.

51. As a direct and proximate result of Pronske & PG&K's breaches of fiduciary duty, Baron has suffered actual damages, including, but not limited to, the loss of Baron's business, Ondova, the loss in value of Baron's beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same.

52. Baron further alleges that there is clear and convincing evidence that Pronske & PG&K acted with malice, that is, with a specific intent to cause substantial injury and harm to Baron. Such acts were committed knowingly, intentionally, maliciously, wantonly, fraudulently, and in reckless and callous disregard of the legitimate rights of Baron, who is, therefore, is entitled to recover exemplary damages against Pronske & PG&K by reason of Pronske & PG&K's breaches of fiduciary duty as set forth above.

53. In the alternative, The Village Trust is entitled to recover the equitable remedy of disgorgement of all compensation paid to PG&K, by reason of the serious and clear violation of the fiduciary duties owed by Pronske & PG&, under the Texas Supreme Court decision of *Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999).<sup>10</sup>

54. In the alternative, Baron alleges that the entirety of the benefits received by PG&K under the above-described contract for legal services with The Village Trust should be treated as improper and unlawful "benefits" obtained by PG&K and that all such improper and unlawful "benefits" should be restored to The Village Trust.

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<sup>10</sup> PG&K and Pronske have admitted under the strictures of Rule 11 of the Federal Rules of Civil Procedure that PG&K's fee agreement was with AsiaTrust and that such agreement was oral in nature. See paragraphs 50 and 51 of PG&K's Original Counterclaim filed in this cause while it was removed to the Bankruptcy Court.

**B. COUNT FOUR - FRAUD**

55. Plaintiff hereby incorporates by reference all paragraphs of this Petition as if fully set forth herein

56. The conduct of Pronske & PG&K described herein, in making the above-described material false affirmative representations to get Baron's company out of bankruptcy through a plan of reorganization, intending that Baron rely upon those representations in forming an attorney-client relationship with Pronske & PG&K, agreeing to incur fees paid by him, and relied upon by Plaintiff Baron in forming the attorney-client relationship and entering into the contract for rendition of legal services between himself and PG&K, constitutes actual common law fraud.

57. Further, Pronske & PG&K failed to disclose Pronske's psychological and emotional problems that would affect PG&K's representation of Baron. The facts PG&K failed to disclose were material. AsiaTrust was misled into engaging PG&K and the intended client, Baron, was also misled into approving PG&K's engagement by AsiaTrust to represent Baron. Had The AsiaTrust and Baron known of Pronske's psychological and emotional problems, they never would have approved PG&K's engagement..

58. As a direct and proximate result of Pronske & PG&K fraud, Baron has suffered actual damages, including, but not limited to, the loss of Baron's business, Ondova, the loss in value of Baron's beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same.

59. Baron further alleges that there is clear and convincing evidence that Pronske & PG&K acted with malice, that is, with a specific intent to cause substantial injury and harm to

Baron. Such acts were committed knowingly, intentionally, maliciously, wantonly, fraudulently, and in reckless and callous disregard of the legitimate rights of Baron, who is, therefore, is entitled to recover exemplary damages against Pronske & PG&K by reason of Pronske & PG&K's fraudulent acts against Baron as set forth above.

**C. COUNT FIVE – PROFESSIONAL NEGLIGENCE AND GROSS NEGLIGENCE**

60. Plaintiff hereby incorporates by reference all paragraphs of this Petition as if fully set forth herein

61. The above described acts of Pronske & PG&K constitute professional negligence in that PG&K represented Baron and failed to conduct their representation in accordance with the applicable standard of care.

62. As a direct and proximate result of Pronske & PG&K's negligence, Baron has suffered actual damages, including, but not limited to, the loss of Baron's business, Ondova, the loss in value of Baron's beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same.

63. Baron also alleges and will prove by clear and convincing evidence that Pronske & PG&K's conduct constituted gross negligence, justifying the award of exemplary damages.

**D. COUNT SIX - MALICIOUS PROSECUTION IN CIVIL ACTION**

64. Plaintiff hereby incorporates by reference all paragraphs of this Petition as if fully set forth herein Truthful

65. Pronske & PG&K's meretricious conduct caused a receivership to be imposed over Baron and his assets, caused the filing of a bogus involuntary bankruptcy action against

Baron, and caused a prejudgment garnishment to be issued with respect to Baron's assets some or all of which were and are exempt under applicable law. Such conduct of Pronske & PG&K was vindictively pursued by PG&K by and through Pronske as lead counsel in an effort to legally harass, extort and to defame Baron.

66. The bringing and continuing of the abovementioned actions constituted malicious prosecution on the part of Pronske & PG&K against Baron.

67. As to the proceedings instituted and/or caused by Pronske & PG&K, Pronske & PG&K, did not have a probable cause, and such proceedings were terminated in Baron's favor.

68. Pronske & PG&K's actions and allegations against Baron were unfounded, frivolous, without probable cause, and pursued by Pronske & PG&K for an improper purpose.

69. As a direct and proximate result of PG&K's malicious prosecution, Baron has suffered actual damages, including, but not limited to, the loss of Baron's business, Ondova, the loss in value of Baron's beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere, Inc. v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same.

70. Baron further alleges that there is clear and convincing evidence that PG&K acted with malice, that is, with a specific intent to cause substantial injury and harm to Baron. Such acts were committed knowingly, intentionally, maliciously, wantonly, fraudulently, and in reckless and callous disregard of the legitimate rights of Baron, who is, therefore, is entitled to recover exemplary damages against PG&K by reason of PG&K's malicious prosecution.

**E. COUNT SEVEN - ABUSE OF PROCESS**

71. Plaintiff hereby incorporates by reference all paragraphs of this Petition as if fully set forth herein

72. The elements of an abuse of process claim include (1) an illegal, improper, or perverted use of process, neither warranted nor authorized by the process, (2) an ulterior motive or purpose in exercising such use, and (3) damages as a result of the illegal act. *Preston Gate, L.P. v. Bukaty*, 248 S.W.3d 892, 897 (Tex. Civ. App. – Dallas 2008, no pet.).

73. Pronske & PG&K's actions in the receivership, involuntary bankruptcy and garnishment proceedings were unlawfully taken to deprive Baron from the use of his property and from his "day in court", where he might have an impartial trial by a court and jury with respect Baron's claims against Pronske & PG&K and Pronske & PG&K's fee claims asserted against Baron.

74. As a direct and proximate result of Pronske & PG&K's abuse of process, Baron has suffered actual damages, including, but not limited to, the loss of Baron's business, Ondova, the loss in value of Baron's beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same.

75. Baron further alleges that there is clear and convincing evidence that Pronske & PG&K acted with malice, that is, with a specific intent to cause substantial injury and harm to Baron. Such acts were committed knowingly, intentionally, maliciously, wantonly, fraudulently, and in reckless and callous disregard of the legitimate rights of Baron, who is, therefore, is entitled to recover exemplary damages against Pronske & PG&K by reason of Pronske & PG&K's abuse of process.

**F. COUNT EIGHT - VIOLATION OF THE TEXAS DEBT COLLECTION ACT**

76. Pronske & PG&K threatened and did, take actions against Baron, which were prohibited by law, as demonstrated by Pronske & PG&K's 1) threats to Baron that they would

engage in “scorched earth” against Baron, 2) threats to disclose Baron’s privileged information to extort a payment from Baron, 3) acts of providing false testimony and advocacy designed to harm Baron and extract payment from him; 4) participation in and advocacy for the now reversed receivership and dismissed involuntary bankruptcy over Baron, in violation of the receivership injunction; 5) acting as counsel for Baron’s adversaries, in breach of Pronske & PG&K’s fiduciary duties.

77. Baron has been damaged by Pronske & PG&K’s abovementioned acts in an amount in excess of the minimum jurisdictional limit of this Court. These damages include, but are not limited to, the loss of Baron’s business, Ondova, the loss in value of Baron’s beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same. Moreover, Baron is entitled to recover his reasonable and necessary attorneys’ fees.

**G. COUNT NINE - BREACH OF CONTRACT**

78. Plaintiff hereby incorporates by reference all paragraphs of this Petition as if fully set forth herein

79. PG&K entered into an oral agreement with AsiaTrust to perform legal services for Baron.

80. PG&K breached its contractual obligations to perform such services by failing to prepare, file and prosecute to conclusion a plan of reorganization to reorganize the affairs of Ondova, Baron’s company, and then unilaterally ceased representing Baron in the latter part of July 2010, when Baron’s need for an attorney to complete the negotiation of the Global Settlement Agreement was acute and critical.

81. As a direct and proximate result of PG&K’s breach of contract, Baron has

suffered actual damages, including, but not limited to, the loss of Baron's business, Ondova, the loss in value of Baron's beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same.

**H. COUNT TEN - VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

82. Plaintiff hereby incorporates by reference all paragraphs of this Petition as if fully set forth herein

83. Baron is a consumer as defined in the Texas Deceptive Trade Practices Act.

84. As provided by the TDPA, a violation under the Texas Debt Collection Act, as alleged by Baron, is violation under the TDPA, which Baron hereby alleges.

85. Pronske & PG&K are liable under the TDPA for their violations of the Texas Debt Collection Act as described above. Therefore, in addition to the actual damages Baron is entitled to recover under the said Act, Baron is entitled to the range of damages afforded to him under the TDPA.

86. Pronske & PG&K engaged in an unconscionable action, or course of action, by charging an unconscionable fee. Further, Pronske & PG&K failed to disclose Pronske's psychological and mental problems that would affect Pronske & PG&K's representation of Baron, the failure of which is unconscionable.

87. Pronske & PG&K represented that their services had characteristics or benefits which they did not have.

88. Pronske & PG&K represented that their services were of a particular standard, quality, or grade when they were of another.

89. Pronske & PG&K represented that their oral agreement conferred rights, remedies, or obligations which it did not have or involve, or which are prohibited by law.

90. Pronske & PG&K failed to disclose information regarding their services which was known at the time of the transaction when such failure to disclose was intended to induce Baron into a transaction into which he would not have entered had the information been disclosed.

91.

92. These deceptive acts described above are a producing cause of economic damages exceeding the minimum jurisdictional limit of this Court. These damages include, but are not limited to, the loss of Baron's business, Ondova, the loss in value of Baron's beneficial interest in The Village Trust and its assets, the attorney fees and expenses incurred by Baron in the *Netsphere v. Baron* case and the appeals emanating therefrom, the attorney fees and expenses incurred by Baron in the Baron Involuntary Bankruptcy and appeals emanating from same.

93. Additionally, the deceptive acts committed by Pronske & PG&K's were done knowingly; therefore, Baron is entitled to statutory penalties of not more than three times the economic damages incurred by him.

94. Finally, the deceptive acts committed by Pronske & PG&K's were done intentionally; therefore, Baron is entitled to be compensated for mental anguish in addition to economic damages. Moreover, Baron is entitled to statutory penalties of not more than three times the economic damages and mental anguish incurred by him.

95. In addition to any damages and statutory penalties award, Baron is entitled to an award of costs and reasonable attorneys' fees.

**I. COUNT ELEVEN - ATTORNEYS FEES**

96. Plaintiff hereby incorporates by reference all paragraphs of this Petition as if fully

set forth herein

97. Pronske & PG&K's conduct as described herein and the resulting damage and loss to Baron has necessitated Baron's retention of the attorneys. Baron is therefore, entitled to recover from Pronske & PG&K an additional sum to compensate Baron for a reasonable fee for such attorneys' necessary services in the preparation and prosecution of this action, as well as reasonable fee for any and all necessary appeals to other courts

98. Baron re-alleges and incorporates by reference the preceding paragraphs for all purposes the same as if set forth herein verbatim.

#### **VII. REQUEST FOR PERMANENT INJUNCTION**

99. Plaintiff asks the court to set his request for permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against the Defendants enjoining them from disclosing confidential and attorney-client privileged information to third parties.

#### **VIII. REQUEST FOR DISCLOSURE**

100. Defendant hereby requests disclosure in writing within 30 days after service of this request of all information listed in Tex. R. Civ. P. 194.2(a) through (i), and (1).

**WHEREFORE, PREMISES CONSIDERED,** Baron respectfully prays that upon final trial or other disposition of this lawsuit, Baron have and recover judgment against Pronske & PG&K for the following:

- (a) all damages requested;
- (b) disgorgement of all fees received;
- (c) reasonable and necessary attorney's fees;
- (d) pre-judgment and post-judgment interest as provided by law;
- (e) costs of court;
- (f) permanent injunction enjoining Pronske & PG&K from further divulging attorney-

client privileged information

(g) exemplary damages; and

(h) such other and further relief, at law or in equity, to which Baron

is justly entitled

Respectfully submitted,

/s/ Leonard Simon

Leonard H. Simon, Esq

TBN: 18387400; SDOT: 8200

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 737-8207 – (Direct)

(832) 202-2810 – (Direct Fax)

Email: [lsimon@pendergraftsimon.com](mailto:lsimon@pendergraftsimon.com)

**ATTORNEY IN CHARGE FOR**

**JEFFREY BARON**

OF COUNSEL:

William P. Haddock, Esq.

Texas Bar No. 00793875

Email: [whaddock@pendergraftsimon.com](mailto:whaddock@pendergraftsimon.com)

PENDGRAFT & SIMON

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 528-8555 – (Main)

(713) 868-1267 – (Main Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2014 I served the above and foregoing by email and by electronically filing the foregoing with the Clerk of the Court using the Court's electronic filing system, which will send notification of such filing to:

Gerrit M. Pronske

PRONSKE, GOOLSBY & KATHMAN, P.C.

2200 Ross Avenue

Suite 5350

Dallas, TX 75201

Email: [gpronske@pgkpc.com](mailto:gpronske@pgkpc.com)

/s/ Leonard H. Simon

**EXHIBIT "1"**

Gerrit M. Pronske  
 State Bar No. 16351640  
 Rakhee V. Patel  
 State Bar No. 00797213  
 Christina W. Stephenson  
 State Bar No. 24049535  
 PRONSKE & PATEL, P.C.  
 2200 Ross Avenue, Suite 5350  
 Dallas, Texas 75201  
 (214) 658-6500 - Telephone  
 (214) 658-6509 – Telecopier  
 Email: [gpronske@pronskepatel.com](mailto:gpronske@pronskepatel.com)  
 Email: [rpate@pronskepatel.com](mailto:rpate@pronskepatel.com)  
 Email: [cstephenson@pronskepatel.com](mailto:cstephenson@pronskepatel.com)

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

<b>In re:</b>	§	<b>CASE NO. 09-34784-SGJ-11</b>
	§	<b>Chapter 11</b>
<b>ONDOVA LIMITED COMPANY,</b>	§	
	§	
<u><b>Debtor.</b></u>	§	
<b>JEFF BARON,</b>	§	<b>ADV. NO. 10-03281-SGJ</b>
	§	
<b>Plaintiff,</b>	§	
<b>v.</b>	§	
	§	
<b>GERRIT M. PRONSKE,</b>	§	
<b>INDIVIDUALLY, AND PRONSKE &amp;</b>	§	
	§	
<b>PATEL, P.C.,</b>	§	
	§	
<u><b>Defendants.</b></u>	§	
<b>GERRIT M. PRONSKE AND</b>	§	
<b>PRONSKE &amp; PATEL, P.C.,</b>	§	
	§	
<b>Counter-Plaintiffs and</b>	§	
<b>Third-Party Plaintiffs,</b>	§	
<b>v.</b>	§	
	§	
<b>JEFF BARON,</b>	§	
	§	
<b>Counter-Defendant, and</b>	§	
	§	
<b>THE VILLAGE TRUST,</b>	§	
	§	
<b>Third-Party Defendant.</b>	§	

**TO THE HONORABLE STACY G. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:**

**COME NOW**, Gerrit M. Pronske and Pronske & Patel, P.C. (collectively, the “Firm” or “Defendants”) and file this their Original Answer to the Plaintiff’s Original Petition for Declaratory Judgment, Original Petition, Application for Temporary Restraining Order and Request for Disclosure (the “Petition”) and Counterclaim and Third-Party Complaint complaining of and against Jeffrey Baron (“Baron”) and The Village Trust (“Trust”) (Baron and the Trust are collectively referred to as the “Counter-Defendants”), and for cause would respectfully show the Court as follows:

**I.  
ANSWER TO THE PETITION**

1. Defendants neither admit nor deny the statement contained in Paragraph 1 of the Petition. However, such statement is not applicable in a federal court proceeding.
2. Defendants admit the allegations contained in Paragraph 2 of the Petition.
3. Defendants admit the allegations contained in Paragraph 3 of the Petition.
4. Defendants admit the allegations contained in Paragraph 4 of the Petition.
5. Defendants neither admit nor deny the jurisdictional allegations contained in Paragraph 5 of the Petition.
6. Defendants neither admit nor deny the jurisdictional allegations contained in Paragraph 6 of the Petition.
7. Defendants neither admit nor deny the jurisdictional allegations contained in the first sentence of Paragraph 7 of the Petition. Defendants admit the allegations

contained in Paragraph 7 of the Petition.

8. Defendants admit the allegations contained in Paragraph 8 of the Petition.
9. Defendants deny the allegations contained in the first sentence of Paragraph 9 of the Petition. Defendants deny the allegations contained in Paragraph 9 of the Petition, in that it was the Trust that agreed to pay the retainer.
10. Defendants deny the allegations contained in Paragraph 10 of the Petition, in that it was the Trust that paid the retainer.
11. Defendants deny the allegations contained in Paragraph 11 of the Petition, in that there was no failure to prepare an engagement letter because one was not requested by either Baron or the Trust prior to payment of the retainer or otherwise.
12. Defendants deny the allegations contained in Paragraph 12 of the Petition.
13. Defendants admit that a July 23, 2010, invoice showed the sum of \$217,452.70 owing to the Defendants through June 30, 2010, less an agreed credit as reflected in a transmittal email, as alleged in Paragraph 13 of the Petition.
14. Defendants deny the allegations contained in Paragraph 14 of the Petition. The additional sums owing in the September 1, 2010, invoice were only for the month of July 2010, and did not go “all the way back to August 31, 2009.”
15. Defendants admit the allegations contained in Paragraph 15 of the Petition, only to the extent that it states that the declaration contained therein is sought. Defendants deny the substantive allegations contained in Paragraph 15 of the Petition.
16. Defendants deny the allegations contained in Paragraph 16 of the Petition.
17. Defendants admit the allegations contained in Paragraph 17 of the Petition.

18. Defendants deny the allegations contained in Paragraph 18 of the Petition.
19. Defendants admit the allegations contained in Paragraph 19 of the Petition.
20. Defendants deny the allegations contained in Paragraph 20 of the Petition.
21. Defendants deny the allegations contained in Paragraph 21 of the Petition.
22. Defendants deny the allegations contained in Paragraph 22 of the Petition.
23. Defendants admit that the Plaintiffs “desire” the remedy contained in Paragraph 23 of the Petition.
24. Defendants deny the allegations contained in Paragraph 24 of the Petition.
25. Defendants deny the substantive allegations contained in Paragraph 25 of the Petition.
26. Defendants deny the allegations contained in Paragraph 26 of the Petition.
27. Paragraph 27 of the Petition requires Defendants to neither admit nor deny its allegations.
28. Paragraph 28 of the Petition requires Defendants to neither admit nor deny its allegations.
29. Defendants deny the allegations contained in Paragraph 29 of the Petition.
30. Paragraph 30 of the Petition requires Defendants to neither admit nor deny its allegations.
31. Defendants deny the allegations contained in Paragraph 31 of the Petition.
32. Defendants deny the allegations contained in Paragraph 32 of the Petition.
33. Defendants deny the allegations contained in Paragraph 33 of the Petition.
34. Defendants deny the allegations contained in Paragraph 34 of the Petition.
35. Defendants deny the allegations contained in Paragraph 35 of the Petition.
36. Defendants deny the allegations contained in Paragraph 36 of the Petition.

37. Defendants deny the allegations contained in Paragraph 37 of the Petition.
38. Paragraph 38 of the Petition requires Defendants to neither admit nor deny its allegations.
39. Defendants deny the allegations contained in Paragraph 39 of the Petition.
40. Paragraph 40 of the Petition requires Defendants to neither admit nor deny its allegations.
41. Defendants deny the allegations contained in Paragraph 41 of the Petition.
42. Defendants deny the allegations contained in Paragraph 42 of the Petition.
43. Defendants deny the allegations contained in Paragraph 43 of the Petition.

**II.  
COUNTERCLAIM AND THIRD PARTY COMPLAINT**

**A. PARTIES**

44. Jeffrey Baron is an individual who resides in Dallas County, Texas and has appeared herein.
45. The Village Trust is a trust organized under the laws of the Cook Islands. The Village Trust has entered an appearance in this bankruptcy case no. 09-34784-SGJ-11, *In re Ondova Limited Company*; pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division and other American cases. Adrian Taylor is the trustee of the Asia Trust, Ltd., which is the trustee of The Village Trust. The Village Trust and Mr. Taylor have consented to the jurisdiction of Texas in proceedings before the bankruptcy court. Adrian Taylor may be served with process by serving him at his business address at Asiatic Trust Pacific Ltd., Level 2, BCI House, Rarotonga, COOK ISLANDS; Tel: +682 23387; Fax: +682 23385; [www.asiaciti.com](http://www.asiaciti.com).

46. Alternatively, The Village Trust has transacted business within the State of Texas and is amenable to service of process in accordance with the Texas Long Arm Statute through the Texas Secretary of State.

**B. JURISDICTION & VENUE**

47. Jurisdiction is proper in this court as this matter is related to the Bankruptcy Case of Ondova Limited Company, and has been properly removed to this Court.
48. Venue is proper in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to 28 U.S.C. §§1408 and 1409.

**C. BASIS OF SUIT**

49. This is a suit brought by the Firm to collect the balance owed from Defendants for legal services provided to Baron at the specific request of Baron and the Trusts.

**D. FACTS**

50. Effective on or about August 31, 2009, Baron, individually and through attorneys for the Trust, retained the Firm in connection with matters related to Ondova Limited Company in its bankruptcy case pending before this Court. The terms of such engagement were negotiated between the Firm and Elizabeth Schurig, an attorney for the Trust, with Baron on the same phone call. Although the Trust required a written engagement letter with many of the attorneys representing Baron for which the Trust was to pay the bills, the Trust did not require such an engagement letter with the Defendants.
51. Baron represented that he was unable to personally pay for the Firm's services, but that the Trust would pay the Firm's fees for services rendered and expenses incurred. In fact, the Trust wire transferred the initial retainer to the Firm either directly or indirectly through the trust account of Friedman and Feiger at or

about the time that the Firm commenced work on Baron's behalf. Based upon this representation, the Firm agreed to provide legal services for Baron.

52. The bulk of the work performed by the Firm centered around the settlement of claims and causes of action among Baron, the Trust and numerous entities relating to Netsphere, Inc., and Ondova Limited Company. The negotiations took considerable time and effort of numerous attorneys, including those of the Firm. The negotiations of the settlement issues were successful, and resulted in the execution of an extensive written settlement agreement approved by this Court in the Ondova Limited Company bankruptcy case.
53. After the settlement was achieved, Baron refused to pay for the legal services, claiming that both he and the Trust had no money.
54. The Firm ceased work upon learning that Baron refused to pay even a portion of the bill for the legal services and filed a Motion to Withdraw from continuing to represent Baron in Ondova Limited Company bankruptcy case. This Court approved the Motion to Withdraw and entered an Order regarding same.
55. At the time that the work ceased, Baron owed the Firm \$241,202.70, less the sum of \$30,000 that the Firm agreed to credit against its bill to assist Baron in obtaining the settlement in the event that the bill was timely paid. Because Baron failed to timely make the payment of the fees and expenses as agreed, the credit has been invalidated and the sum owing to the Firm is \$241,202.70.
56. Demand has been made on Baron on numerous occasions. Notwithstanding, Baron has failed and refused, and continues to fail and refuse, to pay the Firm for its outstanding fees and expenses owed for services rendered.

57. Baron utilized the services of the Firm with no intention to pay for such services, within the meaning of the Texas Theft Liability Act, § 31.04 of the Texas Penal Code and §§ 134.001 – 134.005 of the Texas Civil Practice and Remedies Code.

### **E. CAUSES OF ACTION**

#### ***Count One – Theft of Services***

58. The Firm incorporates and realleges the allegations set forth above.
59. At the request of Baron and the Trust, the Firm provided legal services to Baron.
60. Baron agreed to pay the Firm individually and through the Trust its usual and customary charges for the services rendered. The Firm negotiated the particular arrangement of fees and expenses with Elizabeth Schurig on behalf of the Trust and with Baron. Nothing herein should be construed as any disparagement of Elizabeth Schurig, who acted honorably and in good faith at all times in negotiating the fees and expenses of the Firm.
61. The Firm provided legal services to Baron as requested.
62. Baron knew that the service was being provided by the Firm for compensation.
63. To date, notwithstanding the Firm's demands, Baron has failed and refused, and continues to fail and refuse, to pay the Firm for the services rendered.
64. Baron intended to avoid payment for the services performed by the Firm by
- a. Intentionally or knowingly securing the performance of the service by deception or false token; and by
  - b. Intentionally or knowingly securing the performance of a service by agreeing to provide compensation and, after the service was rendered, failing to make payment after receiving notice demanding payment.

65. As a result of Baron's theft of service, Baron has proximately caused actual damages to the Firm in the amount of \$241,202.70, plus consequential damages and pre and post judgment interest as allowed by law.
66. The Firm is entitled to exemplary damages for Baron's willful acts. *See* Tex. Civ. Prac. & Rem. Code §41.008(c). Baron has an extensive history of utilizing services of attorneys and either 1) discharging the attorneys when a bill is presented or, 2) not paying the attorneys when bills are presented, causing such attorneys to cease representation. There are currently no less than 6 lawsuits pending against Baron by law firms. The Firm is aware of others that will likely be filed by lawyers whose services Baron has stolen from. The bankruptcy schedules of Ondova Limited Company, which was controlled by Baron, shows a "laundry list" of attorneys that Baron purposefully did not pay, but whose services he used until the attorneys realized that he had no intention of paying them. In each instance of intentional non-payment of attorneys, Baron fails to complain about the services until the "free" work has ceased, and then, when a bill is presented, alleges malpractice, breach of fiduciary duty and or/failure of the attorney to properly discharge duties of engagement. Baron has learned that many law firms "go away" and do not sue for compensation once a malpractice claim has been asserted. Additionally, these attorneys come to know that Baron has hidden all of his assets in an offshore trust (the Village Trust) in the Cook Islands, a country that has no treaty with the United States that permits United States litigants to sue Cook Island entities. Discouraged, most of these attorneys do not waste further legal time and expense pursuing Baron. There have been between 25 and 45 recent instances of Baron using attorneys and not

paying them. This long list of unpaid lawyers has one common denominator – Jeffrey Baron. By engaging in theft of services, Baron has “saved” himself over \$1 million in attorneys’ fees and expenses at the expense of the attorneys from whom services have been stolen. Without punitive damages, Baron will be encouraged in the future to steal from other attorneys. Damages awarded for felony theft in the third degree or higher under Texas Penal Code Chapter 31 are exempt from the cap on exemplary damages. See Tex. Civ. Prac. & Rem Code 41.008(b), (c)(13); *Cooper v. Sony Music Entm’t Inc.*, No. 01-0941 (S.D. Tex. 2002) (no pub.; 2-02-02).

67. The Firm requests this Court to award exemplary damages in an amount of no less than \$1,000,000 against Baron and the Trust. The Firm requests that this award not be made to the Firm, but instead pro-rata to a combination of UNICEF, the North Texas Food Bank, the Ronald McDonald House and the American Red Cross. The \$1 million that Baron has “saved” in stealing from lawyers can be put to good use to contribute to those more in need than either Baron or the lawyers who have been left unpaid.

***Count Two -- Breach of Contract***

68. The Firm incorporates and realleges the allegations set forth above.
69. At the request of Baron and the Trust, the Firm provided legal services to Baron. Baron agreed to pay the Firm its usual and customary charges for the services rendered. The Firm negotiated the particular arrangement of fees and expenses with Elizabeth Schurig on behalf of the Trust and with Baron. Nothing herein should be construed as any disparagement of Elizabeth Schurig, who acted

honorably and in good faith at all times in negotiating the fees and expenses of the Firm.

70. To date, notwithstanding the Firm's demands, Baron has failed and refused, and continues to fail and refuse, to pay the Firm or to cause the Trust, which is under his management and control, to pay the Firm for the services rendered.
71. As a result of Baron's breach of contract, Baron has proximately caused actual damages to the Firm in the amount of \$241,202.70, plus consequential damages and pre and post judgment interest as allowed by law.
72. Additionally, Baron is liable for attorneys' fees and expenses for the collection of such fees and expenses.

***Count Three – Quantum Meruit***

73. The Firm incorporates and realleges the allegations set forth above.
74. Pleading in the alternative, if such be necessary, the legal services furnished to Baron were provided under such circumstances that Baron knew that the Firm, in performing legal services, expected to be paid the Firm's usual and customary charges for such services. The legal services provided to Baron were for the benefit of Baron. Baron would be unjustly enriched, and the Firm unjustly penalized, if Baron was allowed to retain the benefits of such services without paying for them.
75. As a result of Baron's failure and refusal to pay for the legal services rendered, Baron has proximately caused actual damages to the Firm in the amount of \$241,202.70, plus consequential damages and pre and post judgment interest as allowed by law.

76. Additionally, Baron is liable for attorneys' fees and expenses for the collection of such fees and expenses.

***Count Four – Attorney's Fees***

77. The Firm incorporates and realleges the allegations set forth above.
78. In accordance with Tex. Civ. Prac. & Rem. Code §38.01 *et. seq.*, the Firm is entitled to recover its reasonable attorney's fees incurred in prosecuting this action. The Firm presented the above-described claim to Baron, but Baron has failed and refused to tender the just amount owed.
79. As a result of Baron's failure and refusal to pay the claims, the Firm has been required to obtain legal counsel to bring this suit. The Firm is, therefore, entitled to recover an additional sum to compensate it for the reasonable attorney's fees incurred in bringing this suit, with further and subsequent awards of attorney's fees in the event of appeals from this Court.

***Count Five – Fraud***

80. The Firm incorporates and realleges the allegations set forth above.
81. Baron made material misrepresentations of fact to Pronske individually and in his capacity as a member of the Firm. Baron's representations were false and they knew the representations were false or acted with reckless disregard to the truth or falsity of the representations. Baron intended that Pronske and the Firm act upon the false representations when agreeing to perform legal services on behalf of the Firm and the Firm did rely on the false misrepresentations to its detriment and damage. Furthermore, the Firm will show that Baron's conduct, as described above, was willful and malicious and, as a result, the Firm is entitled to recover exemplary damages to deter such conduct by others in the future.

82. As a result of Baron's fraud, Pronske and the Firm have suffered actual, consequential, and incidental damages.
83. As a further result of Baron's fraud, Pronske and the Firm are entitled to recover punitive damages, to be awarded and paid to the charities listed in paragraph 67 above.

***Count Six -- Alter Ego***

84. The Firm incorporates and realleges the allegations set forth above.
85. Baron is the settlor and the beneficiary of the Trust. Baron has used the Trust as a sham and to perpetuate actual fraud upon the Firm and other legitimate creditors.
86. The Firm will show that the identity of the Trust and Baron are in substance one and the same. The Trust is but the alter ego of Baron, acting solely as a conduit for the performance of Baron's personal and business endeavors, and a device to cause harm, defraud or prejudice to those dealing with them. The Trust is directed and controlled by Baron and may be dissolved by Baron upon a mere request. The Trust is a sham that has been set up in the Cook Islands, a jurisdiction that has no treaty with the United States relating to bringing litigation against Cook Islands entities, for the sole purpose of hiding assets from American creditors. However, this Trust has made appearances in Courts in the United States in a sloppy manner so as to create full jurisdiction of American Courts against the Trust. Further, the Trustee of the Trust, Adrian Taylor, has executed Affidavits used in American Court proceedings, subjecting him to the jurisdiction of the American courts that is necessary to enforce perjury and other rules of law. Further, Baron has repeatedly exercised control

against the Trust and its Trustee. This control has been exercised in secret and in private. However, the Firm will be able to show the court dozens of actions that Baron has taken in writing, such as moving assets, receiving personal distributions, forcing the hiring and firing of attorneys, making business decisions, requiring the Trust to refrain from taking actions without his approval (such as entry into contracts) that were in direct control of the Trust. As a consequence, the Trust should be held responsible for any and all liabilities found against Baron.

87. A ruling “busting” this sham Trust, and the resulting sale of millions of dollars of domain name assets that have been hidden in the Trust, will inure to the benefit of creditors of Baron who have been frustrated by the improper and illegal actions that Baron has attempted to perpetrate against his legitimate creditors, including that ever-growing List of United States attorneys that are lured to represent Baron by the shell game that the offshore Trust has Provided for Baron’s improper use.

#### **F. CONDITIONS PRECEDENT**

88. All conditions precedent necessary for the Firm to have and recover in this action have been performed, have occurred, or have been waived.

**WHEREFORE, PREMISES CONSIDERED,** Gerrit M. Pronske and Pronske & Patel, P.C. respectfully requests that process issue and be served on Jeffrey Baron and The Village Trust; that, upon final hearing, the Firm have and recover judgment from and against Baron in the amounts set forth above, for reasonable attorney’s fees incurred by the Firm to prosecute this action, for costs and expenses of suit herein, for pre-judgment and post-judgment interest on all monetary relief sought herein at the highest rates

allowed by law; for punitive damages; and, for such other and further relief, both general and special, at law and in equity, to which the Firm may be justly entitled.

Respectfully submitted,

*/s/ Gerrit M. Pronske*

**Gerrit M. Pronske**

Texas Bar No. 16351640

**Rakhee Patel**

Texas Bar No. 00797213

**Christina W. Stephenson**

Texas Bar No. 24049535

**PRONSKE & PATEL, P.C.**

2200 Ross Avenue, Suite 5350

Dallas, Texas 75201

(214) 658-6500 (Telephone)

(214) 658-6509 (Telecopier)

[gpronske@pronskepatel.com](mailto:gpronske@pronskepatel.com)

[rpatel@pronskepatel.com](mailto:rpatel@pronskepatel.com)

[cstephenson@pronskepatel.com](mailto:cstephenson@pronskepatel.com)

**ATTORNEYS FOR PLAINTIFF**

**PRONSKE & PATEL, P.C.**

*10/2/2019*  
*Let not to attorney*

CAUSE NO. 10-11915

FILED  
2019 SEP 15 9:20  
IN THE DISTRICT COURT,  
DALLAS COUNTY, TEXAS  
*[Signature]*

JEFF BARON,  
Plaintiff,

v.

GERRIT M. PRONSKE, INDIVIDUALLY  
AND PRONSKE & PATEL, P.C.  
Defendants.

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193rd JUDICIAL DISTRICT COURT

**PLAINTIFF'S ORIGINAL PETITION FOR  
DECLARATORY JUDGMENT, ORIGINAL PETITION, APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR DISCLOSURE**

NOW INTO COURT through undersigned counsel comes Plaintiff Jeff Baron who respectfully requests as follows:

**I. DISCOVERY CONTROL PLAN**

- 1. Plaintiff intends that discovery be conducted under Discovery Level 3.

**II. PARTIES**

- 2. Plaintiff Jeff Baron is an individual who lives in Dallas County, Texas.

3. Defendant Gerrit M. Pronske is an attorney licensed to practice law in the state of Texas. He may be served at his law office at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

*1 cel, Incl, TRO  
Atty*

4. Defendant Pronske and Patel, P.C. is a law firm with its principal place of business at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201. Pronske & Patel, P.C. may be served through its registered agent, Gerrit M. Pronske, 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201.

*1 cel, Incl, TRO  
attly*

### III. JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this Court.

6. This Court has personal jurisdiction over the Defendants because the Defendants are registered to do business in Texas and/or regularly conduct business in Texas including Dallas County.

7. Venue in Dallas County is proper in this cause because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county. In addition, the Attorney Defendant entered into an agreement with Plaintiff in Dallas County at the time the attorney/client relationship was formed.

### IV. FACTS

8. Jeff Baron retained Gerrit Pronske and Pronske & Patel, P.C. to represent his interests in a bankruptcy styled: *In Re: Ondova Limited Company, Debtor*; Case NO. 09-34784-SGJ-11; United States Bankruptcy Court For the Northern District of Texas, Dallas Division.

9. Gerrit Pronske met with Jeff Baron and informed him that the fee for the representation would be approximately \$75,000.00. The parties agreed that Jeff Baron would deposit a retainer of \$75,000.00 for this representation.

10. Before beginning the representation, Jeff Baron deposited \$75,000.00 with the Defendants to cover the legal fees and expenses in the case.

11. The Defendants failed to prepare an engagement letter setting forth the terms of the engagement as set forth in Texas Disciplinary Rules of Professional Conduct 1.04.

12. The Defendants did not invoice or bill the Plaintiff for any legal fees or expenses from the date the engagement began (approximately summer 2009) until a "draft" invoice was sent on July 23, 2010.

13. This invoice indicated that the Plaintiff owed the Defendants \$217,452.70.

14. A new invoice issued on September 1, 2010 in the amount of \$241,172.70. This invoice included time not previously invoiced going all the way back to August 31, 2009.

15. The Plaintiff seeks a declaration from this Court that the amount of fees and expenses issued by the Defendants is unreasonable and an unconscionable fee or, in the alternative, that the fee is not owed because of the poor billing practices by the Defendants, failure to come to a written agreement on the terms of the legal fees and expenses in advance of the litigation, failure to properly carry out the representation, the disclosure of attorney/client communications and confidential information, and because the Defendants violated the Texas Disciplinary Rules of Professional Conduct and other rules and requirements imposed on attorneys related to billing practices and confidential communications.

16. Within days of issuing the September 1, 2010 invoice and demanding immediate and full payment, the Defendants began taking steps to file information in the bankruptcy case to harm their former client. This included filing a Motion to Withdraw that contained misinformation about the client, and filing a witness and exhibit list containing confidential information. These pleadings were made with the bankruptcy court under the pretext of supporting the Defendants' Motion to Withdraw. However, this information actually was presented to the bankruptcy court for the express intention of causing harm to the client and the client's interests in the bankruptcy, and with the desire to threaten the Plaintiff to either pay the unconscionable fee asserted in the attorney's invoice or be subject to the attorney disclosing confidential attorney/client communication and other information that the attorney learned through the representation in order to harm the client and his position in the bankruptcy. Such

threats are, of course, unconscionable, unethical, illegal and a violation of the Texas Disciplinary Rules of Professional Conduct and should be sanctioned and enjoined.

## **V. CAUSES OF ACTION**

### **A. COUNT ONE – UNCONSCIONABLE FEE**

17. The Plaintiff and Defendants had an attorney/client relationship.

18. The amount of fees and expenses charged to the Plaintiff by the attorney Defendants is unconscionable and unreasonable and exceeded the amount of a reasonable fee that should have been charged for the services provided.

### **B. COUNT TWO – FAILURE TO AGREE UPON THE TERMS IN ADVANCE**

19. The Plaintiff and Defendants had an attorney/client relationship.

20. The Defendant attorneys failed to convey the terms of the engagement to the Plaintiff and failed to set forth those terms in a written engagement letter.

21. The invoice reflects billing amounts and practices that were not agreed to in advance.

22. The billing invoice at issue includes billing rates that were increased over time without the advance consent or agreement of the Plaintiff.

23. As such, the Plaintiff desires a declaratory judgment from this court that these fees and expenses are not owed by the Plaintiff or in the alternative are not owed in the amount stated in the invoice.

### **C. COUNT THREE – FAILURE TO PROPERLY HANDLE THE LEGAL REPRESENTATION**

24. After retaining the Defendants to represent him in the bankruptcy, the Defendants failed to take adequate steps to protect the Plaintiff's interest. This included, but was not limited to, failing to properly and timely file necessary documents related to the bankruptcy, failure to

attend hearings, leaving the courthouse before hearings were completed and failing to take other steps to properly prosecute the Plaintiff's claims and interests in the bankruptcy.

25. Because of the Defendants' failure to adequately provide legal services which left the Plaintiff in a worse position, the Plaintiff seeks a declaratory judgment holding that the Defendants are not entitled to the fees invoiced and an order requiring the return of the fees paid to date.

**D. COUNT FOUR – FULL DISGORGEMENT OF FEES**

26. The Defendants failed to properly prosecute the Plaintiff's claim and failed to properly represent the legal needs of the Plaintiff. As such, Defendants should be forced to disgorge any fees including the \$75,000.00 initially posted as a retainer by the Plaintiff.

**VI. PETITION FOR DAMAGES**

**A. COUNT ONE – NEGLIGENT MISREPRESENTATION**

27. And now assuming the position of Plaintiff seeking damages, Jeff Baron hereby asserts the following:

28. Plaintiff reasserts all facts stated herein.

29. The Defendants negligently misrepresented to the Plaintiff that their fees in the bankruptcy would be approximately \$75,000.00 and that the amount deposited by the Plaintiff with the Defendants would cover the substantial part of the fees and expenses in the case. The Defendants: (1) made the representation to the Plaintiff in a course of the Defendants' business or in a transaction in which the Defendants had an interest; (2) supplied false information for the guidance of others including leading the Plaintiff to believe that the \$75,000.00 would adequately compensate the Defendants for the amount of legal services needed to handle the representation; (3) did not exercise reasonable care or confidence in obtaining or communicating

the information; (4) the Plaintiff justifiably relied on the representation; and (5) the Defendants' negligent misrepresentation proximately caused injury to the Plaintiff.

#### **VII. APPLICATION FOR TEMPORARY RESTRAINING ORDER**

30. And now assuming the position of Applicant for injunctive relief, Jeff Baron hereby asserts the following:

31. Plaintiff's Application for Temporary Restraining Order is authorized by Texas Civil Practice and Remedies Code §65.011 because the applicant, a former client of the Defendant attorneys, is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant; and the Defendants have threatened to continue to perform or is procuring or allowing the performance of an act relating to the subject of the pending litigation in violation of the rights of the applicant and the act would tend to render the judgment in that litigation ineffectual; and the applicant is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions; and the applicant has suffered and will continue to suffer irreparable injury to real or personal property irrespective of any remedy at law if the temporary injunction does not issue.

32. Plaintiff asks the court to enjoin the Defendants from disclosing any further attorney/client confidential information or any information obtained through the relationship as attorney and client between the Plaintiff and Defendants. The Defendants have already done this in various statements included in their Motion to Withdraw in bankruptcy court (*See* pleadings attached hereto and incorporated herein). The Defendants have verbally threatened that if their bill is not paid they will cause substantial harm to the Plaintiff through the additional disclosure of information that is protected by the attorney/client confidentiality. In their threats, the Defendants have repeatedly stated that they will disclose attorney/client confidential information

under the pretext that they are entitled to disclose this information in the pursuit of fees that they claim are owed to them by the Plaintiff. There is a dispute as to whether the Plaintiff owes those fees which will be resolved in this litigation. As such, there is no need for the disclosure of further attorney/client communication in any other manner other than under seal in this proceeding.

33. It is probable that the Plaintiff will recover from Defendants after a trial on the merits because:

- a. The Defendants failed to issue a written engagement letter at the time of the engagement;
- b. The Defendant attorneys failed to produce an invoice each month. Instead, the Defendant attorneys waited until September 1, 2010 to issue an invoice to cover time going back for over 13 months;
- c. The conduct of the attorneys violates the Texas Disciplinary Rules of Professional Conduct; and
- d. Neither the law nor the Texas Disciplinary Rules of Professional Conduct allow an attorney to threaten the client with harm by releasing confidential attorney/client information to the public and to third parties adverse to the client or former client for the purpose of collecting a fee. Because it is such a clear violation of the rules and an attorney's ethical obligation, it is likely that the Plaintiff will prevail.

34. If Plaintiff's application is not granted, harm is imminent because the attorneys have information that they know will assist third parties who are adverse to the Plaintiff in other litigation and business matters.

35. The harm that will result if a temporary restraining order is not issued is irreparable because the third parties and the public can use information that was either gained by the Plaintiff's attorneys, or which the Plaintiff's attorneys *claim* they have learned in other adversarial proceedings and business matters.

36. Plaintiff has no adequate remedy at law because the Defendants have already begun to use their tactic of disclosing attorney/client communications to third parties in order to gain an advantage in collecting what the Plaintiff deems to be an unconscionable fee and the Defendants have made threats that they will continue to do so to strengthen their position and to force the Plaintiff to pay a fee that was not agreed upon and is in excess of what a reasonable attorney would have charged for the services provided.

37. There is not enough time to serve notice on the Defendants and to hold a hearing on this application.

#### **VIII. REQUEST FOR TEMPORARY INJUNCTION**

38. Plaintiff asks the court to set his application for temporary injunction for a hearing and after the hearing issue a temporary injunction against Defendants.

39. Plaintiff has joined all indispensable parties under Texas Rules of Civil Procedure.

#### **IX. REQUEST FOR PERMANENT INJUNCTION**

40. Plaintiff asks the court to set his request for permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against the Defendants.

#### **X. JURY DEMAND**

41. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

#### **XI. CONDITIONS PRECEDENT**

42. All conditions precedent to the Plaintiff's claim for relief has been performed or has occurred.

## **XII. REQUEST FOR DISCLOSURE**

43. Under Texas Rule of Civil Procedure 194 Plaintiff request the Defendants disclose, within 50 days of the service of the request, the information and material described in Rule 194.2.

## **XIII. PRAYER**

For these reasons, Plaintiff asks that Defendants be cited to appear and answer, and on final trial, that Plaintiff be awarded a judgment against Defendants for the following:

- A. Temporary Restraining Order;
- B. Temporary Injunction;
- C. Permanent Injunction;
- D. Actual damages;
- E. Prejudgment and post-judgment interest;
- F. Court costs;
- G. Attorney's fees;
- H. A Declaratory Judgment stating that the Defendants are not entitled to any additional monies for fees or expenses from the Plaintiff or, in the alternative, a declaration setting forth the amount of reasonable fees and expenses in this matter;
- I. Disgorgement of all prior fees paid by the Plaintiff to the Defendants; and
- J. All other relief to which the Plaintiff is entitled.

Respectfully submitted,

BROOME LAW FIRM, PLLC

By: 

**Stanley D. Broome**

State Bar No. 24029457

BROOME LAW FIRM, PLLC  
105 Decker Court, Suite 850  
Irving, Texas 75062  
(214) 574-7500 (Telephone)  
(214) 574-7501 (Facsimile)

**ATTORNEYS FOR PLAINTIFF**

Gerrit M. Pronske  
State Bar No. 16351640  
Rakhee V. Patel  
Texas Bar No. 00797213  
Christina W. Stephenson  
State Bar No. 24049535  
PRONSKE & PATEL, P.C.  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201  
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Email: rpatel@pronskepatel.com  
Email: cstephenson@pronskepatel.com

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

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

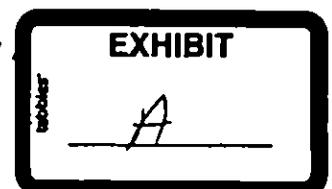
**MOTION FOR EXPEDITED HEARING ON EMERGENCY MOTION  
TO WITHDRAW AS ATTORNEY OF RECORD FOR JEFFREY BARON**

TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

Pronske & Patel, P.C. (“PronskePatel”), pursuant to Section 105 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”), seeks an order from the Court setting an expedited hearing on *Emergency Motion to Withdraw as Attorney of Record for Jeffrey Baron* [Docket No. 419] (the “Motion to Withdraw”). In support of this Motion, PronskePatel respectfully represents as follows:

**I. JURISDICTION AND VENUE**

I. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). This matter is a core proceeding and this Motion is proper in this district pursuant to 28



U.S.C. §§ 1408 and 1409.

2. The statutory basis for relief requested herein is Section 105 of the Bankruptcy Code.

## II. BACKGROUND

3. On July 27, 2009 (the "Petition Date"), the Debtor filed for bankruptcy protection under chapter 11 of title 11 of the Bankruptcy Code.

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

## III. RELIEF REQUESTED

5. As more fully set forth in the Motion to Withdraw, PronskePatel hereby seeks formal withdrawal as attorneys of record for Jeffrey Baron in the above-referenced bankruptcy action.

6. Expedited consideration of the Motion to Withdraw is warranted by the impending time-sensitive issues in this case. <sup>①</sup> Upon information and belief, PronskePatel has recently learned that Mr. Baron intends to transfer assets to an offshore entity over which U.S. Courts will not have jurisdiction, in order to hide those assets from legitimate creditors. <sup>②</sup> Upon information and belief, Mr. Baron will be transferring such assets around September 15, 2010.

In order to pursue state court remedies against such assets and to comply with all ethical obligations, PronskePatel must withdraw as counsel of record for Mr. Baron by September 15, 2010. Thus, PronskePatel must respectfully request that the Court grant relief on an expedited basis, so that PronskePatel may withdraw prior to the transfer of assets by Mr. Baron. Accordingly, PronskePatel respectfully requests a hearing on the Motion to Withdraw on an expedited basis, on or before September 15, 2010. Specifically, PronskePatel requests that this

matter be set before or at the same time as the expedited status conference currently set in this case on September 15, 2010 at 1:30 p.m. [Docket No. 22].

7. PronskePatel has recently learned that Baron intends to hide his assets offshore as early as September 15, 2010. Thus, the hearing will need to move forward expeditiously to prevent Mr. Baron's unlawful activities.

8. Notice of the proposed emergency hearing will be provided to the Trustee, Mr. Baron, counsel for Mr. Baron, and all parties requesting notice.

WHEREFORE, PREMISES CONSIDERED, PronskePatel respectfully requests the Court enter an order expediting the hearing on the Motion to Withdraw and granting such other and further relief, whether in law or in equity, as the Court may deem proper.

Dated: September 9, 2010

Respectfully submitted

By: /s/ Gerrit M. Pronske  
Gerrit M. Pronske  
Texas Bar No. 16351640  
Rakhee V. Patel  
Texas Bar No. 00797213  
Christina W. Stephenson  
Texas Bar No. 24049535  
PRONSKE & PATEL, P.C.  
2200 Ross Avenue, Suite 5350  
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Telephone: 214.658.6500  
Facsimile: 214.658.6509  
Email: gpronske@pronskepatel.com  
Email: rpatel@pronskepatel.com  
Email: cstephenson@pronskepatel.com

**CERTIFICATE OF CONFERENCE**

I, the undersigned, hereby certify that on September 8, 2010 I conferred with Gary Lyon, counsel for Mr. Baron, regarding the relief requested in the Motion. Mr. Lyon indicated that Mr. Baron is unopposed to the expedited setting. I further certify that on September 9, 2010, I conferred with Raymond Urbanik, counsel for the Trustee, regarding the relief requested, and Mr. Urbanik indicated that he is unopposed to the expedited setting.

/s/ Gerrit M. Pronske  
Gerrit M. Pronske

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on September 9, 2010 I caused to be served the foregoing pleading upon all parties registered to receive electronic notice via the Court's electronic transmission facilities.

/s/ Gerrit M. Pronske  
Gerrit M. Pronske

Gerrit M. Pronske  
State Bar No. 16351640  
Rakhee V. Patel  
Texas Bar No. 00797213  
Christina W. Stephenson  
State Bar No. 24049535  
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Email: rpatel@pronskepatel.com  
Email: cstephenson@pronskepatel.com

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

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

**WITNESS AND EXHIBIT LIST**

Pronske & Patel, P.C. (“PronskePatel”) hereby files this, its *Witness and Exhibit List*, in connection with the hearing on the *Emergency Motion to Withdraw as Attorney of Record* for Jeff Barron (the “Motion”) [Docket No. 419] scheduled before the Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, 1100 Commerce Street, 14<sup>th</sup> Floor, Dallas, Texas 75242 at **1:30 p.m. on September 15, 2010** as follows:

- I. **Witnesses.** PronskePatel may call the following witnesses:
- a) Jeff Barron;
  - b) Gerrit M. Pronske;
  - c) John MacPete
  - d) Ray Urbanik



- e) all witnesses designated and/or called by any party in interest; and/or
- f) any and all necessary rebuttal and/or impeachment witnesses.

**II. Exhibits.** PronskePatel may seek the introduction of the following exhibits:

EXHIBIT NUMBER	DESCRIPTION	M A R K E D	O F F E R E D	O B J E C T	A D M I T T E D	D A T E
PP-1	Monthly Financial Statements of the Village Trust for 2009 and 2010					
PP-2	Billing Invoices of Pronske & Patel, P.C.					
PP-3	Final executed Settlement Agreement					
PP-4	Transcript of District Court Hearing Ordering Jeff Baron to hire Criminal defense counsel					
PP-5	Transcripts of Hearings in Ondova Bankruptcy, Case No. 09-34784-SGJ-11					
PP-6	Supplement Agreement with Elizabeth Schurig, Village Trust and others					
PP-7	Affidavits of Adrienne Taylor admitted in Bankruptcy and District Court litigation					
PP-8	Appearances of Village Trust in the Bankruptcy and District Court Litigation					
PP-9	Correspondence between Jeff Baron and other parties regarding plans to transfer assets of trust to further offshore entities					
PP-10	Correspondence and documentation whereby Jeff Baron asserted control over the Village Trust an its assets					
PP-11	Any exhibit designated by any party					
PP-12	Any rebuttal exhibits					

PronskePatel expressly reserves the right to amend or supplement this list at any time prior to the hearing. Any party wishing obtain copies of the exhibits designated herein may do so by requesting copies, in writing, from the undersigned counsel, PronskePatel.

Dated: September 10, 2010

Respectfully submitted

By: /s/ Gerrit M. Pronske  
Gerrit M. Pronske  
Texas Bar No. 16351640  
Rakhee V. Patel  
Texas Bar No. 00797213  
Christina W. Stephenson  
Texas Bar No. 24049535  
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Email: [rpatel@pronskepatel.com](mailto:rpatel@pronskepatel.com)  
Email: [cstephenson@pronskepatel.com](mailto:cstephenson@pronskepatel.com)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on September 10, 2010 I caused to be served the foregoing pleading upon all parties registered to receive electronic notice via the Court's electronic transmission facilities.

/s/ Gerrit M. Pronske  
Gerrit M. Pronske

CAUSE NO. \_\_\_\_\_

JEFF BARON,

Plaintiff,

v.

GERRIT M. PRONSKE, INDIVIDUALLY  
AND PRONSKE & PATEL, P.C.

Defendants.

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IN THE DISTRICT COURT,

DALLAS COUNTY, TEXAS

\_\_\_ JUDICIAL DISTRICT COURT

**AFFIDAVIT OF JEFF BARON**

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day appeared Jeff Baron, who is personally known to me, and first being duly sworn according to law upon his oath, deposed and stated:

1. My name is Jeff Baron. I am over the age of twenty-one (21) years and am in all things competent and authorized to make this Affidavit. The statements contained in this Affidavit are true and correct and are based upon my personal knowledge.

2. I had an attorney/client relationship with Gerrit Pronske and Pronske & Patel, P.C.

3. At no time did the Defendants Gerrit Pronske and Pronske & Patel, P.C. give me or ask me to sign an engagement letter.

4. I was led to believe that the services I was retaining the Defendants to perform would result in approximately \$75,000.00 in attorney's fees and expenses.

5. I paid Gerrit Pronske and Pronske & Patel, P.C. a total of \$75,000.00 as a retainer on or about September 4 and September 11, 2009.



6. From the date that I engaged Gerrit Pronske and Pronske & Patel, P.C. (approximately August 31, 2009), until July 23, 2010, I did not receive an invoice from the Defendants.

7. On September 1, 2010, I received the first "final" invoice indicating that I owed \$241,172.70.

8. Pronske made repeated threats that I must immediately pay this amount or he would use information gained through the attorney/client relationship with me to harm me in the underlying bankruptcy, with third parties and the public domain. He also threatened to file an involuntary bankruptcy which would cause me much harm.

9. These threats have continued in various forms up to the time of the filing of this Affidavit.

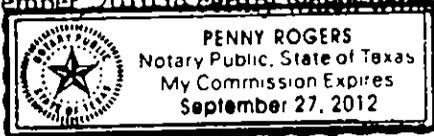
10. On or about September 7, 2010, the Defendants filed a Motion to Withdraw with the bankruptcy court followed by a Witness and Exhibit List. These pleadings are false, incomplete and misleading information that Defendants claimed was obtained during the attorney/client relationship. The real reason for putting this false information in the Motion to Withdraw was to threaten me to pay what is a disputed fee and that I would fear that they would continue to divulge information to the public and to third parties that would put me at a disadvantage in my business and in other litigation.

11. I will suffer irreparable harm if attorney/client confidential information continues to be wrongfully disclosed.

Further affiant sayeth not.

*Jeff Baron*  
\_\_\_\_\_  
JEFF BARON

SUBSCRIBED AND SWORN TO BEFORE ME by Jeff Baron on this 14 day of September, 2010 to certify which witness my hand and seal of office.



*Penny Rogers*  
\_\_\_\_\_  
Notary Public in and for the State of Texas

CAUSE NO. 10-11915

FILED

JEFF BARON,

Plaintiff,

v.

GERRIT M. PRONSKE, INDIVIDUALLY  
AND PRONSKE & PATEL, P.C.

Defendants.

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IN THE DISTRICT COURT,  
2010 SEP 15 AM 11:32

JARY FEEZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS  
DALLAS COUNTY, TEXAS  
DEPUTY

193<sup>rd</sup> JUDICIAL DISTRICT COURT

**CERTIFICATE OF SERVICE**

I certify that pursuant to Local Rule 2.02, a copy of *Plaintiff's Original Petition for Declaratory Judgment, Original Petition, Application for Temporary Restraining Order and Request for Disclosure and Temporary Restraining Order and Order Setting Hearing for Preliminary Injunction* has been served on Gerrit Pronske, via e-mail, at 10:15 a.m. on September 15, 2010.

Respectfully submitted,

BROOME LAW FIRM, PLLC

By:   
Stanley D. Broome  
State Bar No. 24029457

BROOME LAW FIRM, PLLC  
105 Decker Court, Suite 850  
Irving, Texas 75062  
(214) 574-7500 (Telephone)  
(214) 574-7501 (Facsimile)

**ATTORNEYS FOR PLAINTIFF**

CAUSE NO. 10-11915

FILED

JEFF BARON,

Plaintiff,

v.

GERRIT M. PRONSKE, INDIVIDUALLY  
AND PRONSKE & PATEL, P.C.

Defendants.

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IN THE DISTRICT COURT  
2009 SEP 15 AM 11:32  
JARY FITZSIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS  
DALLAS COUNTY, TEXAS  
DEPUTY

193<sup>rd</sup> JUDICIAL DISTRICT COURT

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Respectfully submitted,

BROOME LAW FIRM, PLLC

By:   
**Stanley D. Broome**  
State Bar No. 24029457

BROOME LAW FIRM, PLLC  
105 Decker Court, Suite 850  
Irving, Texas 75062  
(214) 574-7500 (Telephone)  
(214) 574-7501 (Facsimile)

**ATTORNEYS FOR PLAINTIFF**

**B**

Gerrit M. Pronske  
State Bar No. 16351640  
Rakhee V. Patel  
State Bar No. 00797213  
Christina W. Stephenson  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**ONDOVA LIMITED COMPANY**

**Debtor.**

§  
§  
§  
§  
§ **CASE NO. 09-34784-SGJ-11**  
§ **Chapter 11**  
§

**NOTICE OF REMOVAL**

TO THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

Gerrit M. Pronske, Individually and Pronske & Patel, P.C, in, respectfully files this Notice of Removal (the “Notice”) of Cause No. 10-11915 pending in the 193rd Judicial District Court of Dallas County, Texas (the “State Court Suit”), to the United States Bankruptcy Court for the Northern District of Texas, and states the following:

1. Jeff Baron is the Plaintiff in a lawsuit filed in the 193<sup>rd</sup> 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 involves a dispute regarding fees.

2. The Bankruptcy court has jurisdiction over these matters.

3. Gerrit Pronske and Pronske & Patel, P.C. removes the Suit to this Court pursuant to 28 U.S.C. §§ 157, 1334, and 1452, and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

4. 28 U.S.C. § 1452(a) provides that “a party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.”

5. 28 U.S.C. § 1334(b) provides that “the district court shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11.” However, removal pursuant to 28 U.S.C. § 1452(a) is proper directly to a Bankruptcy Court, rather than to a District Court. *See Industrial Clearinghouse, Inc. v. Mims (In re Coastal Plains, Inc.)*, 338 BR 703 (N.D. Tex. 2006).

6. This Court has jurisdiction over the removed State Court Suit pursuant to 28 U.S.C. § 1334, and the removed lawsuit is a civil action other than a proceeding before the Tax Court or a civil action brought by a governmental unit to enforce the government unit’s police or regulatory power as required for removal pursuant to 28 U.S.C. § 1452. Consideration of this action is a core proceeding because, among other things, it involves administration of the estate, a claim against the estate, a counterclaim against a person allegedly holding a claim against the estate, and will affect liquidation of assets of the estate. Venue is proper before this Court under 28 U.S.C. § 1409.

7. To the extent that any claims against any party are not removable under bankruptcy jurisdiction, this Court has supplemental jurisdiction over such claims pursuant to 28 U.S.C. §§ 1367 and 1441.

8. This Notice of Removal is timely filed pursuant to Fed. R. Bankr. P. 9027. Rule 9027(a)(2) provides that if a claim or cause of action in a civil action is pending when a case under the Bankruptcy Code is commenced, a notice of removal may be filed within 90 days after the order for relief in the case. This Notice of Removal is filed within 90 days of the order of relief in this case.

9. Written notice of the filing of this Notice of Removal is being served upon counsel for all of the parties herein and on the Clerk of the Court for the 193rd Judicial District Court of Dallas County, Texas.

10. Removal jurisdiction and venue exists in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, because the state court where the action is pending is within the referenced district and division. 28 U.S.C. § 1334, and 1452; Fed. R. Bankr. P. 9027.

Dated: September 15, 2010.

Respectfully submitted,

/s/ Rakhee V. Patel

Gerrit M. Pronske

Texas Bar No. 16351640

Rakhee V. Patel

Texas Bar No. 00797213

Melanie P. Goolsby

Texas Bar No. 24059841

PRONSKE & PATEL, P.C.

2200 Ross Avenue, Suite 5350

Dallas, Texas 75201

Telephone: 214.658.6500

Facsimile: 214.658.6509

Email: [gpronske@pronskepatel.com](mailto:gpronske@pronskepatel.com)

Email: [rpatel@pronskepatel.com](mailto:rpatel@pronskepatel.com)

Email: [mgoolsby@pronskepatel.com](mailto:mgoolsby@pronskepatel.com)

**PROPOSED COUNSEL FOR  
THE DEBTOR**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on September 15, 2010, the foregoing pleading was served via U.S. Mail, first class, to all counsel of record.

/s/ Rakhee V. Patel

Rakhee V. Patel

C

Gerrit M. Pronske  
 State Bar No. 16351640  
 Rakhee V. Patel  
 State Bar No. 00797213  
 Melanie P. Goolsby  
 State Bar No. 24059841  
 PRONSKE & PATEL, P.C.  
 2200 Ross Avenue, Suite 5350  
 Dallas, Texas 75201  
 (214) 658-6500 - Telephone  
 (214) 658-6509 – Telecopier  
 Email: gpronske@pronskepatel.com  
 Email: rpatel@pronskepatel.com  
 Email: mgoolsby@pronskepatel.com

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

<b>In re:</b>	§	
	§	
<b>ONDOVA LIMITED COMPANY</b>	§	
	§	
	§	<b>CASE NO. 09-34784-SGJ-11</b>
	§	<b>Chapter 11</b>
<b>Debtor.</b>	§	

**AMENDED APPLICATION OF PRONSKE & PATEL, P.C.,  
 FOR PAYMENT OF FEES AS AN ADMINISTRATIVE  
EXPENSE FOR A SUBSTANTIAL CONTRIBUTION TO THE ESTATE**

**SUMMARY OF FEE APPLICATION**

First Application of:	Pronske & Patel, P.C.
For the time period of:	February 1, 2010 through August 31, 2012
Capacity:	COUNSEL FOR JEFF BARON
Unpaid Fees and Expenses Sought for the Initial Application Period:	\$177,352.70 <sup>1</sup>
Additional Fees and Expenses Sought for the Amended Application Period:	\$52,121.17

<sup>1</sup> As allowed by the Findings of Fact, Conclusions of Law, and Order on Assessment and Disbursement of Former attorney Claims entered on May 18, 2011 by the United States District Court for the Northern District of Texas.

<b>Total Fees and Expenses for the Application Period:</b>	<b>\$229,473.87</b>
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TO THE HONORABLE STACEY G. JERNIGAN,  
UNITED STATES CHIEF BANKRUPTCY JUDGE:

Pronske & Patel, P.C. (“Pronske & Patel” or “Applicant”) hereby files this *Amended Application for Payment of Fees and Expenses as an Administrative Expense for a Substantial Contribution to the Estate* (the “Application”) pursuant to 11 U.S.C. § 503(b)(4).

### **I. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this Application pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding under 11 U.S.C. § 157(b)(2)(A).

### **II. RELIEF REQUESTED**

2. As more fully set forth herein, Pronske & Patel asks this Court to enter an order: granting approval and payment of fees and expenses incurred by Pronske & Patel during the Application Period in this case as a substantial contribution to the Ondova bankruptcy estate pursuant to 11 U.S.C. §503(b)(4).

### **III. FACTUAL BACKGROUND RELATING TO SUBSTANTIAL CONTRIBUTION TO THE ESTATE**

3. For a six month period beginning in February 2010, Pronske & Patel’s representation of Baron<sup>2</sup> became focused almost exclusively on the settlement (the “Settlement Negotiations”) of various litigation in the Federal District Court for the Northern District of Texas, Dallas Division, and various Texas State Courts involving Netsphere, Inc., Baron and

<sup>2</sup> Baron is a Creditor of the Ondova bankruptcy case. He filed numerous pleadings in the Ondova bankruptcy case stating that he was filing such pleadings as “as creditor” of Ondova. This position taken by Baron granted him standing to be heard in the Ondova bankruptcy case. By virtue of the standing garnered by the claim of being a Creditor in the case, he cannot now say that he is not a creditor. Further, Baron is the ultimate equity owner of Ondova, as he is the sole beneficiary of the Daystar Trust, which is the 100% equity owner of Ondova. 11 U.S.C. §503(b)(3)(D) and (b)(4).

Ondova (the “Netsphere Litigation”). The Settlement Negotiations were, during that 6 month period, extremely time-consuming, contentious, complex, difficult – and successful. The Settlement Negotiations involved almost daily participation and work on Pronske & Patel’s part. Pronske & Patel became a lead negotiator in the Settlement Negotiations along with John McPete (representing Netsphere), Ray Urbanik (representing the bankruptcy estate), Eric Taube and Craig Capua (representing either the Village Trust or various entities owned and controlled by the Village Trust), and numerous other parties. These Settlement Negotiations generated a settlement document that was over 100 pages long – every sentence of which was the subject of substantial negotiation and discussion, often resulting in impasse. The time-consuming nature of these negotiations is shown, by example, in the month of June 2010, where nearly every day, including both days of every weekend, was spent in negotiations. Most of the lawyers involved in these negotiations were experienced lawyers who have handled numerous significant cases in their careers. Nevertheless, most if not all of these attorneys agreed that this negotiation was the most complex and difficult negotiation that any of them had ever handled. The difficulty of the case was exacerbated by the difficulty of the personalities of the clients, each of which was often relentless with various positions and slow to warm to the idea of compromise without significant amounts of time being spent on any given issue at hand. Almost every issue of the Settlement Negotiation was an extended battle, often turning into impasse numerous times before a compromise could emerge.

4. Despite the difficulties in the Settlement Negotiations, a final deal was struck, and the terms of the deal were approved by this Court.

5. In terms of success, the Settlement Negotiations yielded payments to the bankruptcy estate of Ondova that will provide funds that will likely pay unsecured creditors a healthy, if not complete dividend. The cash sum of \$1,250,000 provided in the Settlement

Agreement resulting from the negotiations has already been funded to the bankruptcy trustee by Netsphere, due to the success of the Settlement Negotiations. Absent continuing litigation with Netsphere, for which Netsphere's counter-parties were running out of funds to continue, no money would likely have been realized by the Ondova bankruptcy estate from Netsphere.

#### **IV. PROCEDURAL BACKGROUND SINCE THE CONCLUSION OF THE SETTLEMENT NEGOTIATIONS**

6. On November 24, 2010, the United States District Court for the Northern District of Texas entered its Order Appointing Receiver to appoint Peter S. Vogel as an equity receiver for Baron (the "Receiver").

7. In February 2011, the District Court ordered the Receiver to collect evidence of the numerous attorney fee claims against Baron. After submitting the declaration of Gerrit M. Pronske that included the fee statements attached to the initial Application, the District Court allowed Pronske & Patel's fees and expenses for the Initial Application Period in the amount of \$177,352.70 after limiting Pronske & Patel's hourly rates to a \$400 per hour fee cap by order entered on May 18, 2011 (the "District Court Fee Order").

8. For over a year since entry of the District Court Fee Order, Baron's dilatory tactics, including numerous appeals and requests for stay to the Fifth Circuit Court of Appeals and countless objections filed at the Bankruptcy Court and District Court level at every turn by a series of attorneys retained by Baron, have precluded Pronske & Patel from receiving payment on account of its reduced claim allowed by the District Court Fee Order.

#### **V. THE STANDARD FOR SUBSTANTIAL CONTRIBUTION CLAIMS**

9. Pronske & Patel hereby seeks this Court's approval for compensation of professional services and reimbursement of expenses for the period beginning February 1, 2010 and ending on July 24, 2010 (the "Initial Application Period"). During the Initial Application Period, Pronske & Patel performed legal services in connection with this case, incurring unpaid

fees in the sum of \$241,172.70, as reduced by the \$400/hour cap by Judge Ferguson to \$177,352.70 for attorney and paraprofessional time as allowed by the District Court Fee Order.

10. Since July 24, 2010 through August 31, 2012 (the “Amended Application Period” and, together with the Initial Application Period, the “Application Period”), Pronske & Patel has incurred additional fees and expenses in pursuit of payment of the fees and expenses incurred during the Initial Application Period in the amount of \$52,121.17. Altogether, Pronske & Patel seeks approval of \$229,473.87 for the Application Period.

11. In terms of substantial contribution, the work performed by Pronske & Patel clearly resulted an actual and demonstrable (or, as some courts say, a “direct and material”) benefit to the debtor’s estate and its creditors. *See, e.g., Lister v. United States*, 846 F.2d 55 (10<sup>th</sup> Cir. 1988).

12. Pronske & Patel submits that without the work that it did in connection with the settlement, the settlement would likely not have come to fruition, and the Ondova estate would not have benefited from the cash that has been paid (and will be paid in the future) under the Settlement Agreement that will result in creditors of Ondova likely receiving up to 100% of the amount of their claims in this case.

13. The benefit that the Ondova estate realized as a result of the settlement amount to far more than an incidental one arising from activities the applicant has pursued in protecting its own interests. The work performed by Pronske & Patel has operated to foster and enhance, rather than retard or interrupt the progress of reorganization in this case.

14. The services performed by Pronske & Patel were in addition to, and were not duplicative of services performed by attorneys for the Bankruptcy Trustee. In many respects, the interests of Ondova and Baron against Netsphere were aligned, making the work performed by

Pronske & Patel directly beneficial to the Ondova estate in terms of realizing sums from Netsphere by the Ondova estate that will be utilized to pay creditor claims a substantial dividend.

15. The reimbursement for attorneys' fees and expenses sought herein will not result in the impairment of other creditors; to the contrary, the work performed by Pronske & Patel will help to make a dividend to creditors much higher than it would otherwise have been.

16. The substantial costs associated with bringing this Application include numerous hours that Pronske & Patel attorneys have spent in this Court and the District Court dealing with the issue of compensation in connection with the settlement negotiations, together with the time spent in preparing this application. These costs are compensable under 11 U.S.C. §503(b)(4). *In re Wind N' Wave*, 509 F.3d 938 (9th Cir. 2007) (“ . . .[C]reditors who receive compensation under 503(b)(4) should also be compensated for costs incurred in litigating a fee award, so long as the services meet the § 503(b)(4) requirements and the case “exemplifies a ‘set of circumstances’ where litigation was ‘necessary’”. . . .”).

#### 177,352.70VI. OBJECTIVE FACTORS AFFECTING LEGAL FEES

17. The fee setting process providing for the recovery of attorneys' fees begins with an examination of the nature and extent of the services rendered or what is referred to as the “time spent” standard. In other words, a measure of the quantum of the services must precede the determination of the value of these services.<sup>3</sup> **Exhibit A** provides detail all of the time for which compensation is sought by Pronske & Patel in the Initial Application Period, broken-down by month and day, and describes the hours by each attorney and paraprofessional who provided services in this case and the requested rate of compensation. **Exhibit B** provides a detail of all the time for which compensation is sought by Pronske & Patel in the Amended Application

<sup>3</sup> See *In re First Colonial Corp. of America*, 544 F. 2d 1291 (5<sup>th</sup> Cir.) cert. denied, 97 S. Ct. 1696 (1977).

Period, broken down by month and day, and describes the hours by each attorney and paraprofessional who provided services in the matter and the requested rate of compensation.

18. Pronske & Patel recognizes that this Court will allow lawyers to be compensated only for legal work performed and that the dollar value of a particular task is not enhanced simply because a lawyer performs it. Considerable care, therefore, has been taken to avoid the performance of purely ministerial tasks by using paraprofessionals where possible.

## VII. SUBJECTIVE FACTORS AFFECTING COMPENSATION

19. In fixing the amount of reasonable compensation to be awarded a law firm for worked performed in a case, the Court may consider factors other than the numbers of hours spent and the hourly rate normally charged.<sup>4</sup> The standards established by Fifth Circuit have been further modified by the opinion of the Supreme Court in *Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air*.<sup>5</sup> While *Delaware Valley* concerned the award of attorneys' fees under section 304(d) of the Clean Air Act, the language of the opinion makes it generally applicable to the award of attorneys' fees pursuant to federal statutes which require that the fee awarded be "reasonable."

20. In *Delaware Valley*, the Supreme Court, in considering the *Johnson* case, noted the practical difficulties encountered by courts in applying the sometimes-subjective *Johnson* factors. The Court in *Delaware Valley* also considered the "lodestar" approach of the Third Circuit Court of Appeals.<sup>6</sup> The Court also revisited its prior opinions<sup>7</sup> whereby it determined

<sup>4</sup> See *In re First Colonial Corp. of America*, *supra*; and *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5<sup>th</sup> Cir. 1974).

<sup>5</sup> *Pennsylvania v. Delaware Valley Citizens Counsel for Clean Air*, 478 U.S. 546.

<sup>6</sup> See e.g., *Lindy Brothers Builders, Inc. v. American Radiator and Standard Sanitary Corporation*, 487 F. 2d 161 (3d Cir. 1973) (Lindy I).

<sup>7</sup> See *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Blum v. Stenson*, 465 U.S. 886 (1984).

that the proper first step in determining a reasonable attorneys' fee is to multiply the number of hours reasonably expended on the litigation times a reasonable hourly rate, and that adjustment of this figure based on some of the *Johnson* factors might be appropriate,<sup>8</sup> but that such modifications would be proper only in certain rare and exceptional cases and when supported by specific evidence and detailed findings of the lower court.<sup>9</sup> In *Delaware Valley*, the Court took an even more restrictive approach to the relevance of the *Johnson* factors and concluded that the "lodestar" figure includes most, if not all, of the relevant factors comprising a "reasonable attorneys' fee."<sup>10</sup>

21. Thus, under the *Delaware Valley* approach, this Court is guided to determine the number of hours reasonably spent in representing the Trustee, multiplied by a reasonable hourly rate for the services performed. The following discussion incorporates the *Johnson* factors only insofar as they might add the Court in its determination of the "lodestar" figure.

22. The following subjective *Johnson* factors are offered for consideration:

- Time and the labor required. Pronske & Patel attorneys and paraprofessionals have expended a significant number of hours providing necessary and reasonable services incident to its representation of Baron for the Application Period, as detailed in the attached **Exhibit A**. The total value of this time is **\$229,473.87** after taking into account amounts allowed by the District Court Fee Order.
- The novelty and difficulty of the questions. This case presented several novel and/or difficult issues in varying degrees. It was necessary for Pronske & Patel to analyze these complex problems in the light of

<sup>8</sup> See *Hensley*, 461 U.S. at 434, n. 9.

<sup>9</sup> See *Blum*, 465 U.S. at 898-901.

<sup>10</sup> See *In Delaware Valley*, 106 S. Ct. at 309.

applicable laws and seek resolution based on such laws with the objective of achieving a result which would benefit the Estate.

- The skill requisite to perform the legal services properly. Mr. Gerrit Pronske is a skilled and highly experienced attorney who has specialized in commercial bankruptcy law for 28 years. Mr. Pronske is a shareholder in the firm of Pronske & Patel. He was a law clerk to the now retired Honorable Robert C. McGuire, Chief Bankruptcy Judge of the Northern District of Texas. He is a regular presenter at legal seminars on commercial and consumer bankruptcy, commercial transactions and other related topics. Mr. Pronske is the author of PRONSKE'S TEXAS BANKRUPTCY ANNOTATED, which is published by Texas Lawyer, and currently in its 12th Edition. Additionally, Mr. Pronske is the editor of 2010 PRONSKE'S TEXAS BANKRUPTCY MINI-CODE, also published by Texas Lawyer. Ms. Rakhee V. Patel, a partner with Pronske & Patel, was a bankruptcy law clerk for Judge Harlin D. Hale and a bankruptcy law clerk for Retired Judge Robert C. McGuire. Ms. Patel is a regular speaker at legal seminars on commercial bankruptcy and author of various bankruptcy related articles. Ms. Christina W. Stephenson, an associate at Pronske & Patel, has practiced commercial bankruptcy law for over five years and is a former extern for the Honorable Harlin D. Hale. Ms. Melanie P. Goolsby, an associate at Pronske & Patel, has practiced commercial bankruptcy law for over four years and was a member and editor of the Louisiana Law Review at the Louisiana State University Law Center. Ms. Sandra Meiners and Mr. Louis Whatley, legal assistants,

provided assistance in this case. Both are proficient legal assistants with a total of over 40 years experience in bankruptcy law.

- The preclusion of other employment by attorneys due to acceptance of this case. This factor was present because Mr. Pronske spent a significant amount of time on this case, thereby precluding other representation.
- The customary fee. **Exhibits A & B** to this Application sets forth the hourly rate at which compensation is requested. These rates are no greater, and in many cases considerably less, than those being charged by attorneys for other major parties-in-interest in this or other bankruptcy cases in this district. Pronske & Patel and other similar firms customarily charge these rates for equivalent services. These rates compare favorably to the cost of legal services to ordinary corporate legal consumers.
- Whether the fee is fixed or contingent. The fee in this case is not contingent upon the outcome of any particular issue or adversary proceeding.
- Time limitations imposed by the client or other circumstances. Time constraints have been substantial in this case as shown by the time records attached hereto as **Exhibits A & B**.
- The experience, reputation and ability of the attorneys. Applicant submits that Ms. Patel and Mr. Pronske have established themselves as able and conscientious practitioners in the Northern and other districts of Texas. Ms. Stephenson and Ms. Goolsby are experienced bankruptcy associates. Ms. Meiners and Mr. Whatley are proficient legal assistants with substantial experience in bankruptcy law.

- The “undesirability” of the case. This factor is not relevant in this case.
- The nature and length of the professional relationship with the client.  
Applicant had no professional relationship with Baron prior to their retention by Baron as counsel.
- Awards in similar cases. Pronske & Patel represents and would demonstrate that the compensation for the services rendered and expenses incurred in connection with this case is not excessive and is commensurate with, or below the compensation sought or ordered in similar cases under the Bankruptcy Code. Pronske & Patel’s fee request is based upon normal hourly charges that Pronske & Patel charges private clients of the firm. Taking into consideration the time and labor spent, the nature and extent of the representation, Pronske & Patel believes the allowance prayed for herein is reasonable.
- Additional consideration. The Court in *First Colonial Corp. of America, supra*, stated that two additional considerations should be considered by the Court:
  - The policy of the Bankruptcy Code that estates be administered as efficiently as possible. It is the policy of Pronske & Patel to assign work to attorneys who have the degree of expertise and specialization to perform efficiently and properly the services required and to utilize law clerks and legal assistants whenever appropriate. This practice has been followed to date in this case and will be followed in the future.

- The Bankruptcy Code does not permit the award of duplicate fees or compensation for non-legal services.

There has been no unnecessary or unavoidable duplication of legal services and there have been no non-legal services performed by this firm for which legal fees have been charged.

### VIII. REASONABLENESS OF PRONSKE & PATEL'S FEES

23. Pronske & Patel's representation of Baron was time intensive during the Initial Application Period and has continued to be so at times during the Amended Application Period. Pronske & Patel accepted this engagement without certainty that all of its fees and expenses would be paid and is charging a fixed hourly rate for services performed.

24. Pronske & Patel represents that the fees and expenses requested herein are fair and reasonable in connection with the services provided. The rates charged by Pronske & Patel are competitive and customary for the degree of skill and expertise necessary for cases of this type and are consistent with, or below, rates charged by other counsel with similar experience in the Northern District of Texas.

25. The work Pronske & Patel performed during its representation herein has been beneficial to the estate as set forth above, and has made a substantial contribution to the estate and its creditors. Taking into consideration the time and labor spent, the nature and extent of the representation, and the results obtained in this proceeding, Pronske & Patel believes the allowance prayed for herein is reasonable and just.

### IX. SUMMARY

26. Applicant seeks an award of compensation as set forth in **Exhibits A & B**, for attorneys' time and paraprofessionals' time for services furnished to Baron during the

Application Period in the total unpaid amount of **\$229,473.87**, which total includes fees and expenses associated with the filing and prosecution of this Motion.

27. **Exhibits A&B** to this Application detail how time was spent as well as how the requested compensation has been calculated. The amounts sought are fair and reasonable compensation in light of all the circumstances.

#### **X. REQUEST FOR RELIEF**

For these reasons, Pronske & Patel respectfully asks this Court to enter an order: (i) granting approval of all fees and expenses incurred by Pronske & Patel in this case during the Application Period in the total amount of **\$229,473.87** as a substantial contribution to the Debtor's bankruptcy estate, compensable as an administrative expense pursuant to 11 U.S.C. §503(b)(4) (ii) allowing compensation and reimbursement of all sums requested as an administrative expense from the Debtor's bankruptcy estate, pursuant to the fee statements attached as **Exhibits A&B** for the Application Period; and (iii) authorizing the allowed fees and expenses to be immediately paid as allowed by the bankruptcy estate as an administrative expense.

Dated: September 14, 2012.

Respectfully submitted,

/s/ Gerrit M. Pronske

Gerrit M. Pronske

State Bar No. 16351640

Rakhee V. Patel

State Bar No. 00797213

Melanie P. Goolsby

State Bar No. 24059841

PRONSKE & PATEL, P.C.

2200 Ross Avenue, Suite 5350

Dallas, Texas 75201

(214) 658-6500 - Telephone

(214) 658-6509 – Telecopier

Email: gpronske@pronskepatel.com

Email: rpatel@pronskepatel.com

Email: mgoolsby@pronskepatel.com

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on September 14, 2012, a true and correct copy of the above and foregoing pleading was served upon the twenty largest unsecured creditors, all parties who have filed a notice of appearance, the United States Trustee and Baron, as more fully illustrated on the attached Master Service List, via First Class United States mail and/or electronic filing, if available, and also via ECF email upon all parties accepting such service.

/s/ Melanie P. Goolsby  
Melanie P. Goolsby

D

Gerrit M. Pronske  
State Bar No. 16351640  
Melanie P. Goolsby  
State Bar No. 24059841  
PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201  
(214) 658-6500 - Telephone  
(214) 658-6509 - Telecopier  
Email: gpronske@pgkpc.com  
Email: mgoolsby@pgkpc.com

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

<b>IN RE:</b>	§	CASE NO. 09-34784-SGJ-11
	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	
<b>Debtor,</b>	§	
_____	§	
	§	ADVERSARY NO. 10-03281-SGJ
<b>PRONSKE GOOLSBY KATHMAN, P.C.,</b>	§	
<b>Counter-Plaintiff/Garnishor,</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>TD AMERITRADE, THE VANGUARD</b>	§	
<b>GROUP, MBSC SECURITIES</b>	§	
<b>CORPORATION, d/b/a DREYFUS</b>	§	
<b>INVESTMENTS,</b>	§	
<b>EQUITY INSTITUTIONAL, F/K/A</b>	§	
<b>STERLING TRUST CO., MID-OHIO</b>	§	
<b>SECURITIES CORP., DELAWARE</b>	§	
<b>CHARTER GUARANTEE &amp; TRUST</b>	§	
<b>d/b/a PRINCIPAL TRUST CO., AND</b>	§	
<b>EQUITY TRUST CO.,</b>	§	
<b>Garnishees,</b>	§	
	§	
<b>and</b>	§	
	§	
<b>JEFFREY BARON,</b>	§	
<b>Defendant</b>	§	

**APPLICATION FOR PRE-JUDGMENT WRIT OF  
GARNISHMENT AGAINST DEFENDANTS**

Plaintiff/Garnishor, Pronske Goolsby Kathman, P.C., files this Application for Pre-Judgment Writ of Garnishment (the “Application”) and in support thereof respectfully shows the Court the following:

### **Summary of Application**

1. Pronske Goolsby Kathman, P.C. (f/k/a Pronske & Patel, P.C., hereinafter “PGK”) filed a Counterclaim in the underlying lawsuit against Jeffrey Baron (“Baron”).

2. 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. (together, the “Garnishees”) have various accounts that are in the name of Jeffrey Baron, individually (“Baron”). These are not accounts that belong to the entities known as Quantec LLC or NovoPoint LLC.

3. This Court has jurisdiction over this adversary proceeding and this Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). The statutory predicate for the relief requested herein is Rule 64 of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rule 7064, and as such rules incorporate section 63.001(2) of the Texas Civil Practice and Remedies Code.

4. The underlying lawsuit and garnishment action have a “conceivable impact” on the bankruptcy estate of Ondova, Ltd. (“Ondova”) because to the extent that recovery of the indebtedness owing by Baron can be collected against Baron and his assets, such collection will reduce, dollar for dollar, the administrative claim

of PGK granted in the Ondova bankruptcy case. This conceivable impact on the Ondova estate supports this Court's jurisdiction in this matter.

5. Unless this Court grants this Application and orders issuance of writs of garnishment to the named Garnishees, Baron will gain control of the funds in the accounts held at the Garnishees, and will likely transfer those assets to trusts and other entities in foreign jurisdictions that do not have treaties with the United States, thereby putting all of his non-exempt assets beyond the reach of creditors in the United States.

6. PGK will likely prevail on summary judgment in the underlying lawsuit based on principles of collateral estoppel, because this Court's Order in the Ondova bankruptcy case granted PGK a substantial contribution claim for the exact same claim that it has against Baron. In doing so, this Court ruled in favor of PGK over objections of Baron after the claim was actually litigated. Baron appealed the entry of the substantial contribution order, and such appeal was dismissed by the United States District Court for the Northern District of Texas, Judge Sam Lindsay presiding. Although Baron has appealed Judge Lindsay's dismissal of the appeal pro se, Baron has neither sought nor obtained any stay pending appeal of the dismissal of the appeal.

7. If the requested garnishment is not granted, any judgment obtained by PGK against Baron in the underlying lawsuit will be meaningless because Baron has no non-exempt assets other than those sought to be garnished herein.

### Parties

8. PGK is a Texas professional corporation with its principal place of business in Dallas, Texas.

9. Garnishee TD Ameritrade is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

10. Garnishee The Vanguard Group is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

11. Garnishee MBSC Securities Corporation d/b/a Dreyfus Investments is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process National Corporate Research, Ltd., 800 Brazos, Suite 400, Austin, Texas 78701.

12. Garnishee Equity Institutional, f/k/a Sterling Trust Co. is a sub-division of Equity Trust Company, a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

13. Garnishee Mid-Ohio Securities Corp. is a sub-division of Equity Trust Company, a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation

Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

14. Garnishee Delaware Charter Guarantee & Trust d/b/a Principal Trust Co. is a foreign for-profit corporation registered to do business in the state of Texas and may served by service on the Texas Secretary of State, 1019 Brazos, Austin, Texas 78701.

15. Garnishee Equity Trust Co. is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

16. Nominal Defendant Jeffrey Baron is an individual with his residence in Dallas County, Texas, and may be served at his post office address at PO Box 111501, Dallas, Texas 75011 or upon his proposed counsel Leonard H. Simon, Pendergraft & Simon, LLP, The Riviana Building, Suite 800, 2777 Allen Parkway, Houston, Texas 77019.

#### **Affidavit in Support of Garnishment**

17. PGK is entitled to the issuance of a writ of garnishment on the grounds stated in the Affidavit of Gerrit M. Pronske in Support of Writ of Garnishment (the "Pronske Affidavit"), a person with knowledge of relevant facts, attached hereto as Exhibit "A", incorporated by reference herein.

## I. PROCEDURAL AND FACTUAL BACKGROUND

### A. The Involuntary Case

18. On December 18, 2012 (the “Petition Date”), PGK and other petitioning creditors (together, the “Petitioning Creditors”) filed an involuntary bankruptcy petition against Jeffrey Baron (“Baron” or the “Debtor”) under Chapter 7 of the Bankruptcy Code [Docket No. 1, later amended at Docket No. 45].

19. On June 26, 2013, after conducting an involuntary trial over two days, the Court entered an Order for Relief in an Involuntary Case (the “Order for Relief”) [Docket No. 240].

20. On January 2, 2014, the United States District Court for the Northern District of Texas (the “District Court”) entered an Amended Memorandum Opinion and Order reversing this Court’s Order for Relief and remanding the matter to this Court the limited purpose of considering potential claims for attorney’s fees under 11 U.S.C. § 303(i) and dismissal of the case. The actual dismissal of the involuntary case has not yet occurred because Baron has not yet requested a hearing on fees, and has not yet submitted any order of dismissal to this Court.

21. The automatic stay continues in place until this Court actually enters the Order of Dismissal. 11 U.S.C. §362(c).

22. PGK and the other Petitioning Creditors have appealed the District Court’s reversal of the Order for Relief to the United States Court of Appeals for the Fifth Circuit. They also requested stay of the District Court’s order pending appeal, which was recently denied by the Fifth Circuit.

23. The District Court has recently entered an order requiring the Baron Receiver to return receivership assets to Baron, Novo Point LLC, and Quantec LLC on or before March 21, 2014. *See* Order entered March 3, 2014 at Document No. 1369 in *Netsphere, Inc., et al v. Baron, et al*, Civil Action No. 3:09-CV-0988-L. Counsel for the Receiver has indicated that they intend to hand all of Baron's assets back to him by March 14, 2014.

**B. The Ondova Adversary Proceeding**

24. Prior to the Petition Date, on September 15, 2010, Baron filed his Original Petition for Declaratory Judgment, Original Petition, Application for Temporary Restraining Order and Request for Disclosure (the "Complaint") against Gerrit M. Pronske, individually, and Pronske & Patel, PC (together, the "Defendants") in the 193rd Judicial District Court of Dallas County, Texas (the "State Court").

25. On that same date, the Defendants filed a Notice of Removal of the Complaint to the United States Bankruptcy Court for the Northern District of Texas in the bankruptcy case styled *In re Ondova Limited Company*, Case. No. 09-34784-SGJ-11 (the "Ondova Case").

26. On September 27, 2010, the Defendants filed their Original Answer and Counter-Claim and Third Party Complaint (the "Answer"). The Answer states claims against Baron and The Village Trust for theft of services, breach of contract, quantum meruit, attorney's fees, fraud, and alter ego.

27. On November 3, 2010, this Court entered its Order Abating Adversary Proceeding and Setting Status Conference temporarily abating the adversary proceeding to December 16, 2010.

28. The adversary proceeding has continued to be abated and/or stayed by the intervening involuntary bankruptcy case against Baron since November 3, 2010, and the Court has not conducted a hearing or entered an order on Baron's Motion to Remand and Motion to Strike Notice of Removal.

#### **Accounts of Baron at Garnishee Institutions**

29. On or about February 12, 2013, Peter Vogel, the Receiver in the Receivership of Baron, filed an Inventory with the federal district court that showed the existence of various assets located in the below-listed Garnishee institutions. Upon information and belief, although the dollar amounts have changed in the accounts due to market conditions, the various institutions continue to hold the below-listed amounts:

Institution	Account Name	Account Number	Account Type	Amount Believed to Be in Account
The Vanguard Group	Jeffrey D. Baron	XXXX-XXXXXXXX792	Non-Roth IRA	\$40,786.66
Dreyfus Investments	The Bank of New York Mellon Cust f/b/o Jeffrey D. Baron	XXXXXXXXXXXX491	Roth Conversion IRA	\$3,629.15
Sterling Trust Co.	Jeff Baron	XX855	Roth IRA	\$49,374.72
Mid-Ohio Securities Corp.	Equity Trust Co. Cust IRA of Jeffrey Baron	XXX-XXX396	Roth IRA	\$126,856.50
Delaware Charter Guarantee & Trust d/b/a Principal Trust Co. (dealt with Interactive Brokers, LLC)	Jeff Baron	XXXX003	Non-Roth IRA	\$319,680.00

Institution	Account Name	Account Number	Account Type	Amount Believed to Be in Account
Equity Trust Co.	Jeffrey Baron	XX471	Roth IRA	\$842,251.69

Institution	Account Name	Account Number	Account Type	Amount Believed to Be in Account
TD Ameritrade	Jeffrey Baron	XX#XX581	Stock	\$378,930.87

30. Although some of these accounts are self-designated by Baron as Individual Retirement Accounts, the accounts are not qualified under the Internal Revenue Code, as would be required to receive exempt status under section 22.0021 of the Texas Property Code, and are therefore not exempt from garnishment and seizure by creditors.

31. In the event that Baron is granted access to the above accounts prior to the entry of the requested garnishment relief, these assets will likely be liquidated by Baron and removed from the United States jurisdiction, leaving Baron no non-exempt assets for the payment of creditors.

#### **Argument in Support of Pre-Judgment Garnishment**

32. PGK is entitled to a pre-judgment writ of garnishment under Texas Civil Practice and Remedies Code section 63.001(2), which provides as follows:

“A writ of garnishment is available if:

. . . .

(2) a plaintiff sues for a debt and makes an affidavit stating that:

(A) the debt is just, due, and unpaid;

(B) within the plaintiff’s knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and

(C) the garnishment is not sought to injure the defendant or the garnishee;. . . .”

33. Under the facts and circumstances described above, PGK has ample reason to believe, and does believe, that Garnishees are indebted to Baron by reason of the various accounts in those institutions listed above. The Garnishees' accounts are not exempt from attachment, levy, execution or garnishment.

34. The attached Affidavit of Gerrit Pronske supports that Baron's debt to PGK is just, due, and unpaid.

35. Baron does not possess, with PGK's knowledge, property in Texas subject to execution sufficient to satisfy the amounts due and owing to PGK.

36. The garnishment applied for is not sought to injure Baron or the Garnishees, as PGK is merely exercising its legal righty to collection of the outstanding balance due from the only immediately available source of funds with which PGK is aware.

### **RELIEF REQUESTED**

WHEREFORE, PREMISES CONSIDERED, PGK requests that a writ of garnishment be issued and served upon Garnishees; that Baron be served with a copy of the writ of garnishment, this application and accompanying affidavit through service; that PGK have judgment against Garnishees to satisfy the amounts due and owing under the terms of the obligations owing by Baron to PGK; that Garnishees by order to withhold such amounts, together with all costs of court herein, pending further order of this Court; and for all other relief to which PGK is entitled.

Dated: March 13, 2014.

Respectfully submitted,

/s/ Gerrit M. Pronske

Gerrit M. Pronske

State Bar No. 16351640

Melanie P. Goolsby

State Bar No. 24059841

PRONSKE GOOLSBY & KATHMAN, PC

2200 Ross Avenue, Suite 5350

Dallas, Texas 75201

(214) 658-6500 - Telephone

(214) 658-6509 – Telecopier

Email: [gpronske@pgkpc.com](mailto:gpronske@pgkpc.com)

Email: [mgoolsby@pgkpc.com](mailto:mgoolsby@pgkpc.com)

**COUNSEL FOR GERRIT M. PRONSKE  
AND PRONSKE GOOLSBY & KATHMAN,  
PC, F/K/A PRONSKE & PATEL, PC**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on March 13, 2014, a true and correct copy of the above and foregoing Application was served upon the counsel for Debtor via email as identified below, and also via ECF email on all parties accepting such service.

Stephen Cochell  
The Cochell Law Firm  
7026 Old Katy Road, Suite 259  
Houston, Texas 77024  
[srcochell@cochellfirm.com](mailto:srcochell@cochellfirm.com)

**COUNSEL FOR THE DEBTOR**

Leonard H. Simon  
Pendergraft & Simon, LLP  
The Riviana Building, Suite 800  
2777 Allen Parkway  
Houston, Texas 77019  
[lsimon@pendergrachtsimon.com](mailto:lsimon@pendergrachtsimon.com)

**PROPOSED COUNSEL FOR THE  
DEBTOR**

/s/ Melanie P. Goolsby  
Melanie P. Goolsby

E

Gerrit M. Pronske  
State Bar No. 16351640  
Melanie P. Goolsby  
State Bar No. 24059841  
PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201  
(214) 658-6500 - Telephone  
(214) 658-6509 – Telecopier  
Email: gpronske@pgkpc.com  
Email: mgoolsby@pgkpc.com

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

**In re:** §  
§ **CASE NO. 12-37921-7**  
**JEFFREY BARON,** §  
§ **INVOLUNTARY CHAPTER 7**  
**Debtor.** § **PROCEEDING**

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

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**GERRIT M. PRONSKE AND PRONSKE  
& PATEL, P.C.,** §

**Counter-Plaintiffs and Third-Party  
Plaintiffs,** §

**v.** §

**JEFF BARON,** §

**Counter-Defendant, and** §

**THE VILLAGE TRUST,** §

**Third-Party Defendant.** §

**MOTION FOR EMERGENCY HEARING**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Gerrit Pronske and Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, P.C. (“PGK” and, together with Gerrit Pronske, the “Movants”) file this Motion for Emergency Hearing (the “Motion for Emergency Hearing”) on their: (i) Emergency Motion for Relief from stay filed in *In re Jeffrey Baron*, Case No. 12-37921-7, and (ii) Emergency Motion to Lift Abatement filed in *Baron v. Pronske, et al*, Adversary Proceeding No. 10-03281-SGJ. In support of the Motion for Emergency Hearing, Movants respectfully show the Court as follows:

1. On December 18, 2012 (the “Petition Date”), PGK and other petitioning creditors (together, the “Petitioning Creditors”) filed an involuntary bankruptcy petition against Jeffrey Baron (“Baron” or the “Debtor”) under Chapter 7 of the Bankruptcy Code [Baron Docket No. 1, later amended at Docket No. 45].

2. On June 26, 2013, after conducting an involuntary trial over two days, the Court entered an Order for Relief in an Involuntary Case (the “Order for Relief”) [Baron Docket No. 240].

3. On January 2, 2014, the United States District Court for the Northern District of Texas (the “District Court”) entered an Amended Memorandum Opinion and Order reversing this Court’s Order for Relief and remanding the matter to this Court the limited purpose of considering potential claims for attorney’s fees under 11 U.S.C. § 303(i) and dismissal of the case.

4. PGK and the other Petitioning Creditors have appealed the District Court’s reversal of the Order for Relief to the United States Court of Appeals for the Fifth Circuit. They also requested stay of the District Court’s order pending appeal, which was denied by the Fifth Circuit on March 6, 2014.

5. The District Court has recently entered an order requiring the Baron Receiver to return receivership assets to Baron, Novo Point LLC, and Quantec LLC on or before March 14, 2014. See Order entered February 28, 2014 at Document No. 1368 in *Netsphere, Inc., et al v. Baron, et al*, Civil Action No. 3:09-CV-0988-L. Upon information and belief, this includes possession, custody, and control over certain investment accounts Baron, some of which accounts Baron alleges to be qualified IRA accounts.

6. The Movants are gravely concerned that, immediately upon the imminent return of Baron's personal assets from the Receivership, Baron intends to remove those assets beyond the reach of his creditors, possibly to off-shore trusts in The Cook Islands. Movants therefore seek emergency relief in the *Baron* bankruptcy case for relief from the bankruptcy automatic stay and emergency relief in the *Baron v. Pronske* adversary case to lift the abatement of that proceeding and move forward with any and all rights and remedies available to Movants under applicable law to protect their interests vis-à-vis Baron and his personal assets.

7. Movants respectfully request that the Court set emergency hearings on these matters on Friday, March 14, 2014, the date Movants expect Baron to regain possession of his personal assets from the Receiver, or otherwise at the earliest convenience of the Court. Movants are seeking emergency relief at the earliest possible moment after learning of the District Court's orders concerning objections to the March 14, 2014 distribution date and confirming the Receiver's intent to return possession of Receivership assets to Baron by tomorrow.

8. Notice of the Motion is being given to counsel for Baron and the Chapter 7 Trustee by email, as set forth in the Certificate of Service below.

WHEREFORE, Movants respectfully request that the Court: (i) grant this Motion for Emergency Hearing; (ii) set an emergency hearing to consider the Motions; and (iv) grant the Movants such other and further relief to which they may be justly entitled.

Dated: March 13, 2014.

Respectfully submitted,

/s/ Gerrit M. Pronske

Gerrit M. Pronske

Texas Bar No. 16351640

Melanie P. Goolsby

State Bar No. 24059841

PRONSKE GOOLSBY & KATHMAN, PC

2200 Ross Avenue, Suite 5350

Dallas, Texas 75201

Telephone: 214.658.6500

Facsimile: 214.658.6509

Email: [gpronske@pgkpc.com](mailto:gpronske@pgkpc.com)

Email: [mgoolsby@pgkpc.com](mailto:mgoolsby@pgkpc.com)

#### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that, on March 11, 2014, I conferred with Leonard Simon, proposed counsel for Baron, regarding the relief sought in this Motion, who indicated that Baron is opposed to the relief requested herein.

/s/ Gerrit M. Pronske

Gerrit M. Pronske

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that, on March 13, 2014, a true and correct copy of the above and foregoing Motion was served upon the Debtor and counsel for the Trustee via email as identified below, and also via ECF email on all parties accepting such service. Any party may request a copy of the attached exhibits to the undersigned counsel.

Stephen Cochell  
The Cochell Law Firm  
7026 Old Katy Road, Suite 259  
Houston, Texas 77024  
[srcochell@cochellfirm.com](mailto:srcochell@cochellfirm.com)

**COUNSEL FOR THE DEBTOR**

Leonard H. Simon  
Pendergraft & Simon, LLP  
The Riviana Building, Suite 800  
2777 Allen Parkway  
Houston, Texas 77019  
[lsimon@pendergraftsimon.com](mailto:lsimon@pendergraftsimon.com)

**PROPOSED COUNSEL FOR THE DEBTOR**

Kevin McCullough  
Kathryn Reid  
Rochelle McCullough, LLP  
325 N. St. Paul Street, Ste. 4500  
Dallas, Texas 75201  
kdm@romclawyers.com  
kreid@romclawyers.com

**ATTORNEYS FOR JOHN LITZLER, CH.  
7 TRUSTEE**

/s/ Melanie P. Goolsby  
Melanie P. Goolsby

**F**



U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

TAWANA C. MARSHALL, CLERK

THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

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

Signed March 14, 2014

United States Bankruptcy Judge

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

<b>IN RE:</b>	§	
	§	
<b>ONDOVA LIMITED COMPANY,</b>	§	<b>CASE NO. 09-34784-SGJ-11</b>
	§	
<b>Debtor.</b>	§	<b>(Chapter 11)</b>
<hr/>		
<b>JEFF BARON,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Adversary No. 10-03281</b>
	§	
<b>v.</b>	§	
	§	
<b>GERRIT M. PRONSKE AND PRONSKE &amp; PATEL, P.C.,</b>	§	
	§	
<b>Defendants, Counter-Plaintiffs, and Third-Party Plaintiffs,</b>	§	
	§	

	§
v.	§
	§
<b>JEFF BARON,</b>	§
	§
<b>Counter-Defendant, and</b>	§
	§
<b>THE VILLAGE TRUST,</b>	§
	§
<b>Third-Party Defendant.</b>	§

**ORDER DENYING MOTION FOR EMERGENCY HEARING [DE # 37]**

Came on for consideration the Motion for Emergency Hearing (the “Motion”) [DE # 37] filed March 13, 2014, by Gerrit Pronske and Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, P.C. in the above-referenced adversary proceeding. After a review of the Motion, the court does not find good cause to grant the relief.

Accordingly,

**IT IS ORDERED** that the Motion is **DENIED**.

**### END OF ORDER ###**

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DC-14-02619  
CAUSE NO. \_\_\_\_\_

<b>PRONSKE GOOLSBY &amp; KATHMAN, PC</b>	§	
	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>DALLAS COUNTY, TEXAS</b>
	§	
<b>JEFFREY BARON,</b>	§	
	§	<b>_____ JUDICIAL DISTRICT COURT</b>
<b>Defendant.</b>	§	

**PLAINTIFF’S ORIGINAL PETITION**

COMES NOW Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, PC (the “Plaintiff” of “PGK”) and files this Original Petition (the “Petition”) complaining of and against Jeffrey Baron (“Defendant” or “Baron”) (the “Defendant”), and for cause would respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends that discovery be conducted under Discovery Level 3.

**II. PARTIES**

2. PGK is a Texas professional corporation with its principal place of business in Dallas, Texas.
3. Jeffrey Baron is an individual resident of Texas. Defendant Jeffrey Baron may be served at his post office address at PO Box 111501, Dallas, Texas 75011 or wherever he may be found.

**III. JURISDICTION & VENUE**

4. The subject matter in controversy is within the jurisdictional limits of this Court.
5. This Court has personal jurisdiction over Defendant because Defendant is a resident of the state of Texas.

6. Venue in Dallas County is proper in this cause because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county. In addition, Defendant entered into an engagement agreement with Plaintiff in Dallas County at the time that the attorney/client relationship was formed.

#### **IV. BASIS OF SUIT**

7. This is a suit brought by PGK to collect the balance owed from Defendants for legal services provided to Baron at the specific request of Baron and the Trusts.

8. Pursuant to Local Rule 1.06, this case may be related to *Baron v. Pronske, et al*, Cause No. 10-11915 in the 193rd Judicial District Court of Dallas County, Texas, which has since been removed to the United States District Court for the Northern District of Texas, Dallas Division.

#### **V. FACTS**

9. Effective on or about August 31, 2009, Baron, individually and through attorneys for The Village Trust (the "Trust"), a trust organized under the laws of the Cook Islands, retained PGK in connection with matters related to Ondova Limited Company in its bankruptcy case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").

10. The terms of such engagement were negotiated between PGK and Elizabeth Schurig, an attorney for the Trust, with Baron on the same phone call. Although the Trust required a written engagement letter with many of the attorneys representing Baron for which the Trust was to pay the bills, the Trust did not require such an engagement letter with PGK.

11. Baron represented that he was unable to personally pay for PGK's services, but that the Trust would pay PGK's fees for services rendered and expenses incurred. In fact, the Trust wire transferred the initial retainer to PGK either directly or indirectly through the trust

account of Friedman and Feiger at or about the time that PGK commenced work on Baron's behalf. Based upon this representation, PGK agreed to provide legal services for Baron.

12. The bulk of the work performed by PGK centered around the settlement of claims and causes of action among Baron, the Trust, and numerous entities relating to Netsphere, Inc. and Ondova Limited Company. The negotiations took considerable time and effort of numerous attorneys, including those of PGK. The negotiations of the settlement issues were successful, and resulted in the execution of an extensive written settlement agreement approved by the Bankruptcy Court in the Ondova Limited Company bankruptcy case.

13. After the settlement was achieved, Baron refused to pay for the legal services, claiming that both he and the Trust had no money.

14. PGK ceased work upon learning that Baron refused to pay even a portion of the bill for the legal services and filed a Motion to Withdraw from continuing to represent Baron in Ondova Limited Company bankruptcy case. This Court approved the Motion to Withdraw and entered an Order regarding same.

15. At the time that the work ceased, Baron owed PGK \$294,033.87, which amount remains unpaid as of the date of this Complaint.

16. Demand has been made on Baron on numerous occasions. Notwithstanding, Baron has failed and refused, and continues to fail and refuse, to pay PGK for its outstanding fees and expenses owed for services rendered.

17. Baron utilized the services of PGK with no intention to pay for such services, within the meaning of the Texas Theft Liability Act, § 31.04 of the Texas Penal Code and §§ 134.001 – 134.005 of the Texas Civil Practice and Remedies Code.

## **VI. CAUSES OF ACTION**

### **A. Count One – Theft of Services**

18. PGK incorporates and realleges the allegations set forth above.
19. At the request of Baron, PGK provided legal services to Baron.
20. Baron agreed to pay PGK individually and through the Trust its usual and customary charges for the services rendered. PGK negotiated the particular arrangement of fees and expenses with Elizabeth Schurig on behalf of the Trust and with Baron.
21. PGK provided legal services to Baron as requested.
22. Baron knew that the service was being provided by PGK for compensation.
23. To date, notwithstanding PGK's demands, Baron has failed and refused, and continues to fail and refuse, to pay PGK for the services rendered.
24. Baron intended to avoid payment for the services performed by PGK by:
  - a. Intentionally or knowingly securing the performance of the service by deception or false token; and by
  - b. Intentionally or knowingly securing the performance of a service by agreeing to provide compensation and, after the service was rendered, failing to make payment after receiving notice demanding payment.
25. As a result of Baron's theft of service, Baron has proximately caused actual damages to PGK in the amount of \$294,033.87, plus consequential damages and pre and post judgment interest as allowed by law.
26. PGK is entitled to exemplary damages for Baron's willful acts. *See* Tex. Civ. Prac. & Rem. Code §41.008(c). Baron has an extensive history of utilizing services of attorneys and either 1) discharging the attorneys when a bill is presented or, 2) not paying the attorneys when bills are presented, causing such attorneys to cease representation. There are currently no less than 6 lawsuits pending against Baron by law firms. PGK is aware of others that will likely

be filed by lawyers whose services Baron has stolen. The bankruptcy schedules of Ondova Limited Company, which was controlled by Baron, shows a “laundry list” of attorneys that Baron purposefully did not pay, but whose services he used until the attorneys realized that he had no intention of paying them. In each instance of intentional non-payment of attorneys, Baron fails to complain about the services until the “free” work has ceased, and then, when a bill is presented, alleges malpractice, breach of fiduciary duty and or/failure of the attorney to properly discharge duties of engagement. Baron has learned that many law firms “go away” and do not sue for compensation once a malpractice claim has been asserted. Additionally, these attorneys come to know that Baron has hidden all of his assets in an offshore trust (the Village Trust) in the Cook Islands, a country that has no treaty with the United States that permits United States litigants to sue Cook Island entities. Discouraged, most of these attorneys do not waste further legal time and expense pursuing Baron. There have been between 25 and 45 recent instances of Baron using attorneys and not paying them. This long list of unpaid lawyers has one common denominator – Jeffrey Baron. By engaging in theft of services, Baron has “saved” himself over \$1 million in attorneys’ fees and expenses at the expense of the attorneys from whom services have been stolen. Without punitive damages, Baron will be encouraged in the future to steal from other attorneys. Damages awarded for felony theft in the third degree or higher under Texas Penal Code Chapter 31 are exempt from the cap on exemplary damages. See Tex. Civ. Prac. & Rem Code 41.008(b), (c)(13); *Cooper v. Sony Music Entm’t Inc.*, No. 01-0941 (S.D. Tex. 2002) (no pub.; 2-02-02).

27. PGK requests this Court to award exemplary damages in an amount of no less than \$1,000,000 against Baron.

**B. Count Two -- Breach of Contract**

28. PGK incorporates and realleges the allegations set forth above.

29. At the request of Baron and the Trust, PGK provided legal services to Baron. Baron agreed to pay PGK its usual and customary charges for the services rendered. PGK negotiated the particular arrangement of fees and expenses with Baron.

30. To date, notwithstanding PGK's demands, Baron has failed and refused, and continues to fail and refuse, to pay PGK or to cause the Trust, which is under his management and control, to pay PGK for the services rendered.

31. As a result of Baron's breach of contract, Baron has proximately caused actual damages to PGK in the amount of \$294,033.87, plus consequential damages and pre and post judgment interest as allowed by law.

32. Additionally, Baron is liable for attorneys' fees and expenses for the collection of such fees and expenses.

**C. Count Three – Quantum Meruit**

33. PGK incorporates and realleges the allegations set forth above.

34. Pleading in the alternative, if such be necessary, the legal services furnished to Baron were provided under such circumstances that Baron knew that PGK, in performing legal services, expected to be paid PGK's usual and customary charges for such services. The legal services provided to Baron were for the benefit of Baron. Baron would be unjustly enriched, and PGK unjustly penalized, if Baron was allowed to retain the benefits of such services without paying for them.

35. As a result of Baron's failure and refusal to pay for the legal services rendered, Baron has proximately caused actual damages to PGK in the amount of \$294,033.87, plus consequential damages and pre and post judgment interest as allowed by law.

36. Additionally, Baron is liable for attorneys' fees and expenses for the collection of such fees and expenses.

**D. Count Four – Attorney’s Fees**

37. PGK incorporates and realleges the allegations set forth above.

38. In accordance with Tex. Civ. Prac. & Rem. Code §38.01 *et. seq.*, PGK is entitled to recover its reasonable attorney’s fees incurred in prosecuting this action. PGK presented the above-described claim to Baron, but Baron has failed and refused to tender the just amount owed.

39. As a result of Baron’s failure and refusal to pay the claims, PGK has been required to obtain legal counsel to bring this suit. PGK is, therefore, entitled to recover an additional sum to compensate it for the reasonable attorney’s fees incurred in bringing this suit, with further and subsequent awards of attorney’s fees in the event of appeals from this Court.

**E. Count Five – Fraud**

40. PGK incorporates and realleges the allegations set forth above.

41. Baron made material misrepresentations of fact to PGK that were false. Baron knew the representations were false or acted with reckless disregard to the truth or falsity of the representations. Baron intended that PGK act upon the false representations when agreeing to perform legal services on behalf of PGK, and PGK did rely on the false misrepresentations to its detriment and damage. Furthermore, PGK will show that Baron’s conduct, as described above, was willful and malicious and, as a result, PGK is entitled to recover exemplary damages to deter such conduct by others in the future.

42. As a result of Baron’s fraud, Pronske and PGK have suffered actual, consequential, and incidental damages.

43. As a further result of Baron’s fraud, Pronske and PGK are entitled to recover punitive damages, to be awarded and paid to the charities listed in paragraph 67 above.

### **VII. CONDITIONS PRECEDENT**

44. All conditions precedent necessary for PGK to have and recover in this action have been performed, have occurred, or have been waived.

### **VIII. REQUEST FOR DISCLOSURE**

45. Under Texas Rule of Civil Procedure 194, PGK requests that Defendant disclose, within 50 days of service of this request, the information and material described in Rule 194.2.

### **IX. PRAYER**

WHEREFORE, PREMISES CONSIDERED, PGK respectfully requests that process issue and be served on Jeffrey Baron; that, upon final hearing, PGK have and recover judgment from and against Baron in the amounts set forth above, for reasonable attorney's fees incurred by PGK to prosecute this action, for costs and expenses of suit herein, for pre-judgment and post-judgment interest on all monetary relief sought herein at the highest rates allowed by law; for punitive damages; and, for such other and further relief, both general and special, at law and in equity, to which PGK may be justly entitled.

Respectfully submitted,

PRONSKE GOOLSBY & KATHMAN, PC

By: /s/ Gerrit M. Pronske

Gerrit M. Pronske

State Bar No. 16351640

Melanie P. Goolsby

State Bar No. 24059841

PRONSKE GOOLSBY & KATHMAN, PC

2200 Ross Avenue, Suite 5350

Dallas, Texas 75201

(214) 658-6500 - Telephone

(214) 658-6509 – Telecopier

**ATTORNEYS FOR PLAINTIFF**

H



2. 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. (together, the “Garnishees”) have various accounts that are in the name of Jeffrey Baron, individually (“Baron”).

3. Unless this Court grants this Application and orders issuance of writs of garnishment to the named Garnishees, Baron will gain control of the funds in the accounts held at the Garnishees, and will likely transfer those assets to trusts and other entities in foreign jurisdictions that do not have treaties with the United States, thereby putting all of his non-exempt assets beyond the reach of creditors in the United States.

4. PGK will likely prevail on summary judgment in the underlying lawsuit based on principles of collateral estoppel, because the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered an Order in the Ondova bankruptcy case granting PGK a substantial contribution claim for the exact same claim that it has against Baron. In doing so, the Bankruptcy Court ruled in favor of PGK over objections of Baron after the claim was actually litigated. Baron appealed the entry of the substantial contribution order, and such appeal was dismissed by the United States District Court for the Northern District of Texas, Judge Sam Lindsay presiding. Although Baron has appealed Judge Lindsay’s dismissal of the appeal pro se, Baron has neither sought nor obtained any stay pending appeal of the dismissal of the appeal.

5. If the requested garnishment is not granted, any judgment obtained by PGK against Baron in the underlying lawsuit will be meaningless because Baron has no non-exempt assets other than those sought to be garnished herein.

### Parties

6. PGK is a Texas professional corporation with its principal place of business in Dallas, Texas.

7. Garnishee TD Ameritrade is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

8. Garnishee The Vanguard Group is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

9. Garnishee MBSC Securities Corporation d/b/a Dreyfus Investments is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process National Corporate Research, Ltd., 800 Brazos, Suite 400, Austin, Texas 78701.

10. Garnishee Equity Institutional, f/k/a Sterling Trust Co. is a sub-division of Equity Trust Company, a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

11. Garnishee Mid-Ohio Securities Corp. is a sub-division of Equity Trust Company, a foreign for-profit corporation registered to do business in the state of Texas and may served on

its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

12. Garnishee Delaware Charter Guarantee & Trust d/b/a Principal Trust Co. is a foreign for-profit corporation registered to do business in the state of Texas and may served by service on the Texas Secretary of State, 1019 Brazos, Austin, Texas 78701.

13. Garnishee Equity Trust Co. is a foreign for-profit corporation registered to do business in the state of Texas and may served on its registered agent for service of process Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

14. Nominal Defendant Jeffrey Baron is an individual with his residence in Dallas County, Texas, and may be served at his post office address at PO Box 111501, Dallas, Texas 75011 or wherever he may be found.

### **Affidavit in Support of Garnishment**

15. PGK is entitled to the issuance of a writ of garnishment on the grounds stated in the Affidavit of Gerrit M. Pronske in Support of Writ of Garnishment (the "Pronske Affidavit"), a person with knowledge of relevant facts, attached hereto as Exhibit "A", incorporated by reference herein.

## **I. PROCEDURAL AND FACTUAL BACKGROUND**

### **A. The Involuntary Case**

16. On December 18, 2012 (the "Petition Date"), PGK and other petitioning creditors (together, the "Petitioning Creditors") filed an involuntary bankruptcy petition against Jeffrey Baron ("Baron" or the "Debtor") under Chapter 7 of the Bankruptcy Code [Docket No. 1, later amended at Docket No. 45].

17. On June 26, 2013, after conducting an involuntary trial over two days, the Court entered an Order for Relief in an Involuntary Case (the “Order for Relief”) [Docket No. 240].

18. On January 2, 2014, the United States District Court for the Northern District of Texas (the “District Court”) entered an Amended Memorandum Opinion and Order reversing this Court’s Order for Relief and remanding the matter to this Court the limited purpose of considering potential claims for attorney’s fees under 11 U.S.C. § 303(i) and dismissal of the case. The actual dismissal of the involuntary case has not yet occurred because Baron has not yet requested a hearing on fees, and has not yet submitted any order of dismissal to this Court.

19. PGK and the other Petitioning Creditors have appealed the District Court’s reversal of the Order for Relief to the United States Court of Appeals for the Fifth Circuit. They also requested stay of the District Court’s order pending appeal, which was recently denied by the Fifth Circuit.

20. The District Court has recently entered an order requiring the Baron Receiver to return receivership assets to Baron, Novo Point LLC, and Quantec LLC on or before March 21, 2014. See Order entered March 3, 2014 at Document No. 1369 in *Netsphere, Inc., et al v. Baron, et al*, Civil Action No. 3:09-CV-0988-L. Counsel for the Receiver has indicated that they intend to hand all of Baron’s assets back to him by March 14, 2014.

21. On March 14, 2014, the Bankruptcy Court entered its Order of Dismissal in the Baron bankruptcy case. The Order of Dismissal specifically provides that “for the avoidance of any doubt, the automatic stay of Section 362 of the Bankruptcy Code no longer applies with regard to the Alleged Debtor and his property.”

### Accounts of Baron at Garnishee Institutions

22. On or about February 12, 2013, Peter Vogel, the Receiver in the Receivership of Baron, filed an Inventory with the federal district court that showed the existence of various assets located in the below-listed Garnishee institutions. Upon information and belief, although the dollar amounts have changed in the accounts due to market conditions, the various institutions continue to hold the below-listed amounts:

Institution	Account Name	Account Number	Account Type	Amount Believed to Be in Account
The Vanguard Group	Jeffrey D. Baron	XXXX-XXXXXXXX792	Non-Roth IRA	\$40,786.66
Dreyfus Investments	The Bank of New York Mellon Cust f/b/o Jeffrey D. Baron	XXXXXXXXXXXX491	Roth Conversion IRA	\$3,629.15
Sterling Trust Co.	Jeff Baron	XX855	Roth IRA	\$49,374.72
Mid-Ohio Securities Corp.	Equity Trust Co. Cust IRA of Jeffrey Baron	XXX-XXX396	Roth IRA	\$126,856.50
Delaware Charter Guarantee & Trust d/b/a Principal Trust Co. (dealt with Interactive Brokers, LLC)	Jeff Baron	XXXX003	Non-Roth IRA	\$319,680.00

Institution	Account Name	Account Number	Account Type	Amount Believed to Be in Account
Equity Trust Co.	Jeffrey Baron	XX471	Roth IRA	\$842,251.69
TD Ameritrade	Jeffrey Baron	XX#XX581	Stock	\$378,930.87

23. Although some of these accounts are self-designated by Baron as Individual Retirement Accounts, the accounts are not qualified under the Internal Revenue Code, as would be required to receive exempt status under section 22.0021 of the Texas Property Code, and are therefore not exempt from garnishment and seizure by creditors.

24. In the event that Baron is granted access to the above accounts prior to the entry of the requested garnishment relief, these assets will likely be liquidated by Baron and removed from the United States jurisdiction, leaving Baron no non-exempt assets for the payment of creditors.

**Argument in Support of Pre-Judgment Garnishment**

25. PGK is entitled to a pre-judgment writ of garnishment under Texas Civil Practice and Remedies Code section 63.001(2), which provides as follows:

“A writ of garnishment is available if:

....

(2) a plaintiff sues for a debt and makes an affidavit stating that:

(A) the debt is just, due, and unpaid;

(B) within the plaintiff’s knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt; and

(C) the garnishment is not sought to injure the defendant or the garnishee;. . .

.”

26. Under the facts and circumstances described above, PGK has ample reason to believe, and does believe, that Garnishees are indebted to Baron by reason of the various accounts in those institutions listed above. The Garnishees’ accounts are not exempt from attachment, levy, execution or garnishment.

27. The attached Affidavit of Gerrit Pronske supports that Baron’s debt to PGK is just, due, and unpaid.

28. Baron does not possess, with PGK’s knowledge, property in Texas subject to execution sufficient to satisfy the amounts due and owing to PGK.

29. The garnishment applied for is not sought to injure Baron or the Garnishees, as PGK is merely exercising its legal righty to collection of the outstanding balance due from the only immediately available source of funds with which PGK is aware.

**RELIEF REQUESTED**

WHEREFORE, PREMISES CONSIDERED, PGK requests that a writ of garnishment be issued and served upon Garnishees; that Baron be served with a copy of the writ of garnishment, this application and accompanying affidavit through service; that PGK have judgment against Garnishees to satisfy the amounts due and owing under the terms of the obligations owing by Baron to PGK; that Garnishees by order to withhold such amounts, together with all costs of court herein, pending further order of this Court; and for all other relief to which PGK is entitled.

Respectfully submitted,

PRONSKE GOOLSBY & KATHMAN, PC

By: /s/ Gerrit M. Pronske

Gerrit M. Pronske  
State Bar No. 16351640  
Melanie P. Goolsby  
State Bar No. 24059841

PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201  
(214) 658-6500 - Telephone  
(214) 658-6509 – Telecopier

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 2.02**

I, the undersigned, hereby certify, pursuant to Local Rule 2.02, that compliance with the provisions of Local Rule 2.02(a) is not required because (i) irreparable harm is imminent and there is insufficient time to notify the opposing party or counsel, and (ii) that to notify the opposing party or counsel would impair or annul the court's power to grant relief because the subject matter of the application could be accomplished or property removed, secreted, or destroyed, if notice were required.

/s/ Gerrit M. Pronske

Gerrit M. Pronske

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Jefferson Bernita

## CAUSE NO. DC-14-02619

<b>PRONSKE GOOLSBY &amp; KATHMAN, PC</b>  <i>Plaintiff,</i>  <b>v.</b>  <b>JEFFREY BARON,</b>  <i>Defendant.</i>	§ § § § § § § § § §	<b>IN THE DISTRICT COURT</b>           <b>192<sup>nd</sup> JUDICIAL DISTRICT</b>           <b>DALLAS COUNTY, TEXAS</b>
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**BUSCH RUOTOLO & SIMPSON, LLP'S AND STROMBERG STOCK, PLLC'S  
ORIGINAL PETITION IN INTERVENTION**

TO THE HONORABLE COURT:

Busch Ruotolo & Simpson, LLP<sup>1</sup> (“Busch”) and Stromberg Stock, PLLC<sup>2</sup> (“Stromberg”) (collectively “Intervenors”), file this Petition in Intervention in the above-styled and titled cause, pursuant to TEXAS RULE OF CIVIL PROCEDURE 60, and would show the Court the following:

I.  
PRELIMINARY STATEMENT

1. Intervenors represented Defendant Jeffrey Baron to contest an involuntary bankruptcy proceeding filed against him by Plaintiff, Pronske Goolsby Kathman, P.C. f/k/a Pronske & Patel, P.C., as both a petitioning creditor in its own right and as counsel for the petitioning creditors.<sup>3</sup> Though the U.S. Bankruptcy Court for the Northern District of Texas (“Bankruptcy Court”) issued an Order for Relief dated June 26, 2013, which permitted the

<sup>1</sup> The term “Busch Ruotolo & Simpson, LLP” includes attorneys Alan L. Busch and Christopher M. Albert.

<sup>2</sup> The term “Stromberg Stock, PLLC” includes attorney Mark Stromberg.

<sup>3</sup> *In re Jeffrey Baron*; Case No. 12-37921-SGJ7; U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division. The petitioning creditors included Plaintiff, **Error! Main Document Only.** Shurig Jetel Beckett Tackett; Dean Ferguson; Gary G. Lyon; Robert Garrey; Powers Taylor, LLP; Jeffrey Hall; and David Pacione (hereafter, the “Petitioning Creditors”)

involuntary bankruptcy case to go forward, the U.S. District Court for the Northern District of Texas (“District Court”), in a Judgment and a separate Amended Memorandum Opinion and Order both signed on January 2, 2014, reversed that Order for Relief and remanded the case back to the bankruptcy court for the limited purpose of dismissal of the involuntary bankruptcy action and consideration as to whether attorney’s fees, costs, or damages should be awarded. On March 14, 2014, the Bankruptcy Court issued its Order of Dismissal of the involuntary bankruptcy case, reserving jurisdiction solely to consider whether attorney’s fees, costs, or damages should be awarded against the Petitioning Creditors, jointly and severally, including Plaintiff.

2. Intervenors intervene in this action in order to recover the attorneys’ fees and costs from Defendant Jeffrey Baron incurred in the defense of Defendant Jeffrey Baron against Plaintiff in Plaintiff’s unsuccessful attempt to force Defendant Jeffrey Baron into involuntary bankruptcy, and claim a superior interest and right to payment to Plaintiff in that portion of the garnished funds or assets required to pay their fees.

## II. PARTIES

3. Intervenor Busch Ruotolo & Simpson, LLP, is a Texas law firm and limited liability partnership whose principal place of business is in Dallas, Texas.

4. Intervenor Stromberg Stock, PLLC, is a Texas law firm and professional limited liability company whose principal place of business is in Dallas, Texas.

5. Plaintiff Pronske Goolsby Kathman, P.C. f/k/a Pronske & Patel, P.C., is a Texas professional corporation whose principal place of business is in Dallas, Texas. A copy of this Petition will be forwarded to Gerrit M. Pronske, PRONSKE GOOLSBY & KATHMAN, PC, attorney of record for Plaintiff, at 2200 Ross Avenue, Suite 5350, Dallas, Texas 75201, under the provisions of TEXAS RULES OF CIVIL PROCEDURE 21 and 21a.

6. Defendant Jeffrey Baron is an individual resident of Texas, who may be served at his post office address at P.O. Box 111501, Dallas, Texas 75011, or wherever he may be found, under the provisions of TEXAS RULES OF CIVIL PROCEDURE 21 and 21a.

III.  
JURISDICTION AND VENUE

7. Because both Plaintiff and Defendant have a principal place of business or reside in Dallas County, Texas, they are subject to the personal jurisdiction of this Court.

8. Venue is proper in Dallas County, Texas, pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE §§15.001(a) and 15.002(a).

IV.  
FACTUAL BACKGROUND

9. As alleged in Plaintiff's Original Petition, Plaintiff was retained to represent Defendant in connection with matters related to the Ondova Limited Company bankruptcy case pending before the U.S. Bankruptcy Court for the Northern District of Texas.

10. As further alleged in Plaintiff's Original Petition, arrangements were made between Plaintiff and Defendant, whereby The Village Trust would pay Plaintiff's fees for services rendered and expenses incurred. After a settlement of claims and causes of action among Defendant, The Village Trust, and numerous entities relating to Netsphere, Inc. and Ondova Limited Company, Defendant is alleged to have refused to pay for Plaintiff's legal services, asserting that both he and The Village Trust had no money.

11. As further alleged in Plaintiff's Original Petition, due to Defendant's refusal to pay, Plaintiff withdrew from representing Defendant. At the time that the work ceased, Defendant claims to have been owed Plaintiff the amount of \$294,033.87, which Plaintiff alleges remains unpaid.

12. With the support of Plaintiff and others (including the Petitioning Creditors), the United States District Court for the Northern District of Texas imposed a receivership upon Defendant. The order imposing the receivership was appealed, and on December 18, 2012, just hours after the United States Court of Appeals for the Fifth Circuit issued an opinion vacating the receivership and ordering that Defendant's assets be returned to him, Plaintiff, along with others including the Petitioning Creditors, filed a Chapter 7 Involuntary Bankruptcy<sup>4</sup> against Defendant.

13. Pursuant to orders from the Bankruptcy Court on or about January 15, 2013, with the approval of the District Court in the Netsphere litigation, a post-petition retainer of \$25,000 was funded by the Receiver. This Retainer was established for the benefit of Defendant and was to be used to pay fees incurred by BRS and the firm of Stromberg Stock, PLLC, in representing Defendant in the initial phases of the Involuntary Bankruptcy.<sup>5</sup>

14. On January 16, 2013, the Bankruptcy Court set a hearing on the Petitioning Creditors' Petition for Involuntary Bankruptcy for February 13, 2013, which was to be in the nature of a summary judgment hearing. On February 1, 2013, the Petitioning Creditors (including Plaintiff) filed a Motion for Summary Judgment that the case met the statutory requirements for an involuntary bankruptcy against Defendant. On June 26, 2013, the Bankruptcy Court issued its Order for Relief, granting the Petitioning Creditors' Motion for Summary Judgment. Thereafter, after a trial before the Bankruptcy Court in June, 2013, an order for relief was entered against Defendant on June 26, 2013 [*see* Docket Nos. 239 and 240].

15. The Order for Relief was appealed to the District Court by Defendant and also by Novo Point LLC and Quantec LLC (as intervenors). On December 31, 2013, the District Court

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<sup>4</sup> *Id.*

<sup>5</sup> See Exhibits "A" and "B" – Engagement Letters between Defendant and Stromberg Stock, PLLC and between Defendant and Busch Ruotolo & Simpson, LLP, respectively.

issued its Memorandum Opinion and Order, which reversed the Bankruptcy Court's Order for Relief and remanded the case to the Bankruptcy Court for the limited purpose of dismissing the Bankruptcy Case and consideration of whether attorney's fees, costs, or damages should be awarded under 11 U.S.C. § 303(i). On January 2, 2014, the District Court issued its Amended Memorandum Opinion and Order to correct oversights in the original, but in essence, was identical to the original of December 31, 2013. Pursuant thereto, a Judgment was entered on January 2, 2014, wherein the case was remanded to the Bankruptcy Court and remanded the case to the Bankruptcy Court for the limited purpose of dismissing the Bankruptcy Case and determination of what amount of attorney's fees, costs, or damages should be awarded to Defendant and against the Petitioning Creditors under 11 U.S.C. § 303(i).<sup>6</sup>

16. Subsequently, on March 14, 2014, the Bankruptcy Court issued its Order of Dismissal based upon the District Court's Opinion and Judgment, whereby

- a. the Bankruptcy Case was dismissed;
- b. jurisdiction was reserved solely to consider whether attorneys' fees (including those of Intervenors), costs, or damages should be awarded under section 303(i) of the Bankruptcy Code in favor of Defendant against Plaintiff or the Petitioning Creditors, and no other motions would be considered unless consistent with an order of the District Court or directive of the U.S. Court of Appeals for the Fifth Circuit, and that applications for such must be filed within 30 days of the order; and
- c. the automatic stay of Section 362 of the Bankruptcy Code no longer applies with regard to the Defendant and his property.

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<sup>6</sup> (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; or
- (2) against any petitioner that filed the petition in bad faith, for—
  - (A) any damages proximately caused by such filing; or
  - (B) punitive damages.

17. On March 17, 2014, the Plaintiff filed the present action, Plaintiff is seeking to recover on their pre-bankruptcy claims against Defendant without paying the Intervenor those amounts due for fees and expenses arising from the involuntary bankruptcy filing.

18. On April 11, 2014, Intervenor timely filed motions with the Bankruptcy Court seeking recovery of their fees and expenses.<sup>7</sup> On April 13, 2014, the Defendant timely filed an adversary action against the Plaintiff and Petitioning Creditor in the Bankruptcy Court seeking his attorneys' fees, costs and other damages under 11 U.S.C. § 303(i).<sup>8</sup> The Intervenor are creditor-beneficiaries of Defendant's 303(i) claim against the Plaintiff.

## V.

### INTERVENORS' INTEREST IN THE PRESENT CAUSE

19. Intervenor have a justiciable interest in the matters in controversy in this litigation in that they as have an interest in any funds garnished for the benefit of Plaintiff to the extent of the fees and expenses incurred by the Intervenor for successfully defending the Defendant against the Plaintiff's involuntary petition as permitted under 11 U.S.C. § 303(i).<sup>9</sup>

## VI.

### CAUSES OF ACTION AGAINST DEFENDANT

#### A. BREACH OF CONTRACT

20. Pursuant to Texas state law, Intervenor plead a cause of action against Defendant for breach of contract. The allegations contained in all of the paragraphs of this Petition are hereby re-averred and re-alleged for all purposes and incorporated herein with the same force and effect as if set forth verbatim.

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<sup>7</sup> See Exhibits "C" and "D" – Motion of Stromberg Stock, PLLC for Recovery of Attorneys Fees & Expenses and Motion of Busch Ruotolo & Simpson, LLP for Recovery of Attorneys Fees & Expenses, respectively.

<sup>8</sup> See Exhibit "E" – Plaintiff Jeffrey Baron's Complaint Under 11 U.S.C. § 303(i).

<sup>9</sup> See Exhibits "A" and "B" – Engagement Letters between Defendant and Stromberg Stock, PLLC and between Defendant and Busch Ruotolo & Simpson, LLP, respectively; See Exhibits "C" and "D" – Motion of Stromberg Stock, PLLC for Recovery of Attorneys Fees & Expenses and Motion of Busch Ruotolo & Simpson, LLP for Recovery of Attorneys Fees & Expenses, respectively.

21. There were valid and enforceable contracts between Intervenor and Defendant for the Intervenor to provide legal services to the Defendant.<sup>10</sup> The Plaintiff performed its contractual obligations by providing legal services to the Defendant. The Defendant breached these contracts by not paying for the legal services, and this breach caused Intervenor Stromberg injury in the amount of \$146,464.46 and Intervenor Busch injury in the amount of \$14,658.33. Demands for payment in the aforementioned amounts were made on April 4, 2014, by Intervenor Stromberg<sup>11</sup> and on April 3, 2014, by Intervenor Busch,<sup>12</sup> pursuant to Section 38.001 *et seq.*, of the TEXAS CIVIL PRACTICE & REMEDIES CODE. Accordingly, Defendant is additionally liable for reasonable attorneys' fees incurred in suing him in an amount currently estimated as follows: \$30,000 through the trial of this matter, an additional \$20,000 in the event of an appeal, an additional \$5,000 in the event of a petition to the Texas Supreme Court, and an additional \$15,000 in the event such petition is granted.

#### B. QUANTUM MERUIT

22. Pursuant to Texas state law, Intervenor plead, in the alternative, a cause of action against Defendant for quantum meruit. The allegations contained in all of the paragraphs of this Petition are hereby re-averred and re-alleged for all purposes and incorporated herein with the same force and effect as if set forth verbatim.

23. The Intervenor provided valuable legal services to the Defendant. The Defendant accepted the legal services and had reasonable notice that the Intervenor expected compensation for the legal services.

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<sup>10</sup> See Exhibits "A" and "B", *supra*.

<sup>11</sup> See Exhibit "F" – Demand Letter from Stromberg Stock, PLLC, dated 4, 2014.

<sup>12</sup> See Exhibit "G" – Demand Letter from Busch Ruotolo & Simpson, LLP, dated April 3, 2014.

VII.  
CONDITIONS PRECEDENT

24. All conditions precedent to Intervenors' claim for relief have been performed or have occurred.

VIII.  
PRAYER FOR RELIEF

For these reasons, Intervenors request that the parties take notice of the filing of this Petition in Intervention and that on final trial, Intervenors be awarded a judgment against Defendant for the following damages:

- a. actual damages;
- b. pre- and post-judgment interest as provided by law;
- c. reasonable and necessary attorney's fees;
- d. court costs; and
- e. such further relief at law and equity to which the Intervenors may be justly entitled.

Respectfully submitted,

/s/ Alan L. Busch  
Alan L. Busch  
State Bar No. 03491600  
*busch@buschllp.com*  
Christopher M. Albert  
State Bar No. 24008550  
*albert@buschllp.com*

BUSCH RUOTOLO & SIMPSON LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201  
Telephone: (214) 855-2880  
Facsimile: (214) 855-2871

*Attorneys for the Intervenor  
Busch Ruotolo & Simpson, LLP*

- and -

STROMBERG STOCK, PLLC

By: /s/ Mark Stromberg  
State Bar No. 19408830  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, Texas 75240  
Telephone: 972/458-5335  
Facsimile: 972/770-2156

*Attorneys for the Intervenor  
Stromberg Stock, PLLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon all parties or counsel of record listed as below via facsimile or certified mail, return receipt requested, on this 16<sup>th</sup> day of April, 2014.

Gerrit M. Pronske  
PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201  
(214) 658-6509 – *facsimile*

Jeffrey Baron  
P.O. Box 111501  
Dallas, Texas 75011

/s/ Alan L. Busch  
Alan L. Busch

## CLIENT ENGAGEMENT AGREEMENT

### Scope of Engagement:

Legal Representation by Stromberg Stock, P.L.L.C. ("the Firm") of Jeffrey Baron ("the Client") to defend the Client against an involuntary bankruptcy petition in the related adversary proceeding styled *In re Jeffrey Baron*, now pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 12-37921-SGJ (hereafter referred to as "the Lawsuit"). *The Firm will not be representing the Debtor in the event that an order for relief is entered under 11 U.S.C. Section 362.*

### I. Hourly Fees, Costs and Expenses

A. The Firm has agreed to represent you based on what is generally referred to as an "hourly fee basis." The Firm will charge, and you agree to pay, a reasonable attorney's fee for the Firm's services, taking into consideration the actual amount of attorney and/or legal assistant time expended, the amount in controversy, the complexity of the issues, and the expertise of the lawyers who become involved. In this matter (as well as any future matter not covered by a separate agreement) you agree that a reasonable fee will be determined by the amount of time spent on the matter multiplied by the applicable hourly rates for the attorneys and legal assistants involved. Generally, the Firm's hourly rates range from \$75.00 (for legal assistants) to \$375.00 per hour, and these rates are subject to change from time to time. We will advise you of any hourly rate changes as they take effect.

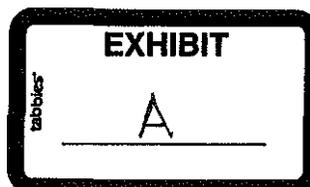
B. Per our agreement, the rate for the attorneys who will likely perform legal services on this case are described below. If any other attorney in the Firm is needed to provide legal services on this case, the fees will be assessed at the rates set forth below.<sup>1</sup> The fees are as follows:

<u>Attorney</u>	<u>Rate</u>
Mark Stromberg	\$375.00
Aric L. Stock	\$325.00
Brett Field	\$220.00

Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

The minimum increment of time to be charged is one-tenth (1/10th) of an hour. Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial

<sup>1</sup> It is possible that it is more cost efficient for certain services to be performed by legal assistants at the direction and under the supervision of the attorney responsible for that file. Services will be performed by those with lower hourly rates whenever reasonably possible and legally appropriate.



experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

C. Some or all of your legal fees, court costs and litigation expenses *may* be recoverable under law (meaning they could be added to your claim), depending upon the terms of your agreements, results of your case and the claims asserted therein; however, one of the many risks of litigation is that a court may award less than all of the reasonable fees billed by the Firm and/or paid by you, and the Firm can provide no assurances that any or all of these collection costs will *necessarily* be awarded by a court, nor can the Firm provide assurances that, if they are awarded by a court, they will be recovered from or paid by your adversary(s). In no event is the obligation to pay the attorneys fees, court costs or litigation expenses billed to you by the Firm contingent upon any result, outcome or recovery by you in this case or on any result of the Firm's efforts, unless an order of the United States Bankruptcy Court for the Northern District of Texas ("the Court") is required for approval and payment thereof.

D. You understand that it may be necessary for us to retain, hereby authorize us to retain, and agree to pay the fees and charges of, other persons or entities who perform services that we deem necessary in connection with this matter. Such other persons or entities may include, but are not limited to, court reporters, investigators, expert witnesses, expert consultants, court document retrieval services, and other attorneys hired for ancillary matters (or as local counsel or consultants) in other localities. Again, some or all of these costs *may* be recoverable by law, and again, employment of experts or other professionals is subject to approval of the Court. We will contact you to obtain approval prior to engaging such persons, if the anticipated cost will likely exceed \$500.00. You also authorize the Firm, in its discretion, to direct such other persons and companies to render statements or invoices for services rendered and expenses advanced either directly to you or to us, in which latter event you have agreed to promptly pay to us the full amount of such statements. Again, the provisions hereof are subject to approval of the Court.

E. In addition to legal fees and third-party expenses, you agree to promptly pay all of the Firm's out-of-pocket expenses submitted to it for payment or reimbursement. In most instances, we will attempt to estimate the anticipated out-of-pocket costs, and in those instances you will advance to this Firm the estimated cost before the expense is incurred. Sometimes, invoices for expenses will be sent to you and should be paid directly to the vendor within fifteen days of receipt. Some out-of-pocket expenses may be incurred in connection with depositions and the employment of expert witnesses and consultants. It is the practice of the Firm to obtain your approval before obligating for a single item in excess of \$100.00. Certain expenses will be charged as follows:

Copies	\$0.25/per copy
Facsimile	\$1.00/per page
Lexis/Nexis Research	Usual and Customary charge assessed by Lexis/Nexis
Postage	Postage used or consumed

## **II. Retainers**

It is generally the policy of this Firm to obtain a retainer in matters such as this. In this case, as a condition of this engagement, the Firm is requiring an initial retainer of \$25,000.00, upon receipt of which, together with this signed agreement, further services may be provided; however, in the discretion of the Firm, a larger retainer may be requested and required in the future, based upon the stage of the proceedings, the history of your account, the payment of fees and expenses from the retainer, and the anticipated expenses associated with the upcoming phases of the lawsuit, perhaps subject to approval of the Court to the extent so required. Any such retainer or any additions thereto must be paid within ten (10) days from the date of court approval request as a condition of this agreement, unless alternative arrangements are made between you and the Firm or unless otherwise ordered by the Court. The above retainer will thereafter be held in our firm trust account and applied to fees, costs, advances and expenses incurred, subject to replenishment, and subject to further orders of the Court. A monthly accounting of legal fees and expenses billed and applied will be provided, any amounts in excess of the retainer will be billed for payment. If there is any unapplied retainer after the resolution and final settlement of this matter, the balance will be refunded or applied against any remaining unpaid invoices until exhausted, and then final bills containing any remaining, unpaid fees and expenses will be sent.

## **III. Payment of Fees, Costs and Expenses of the Firm**

Each invoice from this Firm will usually be dated on or around the first day of the calendar month in which the bill is presented. Our billing cycle cutoff date is usually the last day of the month. Therefore, an invoice dated the first of the month will include time and expenses billed for the approximately thirty-day period prior to the cutoff date. Normally, each Firm invoice is due and payable on or before expiration of thirty (30) days from the date of invoice; to the extent that approval of this Agreement and/or the fees and expenses arising thereunder by the Court is required in advance of payment, then such an order from the Court shall be a condition hereof. You agree that the hourly fees, expenses, and all other sums accruing hereunder shall be paid when due, and shall be due and payable irrespective of your success in this matter or any recovery on your part in connection herewith. You agree that simple interest *may* be charged on any unpaid account balances which are more than sixty (60) days past due at the rate of ten percent (10.0%) per annum in the sole discretion of the Firm.

## **IV. Approval Needed for Settlements**

No settlement of any rights to relief or causes of action shall be made or accepted by the Firm without your approval in advance and, as required by law, by the Court. However, the Firm reserves the right to make recommendations regarding the resolution of the case based upon our best educated beliefs regarding the legal and factual viability of the claims, the posture of the case and the parties, the court and the judge before whom the case may be heard, the uncertainties of the trial process, the status of your relationship with the Firm, the anticipated expenses associated with the continued litigation of the your claims in the case, the collectibility of any claims against the Debtor, any exposure to claims by the Debtor or a trustee, and other factors deemed appropriate. If it appears that irreconcilable differences arise between you and the Firm regarding the handling of the

case, then the Firm may exercise its remedies hereunder, including withdrawal from the representation of all of you.

**V. Cooperation of the Client**

You shall keep the Firm advised of your whereabouts, shall appear on reasonable notice at any and all depositions, mediations and court appearances as required, shall assist the Firm in the compilation of documents and evidence, shall timely provide information necessary to respond to discovery requests made by any other party, and shall comply with all reasonable requests of the Firm in connection with the preparation and presentation of the claim.

**VI. Permission to Withdraw**

A. In case the Firm shall determine, at any time, that any claims or defenses should not be pursued further, you agree that the Firm may terminate the attorney-client relationship and withdraw from the representation of your interests by sending written notice of the Firm's intention to withdraw to you at your last known address, and to cease all work as permitted under applicable rules. Moreover, the Firm shall have the right to terminate the attorney-client relationship in the above manner for any of the following reasons: (1) failure to cooperate and comply fully with all reasonable requests for the Firm in reference to this case, or the failure to cooperate with the Firm in the prosecution of the engagement as delineated in the previous paragraph; (2) in the event a material, irreconcilable disagreement over the handling of this engagement arises between you and the Firm; (3) upon determination by the Firm, in its sole discretion, that a conflict of interest exists; (4) if any invoice remains past due for more than thirty (30) days, including not only any invoices from the Firm but also any invoices from a vendor or service-provider who has provided goods or services on your behalf in connection with your case; and/or (5) conduct by you which renders it unreasonably difficult for this Firm to carry out the purposes of its employment.

B. In the event that the Firm elects to seek permission to withdraw from any one's representation, then that party shall not be obligated to pay any fees accruing thereafter to the Firm, but the Firm shall be entitled to collect any previously-incurred fees, or any costs or expenses, advanced or incurred on your behalf during the course of the representation.

**VI. Statutory Notice of Rights**

The following notice to clients is mandated and required by the State Bar Act:

**NOTICE TO CLIENTS**

**The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys.**

**Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General**

**Counsel will provide you with information about how to file a complaint.**

**For more information, please call 1-800-932-1900. This is a toll-free phone call.**

#### **VII. No Guarantees as to Outcomes**

Obviously, many time-consuming activities of a lawyer are dictated by the requirements placed upon the lawyer by the court, opposing counsel, and the parties involved. Therefore, it is impossible to determine in advance the amount of time that will be required to complete your case, and the amount of legal fees you will incur. Every effort will be made to provide you with reasonable and necessary legal services as promptly and as efficiently as possible. This Firm may not make, and does not make, and you should not expect, solicit or rely upon, any representations, promises, predictions or guarantees as to the outcome of this dispute or any litigation arising therefrom.

#### **VIII. Other Miscellaneous Matters**

A. You understand that the Firm may, from time to time, employ various technologies which are intended to make our service to you more efficient, responsive and effective. These technologies include facsimile transmissions, telephone (including cellular telephones), e-mail, voicemail, the Internet, and/or other technologies commonly used in the practice of law. While these systems offer certain benefits, there are certain security risks associated with their use; for example, and not by way of limitation, on rare occasions, conversations regarding privileged matters occurring over a cellular telephone may be subject to "bleeding through" or unauthorized monitoring, such that others not privileged to hear the conversation become privy thereto. You understand and authorize that the Firm may continue to use such available technologies in connection with your case, and that you hold the Firm harmless from any claims or damages associated with its use of these technologies or any privileged information which might be disseminated through any cause other than the Firm's negligence. If you desire the Firm to cease using any specific technologies, or that the Firm take any special precautions to secure their use, then you will need to so advise the Firm, in writing and in advance.

B. This agreement shall be construed in accordance with the Laws of the State of Texas, all obligations of the parties hereto are performable in Dallas County, Texas USA, and venue of any dispute regarding same shall be in Dallas County, Texas USA. This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors, heirs and assigns. In the event that any one or more of the provisions contained in this agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision did not exist, and, to the extent possible, in a manner consistent with all applicable laws. This agreement constitutes the only agreement of the parties in regard to the subject matter, and supercedes any prior written or oral understandings, agreements or representations made to or between the parties regarding the subject matter. This agreement shall be modified only in writing, which writing must be signed by all parties to the agreement.

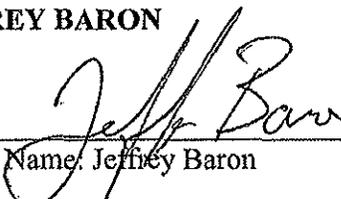


**AGREED AND ACCEPTED:**

**JEFFREY BARON**

By: \_\_\_\_\_

Printed Name: Jeffrey Baron

A handwritten signature in cursive script, appearing to read "Jeff Baron", is written over a horizontal line.

Date: \_\_\_\_\_

8-22-13



**ALAN L. BUSCH**  
**Senior Managing Partner**  
busch@buschllp.com

*Board Certified*  
*- Civil Trial Law*  
*- Labor & Employment Law*

*Via E-mail*

Mr. Jeffery Baron

*Re: Legal Representation by Busch Ruotolo & Simpson, LLP of Jeffrey Baron to defend the Client against an involuntary bankruptcy petition in the related adversary proceeding styled In re Jeffrey Baron, now pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 12-37921-SGJ, but not representation of the Debtor in the event an order for relief is entered under 11 U.S.C. Section 362.*

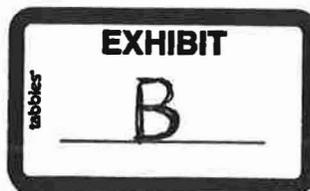
Dear Mr. Baron:

Busch Ruotolo & Simpson, LLP ("BUSCH" or "ATTORNEY") is pleased to represent the above entities, (collectively "Baron" or "you") with regard to the above matter on the terms discussed below. We anticipate that our relationship will be a pleasant one, and would like to encourage you to feel comfortable with, and be knowledgeable about and discuss with us any of our BUSCH's policies and procedures.

I. Hourly Fees, Costs and Expenses

A. BUSCH has agreed to represent you based on what is generally referred to as an "hourly fee basis." BUSCH will charge, and you agree to pay, a reasonable attorney's fee for BUSCH's services, taking into consideration the actual amount of attorney and/or legal assistant time expended, the amount in controversy, the complexity of the issues, and the expertise of the lawyers who become involved. In this matter (as well as any future matter not covered by a separate agreement) you agree that a reasonable fee will be determined by the amount of time spent on the matter multiplied by the applicable hourly rates for the attorneys and legal assistants involved. Generally, BUSCH's hourly rates range from \$95.00 (for legal assistants) to \$400.00 per hour, and these rates are subject to change from time to time. We will advise you of any hourly rate changes as they take effect.

Busch Ruotolo & Simpson, LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201  
(o) 214 855 2880  
(f) 214 855 2871  
toll-free 1 855 855 2880



buschllp.com

Mr. Jeffrey Baron  
January 24, 2013  
Page 2 of 8

B. Per our agreement, the rates for the attorneys who will likely perform legal services on this case are described below. If any other attorney in BUSCH is needed to provide legal services on this case, the fees will be assessed at the rates set forth below.<sup>1</sup> The fees are as follows:

<u>Attorney</u>	<u>Rate</u>
Alan L. Busch	\$400.00
Christopher M. Albert	\$275.00

Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

The minimum increment of time to be charged is one-tenth (1/10th) of an hour. Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

C. Some or all of your legal fees, court costs and litigation expenses *may* be recoverable under law (meaning they could be added to your claim), depending upon the terms of your agreements, results of your case and the claims asserted therein; however, one of the many risks of litigation is that a court may award less than all of the reasonable fees billed by BUSCH and/or paid by you, and BUSCH can provide no assurances that any or all of these collection costs will *necessarily* be awarded by a court, nor can BUSCH provide assurances that, if they are awarded by a court, they will be recovered from or paid by your adversary(s). In no event is the obligation to pay the attorneys fees, court costs or litigation expenses billed to you by BUSCH contingent upon any result, outcome or recovery by you in this case or on any result of BUSCH's efforts, unless an order of the United States Bankruptcy Court for the Northern District of Texas ("the Court") is required for approval and payment thereof.

D. You understand that it may be necessary for us to retain, hereby authorize us to retain, and agree to pay the fees and charges of, other persons or entities who perform services that we deem necessary in connection with this matter. Such other persons or entities may include, but are not limited to, court reporters, investigators, expert witnesses, expert consultants, court document

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<sup>1</sup> It is possible that it is more cost efficient for certain services to be performed by legal assistants at the direction and under the supervision of the attorney responsible for that file. Services will be performed by those with lower hourly rates whenever reasonably possible and legally appropriate.

Mr. Jeffrey Baron  
 January 24, 2013  
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retrieval services, and other attorneys hired for ancillary matters (or as local counsel or consultants) in other localities. Again, some or all of these costs *may* be recoverable by law, and again, employment of experts or other professionals is subject to approval of the Court. We will contact you to obtain approval prior to engaging such persons, if the anticipated cost will likely exceed \$500.00. You also authorize BUSCH, in its discretion, to direct such other persons and companies to render statements or invoices for services rendered and expenses advanced either directly to you or to us, in which latter event you have agreed to promptly pay to us the full amount of such statements. Again, the provisions hereof are subject to approval of the Court.

E. In addition to legal fees and third-party expenses, you agree to promptly pay all of BUSCH's out-of-pocket expenses submitted to it for payment or reimbursement. In most instances, we will attempt to estimate the anticipated out-of-pocket costs, and in those instances you will advance to this BUSCH the estimated cost before the expense is incurred. Sometimes, invoices for expenses will be sent to you and should be paid directly to the vendor within fifteen days of receipt. Some out-of-pocket expenses may be incurred in connection with depositions and the employment of expert witnesses and consultants. It is the practice of the BUSCH to obtain your approval before obligating for a single item in excess of \$100.00. Certain expenses will be charged as follows:

Copies	\$0.25/per copy
Facsimile	\$1.00/per page
Lexis/Nexis Research	Usual and Customary charge assessed by Lexis/Nexis
Postage	Postage used or consumed

## II. Retainers

It is generally the policy of BUSCH to obtain a retainer in matters such as this. In this case, as a condition of this engagement, BUSCH is requiring an initial retainer of \$25,000.00 (this is the same retainer paid to the Stromberg Stock firm and not in addition to that amount), upon receipt of which, together with this signed agreement, further services may be provided; however, in the discretion of BUSCH, a larger retainer may be requested and required in the future, based upon the stage of the proceedings, the history of your account, the payment of fees and expenses from the retainer, and the anticipated expenses associated with the upcoming phases of the lawsuit, perhaps subject to approval of the Court to the extent so required. Any such retainer or any additions thereto must be paid within ten (10) days from the date of court approval request as a condition of this agreement, unless alternative arrangements are made between you and BUSCH or unless otherwise ordered by the Court. The above retainer will thereafter be held in our trust account and applied to fees, costs, advances and expenses incurred, subject to replenishment, and subject to further orders of the Court. A monthly accounting of legal fees and expenses billed and applied will be provided, any amounts in excess of the retainer will be billed for payment. If there is any unapplied retainer after the resolution and final settlement of this matter, the balance will be refunded or applied against any

Mr. Jeffrey Baron  
January 24, 2013  
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remaining unpaid invoices until exhausted, and then final bills containing any remaining, unpaid fees and expenses will be sent.

III. Payment of Fees, Costs and Expenses of BUSCH

Each invoice from BUSCH will usually be dated on or around the first day of the calendar month in which the bill is presented. Our billing cycle cutoff date is usually the last day of the month. Therefore, an invoice dated the first of the month will include time and expenses billed for the approximately thirty-day period prior to the cutoff date. Normally, each BUSCH invoice is due and payable on or before expiration of thirty (30) days from the date of invoice; to the extent that approval of this Agreement and/or the fees and expenses arising thereunder by the Court is required in advance of payment, then such an order from the Court shall be a condition hereof. You agree that the hourly fees, expenses, and all other sums accruing hereunder shall be paid when due, and shall be due and payable irrespective of your success in this matter or any recovery on your part in connection herewith. You agree that simple interest *may* be charged on any unpaid account balances which are more than sixty (60) days past due at the rate of ten percent (10.0%) per annum in the sole discretion of BUSCH.

IV. Approval Needed for Settlements

No settlement of any rights to relief or causes of action shall be made or accepted by BUSCH without your approval in advance and, as required by law, by the Court. However, BUSCH reserves the right to make recommendations regarding the resolution of the case based upon our best educated beliefs regarding the legal and factual viability of the claims, the posture of the case and the parties, the court and the judge before whom the case may be heard, the uncertainties of the trial process, the status of your relationship with BUSCH, the anticipated expenses associated with the continued litigation of the your claims in the case, the collectability of any claims against the Debtor, any exposure to claims by the Debtor or a trustee, and other factors deemed appropriate. If it appears that irreconcilable differences arise between you and BUSCH regarding the handling of the case, then the BUSCH may exercise its remedies hereunder, including withdrawal from the representation of all of you.

V. Cooperation of the Client

You shall keep the BUSCH advised of your whereabouts, shall appear on reasonable notice at any and all depositions, mediations and court appearances as required, shall assist the BUSCH in the compilation of documents and evidence, shall timely provide information necessary to respond to discovery requests made by any other party, and shall comply with all reasonable requests of the BUSCH in connection with the preparation and presentation of the claim.

Mr. Jeffrey Baron  
January 24, 2013  
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VI. Permission to Withdraw

A. In case BUSCH shall determine, at any time, that any claims or defenses should not be pursued further, you agree that BUSCH may terminate the attorney-client relationship and withdraw from the representation of your interests by sending written notice of BUSCH's intention to withdraw to you at your last known address, and to cease all work as permitted under applicable rules. Moreover, BUSCH shall have the right to terminate the attorney-client relationship in the above manner for any of the following reasons: (1) failure to cooperate and comply fully with all reasonable requests for the BUSCH in reference to this case, or the failure to cooperate with BUSCH in the prosecution of the engagement as delineated in the previous paragraph; (2) in the event a material, irreconcilable disagreement over the handling of this engagement arises between you and BUSCH; (3) upon determination by BUSCH, in its sole discretion, that a conflict of interest exists; (4) if any invoice remains past due for more than thirty (30) days, including not only any invoices from BUSCH but also any invoices from a vendor or service-provider who has provided goods or services on your behalf in connection with your case; and/or (5) conduct by you which renders it unreasonably difficult for BUSCH to carry out the purposes of its employment.

B. In the event that BUSCH elects to seek permission to withdraw from any one's representation, then that party shall not be obligated to pay any fees accruing thereafter to BUSCH, but BUSCH shall be entitled to collect any previously-incurred fees, or any costs or expenses, advanced or incurred on your behalf during the course of the representation.

VI. Statutory Notice of Rights

The following notice to clients is mandated and required by the State Bar Act:

**NOTICE TO CLIENTS**

**The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys.**

**Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint.**

**For more information, please call 1-800-932-1900. This is a toll-free phone call.**

Mr. Jeffrey Baron  
January 24, 2013  
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VII. No Guarantees as to Outcomes

Obviously, many time-consuming activities of a lawyer are dictated by the requirements placed upon the lawyer by the court, opposing counsel, and the parties involved. Therefore, it is impossible to determine in advance the amount of time that will be required to complete your case, and the amount of legal fees you will incur. Every effort will be made to provide you with reasonable and necessary legal services as promptly and as efficiently as possible. BUSCH may not make, and does not make, and you should not expect, solicit or rely upon, any representations, promises, predictions or guarantees as to the outcome of this dispute or any litigation arising therefrom.

VIII. Other Miscellaneous Matters

A. You understand that BUSCH may, from time to time, employ various technologies which are intended to make our service to you more efficient, responsive and effective. These technologies include facsimile transmissions, telephone (including cellular telephones), e-mail, voicemail, the Internet, and/or other technologies commonly used in the practice of law. While these systems offer certain benefits, there are certain security risks associated with their use; for example, and not by way of limitation, on rare occasions, conversations regarding privileged matters occurring over a cellular telephone may be subject to "bleeding through" or unauthorized monitoring, such that others not privileged to hear the conversation become privy thereto. You understand and authorize that BUSCH may continue to use such available technologies in connection with your case, and that you hold BUSCH harmless from any claims or damages associated with its use of these technologies or any privileged information which might be disseminated through any cause other than BUSCH's negligence. If you desire BUSCH to cease using any specific technologies, or that BUSCH take any special precautions to secure their use, then you will need to so advise BUSCH, in writing and in advance.

B. This agreement shall be construed in accordance with the Laws of the State of Texas, all obligations of the parties hereto are performable in Dallas County, Texas USA, and venue of any dispute regarding same shall be in Dallas County, Texas USA. This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors, heirs and assigns. In the event that any one or more of the provisions contained in this agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision did not exist, and, to the extent possible, in a manner consistent with all applicable laws. This agreement constitutes the only agreement of the parties in regard to the subject matter, and supercedes any prior written or oral understandings, agreements or representations made to or between the parties regarding the subject matter. This agreement shall be modified only in writing, which writing must be signed by all parties to the agreement.

C. The scope of this engagement is outlined on the first page of this agreement. Unless there is a subsequent client agreement between the Client and BUSCH to do so, any additional

Mr. Jeffrey Baron  
January 24, 2013  
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engagements, legal services, or other litigation matters beyond the scope of that which is outlined therein, specifically including representation of the Client as a debtor or debtor-in-possession in any bankruptcy proceeding following or resulting from the Lawsuit will require a separate client agreement, is not subsumed or covered by this agreement, and BUSCH is not required to undertake such other engagements as a result hereof.

D. With regard to transfers to and from BUSCH's trust (or IOLTA) accounts, Client acknowledges and agrees that BUSCH shall not be obligated to transfer funds deposited in said account for the benefit of the Client until such time as: 1) the deposit has been honored both by BUSCH's depository bank and by the payor's bank; and 2) the time under federal banking regulations by which the deposit can no longer be set aside, challenged, denied or dishonored has fully passed.

JB  
Client Initials

~~E. Jury Trial Waiver. Client and BUSCH agree that in any dispute relating in any way to this Agreement or in regards to the services provided by BUSCH hereunder, the Parties fully and completely waive any constitutional, statutory, or other legal right either of them may have to a trial of any disputed issues before a jury.~~ <sup>15</sup>

\_\_\_\_\_  
Client Initials

F. It is understood that, at present, the Receiver or an interim trustee to be appointed pursuant to orders of the Bankruptcy Court currently hold Client's assets; BUSCH will be paid (or retainers will be advanced) from funded retainers or court disbursements so long as Client's assets are held by the Receivership and/or the interim trustee. Thus, Client's obligation to pay any fee beyond any retainer received or held in trust by BUSCH becomes due only after funding to pay the attorney is provided from the Receivership or authorized by the Bankruptcy Court, or when Client's assets are returned to him.

G. Notwithstanding that BUSCH is not representing the Client in any other litigation, in assisting Client in this matter, upon being made aware of the issues involved in any other ongoing litigation or appeals, BUSCH will exercise care not to prejudice the Client's position in those other pending matters.

Mr. Jeffrey Baron  
January 24, 2013  
Page 8 of 8

H. BUSCH will notify Client and get written permission from him to incur any fees and/or expenses beyond the total sum of \$100,000.00. If fees or expenses beyond \$100,000.00 are requested and/or required by BUSCH in accordance herewith, but not promptly approved by the Client, BUSCH may withdraw from further representation of the Client. If the attorney is not allowed to withdraw, the limitation of this provision shall not apply to fees and expenses approved by the Court.

Sincerely,

*Alan Busch with permission CMA*

Alan L. Busch

ALB/kep

**AGREED AND ACCEPTED:**

**JEFFREY BARON**

By: *Jeff Baron*  
Jeffrey Baron

Date: 1-28-2013

**Mark Stromberg**  
State Bar No. 19408830  
**STROMBERG STOCK, PLLC**  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, Texas 75240  
Telephone 972/458-5335  
Facsimile 972/770-2156  
E-mail: [mark@strombergstock.com](mailto:mark@strombergstock.com)

*Attorneys for Stromberg Stock, PLLC,  
Former Counsel for Jeffrey Baron, Alleged Debtor*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:** §  
§  
**JEFFREY BARON,** § **Bankr. No. 12-37921-SGJ**  
§  
**Debtor.** § **Hearing: \_\_\_\_\_, 2014 @ \_:\_ .m.**

**MOTION OF STROMBERG STOCK, PLLC FOR  
RECOVERY OF ATTORNEYS' FEES & EXPENSES**

**TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:**

COMES NOW Stromberg Stock, P.L.L.C. ("Applicant"), former counsel for the Debtor and acting on its own behalf, who files this its Motion for Recovery of Attorneys' Fees and Expenses (the "Motion") pursuant to 11 U.S.C. §303(i), and would respectfully show the Court the following:

1. This Court has jurisdiction over this Motion pursuant to 11 U.S.C. §§303(i), 327, 329, and 330, and 28 U.S.C. §§157(b)(2)(A), (B) and (O). This case arises from an involuntary proceeding initiated by Pronske & Patel, P.C.; Shurig Jetel Beckett Tackett; Dean Ferguson; Gary G. Lyon; Robert Garrey; Powers Taylor, LLP; Jeffrey Hall; and David Pacione (hereafter, the "Petitioning Creditors") on or about December 18, 2012.

**MOTION OF STROMBERG STOCK, PLLC FOR  
RECOVERY OF ATTORNEYS' FEES & EXPENSES**



## SUMMARY OF PROCEDURAL BACKGROUND

2. Attached hereto as Exhibit "A" is a Declaration containing a statement of the services rendered by Applicant for the period of January 15, 2013, through July 31, 2013, in the gross amount of \$169,072.79 (\$168,115.00 in fees for services, and \$957.79 in out-of-pocket expenses incurred), inclusive of fees or expenses incurred in connection with the conclusion of the engagement, the hearing on withdrawal (July 15, 2013), and the hearing on the motion to draw down retainer (the motion was filed as Docket No. 78 - Mar. 4, 2013, and was heard on July 24, 2013) while representing **JEFFREY BARON** (hereafter, the "Debtor"). The statement contains a description of the services rendered, time spent, the name of the attorney or paraprofessional performing the work, the time spent on each identified activity, and the amounts charged therefor. In addition, this sum reflects a credit given for a payment of \$22,608.33 ordered by this Court [Docket No. 311, July 29, 2013] in granting Docket No. 78, and gross, voluntary fee reductions of \$8,450.00, leaving a remaining unpaid balance of \$146,464.46, for which this Application seeks allowance as an administrative claim, and payment. The attorney performing work on this file was Mark Stromberg (\$375.00/hour) and paraprofessionals performing services herein were Sarah Schild and Kedrin Powell (each at \$85.00/hour). Gross billings for attorney and paraprofessional services on this file combined for 462.20 hours of recorded and billed time, though it is well known that significantly more time was actually spent assisting the Debtor than was billed and recorded;<sup>1</sup> the overall average hourly rate for such services was \$353.33/hour.

3. Pursuant to orders from this Court on or about January 15, 2013, with the approval of the District Court in the Netsphere litigation, a post-petition retainer of \$25,000 (the

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<sup>1</sup> For instance, on May 3, 2013, recorded time expended of 13.60 hours in mediation with Judge Clark and all parties was billed at \$0.00 as opposed to \$5,100.00.

“Retainer”) has been funded by the Receiver, Peter Vogel (the “Receiver”).<sup>2</sup> The Retainer was established for the benefit of the Debtor and was to be used to pay fees incurred by, (i) Applicant [see Docket No. 311], and (ii) Busch, Ruotolo & Simpson, LLP<sup>3</sup> in representing the interests of the Debtor in the initial phases of this case involuntary case. It is believed that the Retainer was paid from assets of the Debtor in the care of the Receiver.

4. On June 26, 2013, this Court entered findings and conclusions adjudicating Debtor bankrupt and imposing an Order for Relief [see Docket Nos. 239 and 240], thus ending and terminating Counsel’s agreed engagement for Debtor; a motion to withdraw as counsel for Debtor was granted by this Court on July 17, 2013 [see Docket No. 296]. (Applicant is not representing Debtor in making the Motion, and seeks recovery of only that which Debtor is obliged to pay for Applicant’s fees and expenses which Debtor may be entitled recover from the Petitioning Creditors.)

5. By orders issued from the United States District Court for the Northern District of Texas, Dallas Division, Order for Relief and associated findings and conclusions were reversed, the bankruptcy case initiated by the Petitioning Creditors was dismissed other than on consent of all Petitioning Creditors and the Debtor, and this case was remanded to the Bankruptcy Court for a determination of the sums recoverable under 11 U.S.C. §303(i). This Court ordered on March 14, 2014 that any party seeking the recovery of fees and expenses under 11 U.S.C. §303(i) would have 30 days within which to file an appropriate motion with this Court. To the date and time of the filing hereof, Debtor has yet to file any such motion, and Applicant, being a creditor

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<sup>2</sup> As was disclosed in court on July 15, 2013, Debtor provided counsel \$300.00 in June to cover the expenses associated with payment for a deposition transcript, and for the subpoena and service fees for the subpoena of Blake Beckham; these sums have been held by Debtor’s counsel and not applied pending court approval.

<sup>3</sup> Busch, Ruotolo & Simpson, LLP will file a separate fee application for its fees and expenses incurred in this case.

beneficiary of Debtor's rights under 11 U.S.C. §303(i) as well as it its own right, seeks to preserve the right of recovery against third parties (the Petitioning Creditors) provided in the Bankruptcy Code, in addition to its rights of recovery against the Debtor. Thus, by this Motion, Applicant - - a creditor beneficiary of Debtor - - seeks final allowance and recovery from the Petitioning Creditors, jointly and severally, of the unpaid balance of its claims against the Debtor and for which the Debtor may seek reimbursement from the Petitioning Creditors for post-petition attorneys fees and expenses representing the Debtor through the trial of Debtor's defense in the involuntary bankruptcy case, conclusion of the engagement, and this Motion.

5. **ALL PARTIES RECEIVING A COPY OF THIS MOTION ARE HEREBY NOTIFIED THAT ANY OBJECTIONS MUST BE FILED AND SERVED ON APPLICANT WITHIN TWENTY-ONE (21) DAYS OF THE MAILING HEREOF.**

6. Applicant had already filed and served an application, to which no objection has been filed and no hearing has been held, for recovery of these same fees and expenses in which Applicant considered the twelve (12) factors applicable to considerations of the propriety of professional fees in the lodestar analysis, as articulated in *In re First Colonial Corp., supra*; *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) [see "Final Motion for Allowance of Administrative Expense Claim, Docket No. 319, filed on August 8, 2013, paragraphs 9 through 14], which is incorporated herein by reference.

**WHEREFORE, PREMISES CONSIDERED**, Applicant prays for the relief requested herein and for such other and further relief as to which it may be justly entitled.

Respectfully submitted,

**STROMBERG STOCK, PLLC**

By: /s/ Mark Stromberg

Mark Stromberg

State Bar No. 19408830

**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2014 a true and correct copy of the foregoing document was sent by email to Lisa Lambert, Counsel for the United States Trustee; Gerrit Pronske, Counsel for the Petitioning Creditors, was served upon all persons identified below by regular mail, postage prepaid, and to all other persons requesting notices via the ECF system.

Gerrit M. Pronske  
PRONSKE & PATEL, P. C.  
2200 Ross Ave., Suite 5350  
Dallas, Texas 75201

Shurig, Jetel Beckett Tackett  
100 Congress Ave., Suite 5350  
Austin, Texas 78701  
Email: [mroberts@morganadler.com](mailto:mroberts@morganadler.com)

Dean Ferguson  
4715 Breezy Point Drive  
Kingwood, Texas 77345  
Email: [dwferg2003dm@yahoo.com](mailto:dwferg2003dm@yahoo.com)

Jeffrey Hall  
8150 N. Central Expy., Suite 1575  
Dallas, Texas 75206  
Email: [jeff@powerstaylor.com](mailto:jeff@powerstaylor.com)

Gary G. Lyon  
The Willingham Law Firm  
6401 W. Eldorado Parkway, Suite 203  
McKinney, Texas 75070  
Email: [glyon.attorney@gmail.com](mailto:glyon.attorney@gmail.com)

David Pacione  
Law Offices of Brian J. Judis  
700 N. Pearl St., Suite 425  
Dallas, Texas 75201  
Email: [david.pacione@CNA.com](mailto:david.pacione@CNA.com)

Robert Garrey  
1201 Elm Street, Suite 5200  
Dallas, Texas 75270  
Email: [rgarrey@gmail.com](mailto:rgarrey@gmail.com)

Sidney B. Chesnin  
4841 Tremont, Suite 9  
Dallas, Texas 75246  
Email: [schesnin@hotmail.com](mailto:schesnin@hotmail.com)

Darrell W. Cook and Stephen W. Davis  
Darrell W. Cook & Associates  
One Meadows Building  
5005 Greenville Ave., Suite 200  
Dallas, Texas 75206  
Email: [all@attorneycook.com](mailto:all@attorneycook.com)

Lisa L. Lambert and Nancy Resnick  
Office of the United States Trustee  
1100 Commerce St., Room 976  
Dallas, Texas 75242  
Email: [lisa.l.lambert@usdoj.gov](mailto:lisa.l.lambert@usdoj.gov)  
Email: [nancy.s.resnick@usdoj.gov](mailto:nancy.s.resnick@usdoj.gov)

**Jeffrey Baron, Alleged Debtor**  
E-mail: [jeffbaron1@gmail.com](mailto:jeffbaron1@gmail.com)

**Stephen R. Cochell**  
E-mail: [srcochell@gmail.com](mailto:srcochell@gmail.com)

*/s/ Mark Stromberg*  
Mark Stromberg

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

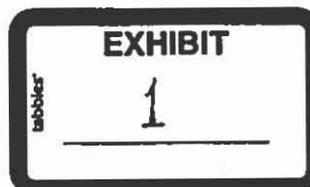
**In re:  
JEFFREY BARON,  
ALLEGED DEBTOR**

§  
§  
§  
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§  
§

**Case No.: 12-37921-sgj7  
Chapter 7**

**DECLARATION**

1. My name is **MARK STROMBERG**. I am over 18 years of age, of sound mind, and fully capable of making this declaration. All of the facts set forth herein are within my personal knowledge, and are true and correct.
2. I am a shareholder of the law firm Stromberg Stock, PLLC (the "Firm"), which maintains its principal place of business in Dallas, Texas.
3. I have been licensed to practice law in the state of Texas since May, 1987, and I am admitted to practice before the the United States District and Bankruptcy Courts for the Northern, Southern, Eastern and Western Districts of Texas, the United States Court of Appeals for the Fifth Circuit, and the United States Supreme Court. In the course of the past roughly 27 years as a practicing attorney, I have practiced in the areas of commercial litigation, creditors' rights and bankruptcy, with a particular emphasis on bankruptcy (including cases in this Court) in the North Texas area. I am, therefore, familiar with the normal, customary and reasonable rates for attorneys performing legal services for debtors and creditors in bankruptcy cases.
4. The alleged Debtor, Jeffrey Baron ("Baron"), retained the Firm, and the undersigned as lead counsel from the Firm, to represent him in connection with the defense of an involuntary bankruptcy petition filed in this Court against Baron.
5. As Baron's attorneys, I have personally represented Baron in the defense of the involuntary petition, and I rendered legal services as requested and as reasonably necessary in connection with these and related proceedings.
6. On April, 13, 2014, after vigorous litigation and in response to a mandate from the United



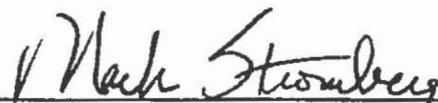
States District Court, this Court dismissed the involuntary case against Baron, and remanded this matter to the Bankruptcy Court to consider Baron's motion for costs and damages. This affidavit is provided in support of Baron's motion pursuant to §303 of the Bankruptcy Code.

7. To date, Baron has incurred attorneys' fees of \$168,115.00 (after credit for \$8,450.00 of voluntary write-downs by the Firm), of which \$22,608.33 have been paid by prior orders of the Bankruptcy Court, and expenses in the sum of \$957.79, in defense of the involuntary bankruptcy petition. The remaining balance unpaid to the Firm is in the amount of \$146,464.46. The Firm spent and billed for a total of 462.20 hours (in addition to 14.10 hours for which no charges were made), at an average hourly rate of \$353.33 per hour, in the course of the engagement representing Baron, all or virtually all of which was directly related to the litigation or attempted resolution of the involuntary petition.
8. A true and correct systematic, detailed and contemporaneous record of the services provided, and the fees and expenses incurred, in this engagement is attached hereto and incorporated herein as Exhibit "A." The billing entries for Exhibit "A" were all personally made by the undersigned at or near the time of the events and activities recorded therein, and Exhibit "A" is a record of the acts and events which I undertook in representing Baron in the involuntary case. Exhibit "A" constituted the record kept by the Firm in the course of its regularly-conducted activity on behalf of Baron, and keeping such a record of lawyer activities and the detailed billings arising therefrom is a regular practice of that activity by the Firm and its attorneys and staff. I am a custodian of the records set forth in Exhibit "A," and I caused same to be prepared for purposes of making application for approval of the attorneys' fees and expenses incurred in this engagement.
9. Based on my experience as an attorney, and upon my personal knowledge of the involuntary case, it is my opinion that all of the services reflected in Exhibit "A" were necessary in connection with the representation of Baron in the involuntary case, through the preparation and filing of a fee application by the Firm on or about August 8, 2013.
10. The hourly rates charged by the Firm's professionals are commensurate with the Firm's customary hourly rates for work of this size, nature and complexity, and it is my opinion that the rates charged by the Firm for its services are reasonable for similar services in Dallas, Texas and in the Northern District of Texas.
11. I am familiar with, and have personally considered, the twelve (12) factors applicable to considerations of the propriety of professional fees in the lodestar analysis, as articulated in *In re First Colonial Corp., supra*; *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) (see "Final Motion for Allowance of Administrative Expense Claim, Docket

No. 319, filed on August 8, 2013, paragraphs 9 through 14). It is my opinion that the total attorneys' fees and expenses incurred, as reflected in Exhibit "A," were and are reasonable and customary for similar services rendered in Dallas, Texas and in the Northern District of Texas, and that the factors set forth in the lodestar analysis militate in favor of an award of fees similar to those set forth in Exhibit "A."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this April 9, 2014

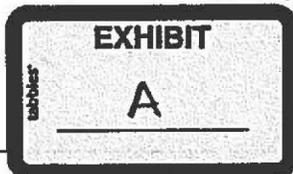
By:   
Printed Name: MARK STROMBERG

Date: 08/08/2013

**Detail Transaction File List**  
Stromberg Stock, PLLC

Page: 1

Client ID	Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
BaronJ.0001	Baron/Jeffrey	01/15/2013	1	375.00	3.00	1,125.00	Telephone conferences with counsel assisting J. Baron, and reviewed prior work product and briefing, the 5th Circuit opinion, and various and sundry other items essential to upcoming hearing; reviewed documents sent by co-counsel and began discussion of what would be the issues, legal, tactical, strategic and otherwise, the role to be played by local counsel, and framing the issues for a hearing on January 16 (1.30); reviewed the 5th Circuit's decision, pleadings from the bankruptcy and district court cases, and the fee/retainer agreement proposed by M. Probus (1.70).
BaronJ.0001		01/16/2013	1	375.00	6.50	2,437.50	Reviewed additional pleadings from the bankruptcy and filings in the District Court and from the Court of Appeals in preparation for upcoming hearing (.90); researched requirements for interim trustee appointment under Section 303(g) in preparation for hearing (.40); telephone conferences with co-counsel for Debtor concerning appearance at the hearing by telephone, the issues before the court, and presentation to the Court (.80); attended hearing and appeared provisionally in the case for Debtor (4.10); conference with Debtor, and conferred telephonically with M. Probus and Debtor's appellate counsel (.30).
BaronJ.0001		01/16/2013	1			10.00	Parking @ Standard Parking: M Stromberg
BaronJ.0001		01/17/2013	1	375.00	4.40	1,650.00	Reviewed multiple drafts of the proposed orders resulting from the hearings on January 16, commented thereon to counsel and requested revisions thereto, exchanged e-mail concerning the revisions, and forwarded the revisions to client and co-counsel with comments and concerns (1.80); telephone conferences with co-counsel concerning the hearings held on 1/16, and responding to the proposed orders, obtaining the retainer, and selection of co-counsel (1.10); telephone conferences with M. Probus RE: his decision concerning taking the case as co-counsel (.40); prepared and sent proposed client agreement, and briefing on res judicata issues (.60); communicated the decision to participate and the conditions thereof to Judge Jernigan (.10); telephone conference with G. Schepps RE: decision to undertake the engagement, the conditions thereto, and the need for additional assistance of counsel (.40).
BaronJ.0001		01/18/2013	1	375.00	2.00	750.00	Telephone conferences with various counsel RE: retention of lead counsel to handle the case since the departure of M. Probus (1.60); exchanged e-mail with various opposing counsel RE: same (.20); telephone conference and e-mail with G. Schepps concerning the hiring of Alan Busch to serve as lead counsel (.20).
BaronJ.0001		01/21/2013	1	375.00	0.50	187.50	Exchanged e-mail with co-counsel RE: client agreement and modifications thereto (.40); exchanged e-mail with D. Ferguson (.10).
BaronJ.0001		01/22/2013	1	375.00	2.00	750.00	Exchanged e-mail with J. Fine RE: obtaining retainer approved by the Court (.10); exchanged e-mail with A. Busch RE: retention as counsel for J. Baron (.20); exchanged e-mail with G. Schepps RE: meeting and terms of the client agreement (.10); revised client agreement in preparation for client meeting (.10); attended meeting with G. Schepps and J. Baron to discuss case strategy (1.40); telephone conference with A. Busch RE: scope of the representation of J. Baron in the bankruptcy case (.10).
BaronJ.0001		01/28/2013	1	375.00	1.50	562.50	Telephone conference with G. Schepps concerning preparation of the outline of argument concerning the res judicata issue, strategy for presentation of the issues to the Bankruptcy Court, and allocation of duties among counsel (.60); telephone conference with L. Lambert RE: issues of concern in the case and to the U. S. Trustee, handling of disclosure requirements in the GAP period, and retention of lead counsel (.40); meeting with A. Busch to discuss allocation of duties for counsel in preparing for hearings on February 13 and beyond (.50).
BaronJ.0001		01/28/2013	7	85.00	0.25	21.25	Prepare Notice of Appearance.
BaronJ.0001		01/29/2013	1	375.00	1.00	375.00	Exchanged e-mail with G. Schepps about getting the Busch client agreement signed and completed (.20); telephone conference with J. Fine RE: request for vehicle from the Debtor to the Receiver, and reviewed e-mail concerning same (.40); exchanged e-mail with G. Schepps RE: making application for the funding for a vehicle for Debtor (.20); exchanged e-mail with A. Busch (.10); exchanged e-mail with L. Lambert, and briefly reviewed confirmation order from the Ondova bankruptcy (.10).
BaronJ.0001		01/30/2013	1	375.00	1.00	375.00	Telephone conference and e-mail with M. Goolsby (.10); further review of Ondova confirmation opinion (.20); reviewed e-mail between the receiver's counsel and S. Cochell RE: dispute over funds from the receivership (.10); exchanged e-mail with A. Busch and G. Schepps (.20); received, reviewed and forwarded response of the Petitioning Creditors to the various pleadings-related motions accompanying the Debtor's answer (.40).
BaronJ.0001		01/31/2013	7	85.00	0.25	21.25	Prepare request for Transcript from Status Conference and correspondence



Date: 08/08/2013

Detail Transaction File List  
Stromberg Stock, PLLC

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001	Baron/Jeffrey					
BaronJ.0001	01/31/2013	1	375.00	2.70	1,012.50	with court reporter regarding same. Telephone conference with R. Urbanek RE: status of the case, roles of counsel, possible resolution of unpaid fee claims, and legal issues before the 5th Circuit (.80); exchanged e-mail with G. Schepps and A. Busch concerning meeting, and allocation of duties among counsel (.20); telephone conference with G. Schepps concerning legal issues regarding involuntary bankruptcies, factual issues concerning the claims, possible resolution of the bankruptcy with a carve-out of funds, dealing with Jeff Baron's idiosyncrasies, and pleading issues regarding the petitioning creditors' petition (1.20); initial legal research concerning involuntary pleading requirements (.50).
BaronJ.0001	01/31/2013	1	375.00		-500.00	Courtesy Discount
BaronJ.0001	02/01/2013	1	375.00	1.50	562.50	Exchanged e-mail with co-counsel, and conferred by telephone (.40); forwarded invoice regarding the January 16 transcript request and requested reimbursement (.10); downloaded, forwarded to client and co-counsel, and began review of, the petitioning creditors' motion for summary judgment and attachments (.90); requested and received exhibit that was not forwarded from zip files and that was not downloading from PACER from M. Goolsby (.10).
BaronJ.0001	02/04/2013	1	375.00	3.00	1,125.00	Telephone conference with G. Pronske RE: involuntary issues, and possible global resolution (.40); attended meeting to prepare briefing, assign tasks in response to summary judgment motion, and discuss tactical presentation issues (2.20); initial download of cases identified in the Petitioning Creditors' brief (.40).
BaronJ.0001	02/05/2013	1	375.00	3.00	1,125.00	Telephone conferences and e-mails with A. Busch RE: preparation of pleadings and concerns over the scope of the response to the summary judgment required by the motion (.30); prepared notebooks for A. Busch and sent documents and exhibits associated with the pending summary judgment motion (.30); telephone conference with G. Schepps concerning merits of the briefing, scope of the response, settlement procedures, legal and tactical questions related to upcoming hearings, and preparation of evidence for responsive filings (1.20); further review of pending motion for summary judgment, reviewed outline and began response (.50); telephone conferences and e-mails with G. Pronske RE: possible resolution of claims and procedure therefor, stipulations limiting on the scope of the motion and presentation for hearing on February 13, and terms of the stipulation (.70).
BaronJ.0001	02/05/2013	1			27.01	Courier to Busch Ruotolo, Dallas, TX: Special Delivery Service, Inc.
BaronJ.0001	02/06/2013	1	375.00	3.50	1,312.50	Conducted legal research concerning finality of judgments for response to summary judgment motion and brief in support (2.10); prepared e-mail with case law and findings on finality for inclusion in the brief (.30); conferred with co-counsel concerning research findings and briefing/document preparation responsibilities (.40); reviewed affidavit of J. Baron (.50); first brief review of summary judgment response (.20).
BaronJ.0001	02/07/2013	1	375.00	11.00	4,125.00	Telephone conferences with co-counsel RE: details of framing and preparation of legal arguments for the Court (.80); reviewed orders from the District Court, the Court of Appeals and the Bankruptcy Court, and added relevant portions thereof to a procedural history of the case explaining the rulings of the various courts pertinent to issue and claim preclusion (3.40); initial review of proposed stipulation from M. Goolsby (.10); sent versions of the response and brief to co-counsel, and reviewed same by telephone, making further revisions (.40); further research, review of case law, drafting of response to summary judgment motion, briefing of issues therein, and completing and sending the brief to co-counsel (4.30); researched and drafted motion for continuance, brief in support thereof, and declaration of facts supporting the continuance, and circulated same to co-counsel (2.00).
BaronJ.0001	02/08/2013	1	375.00	5.50	2,062.50	Telephone conference with A. Busch RE: completion of response (.10); telephone conference with co-counsel concerning revisions to the response and finalizing same, anticipated approach to the upcoming hearing, and revisions to evidence supporting the response (.70); e-mailed finished versions of the response to the MSJ and exhibits to A. Busch for his files and confirmed approval to file (.20); telephone conference with M. Goolsby RE: stipulation for upcoming hearing, and making revisions thereto (.20); reviewed and suggested additional revisions for the stipulation to M. Goolsby via e-mail (.20); reviewed evidence of Petitioning Creditors and drafted evidentiary objections thereto (3.10); telephone conference with co-counsel RE: filing of updated Baron declaration (.10); assisted with filing and service of the response to summary judgment motion on multiple parties (.40); reviewed documents sent by M. Sutherland consisting of filings by CCSB and Dykema concerning the effect of the appeal on the bankruptcy, and vice versa (.50).

Date: 08/08/2013

Detail Transaction File List  
Stromberg Stock, PLLC

Page: 3

Client ID	Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
BaronJ.0001	Baron/Jeffrey	02/11/2013	1	375.00	0.50	187.50	Reviewed e-mail from co-counsel concerning upcoming hearing (.30); reviewed documents and filings before the Court of Appeals sent by M. Sutherland from the appeal, and exchanged e-mail with M. Sutherland (.20).
BaronJ.0001	BaronJ.0001	02/12/2013	1	375.00	3.50	1,312.50	Telephone conference with G. Pronske RE: possible resolution alternatives and the merits of the pending motion (.50); lengthy telephone conference with co-counsel in preparation for upcoming hearing and review of claim disposition alternatives (1.50); reviewed e-mail from G. Pronske concerning possible claim resolution procedures (.30); reviewed and responded to e-mail from co-counsel in regards to upcoming issues (.40); initial preparation for upcoming hearing (.40); downloaded and reviewed multiple filings from Dykema and the receiver (.40).
BaronJ.0001	BaronJ.0001	02/13/2013	1	375.00	6.20	2,325.00	Preparation for hearing on motion for summary judgment and dismissal motion (1.80); telephone conferences with co-counsel in connection with the upcoming hearings, possible retainer requests, and retention of experts and co-counsel (.50); traveled to and attended hearings on summary judgment, and conferred afterwards with J. Baron concerning possible claim resolution procedures (3.90).
BaronJ.0001	BaronJ.0001	02/13/2013	1			10.00	Parking @ Standard Parking: M Stromberg
BaronJ.0001	BaronJ.0001	02/14/2013	1	375.00	2.80	1,050.00	Telephone conference with M. Sutherland RE: possible negotiations with various creditors, problems with the case, and the exorbitant fees being charged by the receiver and Dykema (.70); meeting with G. Schepps to discuss trial strategy issues and the outcomes of the hearings (.70); telephone conference with G. Pronske RE: issues and options concerning a possible resolution of various claims (.30); telephone conference with A. Busch concerning the results of the hearing and planning for possible outcomes of the Court's ruling (.30); docketed hearing date and reviewed ECF notifications from the Court (.10); initial preparation of Rule 2016(b) disclosures (.20); reviewed filings by Dykema for the receiver in both district and bankruptcy courts sent by M. Sutherland (.50).
BaronJ.0001	BaronJ.0001	02/15/2013	1	375.00	0.50	0.00	Exchanged e-mail with M. Sutherland and G. Pronske (.10); telephone conference with G. Pronske RE: possible resolution of claims, procedural questions, and a possible joint attack on unreasonable fees (.40).
BaronJ.0001	BaronJ.0001	02/18/2013	1	375.00	1.00	375.00	Telephone conference with M. Sutherland RE: issues concerning the receivership and the fees being sought by Dykema, raising these issues with the Bankruptcy Court, concerns about resolution of claims, and his suggestions concerning a possible resolution structure (.50); received, reviewed and considered e-mail from M. Sutherland and G. Pronske concerning proposal for entry of an order for relief, and the terms thereof (.50).
BaronJ.0001	BaronJ.0001	02/19/2013	1	375.00	1.00	375.00	Telephone conference with G. Pronske (.40); telephone conference with G. Schepps (.40); exchanged e-mail with opposing counsel RE: upcoming hearing (.20).
BaronJ.0001	BaronJ.0001	02/20/2013	1	375.00	5.50	2,062.50	Telephone conference with G. Schepps in advance of hearing (.50); reviewed and forwarded e-mail concerning settlement issues from G. Pronske (.40); meeting with A. Busch prior to hearing (.20); prepared for and attended hearing on announced court ruling and Ondova bankruptcy (2.90); meeting to discuss possible settlement with J. Baron, M. Goolsby and G. Pronske after hearing (.80); meeting with M. Sutherland to discuss the Court's ruling and possible resolution of claims (.90).
BaronJ.0001	BaronJ.0001	02/20/2013	1			10.00	Parking @ Standard Parking: M Stromberg
BaronJ.0001	BaronJ.0001	02/20/2013	1			68.00	Meeting with Opposing Counsel regarding Settlement: M Stromberg
BaronJ.0001	BaronJ.0001	02/21/2013	1	375.00	4.10	1,537.50	Telephone conferences and lunch meeting with G. Pronske, M. Goolsby and M. Sutherland to discuss possible plan and/or claim resolution options in view of the Court's rulings (1.60); attended meeting with R. Urbanik RE: claim resolution options and distributions among various creditors (1.90); telephone conference with G. Pronske RE: results of discussions with R. Urbanik, and sketching out the outlines of assets and liabilities in search of potential claim resolutions (.60).
BaronJ.0001	BaronJ.0001	02/22/2013	1	375.00	2.00	750.00	Meeting with Alan Busch to discuss progress in the case and possible resolution alternatives (1.00); telephone conference with M. Sutherland to review possible settlement alternatives and discussions with other counsel from the prior day (.30); telephone conference with R. Urbanik concerning quantifying the various assets and claims of the important participants in the litigation for settlement purposes (.70).
BaronJ.0001	BaronJ.0001	02/26/2013	1	375.00	0.50	187.50	Telephone conference with R. Urbanik RE: identifying assets in the possession of the bankruptcy estates and receivers, further identifying claims of the various parties, and considering settlement alternatives (.50).
BaronJ.0001	BaronJ.0001	02/27/2013	1	375.00	0.10	37.50	Telephone conference with R. Urbanik RE: discussion with debtor over a

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Client ID BaronJ.0001	Baron/Jeffrey					
BaronJ.0001	02/28/2013	1	375.00	0.50	187.50	possible settlement, and data needed for fleshing out the contemplated proposal (.10). Telephone conference with R. Urbanik RE: determining the assets on hand in Ondova and in the receivership, the amount of claims against J. Baron, and the status of the preparation of responses to the receiver's fee payment motions (.20); telephone conference with G. Schepps RE: procedural issues regarding the upcoming hearings on the applications by the receiver, availability of discovery in connection therewith, and status of order submission concerning the motion to dismiss and the summary judgment motion (.20); obtained from M. Sutherland and reviewed pleadings filed in the district court case by Dykema (.10).
BaronJ.0001	02/28/2013	1	375.00		-1,000.00	Courtesy Discount
BaronJ.0001	03/01/2013	1	375.00	0.50	187.50	Telephone conferences with R. Urbanik (.20) and G. Pronske (.10) concerning settlement issues; conferred with A. Busch RE: preparation of motions to draw on retainer and for additional retainer (.20).
BaronJ.0001	03/04/2013	1	375.00	3.00	1,125.00	Investigation of underlying facts concerning money transfers and claims for purposes of response to various pending motions (.90); reviewed and analyzed bills from prior months, drafted motion to draw down on retainer, and associated cover sheet, and filed and served same (2.00); telephone conference with C. Albert and A. Busch RE: fee applications and additional retainer requests (.10).
BaronJ.0001	03/06/2013	1	375.00	3.50	1,312.50	Reviewed e-mail regarding allegedly inaccurate declarations by J. Baron between S. Cochell and G. Pronske (.20); telephone conference with G. Pronske RE: status of negotiations concerning possible global settlement, and deadlines for objecting to receivership related payment motions (.60); reviewed filings in the District Court case concerning the fee payment and allowance motions filed by Dykema (.70); lengthy telephonic discussion with J. Baron regarding the negotiations ongoing among the creditors, the status of the bankruptcy proceedings, and mapping options and potential outcomes for various strategies (2.00).
BaronJ.0001	03/07/2013	1	375.00	1.00	375.00	Exchanged e-mail with co-counsel concerning filing of objections to the fee applications of Dykema (.20); reviewed filings by co-counsel in the District Court (.60); telephone conference with R. Urbanik RE: the Trustee's objections on Dykema filings (.10); reviewed e-mails between G. Pronske and S. Cochell (.10); telephone conference with G. Pronske (no charge).
BaronJ.0001	03/08/2013	1	375.00	4.50	1,687.50	Conducted legal research and review of prior filings by the Receiver and his counsel for preparation of objections to various filings for consideration on March 19, and drafted, completed, filed and served responsive pleadings (2.90); downloaded and reviewed responses filed by Munsch Hardt on behalf of the Trustee in Ondova, as well as those filed by Gardere (former counsel for the Receiver) and the Petitioning Creditors (1.60).
BaronJ.0001	03/11/2013	1	375.00	2.00	750.00	Telephone conference with J. Baron RE: settlement issues, pretrial strategy, possible excuse from attendance at all hearings, fee issues, and dealing with the various issues and concerns of the multiple litigants involved in the case (1.90); telephone conference with attorney Chesnin RE: the filing of a proof of claim (.10).
BaronJ.0001	03/12/2013	1	375.00	1.00	375.00	Telephone conference with M. Sutherland RE: status of the case and settlement issues (.80); reviewed pleadings filed by Carrington Coleman (sent by M. Sutherland) in the District Court case (.40).
BaronJ.0001	03/13/2013	1	375.00	0.50	187.50	Telephone conference with G. Pronske RE: possible settlement and settlement meeting (.30); docketed settlement meeting, and conferred with A. Busch RE: his availability for the meeting (.20).
BaronJ.0001	03/14/2013	1	375.00	3.00	1,125.00	Reviewed and responded to e-mail from co-counsel, S. Cochell and A. Busch (.50), and conducted telephone conferences with S. Cochell (.70); exchanged e-mail with counsel for various creditors (Ray Urbanik, Dean Ferguson, Gerrit Pronske) RE: scheduling of settlement meeting (.30); telephone conferences with R. Urbanik RE: planning settlement meeting and attendees (.40); telephone conferences with S. Cochell RE: scheduling the settlement meeting, Jeff's attendance of the meeting, and what might be accomplished through negotiations (.80); several e-mails with various counsel RE: scheduling of and confirming settlement meeting and the attendees thereof (.30)
BaronJ.0001	03/15/2013	1	375.00	6.80	2,550.00	Final preparation for settlement meeting, and printed documents per request by S. Cochell (.80); attended settlement meeting at the offices of R. Urbanik, negotiated over possible resolution of claims, and obtained status conference from the Court (4.40); telephone conference with G. Pronske RE: discussion with the Court at the status conference on Monday (.20); docketed status conference, and downloaded witness and exhibits list from Dykema (.20);

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BaronJ.0001	Baron/Jeffrey						telephone conference and e-mail with A. Busch RE: results of settlement meeting, attendance of the status conference, and attendance of the Tuesday hearings (.30); telephone conference with S. Cochell RE: planning for upcoming hearings and dealing with internal issues (1.10).
BaronJ.0001		03/15/2013	1			12.00	Parking @ FBC Standard Parking Garage
BaronJ.0001		03/18/2013	1	375.00	3.70	1,387.50	Telephone conferences with S. Cochell in advance of the status conference with Judge Jernigan (.30); downloaded and briefly reviewed filing by Dykema concerning the wind down objections and related matters (.40); traveled to and attended status conference with J. Baron and the Court (1.80); meeting with S. Cochell and J. Baron after hearing (.10); downloaded and briefly reviewed filings by Dykema concerning the fee objections, and the Court's orders regarding the joint status conference and settlement negotiations, and sent same to co-counsel (.70); telephone conference with A. Busch and C. Albert RE: results of the status conference, the Court's orders concerning settlement negotiations, and scheduling for the various meetings required by the order (.30).
BaronJ.0001		03/18/2013	1			10.00	Parking @ Standard Parking: M Stromberg
BaronJ.0001		03/19/2013	1	375.00	2.00	750.00	Telephone conference with R. Urbanik RE: results of the status conference, and discussions with other parties (.40); telephone conference with A. Busch (.10); telephone conference with S. Cochell RE: strategy for handling of negotiations ordered by the Bankruptcy Court (1.10); continued review of late filings by Dykema on behalf of the Receiver just after the status conference (.40).
BaronJ.0001		03/20/2013	1	375.00	0.50	187.50	Reviewed e-mail from S. Cochell, and contacted S. Cochell concerning upcoming settlement meeting and application for payment of retainers (.30); reviewed e-mail from R. Urbanik, G. Schepps (concerning proposed order language), and J. Fine (.10); brief review of proposed retainer motion (.10).
BaronJ.0001		03/21/2013	1	375.00	6.00	2,250.00	Telephone conference with S. Cochell in advance of settlement meeting and planning strategy therefor (.80); traveled to and attended settlement meeting with J. Baron and other parties at the offices of Munsch Hardt, conferred afterwards with J. Baron, and returned (5.40).
BaronJ.0001		03/22/2013	1	375.00	2.90	1,087.50	Telephone conference with R. Urbanik (.30); telephone conference with S. Cochell RE: results of settlement meeting, and planning for handling of the next settlement meeting (1.00); exchanged e-mail with J. Baron and summarized discussions with other parties (.20); exchanged e-mail with M. Sutherland and R. Urbanik (.20); telephone conference with D. Schenk, J. Fine, Chris Kratovil and S. Cochell to discuss the case and settlement issues (1.10); brief call with S. Cochell RE: settlement strategy (.10).
BaronJ.0001		03/25/2013	1	375.00	2.00	750.00	Telephone conference with S. Cochell concerning settlement issues and dealing with client concerns in connection therewith (.50); reviewed e-mails from S. Cochell RE: domain name values, and other settlement and litigation related concerns in advance of settlement meeting (.20); telephone conference with J. Fine concerning settlement issues and possible payment from the receivership assets to satisfy creditors' claims (.80); reviewed and revised order on motion to dismiss, and exchanged e-mail with client and co-counsel RE: the changes made thereto (.50).
BaronJ.0001		03/26/2013	1	375.00	10.00	3,750.00	Telephone conference with S. Cochell (.20); attended settlement meeting with J. Baron and others (8.50); meeting with J. Baron, and telephone conference with S. Cochell, to discuss progress made in settlement discussions, additional issues concerning settlement, and things to do going forward (1.30)
BaronJ.0001		03/27/2013	1	375.00	1.50	562.50	Telephone conference with G. Pronski (.60); reviewed and responded to e-mail regarding settlement (.50); reviewed filings from S. Cochell in the District Court litigation (.20); began revisions to report on settlement negotiations (.20)
BaronJ.0001		03/28/2013	1	375.00	1.40	525.00	Telephone conferences with S. Cochell (.40); telephone conference with D. Ferguson (.30); telephone conference with J. Fine and D. Schenk (.40); reviewed multiple e-mails concerning settlement discussions (.30).
BaronJ.0001		03/29/2013	1	375.00	0.70	262.50	Completed report on settlement negotiations, and sent same for filing and service (.40); at client request, prepared joinder in the request for retainers prepared and filed by S. Cochell in the District Court case (.30).
BaronJ.0001		03/31/2013	1	375.00	0.50	187.50	Reviewed e-mailed settlement correspondence from the end of the week, and e-mailed, suggested pleadings prepared by S. Cochell (.50).
BaronJ.0001		03/31/2013	1	375.00		-1,850.00	Courtesy Discount
BaronJ.0001		04/01/2013	1	375.00	2.20	825.00	Telephone conference with Jeff Baron (.60); telephone conferences and e-mails with S. Cochell RE: need for filing of appeal, leave to file, and other related issues (.80); revised and uploaded motion for leave to file limited appeal, and notice of appeal (.70); telephone conference with S. Cochell RE: filings (.10).

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BaronJ.0001	Baron/Jeffrey	04/02/2013	1	375.00	3.70	1,387.50	Telephone conferences with G. Pronske RE: settlement issues (.50); reviewed and responded to e-mail from D. Ferguson (.10); telephone conference with S. Cochell (.20); drafted e-mail to client concerning bankruptcy and client issues, and reviewed and responded to client e-mails (.40); telephone conference with T. Davis' offices, and exchanged e-mail with the Court RE: fee application hearings (.10); downloaded and reviewed orders from the District and Bankruptcy Courts RE: fee application hearings, and agenda for upcoming joint status conference (.30); telephone conference with A. Busch (.30); telephone conference with S. Cochell RE: settlement issues and dealing with client health and transportation problems (.70); telephone conference with G. Pronske RE: settlement discussions regarding domain names and potential settlement funding (.40); reviewed and sent J. Baron invoices from Stromberg Stock, reviewed invoice from S. Curtis and forwarded same to client, and reviewed invoice from A. Busch (.20); reviewed e-mail from D. Ferguson, sent e-mail RE: same to G. Pronske, and discussed same by telephone (.50).
BaronJ.0001		04/02/2013	1			298.00	Filing fees for Notice of Appeal: U S Bankruptcy Court, Northern District of Texas
BaronJ.0001		04/03/2013	1	375.00	3.20	1,200.00	Telephone conference with J. Baron in advance of joint status hearing (.40); telephone conference with S. Cochell and J. Baron RE: settlement and various other matters in preparation for upcoming joint status hearing (.80); downloaded and reviewed application to employ by E. Wright (.10); exchanged e-mail and conferred with S. Cochell concerning filings in the bankruptcy case by others on behalf of J. Baron, and concerns regarding the activity taking place in advance of notice to counsel (.80); conferred with A. Busch and C. Albert concerning the status of the case and assignment of roles in the upcoming status conference (.20); reviewed e-mail from D. Ferguson, and telephone conferences with G. Pronske RE: settlement issues (.50); reviewed proposed deposition notice from Petitioning Creditors, and forwarded same to client and S. Cochell (.10); reviewed settlement proposal from G. Pronske, and prepared written recommendation to client concerning responding thereto (.30).
BaronJ.0001		04/04/2013	1	375.00	7.50	2,812.50	Telephone conference and e-mail with S. Cochell in advance of status conference and pre-hearing lunch meeting, discussed issues with recent filings in the case, and considered the role of E. Wright in the case (.60); telephoned conference with A. Busch (.20); prepared for and attended client meeting, met afterwards with client and S. Cochell, and returned to office (6.40); reviewed and responded to e-mail from various parties RE: mediator selection (.30).
BaronJ.0001		04/04/2013	1			12.00	Parking @ Adolphus Hotel: M Stromberg
BaronJ.0001		04/05/2013	1	375.00	4.00	1,500.00	Downloaded, reviewed and forwarded to client and co-counsel with comments the orders on the motion to dismiss and motion for partial summary judgment, the order on the receiver's motion to pay, the lift stay order, and the order setting forth the pretrial process leading to the trial of the remaining issues in the involuntary bankruptcy (1.20); telephone conference and e-mail with J. Baron RE: information needed from creditors for declarations in connection with payment of debts as they come due for upcoming trial, and suggested language for use in those declarations (.80); exchanged e-mail, and conferred by telephone, with S. Cochell RE: various matters on which action was needed in view of the upcoming involuntary proceeding trial (.60); reviewed and responded to multiple e-mails concerning mediator selection for the court-ordered mediation, mediation timing, and attendance (.30); lengthy telephone conference with J. Fine RE: obtaining documents provided to the receiver by Jeff Baron, the upcoming trial, and mediation settlement issues (1.10).
BaronJ.0001		04/08/2013	1	375.00	1.00	375.00	Reviewed and responded to e-mail from the various parties concerning settlement and mediation (.20); telephone conference with A. Busch RE: results of the April 4 hearing and limiting his role in the case in view of its present posture (.40); telephone conference with S. Cochell RE: items requested by J. Baron, and things needed from him in preparation of the case for mediation and/or trial (.20); telephone call, and e-mail to, J. Fine RE: transcript requests and official request for access to documents of J. Baron in possession of the receiver, and e-mail to S. Cochell and client concerning same, and mediation (.20).
BaronJ.0001		04/09/2013	1	375.00	2.50	937.50	Telephone conference with A. Busch RE: identifying the roles of counsel, attendance of mediation, and appearance and preparation for the trial (.80); exchanged e-mail with counsel RE: mediation dates (.10); exchanged e-mail with J. Baron and S. Cochell RE: mediation availability and the motion for

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Client	Trans Date	Tmkr	Stmnt # Rate	Hours to Bill	Amount
Client ID BaronJ.0001	Baron/Jeffrey				
BaronJ.0001	04/10/2013	1	375.00	2.30	662.50
					funds to purchase a vehicle (.10); revised and completed draft of the vehicle purchase motion (.40); downloaded and reviewed the order regarding mediation, and forwarded same to G. Schepps, S. Cochell, A. Busch and J. Baron with comments (.20); telephone conference with R. Urbanik RE: mediation and litigation issues (1.10); exchanged e-mail with J. Fine RE: document and transcript requests (.10).
BaronJ.0001	04/11/2013	1	375.00	1.50	562.50
					Reviewed and responded to e-mail from S. Cochell RE: transcript requests and other matters (.10); exchanged e-mail with, and conferred by telephone, with R. Urbanik RE: upcoming mediation and settlement conference, attendance thereof, and data for the mediator (.60); e-mail to counsel for the Receiver RE: obtaining documents and transcripts, and conferred with J. Fine and D. Schenk RE: same (.60); reviewed e-mail from R. Urbanik, downloaded brief to which that e-mail referred and reviewed it, and responded to e-mail concerning new appellate filing and the effects of the bankruptcy court's stay orders (.40); reviewed e-mail and attachments from J. Baron, and e-mail from S. Cochell RE: attendance of the mediation (.20); telephone conference with a prior clerk for Judge Clark RE: his personality and handling of mediation (.40).
BaronJ.0001	04/12/2013	1	375.00	5.30	1,967.50
					Telephone conference with J. Baron RE: various matters pertaining to the mediation and providing documents for the mediator's consideration, the bankruptcy case, and the need for hearing transcripts and a car (.60); telephone conferences with the transcription service for the bankruptcy court (.20); exchanged e-mail with S. Cochell RE: obtaining transcripts of hearings (.10); briefly reviewed documents sent by the Receiver, telephone conference with J. Baron RE: same, and made arrangements for the copying of the disk and documents (.40); telephone conference with Leif Clark RE: information needed by the mediator and arrangements for a second telephonic discussion (.20).
BaronJ.0001	04/15/2013	1	375.00	3.70	1,387.50
					Reviewed designations of the record and issues on appeal sent by client (.10); telephone conference with J. Baron concerning various matters in advance of telephone conference with Judge Clark, including vehicle funding motion, obtaining declarations from potential witnesses, and issues pertaining to designation of the record in connection with appeal (.20); telephone conference with Judge Clark RE: mediation issues, dynamics of the various parties, status of negotiations leading to the present, and legal merits issues (1.20); telephone conference with G. Pronske and M. Goolsby RE: deposition of J. Baron and document production issues, obtaining tax information from E. Schurig, attendance of A. Busch, and documents from the Receiver (.40); telephone conference with R. Urbanik RE: mediation issues (.20); revised motion for funds for vehicle and sent same to J. Baron and S. Cochell for review and comment (.40); reviewed FRE Rule 803 and provided suggested additions to draft declaration prepared by J. Baron for creditors concerning their account and payment histories (.20); lengthy telephone conference with S. Cochell and Judge Clark to review additional issues concerning the values of the domain names and prior negotiations over the handling of them, existence of claims by J. Baron against various parties, prior rulings of the District and Bankruptcy Courts, and settlement considerations for the mediation upcoming (2.00); exchanged e-mail with D. Schenk and J. Fine concerning getting additional copies of documents on disk and the Receiver's position concerning the motion for funds for a vehicle (.20); forwarded documents for consideration to L. Clark in connection with mediation (.10); downloaded and reviewed motion for contempt filed by the Receiver against WIPO and ICANN, reviewed same with S. Cochell, and discussed request for transcripts of hearings (.30).
BaronJ.0001	04/15/2013	1	375.00	3.70	1,387.50
					Lengthy telephone conference with J. Baron concerning obtaining documents and witness testimony, status of the case and its procedural posture, mediation and discussions with the mediator, and obtaining documents from the receiver (1.30); reviewed mediation information from Judge Clark and forwarded same to client and S. Cochell for discussion thereof (.50); exchanged e-mail with J. Baron and G. Pronske concerning redacted medical bills for use in the trial (.20); exchanged e-mail with D. Schenk and G. Pronske concerning receiving additional documents from the Receiver (.10); drafted e-mail to G. Pronske concerning tax issues and obtaining tax records of J. Baron in advance of the upcoming mediation (.10); reviewed suggested language for declarations from creditors, and prepared suggested revisions thereto, including business records and authentication language (.50); received, reviewed and forwarded transcript from the February 13 hearing, and prepared transcript request for the February 20 hearing, per instructions from co-counsel (.30); received, reviewed and forwarded UDRP

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount
Client ID BaronJ.0001	Baron/Jeffrey				
BaronJ.0001	04/16/2013	1	375.00	2.50	937.50
BaronJ.0001	04/16/2013	7	85.00	0.25	21.25
BaronJ.0001	04/17/2013	1	375.00	2.00	750.00
BaronJ.0001	04/18/2013	1	375.00	1.70	637.50
BaronJ.0001	04/19/2013	1	375.00	2.40	900.00
BaronJ.0001	04/21/2013	1	375.00	0.70	262.50
BaronJ.0001	04/22/2013	1	375.00	12.50	4,687.50
BaronJ.0001	04/22/2013	7	85.00	0.75	63.75
BaronJ.0001	04/23/2013	1	375.00	12.50	4,687.50
BaronJ.0001	04/24/2013	1	375.00	4.10	1,537.50

documentation from D. Schenck to client and S. Cochell (.40); reviewed and forwarded notice of Baron deposition, and arranged for conference room therefor (.10); reviewed documents sent by J. Baron (.20)

Completed and filed transcript request (.10); lengthy telephone conference with J. Baron regarding obtaining information from creditors, preparation of declarations, dealing with involuntary bankruptcy issues, obtaining documents from the Receiver, and requesting documents (1.30); telephone conference with R. Urbanik RE: attendees at the mediation, informing the Court thereof, and settlement issues (.40); sent disks received from the Receiver to J. Baron and G. Pronske (.10); exchanged e-mail with J. Schenck and J. Fine RE: request for car funds and an official position from the Receiver thereon, and conferred with J. Baron RE: same and filing of the motion (.10); exchanged e-mail with all counsel concerning Alan Busch's attendance at the mediation (.20); telephone conference with J. Baron RE: specific questions concerning the creditor declarations and other possible sources of information on payment of bills as they come due (.30).

Prepare correspondence to Jeff Baron and counsel sending documents and dvd.

Exchanged e-mail with R. Urbanik RE: attendees at mediation (.10); reviewed, responded to and/or forwarded e-mail from various counsel RE: Busch attendance (.20); telephone conference with J. Baron RE: reviewed issues concerning medical bills and acquiring creditor information for presentation of defense of involuntary bankruptcy (.50); exchanged several e-mails with transcription service RE: bills for transcripts requested (.20); reviewed draft motion sent by S. Cochell concerning fee application deadlines and request to parties for conference thereon (.10); telephone conference with Dawn in Judge Jernigan's court RE: inclusion of items in the transcript requested (.10); reviewed account statements sent by J. Baron in connection with proof of payment of creditors (.30); telephone conference with D. Schenck concerning request for payment of car funds (.10); reviewed items prepared and sent by S. Cochell to Judge Clark concerning mediation and preparation therefor (.40).

Telephone conferences with J. Baron RE: additional details concerning motion for recommendation for car funds, efforts to locate creditor witnesses for declarations, documents produced by the Receiver and related privilege issues, proving up payments to creditors, and preparations for mediation (.60); telephone conferences with G. Pronske RE: UDRP litigation, document production and privilege issues, mediation settlement considerations, and the Petitioning Creditors' position on the car funds motion (.40); filing and service of the car funds motion, and worked with S. Schild on request for a hearing date thereon (.10); researched privilege and claw-back considerations in the Federal Rules of Civil Procedure, and exchanged e-mails with G. Pronske RE: preservation of privilege in accordance with Rule 28 (.50); telephone conference with J. Fine RE: upcoming mediation (.10).

Telephone conference with Jeff Baron concerning upcoming mediation, obtaining declarations, language of declarations and documents to be obtained (.30); reviewed bills and proposed declarations, made revisions thereto, and drafted e-mail to J. Baron concerning the declarations (.90); telephone conference with Bob Blend and Brandy Wilson, counsel for Trinity Meadows, RE: obtaining their declarations, and procedure therefor (.50); telephone conference with S. Cochell RE: upcoming mediation and assigning responsibilities regarding mediation position papers (.40); reviewed e-mail and initial position paper (.30).

Reviewed numerous e-mails from the weekend and began preparations for mediation (.30); telephone conference with S. Cochell in advance of mediation (.40).

Attended first day of a two day mediation of the case (arrival at 8:30 a.m.), and met with the parties, Judge Clark and J. Baron until past 8:30 p.m. (12.50).

Prepare correspondence to the court filing the court transcript relating to docket numbers 101 and 102. Several telephone conferences with the court regarding the filing of same.

Arrived at second day of mediation at 8:00 a.m. and worked on mediation and settlement past 8:30 p.m. (12.50).

Telephone conference with S. Cochell RE: mediation and the anticipated mediator's proposal (.50); telephone conference with M. Goolsby and G. Pronske (.50); reviewed the mediator's proposal and later-sent attachment (.50); telephone conference with G. Pronske concerning mediator's proposal,

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001 Baron/Jeffrey						moving the Baron deposition date and place, and hearings/objection deadlines for fee disputes (.40); telephone conference with S. Cochell RE: objections to fees and upcoming hearing and pretrial (.40); telephone conference with J. Baron concerning mediator's proposal and also obtaining evidence in support of defense to involuntary bankruptcy (.50); telephone conference with S. Cochell (.20); reviewed numerous e-mails among the parties, and between S. Cochell and J. Baron, concerning settlement issues, and mediation proposal (.50); researched issue concerning proof required in Texas to recover legal fees and sent case law and arguments via e-mail to S. Cochell (.60).
BaronJ.0001	04/25/2013	1	375.00	2.00	750.00	Telephone conference with S. Cochell and J. Baron RE: mediation proposal, and making possible modifications thereto, obtaining documentation for involuntary hearing, and the upcoming deposition in the involuntary (.80); reviewed e-mail from Judge Clark RE: mediator's proposal and clarifications thereto (.30); drafted e-mail to B. Beckham concerning his declaration regarding payment of bills and making modifications thereto (.10); exchanged e-mail with J. Baron RE: discussions with G. Pronske concerning the deposition of J. Baron and document production issues (.10); telephone calls to R. Urbanik and M. Sutherland concerning matters related to the mediation and the mediator's proposal (.20); telephone conference with J. Baron RE: various issues relating to the involuntary and the mediator's proposal (.50).
BaronJ.0001	04/26/2013	1	375.00	5.20	1,950.00	Telephone conference with S. Cochell RE: mediator's proposal and discussion points thereon (.60); telephone conference with J. Baron and S. Cochell concerning same (1.40); telephone conference with Leif Clark RE: mediator's proposal, issues arising in connection therewith, and possible extension of time to make an alternative cash proposal (.60); telephone conference with R. Urbanik RE: mediation issues and the mediator's proposal (.40); exchanged e-mail with Sid Chesnin RE: his claim (.30); exchanged e-mail with S. Curtis and her firm's claims (.30); telephone conferences and e-mails with J. Fine and D. Schenck RE: obtaining information concerning the income and expenses of the LLCs and the remaining domain name inventory (.50); telephone conference with G. Pronske, R. Urbanik and D. Ferguson RE: mediation proposal and issues raised thereby (.40); reviewed and exchanged information via e-mail with S. Cochell and J. Baron concerning the domain names in, and the income of, the LLCs (.20); telephone conference with J. Baron and S. Cochell RE: modifications to mediator's proposal for a cash offer, and answered client question in an e-mail concerning sealing records, expunction, and dealing with credit issues (.50).
BaronJ.0001	04/27/2013	1	375.00	5.00	1,875.00	Multiple telephone conferences and e-mails with S. Cochell and J. Baron RE: mediator's proposal and modifications thereof for a cash offer (2.60); telephone conference with Leif Clark RE: modifications to mediator's proposal, issues arising in connection therewith, and possible use extension of time to make an alternative proposal permitting the Receiver to draw on the IRAs if funds were not paid to creditors within a six month period (.60); telephone conference with R. Urbanik RE: mediation issues and the mediator's proposal (.40); telephone conferences with G. Pronske RE: status of efforts to settle the case and interest in the IRA proposal (.30); exchanged e-mail and conferred by telephone with R. Roberson RE: assets in the receivership (.30); telephone conferences with J. Baron and S. Cochell RE: documentation of proposal through the mediator (.60); telephone conference with L. Clark (.20).
BaronJ.0001	04/27/2013	1			78.42	Courier to/from U. S. Bankruptcy Court, Dallas, Texas
BaronJ.0001	04/28/2013	1	375.00	5.00	1,875.00	Three telephone conferences with Judge Clark RE: modifications to settlement proposal and dealing with claims of creditors (1.00); multiple telephone conferences with J. Baron and S. Cochell concerning revisions to the mediator's proposal and completion of proposal to be made through the mediator (2.40); telephone conference with C. Payne (.40); telephone conference with C. Payne and D. Olson (.70); telephone conference with J. Baron RE: discussions with counsel for G. Schepps (.30); reviewed multiple e-mails concerning the mediation proposal and modifications thereto (.20)
BaronJ.0001	04/29/2013	1	375.00	8.30	3,112.50	Telephone conference with D. Olson RE: claims of G. Schepps (.50); telephone conference with J. Baron RE: negotiation of settlement (.20); telephone conference with S. Cochell (.30); reviewed multiple e-mails concerning settlement (.30); telephone conference with G. Pronske (.20); telephone conference with R. Urbanik (.20); telephone conference with counsel for TXU RE: declaration concerning J. Baron's account, revised declaration, and exchanged e-mail (.20); telephone conference with S. Cochell (.20); telephone conference with C. Sherman RE: proposal from J.

**EXHIBIT**  
A-Part 2

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Client	Trans Date	Tmkr	Strt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001 Baron/Jeffrey						Baron through the mediator (.40); telephone conference with S. Cochell and J. Baron concerning settlement issues (.30); telephone conference with R. Urbanik, D. Ferguson, G. Pronske, S. Cochell and J. MacPete (1.00); telephone conference with S. Cochell and J. Baron (.50); telephone conference with R. Urbanik (.20); telephone conference with G. Pronske (.10); telephone conference with R. Urbanik, D. Ferguson, G. Pronske, S. Cochell and R. Roberson (.60); telephone conference with S. Cochell and Judge Clark (.70); telephone conferences with J. Fine RE: mediation issues (.60); telephone conferences with M. Sutherland (.30); telephone conferences with G. Pronske and S. Cochell RE: new proposal (.30); telephone conference with J. Baron and S. Cochell RE: proposal from the creditors and responding thereto (.40); telephone conference with R. Urbanik (.20); telephone conference with G. Pronske RE: settlement issues and deposition (.10); drafted e-mail to client RE: deposition scheduling and preparation (.10); reviewed e-mail to counsel for G. Schepps and drafted e-mail to D. Olson (.20); downloaded ruling from the 5th Circuit on motion for stay pending appeal, and reviewed various other communications concerning settlement (.20).
BaronJ.0001	04/30/2013	1	375.00	4.80	1,800.00	Telephone conference w/S. Cochell and J. Baron RE: mediation issues (.60); telephone conference with R. Urbanik RE: same (.20); telephone conference with J. Baron (.10); telephone conference with L. Clark RE: mediation proposal and issues concerning the domain names and possible sales thereof (.80); telephone conference with Dennis Olson RE: status of mediation, settlement proposal from C. Payne for G. Schepps, and his clients' continued insistence on talking (improperly) with, or threatening, J. Baron (.40); exchanged e-mail with D. Ferguson RE: IRA issues, and reviewed cases and authorities sent by him (.70); reviewed settlement proposal prepared for J. Baron by S. Cochell and commented thereon (.10); telephone conference with R. Urbanik RE: progress in settlement discussions (.10); telephone conferences with S. Cochell RE: progress on settlement offer, details thereof, and discussions with other counsel (.20); telephone conferences with S. Cochell and J. Baron RE: finalizing the proposal to the creditors (.20); exchanged e-mail with D. Ferguson RE: settlement issues (.10); exchanged e-mail with R. Urbanik and L. Clark, conferred with S. Cochell, and conferred with G. Pronske RE: clarifications to proposal from J. Baron (.50); exchanged e-mail with Judge Clark RE: specific deal points (no charge); telephone conference with R. Urbanik RE: settlement approval and details (.30); telephone conference with Judge Clark RE: settlement status and details for settlement to be finalized (.20); telephone conference with J. Baron and S. Cochell RE: status and structure of the deal that appears to be agreed in principle (.30).
BaronJ.0001	05/01/2013	1	375.00	2.00	750.00	Telephone conferences with J. Baron RE: obtaining evidence for involuntary bankruptcy, dealing with settlement issues, and status of negotiations and possible settlement terms (.80); telephone conference with S. Cochell RE: status of negotiations, and issues for discussion in connection with the proposed settlement agreement (.20); telephone conference with Dennis Olson RE: settlement negotiations among the parties, and negotiations with Gary Schepps (.30); reviewed and responded to multiple-mails concerning settlement negotiations (.20); telephone conference with R. Urbanik RE: settlement issues and drafting of the settlement agreement terms (.30); review of settlement documents (.20).
BaronJ.0001	05/02/2013	1	375.00	2.80	1,050.00	Work on issues related to the settlement agreement, sent same to client, and reviewed exhibit concerning payments to various former counsel (.70); reviewed documents from M. Sutherland (.20); reviewed drafts of the settlement agreement, and comments thereon, from S. Cochell in preparation for settlement meeting (.60); reviewed edits to the settlement documents (.20); telephone conferences with R. Urbanik and D. Ferguson (.70); telephone conference with G. Pronske (.10); telephone conference with S. Cochell and J. Baron (.30).
BaronJ.0001	05/03/2013	1	375.00		0.00	Arrived at 8:15 a.m. for mediation/document preparation session, attended same, and attempted to negotiate a settlement among all the parties with Judge Clark until 9:35 p.m. (13.80); drove Judge Clark to Love Field and to his hotel (no charge).
BaronJ.0001	05/03/2013	1			27.37	Courier to U. S. Bankruptcy Court, Dallas, Texas: Special Delivery Services, Inc.
BaronJ.0001	05/05/2013	1	375.00	1.60	600.00	Reviewed numerous e-mails exchanged regarding settlement issues and settlement documents (.70); exchanged e-mail with various parties (.20); telephone conference with R. Urbanik (no charge); telephone conference with

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Client	Trans Date	Tmkr	Stnt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001	Baron/Jeffrey					
BaronJ.0001	05/06/2013	1	375.00	4.50	1,687.50	S. Cochell and J. Baron (.60). Telephone conference with S. Cochell RE: revision of agreement and settlement issues (.40); telephone conference with S. Cochell and Judge Clark RE: attempting to move negotiations forward (.20); telephone conference with J. Fine RE: events at the conclusion of mediation, and settlement issues going forward (.30); telephone conference with R. Urbanik RE: settlement issues and possible sale of Quantec and discussions with Domain Holdings concerning a possible sale (.70); telephone conference with S. Cochell and J. Baron (.70); revised declaration for Las Colinas FCU and sent same to J. Baron (.20); reviewed e-mail and responded to S. Cochell RE: transcripts being ordered and cancellation for lack of payment arrangement (.30); drafted and sent multiple e-mails to creditors who may give declarations on J. Baron's payment of his bills, and corresponded with J. Baron RE: same (.60); telephone conferences with D. Ferguson and R. Urbanik RE: settlement revisions (.60); telephone conferences with J. Baron and S. Cochell RE: settlement documents and settlement issues (.50).
BaronJ.0001	05/07/2013	1	375.00	8.60	3,225.00	Telephone conferences with D. Ferguson and R. Urbanik RE: drafting issues for a settlement proposal from Baron (.80); drafted another revision to the settlement agreement with assistance of, and incorporating comments from, D. Ferguson and other creditors (2.70); drafted e-mail to all parties circulating the latest draft of the settlement document with creditors' comments incorporated therein (.20); telephone conferences with J. Baron and S. Cochell RE: provisions of the settlement agreement and concerns regarding same (.60); additional work on obtaining declarations from creditor witnesses for upcoming deadline to file declarations, and conferred with J. Baron RE: efforts thereon and steps to take if witness testimony was not provided (1.60); reviewed comments to settlement agreement from R. Urbanik, D. Ferguson and others (.30); telephone conference with S. Cochell and J. Baron RE: problems with and alternatives to the settlement document (.70); telephone conferences with S. Cochell, Ed Wright and J. Baron RE: revisions to proposed settlement agreement, and structuring a settlement (1.40); e-mails and telephone conferences with D. Ferguson and Judge Clark (.30).
BaronJ.0001	05/08/2013	1	375.00	5.60	2,100.00	Drafted e-mail to D. Ferguson identifying points for revision in the agreement reworded for Jeff Baron after discussions with S. Cochell (.40); telephone conferences with D. Ferguson and R. Urbanik in advance of fee hearing concerning settlement proposal (.50); telephone conferences with J. Baron and S. Cochell RE: settlement points (.40); reviewed response from Judge Clark concerning deal points (.20); drafted e-mail to J. Baron concerning issues raised regarding the settlement agreement and reviewed agreement in connection therewith (.30); telephone conference with D. Ferguson and R. Urbanik RE: status of preparation of responding settlement agreement (.10); reviewed draft settlement agreement and conferred with S. Cochell RE: same (.20); traveled to courthouse for hearing, attended beginning of the fee hearing before Judge Ferguson, and conferred with C. Payne concerning possible settlement (1.70); telephone conferences with D. Ferguson concerning status of the hearing, settlement negotiations, and the settlement drafts (.30); telephone conferences and e-mails with various creditors concerning obtaining their declarations, imaged declarations received, sent same to J. Baron with instructions for handling thereof, and listed remaining declarations which had not been obtained after most recent efforts (.90); telephone conferences with S. Cochell and J. Baron concerning results of the hearings, settlement negotiations, and settlement terms (.60).
BaronJ.0001	05/09/2013	1	375.00	6.30	2,362.50	Reviewed multiple e-mails concerning further settlement discussions (.20); exchanged multiple e-mails with declarants for declaration filings to obtain declarations and documents prior to deadline (.70); per client request, traveled to the courthouse to discuss settlement with J. MacPeta and conducted negotiations throughout the lunch break and thereafter (2.60); prepared final versions of declarations for filing, with instructions to assistant and J. Baron RE: completion of same (1.20); discussions with S. Cochell and J. Baron RE: results of the hearings and other matters regarding settlement and the upcoming involuntary trial (.70); telephone conferences with D. Ferguson and R. Urbanik RE: settlement issues (.60); telephone conference with G. Pronske RE: possible alternative settlement arrangement with a sale of the Quantec portfolio (.30)
BaronJ.0001	05/10/2013	1	375.00	0.50	187.50	Telephone conference with S. Cochell (.20); reviewed possible settlement alternatives (.30).
BaronJ.0001	05/10/2013	7	85.00	3.00	255.00	Conferred with client to file, then upload declarations in bankruptcy case.
BaronJ.0001	05/13/2013	1	375.00	3.50	1,312.50	Telephone conference with J. Baron (.30); telephone conference with Gerrit

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001	Baron/Jeffrey					Pronske and Melanie Goolsby RE: possible new settlement proposal (.20); telephone conference with Ray Urbanik (.20); telephone conference with J. Baron RE: issues concerning the involuntary bankruptcy, and concerning settlement negotiations (.70); telephone conference with G. Pronske (.20); researched legal issues concerning <i>sub rosa</i> plans, asset sales, and 9019 settlements (.80); telephone conference with R. Urbanik (.20); telephone conference with S. Cochell (.40); reviewed settlement agreement draft from S. Cochell after discussions with G. Pronske (.50).
BaronJ.0001	05/14/2013	1	375.00	1.50	562.50	Exchanged e-mail with R. Urbanik and reviewed pleading (.10); exchanged e-mail with S. Cochell RE: role of G. Schepps in representing the LLCs (.10); telephone conference with S. Cochell RE: settlement documents (.30); telephone conference with J. Baron RE: issues related to the adversary (.30); reviewed draft of settlement proposal from J. Baron (.30); telephone conference with G. Pronske RE: settlement (.40).
BaronJ.0001	05/15/2013	1	375.00	2.50	937.50	Telephone conferences and e-mails with J. Baron and S. Cochell regarding terms of the settlement proposals being discussed (.70); exchanged e-mail with R. Urbanik (.10); made revisions to the settlement agreement, conferred with S. Cochell concerning same, and conferred with J. Baron concerning same (.1.10); exchanged e-mail and conferred by telephone with G. Pronske RE: provisions of the settlement agreement (.40); telephone conference with J. MacPete concerning negotiations between J. Baron and Netsphere and revisions to the previous settlement document (.20).
BaronJ.0001	05/18/2013	1	375.00	1.50	562.50	Reviewed issues concerning the involuntary, settlement, and discussions with J. MacPete concerning the Netsphere portion of the settlement with J. Baron and S. Cochell (.80); exchanged e-mail and telephone conferences with G. Pronske RE: settlement agreement and deposition reschedule (.40); reviewed draft settlement agreement, and conferred with S. Cochell and J. Baron (.50).
BaronJ.0001	05/17/2013	1	375.00	6.50	2,437.50	Telephone conferences with J. Baron and S. Cochell RE: review and revision of settlement agreement, and made revisions to settlement agreement (3.60); telephone conferences and e-mails with G. Pronske RE: settlement agreement, revisions thereto, and finalized same for consideration by other creditors (1.60); telephone conference with J. Fine RE: settlement agreement (.80); telephone conference with G. Pronske concerning discussion with J. Fine (.30); telephone conference with S. Cochell (.20).
BaronJ.0001	05/20/2013	1	375.00	4.50	1,687.50	Telephone conference with J. Baron RE: results of efforts to promulgate settlement, settlement discussions between S. Cochell and G. Pronske, and legal issues concerning the effect of the mandate on prior orders from the District Court (1.60); telephone conference with G. Pronske RE: settlement (.20); meeting with G. Pronske RE: settlement and contacted J. Fine to discuss settlement (2.10); telephone conference with G. Pronske (.10); telephone conference with R. Urbanik (.30); reviewed, responded to and forwarded e-mail from J. Fine and G. Pronske (.20).
BaronJ.0001	05/21/2013	1	375.00	2.50	937.50	Telephone conferences with J. Baron RE: legal issues and settlement matters (.30); telephone conference with G. Pronske (.10); telephone conference with G. Pronske and J. Baron RE: various questions and considerations concerning settlement (1.30); telephone conference with R. Urbanik's offices RE: conferring with J. Bashoff (.10); downloaded and reviewed fee application of E. Wright (.20); reviewed brief at request of J. Baron (.30); telephone conference with S. Cochell RE: settlement matters (.20).
BaronJ.0001	05/22/2013	1	375.00	3.50	1,312.50	Telephone conference and e-mails with S. Cochell (.60); telephone conference with J. Baron RE: settlement issues and documentation, and arguments concerning the effect of the 5th Circuit mandate on prior bankruptcy court rulings (.50); reviewed filing sent by J. Baron concerning the appeals from the Bankruptcy Court's rulings filed in the District Court (.30); telephone conference with G. Pronske RE: settlement and wind-down plan (.30); telephone conference with G. Pronske and R. Urbanik concerning settlement issues (.40); telephone conferences with J. Fine RE: the receiver's review of the offer made Friday last (.20); telephone conference with K. Frye RE: status of settlement negotiations (.10); telephone conference and e-mail with G. Pronske (.20); telephone conferences and e-mails with S. Cochell and J. Baron concerning settlement options, client needs, and status of negotiations (.90).
BaronJ.0001	05/23/2013	1	375.00	4.50	1,687.50	Telephone conferences with S. Cochell and J. Baron RE: client expectations and communications, settlement negotiations, and instructions regarding what the client will accept (.70); telephone conference call with R. Urbanik to contact Jason Bashoff (.20); call with Ray Urbanik RE: discussions with Jason Bashoff and possible sale of Quantec (.30); telephone conference with J. Baron RE: terms of possible sale of Quantec, and issues to vet with J.

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Client ID Baron.J.0001 Baron/Jeffrey						Bashoff and Domain Holdings (.80); telephone conference with J. Bashoff concerning possible Quantec sale and the terms thereof (.50); e-mails with G. Pronske and J. Fine RE: getting the Receiver's position concerning settlement proposal (.20); revised settlement proposal (.20); telephone conferences with G. Pronske RE: revisions to the settlement proposal and possible filing of wind-down plan (.60); telephone conference with S. Cochell (.20); reviewed and responded to e-mails concerning settlement issues (.30); telephone conference with S. Cochell and J. Baron (.50).
Baron.J.0001	05/24/2013	1	375.00	5.50	2,062.50	Telephone conferences with G. Pronske RE: settlement, and made revisions to the wind-down outline (.70); telephone conferences with J. Baron RE: settlement documents (.80); telephone conference with M. Goolsby (.20); telephone conferences with S. Cochell and J. Baron RE: settlement issues and the wind-down documents (1.20); telephone conferences with S. Cochell and G. Pronske RE: settlement agreements and filing of the wind-down plan (.80); telephone conferences with Jason Bashoff RE: sale of Quantec and UDRP issues, provisions of the brokerage agreement, and provisions of the sale agreement (.70); telephone conference with G. Pronske and R. Roberson RE: wind-down issues and terms (.50); telephone conferences and e-mails with S. Cochell and G. Pronske RE: settlement issues (.60).
Baron.J.0001	05/25/2013	1	375.00	1.00	375.00	Lengthy telephone conference with S. Cochell and J. Baron RE: settlement revisions, and removal of releases for third parties from the arrangement (1.00).
Baron.J.0001	05/27/2013	1	375.00	2.50	937.50	Telephone conference with S. Cochell (.10); telephone conference with J. Baron (.20); telephone conferences with S. Cochell and G. Pronske (.40); telephone conference with J. Baron RE: settlement and wind-down (.80); revised joint wind-down motion and settlement agreement (.20); telephone conference with S. Cochell (.20); telephone conference with S. Cochell and J. Baron (.60).
Baron.J.0001	05/28/2013	1	375.00	2.30	862.50	Telephone conference with J. Baron RE: wind-down plan issues (.30); telephone conferences with G. Pronske and S. Cochell RE: revisions to and completion of the proposed draft of the wind-down plan and accompanying motion (.70); telephone conference with K. Frye RE: possible filing and scheduling of a hearing (.10); reviewed proposed wind-down and revisions thereto with G. Pronske and S. Cochell (.50); exchanged e-mail and conferred with G. Pronske and S. Cochell RE: cancellation of hearing (.20); telephone conference with R. Urbanik RE: hearing cancellation, and with S. Cochell RE: notice to the parties (.20); reviewed court order from Judge Ferguson regarding wind-down proposal (.30).
Baron.J.0001	05/29/2013	1	375.00	7.50	2,812.50	Reviewed last of 14 boxes of seized documents produced by the Receiver on DVD, identified the documents found thereon, and drafted e-mail to client concerning the documents reviewed and inability to identify allegedly missing personal financial records and documents (5.80); telephone conference with J. Baron RE: results of the District Court's ruling regarding fees and effects on the wind-down, and RE: scheduling the deposition requested by counsel for the Petitioning Creditors (.30); reviewed the District Court's order regarding fees for the receivership (.60); telephone conference regarding the status and the Court's ruling with S. Cochell (.20); telephone conference with J. MacPete concerning the settlement negotiations and the effects of the Court's ruling (.30); telephone conference with G. Pronske and reviewed and forwarded e-mailed resolution proposal redlined to take the District Court's ruling into consideration (.30); telephone conference with R. Urbanik RE: settlement negotiations (.20 - no charge).
Baron.J.0001	05/30/2013	1	375.00	2.00	750.00	Telephone conference with S. Cochell RE: settlement status (.20); telephone conference with J. Baron RE: various items regarding settlement, scheduling of his deposition, defending the involuntary, and rulings by the District and Bankruptcy Courts, and the 5th Circuit (.60); reviewed document regarding effect of the mandate at request of J. Baron (.20); telephone conference with S. Cochell (.20); telephone conference with S. Cochell RE: settlement negotiations (.20); telephone conference with G. Pronske concerning settlement issues, a feasible settlement proposal, and scheduling of the Baron involuntary deposition (.30); outlined potential settlement proposal (.20); telephone conference with S. Cochell (.10).
Baron.J.0001	05/31/2013	1	375.00	5.00	1,875.00	Lengthy telephone conference with J. Baron RE: settlement options, problems with the direction of settlement negotiations, issues related to the involuntary (including scheduling of his deposition), my recommendations for how the matter may be resolved, and need for closure to the negotiations (1.20); reviewed prior drafts of settlement documents, and drafted and completed settlement agreement for proposal to J. Baron to consider (2.50); drafted

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001	Baron/Jeffrey					
BaronJ.0001	06/03/2013	1	375.00	0.80	300.00	e-mail with details concerning recommendation, and downsides of failing to pursue this settlement approach, to J. Baron (.80); telephone conference with G. Pronske RE: the involuntary, the deposition, and global settlement (.20); reviewed and forwarded e-mails from G. Pronske (.10); telephone conference with S. Cochell (.20).
BaronJ.0001	06/04/2013	1	375.00	0.50	187.50	Exchanged multiple e-mails with J. Baron RE: settlement and trial preparation (.40); telephone conference with J. Boshoff at Domain Holdings RE: possible sale of the Quantec portfolio (.10); telephone conference with S. Cochell RE: settlement issues and client input (.10); telephone conference with S. Cochell RE: settlement documents, and scheduling of the upcoming deposition of J. Baron (.20).
BaronJ.0001	06/05/2013	1	375.00	3.50	1,312.50	Exchanged e-mail RE: status of request for comments on settlement recommendation (.10); telephone conference with G. Pronske RE: arrangements for the deposition of J. Baron, and efforts to push out a settlement proposal (.10); telephone conference with S. Cochell RE: failure to get the client's input since the recommendation made on Friday, May 31 (.10); telephone conference with J. Baron RE: questions concerning the settlement recommendation, and when he might provide his draft comments (.20). Telephone conference with G. Pronske (.10); telephone conference with J. Baron RE: settlement documents and specific changes (.40); telephone conference with S. Cochell RE: update concerning settlement negotiations and discussions with client (.20); reviewed and responded to e-mail from J. Baron concerning documentation of the settlement proposal, and specific terms and issues (.40); reviewed and edited draft settlement document and sent same to client (.70); exchanged e-mails and conferred with J. Baron RE: settlement issues, and other matters pertinent to the involuntary case (.60); telephone conference with J. Baron concerning further edits to the settlement documents and possible sale of Quantec through Domain Holdings (.60); telephone conference with J. Boshoff concerning the marketing of Quantec and efforts by Domain Holdings to sell Quantec, how to get the best price for the assets, the Exclusive Brokerage Agreement (and the fact that sale through others was not being sought by J. Baron), and setting a reasonable floor for the asset sale (.30); telephone conferences with R. Urbanik (.10); telephone conference with G. Pronske (.10).
BaronJ.0001	06/06/2013	1	375.00	6.70	2,512.50	Telephone conferences with J. Baron RE: settlement issues, upcoming deposition, involuntary bankruptcy, and J. Boshoff discussions (.60); reviewed and revised settlement documents, incorporated changes made by J. Baron and made others, and prepared e-mail explaining the changes to J. Baron and calling for action on the proposal (1.20); telephone conference with G. Pronske RE: settlement proposal and his response thereto (.10); telephone conference with G. Pronske RE: problems with the Baron proposal, and making of revisions to the proposal (.20); telephone conference with G. Pronske RE: his proposed revisions to the Baron proposal, and reasons for the revisions (.40); reviewed Pronske revisions and associated e-mail explaining why the proposal was unworkable, and forwarded same to S. Cochell and Jeff Baron for further discussion (.50); meeting with J. Baron to prepare for his deposition (1.00); attended deposition of J. Baron and defended same (2.00); meeting with J. Baron after deposition to review Pronske proposal and changes (.50); reviewed e-mail response from J. Baron with his comments on the matters Pronske proposed to revise, and those on which agreement was possible (.20).
BaronJ.0001	06/07/2013	1	375.00	3.00	1,125.00	Telephone conference with J. Baron RE: settlement issues with the Pronske counter-proposal (.10); prepared for and attended meeting with G. Pronske to review contract and confer with Jason Boshoff concerning possible sale of the Quantec portfolio (1.30); drafted e-mail to J. Baron RE: review of the Pronske counter-offer, and recommendations for handling thereof (.80); telephone conference with J. Baron RE: settlement issues and the involuntary trial (.40); telephone conference with Steve Cochell RE: hangups of Baron concerning settlement and attempts to resolve same (.30); telephone conference with G. Pronske RE: breakdown of talks over sale of Quantec portfolio as opposed to the member interest (.10).
BaronJ.0001	06/08/2013	1	375.00	5.70	2,137.50	Reviewed declarations and associated documentation from 23 declarants in preparation for trial, and evaluated and charted the evidence, missing information, amounts billed versus amounts paid, the identities of the persons liable, and the percentages remaining unpaid, for purposes of preparing for trial (5.70).
BaronJ.0001	06/10/2013	1	375.00	3.00	1,125.00	Drafted worksheet for trial preparation and analysis of the various creditor claims among those filed by Petitioning Creditors (.70); telephone conference

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001	Baron/Jeffrey					with Jeff Baron RE: preparation for trial, legal and factual issues in connection therewith, analysis of the various claims of the creditors, and status of settlement issues (1.10); telephone conference with G. Pronske RE: evidentiary issues for upcoming trial, omission of certain exhibits and information from the declarations of the creditors and obtaining same, and settlement (.70); initial draft of witness and exhibit list, and considered documents to be introduced at trial (.50).
BaronJ.0001	06/11/2013	1	375.00	3.50	1,312.50	Telephone conference with J. Baron RE: settlement issues and trial preparation (.20); telephone conference and e-mail with J. Boshoff RE: possible Quantec sale (.10); legal research concerning involuntary bankruptcy standards in preparation for upcoming trial (2.00); telephone conference with J. Baron concerning preparation for trial, witnesses, and documents (.20); telephone conference with G. Pronske and R. Urbanik RE: possible settlement proposal from all creditors (.20); in depth discussion of involuntary and settlement issues with R. Urbanik (.50); began review of case law for trial preparation (.30).
BaronJ.0001	06/12/2013	1	375.00	2.50	937.50	Reviewed deposition transcript and exhibits, and sent same to J. Baron for review (.40); telephone conference with J. Baron RE: preparation for trial, subpoenas, efforts to obtain the cooperation of B. Beckham, discussion of trustee and counsel appointees, and communications from J. Boshoff (.60); reviewed and forwarded e-mail RE: possible Quantec sale to J. Baron (.10); telephone conferences with M. Goolsby RE: joint exhibit and witness lists, and forwarded document for use in the trial (.30); prepared witness and exhibit list for upcoming trial, and filed and served same (1.00); reviewed witness and exhibit list from the Petitioning Creditors (.10).
BaronJ.0001	06/12/2013	1			199.70	Transcript of witness Jeffrey Baron: On-The-Record Reporting
BaronJ.0001	06/13/2013	1	375.00	2.50	937.50	Telephone conference with J. Baron RE: preparation for trial and evidentiary issues, settlement, and discussions with B. Beckham (.30); telephone conference with R. Roberson and R. Urbanik RE: their proposal to settle, and the take-it-or-leave-it terms thereof (.70); forwarded proposal, and brief telephone conference with J. Baron RE: revised settlement proposal from R. Roberson (.10); prepared and sent e-mail to J. Baron and S. Cocheil RE: revised settlement proposal from the creditors and the urgency of considering and responding thereto (.30); telephone conferences with J. Baron RE: settlement proposal and issues associated therewith, the upcoming trial, and status of trial subpoena for Beckham (.60); e-mails to S. Cocheil and E. Wright RE: status of settlement negotiations and proposal from creditors (.30); prepared and sent trial subpoena request for Blake Beckham (.20).
BaronJ.0001	06/13/2013	7	85.00	1.00	85.00	Prepare Trial Subpoena with document request.
BaronJ.0001	06/13/2013	1			46.00	Witness Fee on Subpoena: Integrity Document Services, Inc.
BaronJ.0001	06/14/2013	3	220.00	0.50	110.00	Reviewed and discussed the use of trial exhibits with M Stromberg (.5)
BaronJ.0001	06/14/2013	1	375.00	6.20	2,325.00	Telephone conference with J. Baron RE: review of revisions to settlement agreement, and discussion of trial preparation issues, witnesses, and exhibits (1.10); telephone conferences with M. Goolsby and G. Pronske RE: settlement issues, trial issues, joint submission of exhibits, and provision of trial documents for the Court (.70); telephone conferences and e-mails with M. Goolsby RE: final details of witness and exhibit binders, debt amounts, compliance with the Court's pretrial requirements, and demonstrative aids (1.40); calculation of claim amounts without the claims that were solely entity obligations, reviewed case law, and continued trial preparations (including witness examinations and arguments) (2.80); telephone conference with S. Cocheil RE: status of trial preparations and settlement discussions (.10); telephone conference with J. Baron RE: preparing for trial and meeting to review anticipated testimony (.10).
BaronJ.0001	06/15/2013	1	375.00	5.00	1,875.00	Reviewed case law concerning involuntary issues, prepared arguments and testimony outline for the upcoming trial, and evaluated personal liability issues bearing on Debtor's debts (versus those exclusively of other entities).
BaronJ.0001	06/16/2013	1	375.00	10.00	3,750.00	Meeting with J. Baron to prepare for trial and review issues on which he may testify (2.50); telephone conferences with G. Pronske RE: upcoming trial and presentation of evidence concerning unpaid claims, including that of G. Lyon (.50); telephone conference with G. Pronske RE: settlement issues, and proposal from R. Urbanik (.50); telephone conference with S. Cocheil concerning status of the case, settlement negotiations and trial preparation (.30); telephone conference with J. Baron RE: review of settlement proposals and upcoming trial (.30); continuing preparation of opening arguments, closing arguments, demonstrative aids, trial exhibits, witness examinations, and cross-examination (5.90).
BaronJ.0001	06/17/2013	1	375.00	9.80	3,600.00	Final preparation for, and attended first day of trial and conferred with client

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<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>Stmt #</u>	<u>Hours to Bill</u>	<u>Amount</u>	
Client ID BaronJ.0001	Baron/Jeffrey					
BaronJ.0001	06/17/2013	1			48.10	concerning the results thereof (9.60). Parking and misc. expenses during trial.
BaronJ.0001	06/17/2013	1			81.19	Service of Process: Served Subpoena to Beckham Group: Integrity Document Services, LLC
BaronJ.0001	06/18/2013	1	375.00	7.50	2,812.50	Attended the second day of trial (4.30); conferred with J. Baron RE: the results of the trial, the likely ruling of the court, the pursuit of settlement alternatives, and my request for comments on the specific aspects of the Roberson/Urbanik proposal that were or were not workable (1.00); reviewed settlement contract sent from client, and compared same to version from R. Roberson (.50); telephone conferences with G. Pronske RE: suggestions for pursuing a settlement, and the results of the trial (.30); telephone conference with S. Cochell RE: results of the trial and status of settlement discussions taking place thereafter (.40); telephone conference with J. Fine concerning settlement status and specific issues of concern to Dykema and the Receiver (.30); exchanged e-mails with the client concerning the need for comments on the Urbanik/Roberson proposal (.40); telephone conference with R. Urbanik RE: settlement status and his views on claims his estate or firm may have against the Alleged Debtor (.30).
BaronJ.0001	06/19/2013	1	375.00	6.10	2,287.50	Telephone conference with J. Baron RE: draft of his review of the Roberson/Urbanik settlement document (.10); drafted e-mail to client RE: activities of G. Schepps in the various appeals after review of documents from R. Urbanik (.20); telephone conference with G. Pronske in preparation for settlement meeting at his offices (.50); telephone conference with R. Urbanik's offices, and exchanged e-mail concerning settlement meeting (.10); telephone conference with J. Bashoff RE: status of purchase offers for Quantec's portfolio (.10); attended meeting with G. Pronske, M. Goolsby, J. Baron, D. Schenck, J. Fine, R. Roberson and E. Baker, and conferred afterwards with G. Pronske, M. Goolsby and J. Baron RE: revisions to the settlement document (4.80); conferred with J. Baron RE: settlement implications (.20).
BaronJ.0001	06/20/2013	1	375.00	5.50	2,062.50	Telephone conference with J. Baron RE: issues regarding transcript requests (.10); telephone conference with S. Cochell RE: same and other issues concerning fees and expenses, settlement agreement, and litigation still pending (.40); telephone conference with J. Baron RE: obtaining settlement edits from G. Pronske (.20); telephone conference with G. Pronske and reviewed revisions to the settlement agreement (.30); reviewed e-mail from J. Fine RE: requirements of any settlement acceptable to the Receiver, and discussed same with G. Pronske (.20); drafted revisions to the settlement agreement as requested by the client in settlement meeting on Wednesday, and finalized and sent a draft thereof to G. Pronske (with approval from J. Baron, for discussion purposes only) to begin further discussions (2.80); telephone conference and e-mail with J. Baron RE: resolution of counsel fee claims as pertains to the settlement agreement (.50); telephone conference with S. Cochell (.30); draft e-mail to client RE: attorneys fees to date (.30); telephone conference with J. Baron RE: settlement issues and upcoming hearing (.30); telephone conference with S. Cochell RE: ascertaining his claims for attorneys fees (.10).
BaronJ.0001	06/21/2013	1	375.00	8.10	3,037.50	Reviewed client e-mail and draft of settlement agreement with revisions, and prepared e-mail to client RE: unanswered questions concerning the provisions in the proposal (.90); telephone conferences with client RE: identifying revisions to the settlement documents, and making additional changes to get the document finalized, and issues concerning the manner and amount of payment of attorneys claims (1.50); exchanged e-mail and conferred with G. Pronske RE: progress in finalization of the settlement draft (.40); telephone conferences with J. Baron and G. Pronske RE: preparation of the exhibits to the wind-down plan and possible filing of the document under seal and the problems noted with that request (.20); additional drafting of revisions to the Buy-Sell and Exclusive Brokerage Agreements to be used as exhibits B and C, discussions with J. Baron RE: same, and review of motions and orders to seal and for approval of agreement (1.20); multiple telephone conferences with G. Pronske, M. Goolsby, J. Baron and S. Cochell RE: procedural questions concerning the filing of the motion to approve and the motion for authority to receive funds from the receivership to cure trust issues, the filing of the settlement document under seal, and the content of the proposed orders thereon (1.30); telephone conferences with J. Baron and S. Cochell RE: settlement and wind-down issues and status of pending litigation (.80); telephone conference and e-mail with T. Davis and M. Goolsby RE: procedural questions concerning filing under seal, timing of delivery of

Date: 06/06/2013

Detail Transaction File List  
Stromberg Stock, PLLC

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001 Baron/Jeffrey						
BaronJ.0001	06/22/2013	1	375.00	1.70	637.50	documents, and content of the motion (.50); telephone conference with J. Fine RE: the proposed wind-down from the Receiver's perspective (.40); telephone conference with R. Urbanik RE: objections of Ondova and its Trustee to the wind-down and the negotiations in general (.30); telephone conference with J. Baron RE: progress in getting the wind-down plan before the Court and other settlement-related considerations (.20); telephone conference with S. Cochell RE: contents of the revised proposal (.30); exchanged e-mail with S. Chesnin, G. Pronske, and J. Baron RE: possible support for the wind-down proposal (.30).
BaronJ.0001	06/23/2013	1	375.00	1.20	450.00	Telephone conference with J. Baron RE: discussions with S. Cochell and need for signatures on the wind-down plan (.20); telephone conference with S. Cochell RE: terms of the wind-down plan and counsel for Baron in the Fifth Circuit (.40); telephone conference S. Cochell (.20); drafted e-mails to J. Baron RE: need for signatures on the wind-down plan and resolution of all claims to the extent possible (.70); exchanged e-mail with J. MacPete RE: discussion of settlement (.10); exchanged e-mail with G. Pronske (.10).
BaronJ.0001	06/24/2013	1	375.00	6.50	2,437.50	E-mail and telephone conference with J. Baron RE: execution of the wind down plan (.30); telephone conference with G. Pronske RE: upcoming discussion with J. MacPete (.20); prepared and sent language for signature blocks on the wind-down plan (.20); telephone conference with J. MacPete (.50).
BaronJ.0001	08/25/2013	1	375.00	5.60	2,100.00	Telephone conference with G. Pronske RE: preparation for hearing, arguments expected from opponents, and disputes with various parties (.60); telephone conference with J. Baron RE: signature and associated language for the wind-down plan, preparation for the upcoming hearing on the wind-down plan, and implementation issues (such as trustee retention for Village Trust) should the court determine to approve or consider the plan (.90); prepared for hearing on wind-down plan and other pending motions, and reviewed settlement negotiation history on questions of good faith that may be raised in the hearing (1.0); attended hearing on wind-down plan, motion for authority to use funds, and motion to seal, and conferred afterwards with J. Baron (3.50); telephone conference with G. Pronske RE: results of the hearing, and possible approval of the Urbanik proposal (.20); telephone conference with R. Urbanik RE: his issues concerning the settlement discussions, the previous proposal, and obtaining a copy of the Roberson proposal in MS Word format (.30); reviewed e-mail from G. Pronske and R. Urbanik, forwarded e-mails to client (.40 - no charge).
BaronJ.0001	06/28/2013	1	375.00	5.80	2,175.00	Reviewed client comments on the Urbanik proposal (.80); telephone conference with J. Baron concerning the draft agreement, and provisions to be changed or addressed therein (.70); began drafting revisions to the proposed agreement and addressing client concerns (1.50); telephone conference with R. Urbanik concerning the issues with or in the agreement (.80); drafted client e-mail concerning discussions with R. Urbanik, made additional revisions to the proposed agreement, and conferred with J. Baron RE: the settlement revisions and providing for attorneys fees (1.60); telephone conference with S. Cochell RE: transcript requests regarding assets of the estate in the event of an order for relief (.30); exchanged e-mail with J. Boshoff concerning status of current purchasers for the Quantac portfolio (.10); exchanged e-mail with R. Urbanik, J. MacPete, G. Pronske, S. Cochell, J. Baron and D. Ferguson (.20).

Date: 08/08/2013

**Detail Transaction File List**  
 Stromberg Stock, PLLC

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Client	Trans Date	Tmkr	Stmt # Rate	Hours to Bill	Amount	
Client ID BaronJ.0001	Baron/Jeffrey					reviewed transcript, and drafted letter to Judge Jernigan RE: language from the transcript of Judge Ferguson's hearing on fees regarding entity ownership, and filed same per client instructions (.50); telephone conference with S. Cocheil RE: status of settlement negotiations and objections being received to the proposal from J. Baron (.10); telephone conference with E. Wright (.10) downloaded, reviewed and forwarded to client the order for relief and the findings of fact and conclusions of law on the involuntary case (.80).
BaronJ.0001	06/27/2013	1	375.00	2.60	975.00	Telephone conference with K. McCullough concerning the Baron bankruptcy case, transitioning the case to the Trustee, status of settlement negotiations, issues with various creditor claims, and need for new bankruptcy counsel for J. Baron (.70); telephone conference with J. Fine concerning the Village Trust and its new trustee (.20); drafted motion and order for withdrawal (1.0); conferred with A. Busch RE: filing of the withdrawal motion (.10); telephone conference with T. Davis concerning a hearing on the withdrawal motion (.10); obtaining hearing on the withdrawal motion, drafted and filed notice of hearing on the motion to withdraw, and docketed hearing on the motion (.40).
BaronJ.0001	06/28/2013	1	375.00	0.50	187.50	E-mail to J. Baron RE: motion to withdraw and consent, and search for new counsel; reviewed article by Judge Jernigan concerning withdrawal from the ABI Journal.
BaronJ.0001	07/08/2013	1	375.00	0.50	187.50	Reviewed recent filings in the case, and exchanged e-mail with J. Baron concerning same (.10); telephone conference with G. Pronske RE: status of the case and appointment of counsel (.10); telephone conference with S. Cocheil RE: obtaining exhibits from the bankruptcy case, and provided documents and information regarding involuntary appeal issues (.30).
BaronJ.0001	07/11/2013	1	375.00	0.50	187.50	Telephone conferences with J. Baron RE: finding new bankruptcy counsel, and issues regarding a possible retention (.50).
BaronJ.0001	07/15/2013	1	375.00	3.50	1,312.50	Reviewed article in ABI Journal, and prepared for hearing on the motion to withdraw (1.20); traveled to and attended hearing on the motion to withdraw (2.10); conferred with counsel for the Trustee RE: procedural issues, and due process with respect to the estate's claims relative to the LLCs (.10); telephone conferences with S. Cocheil and A. Busch RE: results of the hearing (.10).
BaronJ.0001	07/15/2013	1			10.00	Parking @ Standard Parking South Lot: M Stromberg
BaronJ.0001	07/17/2013	1	375.00	0.50	187.50	Exchanged e-mail with M. Sutherland RE: status of the bankruptcy case and results of the withdrawal hearing (.20); exchanged e-mail with the Court RE: submission of the withdrawal order (.10); downloaded and reviewed filings by the petitioning creditors for the debtor (.20).
BaronJ.0001	07/22/2013	1	375.00	1.00	375.00	Telephone conference and e-mail with A. Busch RE: upcoming hearing on motion to draw down on retainer, and form of order (.30); drafted initial proposed order for entry in connection with draw down motion (.50); obtained documents regarding fees and expenses, and reviewed fee summaries for application for allowance of administrative claim (.20).
BaronJ.0001	07/23/2013	1	375.00	1.50	562.50	Telephone conferences with A. Busch RE: upcoming hearing and terms of the proposed order for disbursement of retained funds (.40); revised proposed order and sent same to A. Busch (.40); began review of invoices, and outlined arguments for hearing on motion for distribution (.40); drafted e-mail to client RE: use of bills in fee application (.30).
BaronJ.0001	07/24/2013	1	375.00	2.50	937.50	Final preparation for, and attendance of, the hearing on the motion for distribution of retainer (2.50).
BaronJ.0001	07/24/2013				22,608.33	Payment Thank You (Retainer)
BaronJ.0001	07/24/2013	1			10.00	Parking @ Standard Parking South Lot: M Stromberg
BaronJ.0001	07/31/2013	1	375.00	1.50	562.50	Downloaded and reviewed the Court's ruling concerning the Debtor's assets and the LLCs (.40); entered appearance as a creditor and conferred with J. Fine RE: same (.10 - no charge); telephone conference with R. Orenstein RE: background of the case, legal and factual issues, efforts at settlement, and questions concerning asset ownership (1.10).

Total for Client ID: BaronJ.0001	Billable	462.20	169,072.79	Baron/Jeffrey
	Payments		22,608.33	Re: Bankruptcy

**GRAND TOTALS**

Billable	462.20	169,072.79
Payments		22,608.33

Fees: \$ 168,115.00  
 Exp: \$ 957.79

**Alan L. Busch**  
**Christopher M. Albert**  
**Busch, Ruotolo & Simpson, LLP**  
**100 Crescent Court, Suite 250**  
**Dallas, Texas 75201**  
**Telephone: (214) 855-2880**  
**Facsimile: (214) 855-2871**  
**E-mail: busch@buschllp.com**  
**E-mail: albert@buschllp.com**  
*Attorneys for Busch Ruotolo & Simpson, LLP*  
*Former Counsel for Jeffrey Baron, Alleged Debtor*

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF TEXAS**  
**DALLAS DIVISION**

<b>IN RE:</b>  <b>JEFFREY BARON,</b>  <b>Alleged Debtor.</b>	§ § § § §	Bankr. No. 12-37921-SGJ  Hearing: _____, 2014 @ _:__.m.
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**MOTION OF BUSCH RUOTOLO & SIMPSON, LLP, FOR**  
**RECOVERY OF ATTORNEYS' FEES & EXPENSES**

**TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:**

COMES NOW Busch Ruotolo & Simpson, LLP (“Applicant”), former counsel for the Debtor and acting on its own behalf, who files this its Motion for Recovery of Attorneys’ Fees and Expenses (the “Motion”) pursuant to 11 U.S.C. §303(i), and would respectfully show the Court the following:

1. This Court has jurisdiction over this Motion pursuant to 11 U.S.C. §§303(i), 327, 329, and 330, and 28 U.S.C. §§157(b)(2)(A), (B) and (O). This case arises from an involuntary proceeding initiated by Pronske & Patel, P.C.; Shurig Jetel Beckett Tackett; Dean Ferguson; Gary G. Lyon; Robert Garrey; Powers Taylor, LLP; Jeffrey Hall; and David Pacione (hereafter, the “Petitioning Creditors”) on or about December 18, 2012.



### SUMMARY OF PROCEDURAL BACKGROUND

2. Attached hereto as Exhibit "1" is a Declaration to which is attached a statement of the services rendered by Applicant for the period of January 28, 2013, through August 21, 2013, in the gross amount of \$17,350.00 (\$16,785.00 in fees for services, and \$565.00 in out-of-pocket expenses incurred), inclusive of fees or expenses incurred in connection with the conclusion of the engagement, the hearing on withdrawal (July 15, 2013), and the hearing on the motion to draw down retainer (the motion was filed as Docket No. 79 - Mar. 5, 2013, and was heard on July 24, 2013) while representing **JEFFREY BARON** (hereafter, the "Debtor"). The statement contains a description of the services rendered, time spent, the name of the attorney or paraprofessional performing the work, the time spent on each identified activity, and the amounts charged therefor. In addition, this sum reflects a credit given for a payment of \$2,691.67 ordered by this Court [Docket No. 311, July 29, 2013] in granting Docket No. 79, and gross, voluntary fee reductions of \$2,535.00, leaving a remaining unpaid balance of \$14,658.33 (which includes the previous voluntary fee reduction), for which this Application seeks allowance as an administrative claim, and payment. The attorney performing work on this file was Alan L. Busch (\$400.00/hour), Christopher M. Albert (\$275.00/hour) and paraprofessional performing services herein was Kevin Perry (\$95.00/hour). Gross billings for attorney and paraprofessional services on this file combined for 66.10 hours of recorded and billed time, though it is well known that significantly more time was actually spent assisting the Debtor than was billed and recorded; the overall average hourly rate for such services was \$253.93/hour.
3. Pursuant to orders from this Court on or about January 15, 2013, with the approval of the District Court in the Netsphere litigation, a post-petition retainer of \$25,000 (the "Retainer") has been funded by the Receiver, Peter Vogel (the "Receiver"). The Retainer was established for the benefit of the Debtor and was to be used to pay fees incurred by, (i) Applicant [*see* Docket No.

311], and (ii) Stromberg Stock, PLLC<sup>1</sup> in representing the interests of the Debtor in the initial phases of this case involuntary case. It is believed that the Retainer was paid from assets of the Debtor in the care of the Receiver.

4. On June 26, 2013, this Court entered findings and conclusions adjudicating Debtor bankrupt and imposing an Order for Relief [*see* Docket Nos. 239 and 240], thus ending and terminating Counsel's agreed engagement for Debtor; a motion to withdraw as counsel for Debtor was granted by this Court on July 23, 2013 [*see* Docket No. 301]. (Applicant is not representing Debtor in making the Motion, and seeks recovery of only that which Debtor is obliged to pay for Applicant's fees and expenses which Debtor may be entitled recover from the Petitioning Creditors.)

5. By orders issued from the United States District Court for the Northern District of Texas, Dallas Division, Order for Relief and associated findings and conclusions were reversed, the bankruptcy case initiated by the Petitioning Creditors was dismissed other than on consent of all Petitioning Creditors and the Debtor, and this case was remanded to the Bankruptcy Court for a determination of the sums recoverable under 11 U.S.C. §303(i). This Court ordered on March 14, 2014 that any party seeking the recovery of fees and expenses under 11 U.S.C. §303(i) would have 30 days within which to file an appropriate motion with this Court. To the date and time of the filing hereof, Debtor has yet to file any such motion, and Applicant, being a creditor beneficiary of Debtor's rights under 11 U.S.C. §303(i) as well as it its own right, seeks to preserve the right of recovery against third parties (the Petitioning Creditors) provided in the Bankruptcy Code, in addition to its rights of recovery against the Debtor. Thus, by this Motion, Applicant - - a creditor beneficiary of Debtor - - seeks final allowance and recovery from the Petitioning Creditors, jointly and severally, of the unpaid balance of its claims against the Debtor

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1 Stromberg Stock, P.L.L.C., will file a separate fee application for its fees and expenses incurred in this case.

and for which the Debtor may seek reimbursement from the Petitioning Creditors for post-petition attorneys fees and expenses representing the Debtor through the trial of Debtor's defense in the involuntary bankruptcy case, conclusion of the engagement, and this Motion.

5. **ALL PARTIES RECEIVING A COPY OF THIS MOTION ARE HEREBY NOTIFIED THAT ANY OBJECTIONS MUST BE FILED AND SERVED ON APPLICANT WITHIN TWENTY-ONE (21) DAYS OF THE MAILING HEREOF.**

6. Applicant had already filed and served an application, to which no objection has been filed and no hearing has been held, for recovery of these same fees and expenses in which Applicant considered the twelve (12) factors applicable to considerations of the propriety of professional fees in the lodestar analysis, as articulated in *In re First Colonial Corp., supra*; *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) [*see* "Final Motion for Allowance of Administrative Expense Claim, Docket No. 319, filed on August 8, 2013, paragraphs 9 through 14], which is incorporated herein by reference.

**WHEREFORE, PREMISES CONSIDERED,** Applicant prays for the relief requested herein and for such other and further relief as to which it may be justly entitled.

Respectfully submitted,

**BUSCH RUOTOLO & SIMPSON, LLP**

By: /s/ Alan L. Busch

Alan L. Busch  
State Bar No. 19408830  
Christopher M. Albert  
State Bar No. 24008550

**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2014 a true and correct copy of the foregoing document was sent by email to Lisa Lambert, Counsel for the United States Trustee; Gerrit Pronske, Counsel for the Petitioning Creditors, was served upon all persons identified below by regular mail, postage prepaid, and to all other persons requesting notices via the ECF system.

Gerrit M. Pronske  
PRONSKE & PATEL, P. C.  
2200 Ross Ave., Suite 5350  
Dallas, Texas 75201

Shurig, Jetel Beckett Tackett  
100 Congress Ave., Suite 5350  
Austin, Texas 78701  
Email: [mroberts@morganadler.com](mailto:mroberts@morganadler.com)

Dean Ferguson  
4715 Breezy Point Drive  
Kingwood, Texas 77345  
Email: [dwferg2003dm@yahoo.com](mailto:dwferg2003dm@yahoo.com)

Jeffrey Hall  
8150 N. Central Expy., Suite 1575  
Dallas, Texas 75206  
Email: [jeff@powerstaylor.com](mailto:jeff@powerstaylor.com)

Gary G. Lyon  
The Willingham Law Firm  
6401 W. Eldorado Parkway, Suite 203  
McKinney, Texas 75070  
Email: [glyon.attorney@gmail.com](mailto:glyon.attorney@gmail.com)

David Pacione  
Law Offices of Brian J. Judis  
700 N. Pearl St., Suite 425  
Dallas, Texas 75201  
Email: [david.pacione@CNA.com](mailto:david.pacione@CNA.com)

Robert Garrey  
1201 Elm Street, Suite 5200  
Dallas, Texas 75270  
Email: [rgarrey@gmail.com](mailto:rgarrey@gmail.com)

Sidney B. Chesnin  
4841 Tremont, Suite 9  
Dallas, Texas 75246  
Email: [schesnin@hotmail.com](mailto:schesnin@hotmail.com)

Darrell W. Cook and Stephen W. Davis  
Darrell W. Cook & Associates  
One Meadows Building  
5005 Greenville Ave., Suite 200  
Dallas, Texas 75206  
Email: [all@attorneycook.com](mailto:all@attorneycook.com)

Lisa L. Lambert and Nancy Resnick  
Office of the United States Trustee  
1100 Commerce St., Room 976  
Dallas, Texas 75242  
Email: [lisa.l.lambert@usdoj.gov](mailto:lisa.l.lambert@usdoj.gov)  
Email: [nancy.s.resnick@usdoj.gov](mailto:nancy.s.resnick@usdoj.gov)

Jeffrey Baron, Alleged Debtor  
E-mail: [jeffbaron1@gmail.com](mailto:jeffbaron1@gmail.com)

Stephen R. Cochell  
E-mail: [srcochell@gmail.com](mailto:srcochell@gmail.com)

Alan L. Busch

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

**In re:**  
**JEFFREY BARON,**  
**ALLEGED DEBTOR**

§  
§  
§  
§  
§  
§

**Case No.: 12-37921-sgj7**  
**Chapter 7**

**DECLARATION**

1. My name is **ALAN BUSCH**. I am over 18 years of age, of sound mind, and fully capable of making this declaration. All of the facts set forth herein are within my personal knowledge, and are true and correct.
2. I am a Managing Senior Partner of the law firm Busch, Ruotolo & Simpson, LLP (the "Firm"), which maintains its principal place of business in Dallas, Texas.
3. I have been licensed to practice law in the state of Texas since November 24, 1980, and I am admitted to practice before the the United States District and Bankruptcy Courts for the Northern, Southern, Eastern and Western Districts of Texas, the United States Court of Appeals for the Fifth Circuit, and the United States Supreme Court. I am Board Certified in Civil Trial Law by the Texas Board of Legal Specialization. In the course of the past roughly 33 years as a practicing attorney, I have practiced in the areas of commercial litigation, with a particular emphasis on complex commercial cases including bankruptcy in the North Texas area. I also have material experience in bankruptcy adversary litigation. I am, therefore, familiar with the normal, customary and reasonable rates for attorneys performing legal services for debtors and creditors in bankruptcy cases.
4. The alleged Debtor, Jeffrey Baron ("Baron"), retained the Firm, and the undersigned as counsel from the Firm, to represent him in connection with the defense of an involuntary bankruptcy petition filed in this Court against Baron.
5. As Baron's attorneys, I have personally represented Baron in the defense of the involuntary petition, and I rendered legal services as requested and as reasonably necessary in connection with these and related proceedings.



6. On April, 13, 2014, after vigorous litigation and in response to a mandate from the United States District Court, this Court dismissed the involuntary case against Baron, and remanded this matter to the Bankruptcy Court to consider Baron's motion for costs and damages. This affidavit is provided in support of Baron's motion pursuant to §303 of the Bankruptcy Code.
7. To date, Baron has incurred with my firm attorneys' fees of \$16,785.00 and \$565.00 in out-of-pocket expenses, of which \$2,691.67 has been paid by prior order of the Bankruptcy Court, in defense of the involuntary bankruptcy petition. The remaining balance unpaid to the Firm is in the amount of \$14,658.33. The Firm spent and billed for a total of 66.10 hours, at an average hourly rate of \$253.93 per hour, in the course of the engagement representing Baron, all or virtually all of which was directly related to the litigation or attempted resolution of the involuntary petition.
8. A true and correct systematic, detailed and contemporaneous record of the services provided, and the fees and expenses incurred, in this engagement is attached hereto and incorporated herein as Exhibit "A." The billing entries for Exhibit "A" were all personally made by the undersigned at or near the time of the events and activities recorded therein, and Exhibit "A" is a record of the acts and events which I undertook in representing Baron in the involuntary case. Exhibit "A" constituted the record kept by the Firm in the course of its regularly-conducted activity on behalf of Baron, and keeping such a record of lawyer activities and the detailed billings arising therefrom is a regular practice of that activity by the Firm and its attorneys and staff. I am a custodian of the records set forth in Exhibit "A," and I caused same to be prepared for purposes of making application for approval of the attorneys' fees and expenses incurred in this engagement.
9. Based on my experience as an attorney, and upon my personal knowledge of the involuntary case, it is my opinion that all of the services reflected in Exhibit "A" were reasonable and necessary in connection with the representation of Baron in the involuntary case, through the preparation and filing of a fee application by the Firm on or about August 8, 2013.
10. The hourly rates charged by the Firm's professionals are commensurate with the Firm's customary hourly rates for work of this size, nature and complexity, and it is my opinion that the rates charged by the Firm for its services are reasonable for similar services in Dallas, Texas and in the Northern District of Texas.
11. I am familiar with, and have personally considered, the twelve (12) factors applicable to considerations of the propriety of professional fees in the lodestar analysis, as articulated in *In re First Colonial Corp., supra*; *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) (*see* "Final Motion for Allowance of Administrative Expense Claim, Docket

No. 319, filed on August 8, 2013, paragraphs 9 through 14). It is my opinion that the total attorneys' fees and expenses incurred, as reflected in Exhibit "A," were and are reasonable and customary for similar services rendered in Dallas, Texas and in the Northern District of Texas, and that the factors set forth in the lodestar analysis militate in favor of an award of fees similar to those set forth in Exhibit "A."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this April 9<sup>th</sup>, 2014

By: 

Printed Name: Alan L. Busch

# EXHIBIT

# A

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Hours to Bill	Amount		Ref #
Client ID 550.000 Baron, Jeffery									
550.000	01/28/2013	9	A	1	275.00		0.00	Receipt and review filings in bankruptcy court ordering Motion for Summary Judgment hearing on involuntary petition and bona fide dispute issue. Discuss case strategy with A. Busch.	ARCH
550.000	01/29/2013	9	A	1	275.00		0.00	Receipt and review Findings of fact and conclusions of law.	ARCH
550.000	01/31/2013	1	A	1	400.00	1.90	760.00	preliminary review of: order adopting bk court rec, 5th Cir opinion in Netsphere, order setting involuntary trial for interim relief, Baron answer and counterclaim, FFCL, various emails from Schepps and Stromberg regarding strategy, etc.	ARCH
550.000	01/31/2013	9	A	1	275.00	1.90	522.50	Review pleadings and discuss case strategy with A. Busch.	ARCH
550.000	02/03/2013	1	A	1	400.00	1.60	569.98	first review of Motion for Summary Judgment and exhibits	ARCH
550.000	02/04/2013	9	A	1	275.00	3.00	734.74	Receipt and review motion for summary judgment, declarations and other attachments. Participate in conference with A. Busch regarding same.	ARCH
550.000	02/04/2013	1	A	1	400.00	0.60	213.74	t/c's and emails Stromberg regarding status, need for expert, procedural issues	ARCH
550.000	02/05/2013	13	A	1	95.00	2.80	236.90	Drafting of affidavits, research on Internet.	ARCH
550.000	02/05/2013	9	A	1	275.00	1.70	416.35	Work with A. Busch and M. Stromberg on strategy for responses and division of labor. Review summary judgment affidavits.	ARCH
550.000	02/06/2013	9	A	1	275.00	1.50	367.37	Receipt and review Electronic communication with from M. Stromberg on "fully litigated" issue. Research and send M. Stromberg case regarding affirmative defenses.	ARCH
550.000	02/07/2013	13	A	1	95.00	2.10	177.67	Review of Motion for Summary Judgment and exhibits, drafting of affidavit.	ARCH
550.000	02/07/2013	1	A	1	400.00	0.80	284.99	review various drafts of response and affidavits	ARCH
550.000	02/07/2013	9	A	1	275.00	1.50	367.37	Review Response to Motion for Summary Judgment discuss agreement with opposing counsel and strategy for next stage with A. Busch.	ARCH
550.000	02/08/2013	1	A	1	400.00	1.30	463.11	review final response and brief and motion for continuance; conf CMA and Electronic communication with Stromberg	ARCH
550.000	02/11/2013	9	A	1	275.00	0.40	97.97	Review outline for Motion for Summary Judgment hearing.	ARCH
550.000	02/12/2013	9	A	1	275.00	0.50	122.46	Receipt and review settlement conversation with G. Pronske. Discuss same with A. Busch.	ARCH
550.000	02/13/2013	1	A	1	400.00	3.60	1,282.46	t/c Stromberg; prep for hearing; conf MS and client and hearing; t/c Stromberg	ARCH
550.000	02/13/2013	9	A	1	275.00	3.00	734.74	Receipt and review objection to summary judgment evidence, Motion to preserve status quo of receivership, request for payment by receiver and various other receiver filings. Participate in conference with A. Busch regarding receiver motion and fifth circuit language to "re-evaluate"fees. Prepare A. Busch for hearing on Motion for summary judgment. Draft and file notice of appearance.	ARCH
550.000	02/13/2013	13	A	1	95.00	0.50	42.33	Preparation of notice of appearance (.3); E-filing of Notice of Appearance (.2).	ARCH
550.000	02/14/2013	9	A	1	275.00	0.10	24.49	Review bankruptcy court filing of order from hearing.	ARCH
550.000	02/20/2013	1	A	1	400.00	3.40	1,211.21	review outline from Schepps; conf Stromberg and court appearance regarding ruling and going forward	ARCH
550.000	02/20/2013	9	A	1	275.00	0.20	48.98	Review motion to pay receiver.	ARCH
550.000	02/21/2013	9	A	1	275.00	1.00	244.91	Receipt and review of Order abating and for joint status conference and motion by trustee and receiver filed with court.	ARCH
550.000	02/22/2013	1	A	1	400.00	1.40	498.73	analyze settlement emails; conf Stromberg regarding settlement status, wind down plan, and going forward regarding insolvency	ARCH
550.000	03/04/2013	9	A	1	275.00	0.80	220.00	Review co-counsel's motion to draw down on retainer and work on same.	ARCH
550.000	03/05/2013	13	A	1	95.00	0.70	66.50	Review and revisions to motion for distribution of retainer(.5); E-filing of BRS motion to distribution (.2).	ARCH
550.000	03/05/2013	9	A	1	275.00	2.00	550.00	Draft motion to draw down on retainer and attache invoices to same. Participate in call with M. Stromberg regarding potential privilege issues in attachment.	ARCH
550.000	03/06/2013	9	A	1	275.00	0.10	27.50	Receipt and review notice of hearing for interim trustee's professionals.	ARCH
550.000	03/08/2013	9	A	1	275.00	2.00	550.00	Receipt and review emails between client and co-counsel and review court's clarification order. Review debtor's response to fee applications. review multiple responses/objections filed by all parties.	ARCH
550.000	03/11/2013	9	A	1	275.00	0.50	137.50	Receipt and review Electronic communication with from A. Busch regarding filings at docket no. 83 - 89 and review same.	ARCH
550.000	03/11/2013	13	A	1	95.00	1.50	142.50	Preparation and assembly of Hearing Notebook and	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmnt # Rate	Hours to Bill	Amount	Ref #
Client ID 550.000	Baron, Jeffery							
550.000	03/12/2013	13	A	1	95.00	0.50	47.50	ARCH
550.000	03/13/2013	9	A	1	275.00	1.00	275.00	ARCH
550.000	03/14/2013	9	A	1	275.00	0.80	220.00	ARCH
550.000	03/18/2013	9	A	1	275.00	0.90	247.50	ARCH
550.000	03/29/2013	9	A	1	275.00	0.30	82.50	ARCH
550.000	04/02/2013	1	A	1	400.00	1.30	520.00	ARCH
550.000	04/02/2013	9	A	1	275.00	0.70	192.50	ARCH
550.000	04/03/2013	13	A	1	95.00	0.30	28.50	ARCH
550.000	04/03/2013	9	A	1	275.00	2.00	550.00	ARCH
550.000	04/05/2013	1	A	1	400.00	0.40	160.00	ARCH
550.000	04/09/2013	9	A	1	275.00	0.60	165.00	ARCH
550.000	04/12/2013	9	A	1	275.00	0.40	110.00	ARCH
550.000	04/16/2013	9	A	1	275.00	0.30	82.50	ARCH
550.000	04/17/2013	9	A	1	275.00	0.50	137.50	ARCH
550.000	04/19/2013	9	A	1	275.00	0.10	27.50	ARCH
550.000	04/22/2013	9	A	1	275.00	1.50	412.50	ARCH
550.000	04/24/2013	9	A	1	275.00	1.00	275.00	ARCH
550.000	04/29/2013	9	A	1	275.00	0.20	55.00	ARCH
550.000	05/10/2013	9	A	1	275.00	0.50	137.50	ARCH
550.000	06/24/2013	9	A	1	275.00	1.00	275.00	ARCH
550.000	06/27/2013	13	A	1	95.00	0.60	57.00	ARCH
550.000	06/28/2013	13	A	1	95.00	0.40	38.00	ARCH
550.000	07/08/2013	13	A	1	95.00	0.20	19.00	ARCH
550.000	07/09/2013	13	A	1	95.00	0.40	38.00	ARCH
550.000	07/11/2013	9	A	1	275.00	0.30	82.50	ARCH
550.000	07/12/2013	9	A	1	275.00	1.00	275.00	ARCH
550.000	07/15/2013	9	A	1	275.00	0.50	137.50	ARCH
550.000	07/17/2013	13	A	1	95.00	0.90	85.50	ARCH
550.000	07/17/2013	9	A	1	275.00	1.00	275.00	ARCH
550.000	07/23/2013	13	A	1	95.00	0.60	57.00	ARCH
550.000	07/26/2013		A	900			2,691.67	ARCH
550.000	08/09/2013	13	P	1	95.00	0.70	66.50	65
550.000	08/13/2013	13	P	1	95.00	0.40	38.00	66
550.000	08/21/2013	13	P	1	95.00	0.90	85.50	67
550.000	08/21/2013	9	P	1	275.00	1.50	412.50	68

Client	Trans Date	H Tmkr P	Tcode/ Task Code	Stmt # Rate	Hours to Bill	Amount	Ref #
<b>Total for Client ID 550.000</b>				Billable	66.10	16,785.00	Baron, Jeffery
				Payments		2,691.67	Baron/Stromberg
<b>GRAND TOTALS</b>							
				Billable	66.10	16,785.00	
				Payments		2,691.67	

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Amount		Ref #
<b>Client ID 550.000 Baron, Jeffery</b>								
550.000	02/20/2013		1 A	54		10.00	Travel expense: Parking	ARCH
550.000	02/28/2013		1 A	51	0.250	2.25	Photocopy charges	ARCH
550.000	03/31/2013		1 A	51	0.250	89.50	Photocopy charges	ARCH
550.000	04/30/2013		1 A	51	0.250	73.50	Photocopy charges	ARCH
550.000	05/31/2013		1 A	51	0.250	29.50	Photocopy charges	ARCH
550.000	06/28/2013		1 A	51	0.250	66.25	Photocopy charges	ARCH
550.000	07/26/2013		A	900		2,691.67	Payment Check 1046	ARCH
550.000	07/31/2013		1 A	51	0.250	294.00	Photocopy charges	ARCH

**Total for Client ID 550.000**

Billable	565.00	Baron, Jeffery
Payments	2,691.67	Baron/Stromberg

**GRAND TOTALS**

Billable	565.00
Payments	2,691.67



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 and 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.<sup>1</sup>

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

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<sup>1</sup> 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 Petrosiences 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(D)(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 Pendergraft & 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);<sup>s</sup> 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<sup>2</sup> and 308.<sup>3</sup> 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).

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<sup>2</sup> "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."

<sup>3</sup> "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 17<sup>th</sup> 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 69<sup>th</sup> 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 13<sup>th</sup> day of April 2014.

**PENDERGRAFT & SIMON, LLP**

/s/ Leonard H. Simon

Leonard H. Simon

Texas Bar No. 18387400

S.D.Tex. Adm. No. 8200

Email: lsimon@pendergraftsimon.com

William P. Haddock

Texas Bar No. 00793875

S.D.Tex. Adm. No. 19637

Email: whaddock@pendergraftsimon.com

2777 Allen Parkway, Suite 800

Houston, Texas 77019

Tel. (713) 528-8555

Fax. (713) 868-1267

**ATTORNEY IN CHARGE FOR  
JEFFEY BARON**

# EXHIBIT "1"



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. <sup>DC</sup> 14-2619 in the 6th 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



[mark@strombergstock.com](mailto:mark@strombergstock.com)

Direct: 972.458.5335

April 4, 2014

Jeffrey Baron  
P.O. Box 111501  
Dallas, Texas 75011

Via E-Mail: [jeffbaron1@gmail.com](mailto:jeffbaron1@gmail.com)  
and Via Regular U.S. Mail

**Re: Attorneys' Fees and Expenses Incurred in Connection with *In re Baron*, Case No. 12-37921-SGJ-7, United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Involuntary Case")**

Dear Mr. Baron:

I am writing you on behalf of Stromberg Stock, PLLC, (the "Firm") in connection with the above-referenced matter. I have attached for your reference the contract you signed identifying the terms of your legal representation by the Firm in connection with the Involuntary Case. As stated in our Motion to Withdraw in the Involuntary Case, which was granted on July 17, 2013 [Docket No. 296], the engagement between the Firm and you ended by its terms when, on June 26, 2013, the Court entered its Order for Relief.

The services rendered by the Firm for the period of January 15, 2013, through July 31, 2013, were in the gross amount of \$168,115.00 (*after* voluntary fee reductions of \$8,450.00), together with an additional \$957.79 in out-of-pocket expenses incurred, exclusive of fees or expenses incurred in connection with the conclusion of the engagement. A credit is applied for a payment of \$22,608.33 ordered by the Bankruptcy Court on July 26, 2013, leaving a remaining unpaid balance, as of July 31, 2013, of \$146,464.46, exclusive of contractual interest. No further payments have been received by the Firm, despite reminders of the unpaid balance and monthly invoices reflecting that which is due.

This letter shall serve as our demand for payment of unpaid fees and expenses in the principal sum of \$146,464.46. If the full amount is not tendered within 10 days from the date of this letter, the Firm may pursue any and all lawful remedies, including but not limited to litigation, to recover the sums now long past due. In the event that litigation becomes necessary, the Firm will seek recovery of pre- and post-judgment interest as provided under the client agreement, all costs of court, and recovery of additional attorneys' fees as permitted both under the client agreement and Section 38.001, *et seq.* of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

[www.strombergstock.com](http://www.strombergstock.com)  
8750 North Central Expressway, Suite 625 Dallas, Texas 75231  
Main Phone: 972.458.5353 Fax: 972.861.5339





[mark@strombergstock.com](mailto:mark@strombergstock.com)

Direct: 972.458.5335

A copy of this letter has been forwarded to Mr. Leonard Simon, as he was an attorney representing you in connection with the bankruptcy and litigation matters arising after the Order for Relief. However, I am unaware of the scope of his representation and whether this issue is one on which he is providing you counsel. If he does not represent you or if there is another attorney who should be copied on this letter, please let me know.

Kindly take due notice.

Very truly yours,

By:   
MARK STROMBERG

cc: Leonard Simon (*via facsimile: 832-202-2810*)

## CLIENT ENGAGEMENT AGREEMENT

### Scope of Engagement:

Legal Representation by Stromberg Stock, P.L.L.C. ("the Firm") of Jeffrey Baron ("the Client") to defend the Client against an involuntary bankruptcy petition in the related adversary proceeding styled *In re Jeffrey Baron*, now pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 12-37921-SGJ (hereafter referred to as "the Lawsuit"). *The Firm will not be representing the Debtor in the event that an order for relief is entered under 11 U.S.C. Section 362.*

### I. Hourly Fees, Costs and Expenses

A. The Firm has agreed to represent you based on what is generally referred to as an "hourly fee basis." The Firm will charge, and you agree to pay, a reasonable attorney's fee for the Firm's services, taking into consideration the actual amount of attorney and/or legal assistant time expended, the amount in controversy, the complexity of the issues, and the expertise of the lawyers who become involved. In this matter (as well as any future matter not covered by a separate agreement) you agree that a reasonable fee will be determined by the amount of time spent on the matter multiplied by the applicable hourly rates for the attorneys and legal assistants involved. Generally, the Firm's hourly rates range from \$75.00 (for legal assistants) to \$375.00 per hour, and these rates are subject to change from time to time. We will advise you of any hourly rate changes as they take effect.

B. Per our agreement, the rate for the attorneys who will likely perform legal services on this case are described below. If any other attorney in the Firm is needed to provide legal services on this case, the fees will be assessed at the rates set forth below.<sup>1</sup> The fees are as follows:

<u>Attorney</u>	<u>Rate</u>
Mark Stromberg	\$375.00
Aric L. Stock	\$325.00
Brett Field	\$220.00

Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

The minimum increment of time to be charged is one-tenth (1/10th) of an hour. Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial

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<sup>1</sup> It is possible that it is more cost efficient for certain services to be performed by legal assistants at the direction and under the supervision of the attorney responsible for that file. Services will be performed by those with lower hourly rates whenever reasonably possible and legally appropriate.

experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

C. Some or all of your legal fees, court costs and litigation expenses *may* be recoverable under law (meaning they could be added to your claim), depending upon the terms of your agreements, results of your case and the claims asserted therein; however, one of the many risks of litigation is that a court may award less than all of the reasonable fees billed by the Firm and/or paid by you, and the Firm can provide no assurances that any or all of these collection costs will *necessarily* be awarded by a court, nor can the Firm provide assurances that, if they are awarded by a court, they will be recovered from or paid by your adversary(s). In no event is the obligation to pay the attorneys fees, court costs or litigation expenses billed to you by the Firm contingent upon any result, outcome or recovery by you in this case or on any result of the Firm's efforts, unless an order of the United States Bankruptcy Court for the Northern District of Texas ("the Court") is required for approval and payment thereof.

D. You understand that it may be necessary for us to retain, hereby authorize us to retain, and agree to pay the fees and charges of, other persons or entities who perform services that we deem necessary in connection with this matter. Such other persons or entities may include, but are not limited to, court reporters, investigators, expert witnesses, expert consultants, court document retrieval services, and other attorneys hired for ancillary matters (or as local counsel or consultants) in other localities. Again, some or all of these costs *may* be recoverable by law, and again, employment of experts or other professionals is subject to approval of the Court. We will contact you to obtain approval prior to engaging such persons, if the anticipated cost will likely exceed \$500.00. You also authorize the Firm, in its discretion, to direct such other persons and companies to render statements or invoices for services rendered and expenses advanced either directly to you or to us, in which latter event you have agreed to promptly pay to us the full amount of such statements. Again, the provisions hereof are subject to approval of the Court.

E. In addition to legal fees and third-party expenses, you agree to promptly pay all of the Firm's out-of-pocket expenses submitted to it for payment or reimbursement. In most instances, we will attempt to estimate the anticipated out-of-pocket costs, and in those instances you will advance to this Firm the estimated cost before the expense is incurred. Sometimes, invoices for expenses will be sent to you and should be paid directly to the vendor within fifteen days of receipt. Some out-of-pocket expenses may be incurred in connection with depositions and the employment of expert witnesses and consultants. It is the practice of the Firm to obtain your approval before obligating for a single item in excess of \$100.00. Certain expenses will be charged as follows:

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## **II. Retainers**

It is generally the policy of this Firm to obtain a retainer in matters such as this. In this case, as a condition of this engagement, the Firm is requiring an initial retainer of \$25,000.00, upon receipt of which, together with this signed agreement, further services may be provided; however, in the discretion of the Firm, a larger retainer may be requested and required in the future, based upon the stage of the proceedings, the history of your account, the payment of fees and expenses from the retainer, and the anticipated expenses associated with the upcoming phases of the lawsuit, perhaps subject to approval of the Court to the extent so required. Any such retainer or any additions thereto must be paid within ten (10) days from the date of court approval request as a condition of this agreement, unless alternative arrangements are made between you and the Firm or unless otherwise ordered by the Court. The above retainer will thereafter be held in our firm trust account and applied to fees, costs, advances and expenses incurred, subject to replenishment, and subject to further orders of the Court. A monthly accounting of legal fees and expenses billed and applied will be provided, any amounts in excess of the retainer will be billed for payment. If there is any unapplied retainer after the resolution and final settlement of this matter, the balance will be refunded or applied against any remaining unpaid invoices until exhausted, and then final bills containing any remaining, unpaid fees and expenses will be sent.

## **III. Payment of Fees, Costs and Expenses of the Firm**

Each invoice from this Firm will usually be dated on or around the first day of the calendar month in which the bill is presented. Our billing cycle cutoff date is usually the last day of the month. Therefore, an invoice dated the first of the month will include time and expenses billed for the approximately thirty-day period prior to the cutoff date. Normally, each Firm invoice is due and payable on or before expiration of thirty (30) days from the date of invoice; to the extent that approval of this Agreement and/or the fees and expenses arising thereunder by the Court is required in advance of payment, then such an order from the Court shall be a condition hereof. You agree that the hourly fees, expenses, and all other sums accruing hereunder shall be paid when due, and shall be due and payable irrespective of your success in this matter or any recovery on your part in connection herewith. You agree that simple interest *may* be charged on any unpaid account balances which are more than sixty (60) days past due at the rate of ten percent (10.0%) per annum in the sole discretion of the Firm.

## **IV. Approval Needed for Settlements**

No settlement of any rights to relief or causes of action shall be made or accepted by the Firm without your approval in advance and, as required by law, by the Court. However, the Firm reserves the right to make recommendations regarding the resolution of the case based upon our best educated beliefs regarding the legal and factual viability of the claims, the posture of the case and the parties, the court and the judge before whom the case may be heard, the uncertainties of the trial process, the status of your relationship with the Firm, the anticipated expenses associated with the continued litigation of the your claims in the case, the collectibility of any claims against the Debtor, any exposure to claims by the Debtor or a trustee, and other factors deemed appropriate. If it appears that irreconcilable differences arise between you and the Firm regarding the handling of the

case, then the Firm may exercise its remedies hereunder, including withdrawal from the representation of all of you.

**V. Cooperation of the Client**

You shall keep the Firm advised of your whereabouts, shall appear on reasonable notice at any and all depositions, mediations and court appearances as required, shall assist the Firm in the compilation of documents and evidence, shall timely provide information necessary to respond to discovery requests made by any other party, and shall comply with all reasonable requests of the Firm in connection with the preparation and presentation of the claim.

**VI. Permission to Withdraw**

A. In case the Firm shall determine, at any time, that any claims or defenses should not be pursued further, you agree that the Firm may terminate the attorney-client relationship and withdraw from the representation of your interests by sending written notice of the Firm's intention to withdraw to you at your last known address, and to cease all work as permitted under applicable rules. Moreover, the Firm shall have the right to terminate the attorney-client relationship in the above manner for any of the following reasons: (1) failure to cooperate and comply fully with all reasonable requests for the Firm in reference to this case, or the failure to cooperate with the Firm in the prosecution of the engagement as delineated in the previous paragraph; (2) in the event a material, irreconcilable disagreement over the handling of this engagement arises between you and the Firm; (3) upon determination by the Firm, in its sole discretion, that a conflict of interest exists; (4) if any invoice remains past due for more than thirty (30) days, including not only any invoices from the Firm but also any invoices from a vendor or service-provider who has provided goods or services on your behalf in connection with your case; and/or (5) conduct by you which renders it unreasonably difficult for this Firm to carry out the purposes of its employment.

B. In the event that the Firm elects to seek permission to withdraw from any one's representation, then that party shall not be obligated to pay any fees accruing thereafter to the Firm, but the Firm shall be entitled to collect any previously-incurred fees, or any costs or expenses, advanced or incurred on your behalf during the course of the representation.

**VI. Statutory Notice of Rights**

The following notice to clients is mandated and required by the State Bar Act:

**NOTICE TO CLIENTS**

**The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys.**

**Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General**

**Counsel will provide you with information about how to file a complaint.**

**For more information, please call 1-800-932-1900. This is a toll-free phone call.**

**VII. No Guarantees as to Outcomes**

Obviously, many time-consuming activities of a lawyer are dictated by the requirements placed upon the lawyer by the court, opposing counsel, and the parties involved. Therefore, it is impossible to determine in advance the amount of time that will be required to complete your case, and the amount of legal fees you will incur. Every effort will be made to provide you with reasonable and necessary legal services as promptly and as efficiently as possible. This Firm may not make, and does not make, and you should not expect, solicit or rely upon, any representations, promises, predictions or guarantees as to the outcome of this dispute or any litigation arising therefrom.

**VIII. Other Miscellaneous Matters**

A. You understand that the Firm may, from time to time, employ various technologies which are intended to make our service to you more efficient, responsive and effective. These technologies include facsimile transmissions, telephone (including cellular telephones), e-mail, voicemail, the Internet, and/or other technologies commonly used in the practice of law. While these systems offer certain benefits, there are certain security risks associated with their use; for example, and not by way of limitation, on rare occasions, conversations regarding privileged matters occurring over a cellular telephone may be subject to "bleeding through" or unauthorized monitoring, such that others not privileged to hear the conversation become privy thereto. You understand and authorize that the Firm may continue to use such available technologies in connection with your case, and that you hold the Firm harmless from any claims or damages associated with its use of these technologies or any privileged information which might be disseminated through any cause other than the Firm's negligence. If you desire the Firm to cease using any specific technologies, or that the Firm take any special precautions to secure their use, then you will need to so advise the Firm, in writing and in advance.

B. This agreement shall be construed in accordance with the Laws of the State of Texas, all obligations of the parties hereto are performable in Dallas County, Texas USA, and venue of any dispute regarding same shall be in Dallas County, Texas USA. This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors, heirs and assigns. In the event that any one or more of the provisions contained in this agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision did not exist, and, to the extent possible, in a manner consistent with all applicable laws. This agreement constitutes the only agreement of the parties in regard to the subject matter, and supercedes any prior written or oral understandings, agreements or representations made to or between the parties regarding the subject matter. This agreement shall be modified only in writing, which writing must be signed by all parties to the agreement.

C. The scope of this engagement is outlined on the first page of this agreement. Unless there is a subsequent client agreement between the Client and the Firm to do so, any additional engagements, legal services, or other litigation matters beyond the scope of that which is outlined therein, specifically including representation of the Client as a debtor or debtor-in-possession in any bankruptcy proceeding following or resulting from the Lawsuit will require a separate client agreement, is not subsumed or covered by this agreement, and the Firm is not required to undertake such other engagements as a result hereof.

D. With regard to transfers to and from the Firm's trust (or IOLTA) accounts, Client acknowledges and agrees that the Firm shall not be obligated to transfer funds deposited in said account for the benefit of the Client until such time as: 1) the deposit has been honored both by the Firm's depository bank and by the payor's bank; and 2) the time under federal banking regulations by which the deposit can no longer be set aside, challenged, denied or dishonored has fully passed.

JB  
Client Initials

~~E. Jury Trial Waiver. Client and the Firm agree that in any dispute relating in any way to this Agreement or in regards to the services provided by the Firm hereunder, the Parties fully and completely waive any constitutional, statutory, or other legal right either of them may have to a trial of any disputed issues before a jury.~~

MS JB

\_\_\_\_\_  
Client Initials

F. It is understood that, at present, the Receiver or an interim trustee to be appointed pursuant to orders of the Bankruptcy Court currently hold Client's assets; the Firm will be paid (or retainers will be advanced) from funded retainers or court disbursements so long as Client's assets are held by the Receivership and/or the interim trustee. Thus, Client's obligation to pay any fee beyond any retainer received or held in trust by the Firm becomes due only after funding to pay the attorney is provided from the Receivership or authorized by the Bankruptcy Court, or when Client's assets are returned to him.

G. Notwithstanding that the Firm is not representing the Client in any other litigation, in assisting Client in this matter, upon being made aware of the issues involved in any other ongoing litigation or appeals, the Firm will exercise care not to prejudice the Client's position in those other pending matters.

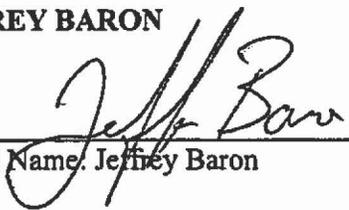
H. The Firm will notify Client and get written permission from him to incur any fees and/or expenses beyond the total sum of \$100,000.00. If fees or expenses beyond \$100,000.00 are requested and/or required by the Firm in accordance herewith, but not promptly approved by the Client, the Firm may withdraw from further representation of the Client. If the attorney is not allowed to withdraw, the limitation of this provision shall not apply to fees and expenses approved by the Court.

**AGREED AND ACCEPTED:**

**JEFFREY BARON**

By: \_\_\_\_\_

Printed Name: Jeffrey Baron

A handwritten signature in cursive script, appearing to read "Jeff Baron", written over a horizontal line.

Date: \_\_\_\_\_

1-22-13



**ALAN L. BUSCH**  
**Senior Managing Partner**  
*busch@buschllp.com*

*Board Certified*  
*- Civil Trial Law*  
*- Labor & Employment Law*

April 3, 2014

**Via E-Mail: *jeffbaron1@gmail.com***  
**and Regular U.S. Mail**

Jeffrey Baron  
P.O. Box 111501  
Dallas, Texas 75011

*Re: Attorneys Fees - U.S. Bankruptcy Court for the Northern District of Texas,  
Dallas Division, Case No. 12-37921-SGJ; Involuntary Chapter 7 Bankruptcy*

Dear Mr. Baron:

Our firm represents Busch Ruotolo & Simpson, LLP, ("BRS") in the above-referenced matter. I have attached the pertinent contract that you entered into regarding legal representation by BRS to represent you in opposition to the involuntary bankruptcy petition (*In re Jeffrey Baron*) then pending before the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 12-37921-SGJ (the "Bankruptcy Case"), as Exhibit "A".

As stated in our Motion to Withdraw in the Bankruptcy Case, which was filed on June 28, 2014 and granted on July 23, 2013, the agreed engagement between BRS and you ended by its terms when on June 26, 2013, the Court entered its *Findings and Conclusions* and also its *Order for Relief*.

The services rendered by BRS for the period of January 28, 2013, through August 26, 2013, are in the gross amount of \$17,350.00 (\$16,785.00 in fees for services, and \$565.00 in out-of-pocket expenses incurred), inclusive of fees or expenses incurred in connection with the conclusion of the engagement, the hearing on withdrawal (July 15, 2013), and the hearing on the motion to draw down retainer. A credit is applied for a payment of \$2,691.67 ordered by the

Busch Ruotolo & Simpson, LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201  
(o) 214 855 2880  
(f) 214 855 2871  
toll-free 1 855 855 2880



buschllp.com

Jeffrey Baron  
April 3, 2014  
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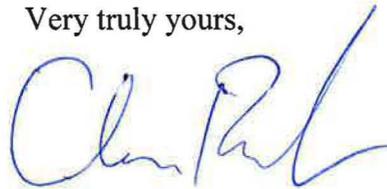
Bankruptcy Court on July 26, 2013, leaving a remaining unpaid balance of \$14,658.33.<sup>1</sup>

Please allow this letter to serve as our demand for payment of \$14,658.33 to you. If the full amount is not tendered within 30 days from the date of this letter, we intend to file suit on behalf of Busch Ruotolo and Simpson, LLP, and pursue all applicable causes of action including seeking our attorney's fees associated with this matter pursuant to Section 38.001 et seq. of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

We have copied Mr. Leonard Simon on this letter as he appears to be your latest attorney. However, we are unaware of the scope of his representation and whether this issue is within that scope. If he does not represent you or if there is another attorney who should be copied on this letter, please let us know.

Should you have any questions or comments, please feel free to contact our office.

Very truly yours,



Alan L. Busch

ALB/kep  
Enclosure as stated

cc: Leonard Simon (*via facsimile: 832-202-2810*)

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<sup>1</sup> This amount does not include the voluntary fee reduction of \$2,535.00 made during the pendency of the Bankruptcy Case and stated in our Final Motion for Allowance of Administrative Expense Claim filed on August 26, 2013. Now that the involuntary bankruptcy petition in the Bankruptcy Case has been dismissed, this voluntary reduction is no longer necessary.



**ALAN L. BUSCH**  
**Senior Managing Partner**  
busch@buschllp.com

*Board Certified*  
*- Civil Trial Law*  
*- Labor & Employment Law*

**Via E-mail**

Mr. Jeffery Baron

*Re: Legal Representation by Busch Ruotolo & Simpson, LLP of Jeffrey Baron to defend the Client against an involuntary bankruptcy petition in the related adversary proceeding styled In re Jeffrey Baron, now pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 12-37921-SGJ, but not representation of the Debtor in the event an order for relief is entered under 11 U.S.C. Section 362.*

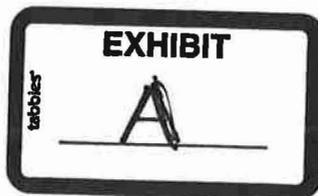
Dear Mr. Baron:

Busch Ruotolo & Simpson, LLP ("BUSCH" or "ATTORNEY") is pleased to represent the above entities, (collectively "Baron" or "you") with regard to the above matter on the terms discussed below. We anticipate that our relationship will be a pleasant one, and would like to encourage you to feel comfortable with, and be knowledgeable about and discuss with us any of our BUSCH's policies and procedures.

I. Hourly Fees, Costs and Expenses

A. BUSCH has agreed to represent you based on what is generally referred to as an "hourly fee basis." BUSCH will charge, and you agree to pay, a reasonable attorney's fee for BUSCH's services, taking into consideration the actual amount of attorney and/or legal assistant time expended, the amount in controversy, the complexity of the issues, and the expertise of the lawyers who become involved. In this matter (as well as any future matter not covered by a separate agreement) you agree that a reasonable fee will be determined by the amount of time spent on the matter multiplied by the applicable hourly rates for the attorneys and legal assistants involved. Generally, BUSCH's hourly rates range from \$95.00 (for legal assistants) to \$400.00 per hour, and these rates are subject to change from time to time. We will advise you of any hourly rate changes as they take effect.

Busch Ruotolo & Simpson, LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201  
(o) 214 855 2880  
(f) 214 855 2871  
toll-free 1 855 855 2880



buschllp.com

Mr. Jeffrey Baron  
 January 24, 2013  
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B. Per our agreement, the rates for the attorneys who will likely perform legal services on this case are described below. If any other attorney in BUSCH is needed to provide legal services on this case, the fees will be assessed at the rates set forth below.<sup>1</sup> The fees are as follows:

<u>Attorney</u>	<u>Rate</u>
Alan L. Busch	\$400.00
Christopher M. Albert	\$275.00

Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

The minimum increment of time to be charged is one-tenth (1/10th) of an hour. Some, but not all, of the services charged and billed on a time basis include court appearances, travel, legal research, office conferences, telephone conferences, investigative work, interviewing consulting or trial experts, review of materials received or documents produced, and drafting of correspondence, pleadings or motions.

C. Some or all of your legal fees, court costs and litigation expenses *may* be recoverable under law (meaning they could be added to your claim), depending upon the terms of your agreements, results of your case and the claims asserted therein; however, one of the many risks of litigation is that a court may award less than all of the reasonable fees billed by BUSCH and/or paid by you, and BUSCH can provide no assurances that any or all of these collection costs will *necessarily* be awarded by a court, nor can BUSCH provide assurances that, if they are awarded by a court, they will be recovered from or paid by your adversary(s). In no event is the obligation to pay the attorneys fees, court costs or litigation expenses billed to you by BUSCH contingent upon any result, outcome or recovery by you in this case or on any result of BUSCH's efforts, unless an order of the United States Bankruptcy Court for the Northern District of Texas ("the Court") is required for approval and payment thereof.

D. You understand that it may be necessary for us to retain, hereby authorize us to retain, and agree to pay the fees and charges of, other persons or entities who perform services that we deem necessary in connection with this matter. Such other persons or entities may include, but are not limited to, court reporters, investigators, expert witnesses, expert consultants, court document

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Mr. Jeffrey Baron  
 January 24, 2013  
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retrieval services, and other attorneys hired for ancillary matters (or as local counsel or consultants) in other localities. Again, some or all of these costs *may* be recoverable by law, and again, employment of experts or other professionals is subject to approval of the Court. We will contact you to obtain approval prior to engaging such persons, if the anticipated cost will likely exceed \$500.00. You also authorize BUSCH, in its discretion, to direct such other persons and companies to render statements or invoices for services rendered and expenses advanced either directly to you or to us, in which latter event you have agreed to promptly pay to us the full amount of such statements. Again, the provisions hereof are subject to approval of the Court.

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## II. Retainers

It is generally the policy of BUSCH to obtain a retainer in matters such as this. In this case, as a condition of this engagement, BUSCH is requiring an initial retainer of \$25,000.00 (this is the same retainer paid to the Stromberg Stock firm and not in addition to that amount), upon receipt of which, together with this signed agreement, further services may be provided; however, in the discretion of BUSCH, a larger retainer may be requested and required in the future, based upon the stage of the proceedings, the history of your account, the payment of fees and expenses from the retainer, and the anticipated expenses associated with the upcoming phases of the lawsuit, perhaps subject to approval of the Court to the extent so required. Any such retainer or any additions thereto must be paid within ten (10) days from the date of court approval request as a condition of this agreement, unless alternative arrangements are made between you and BUSCH or unless otherwise ordered by the Court. The above retainer will thereafter be held in our trust account and applied to fees, costs, advances and expenses incurred, subject to replenishment, and subject to further orders of the Court. A monthly accounting of legal fees and expenses billed and applied will be provided, any amounts in excess of the retainer will be billed for payment. If there is any unapplied retainer after the resolution and final settlement of this matter, the balance will be refunded or applied against any

Mr. Jeffrey Baron  
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Mr. Jeffrey Baron  
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Mr. Jeffrey Baron  
January 24, 2013  
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**NOTICE TO CLIENTS**

**The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys.**

**Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint.**

**For more information, please call 1-800-932-1900. This is a toll-free phone call.**

Mr. Jeffrey Baron  
January 24, 2013  
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VII. No Guarantees as to Outcomes

Obviously, many time-consuming activities of a lawyer are dictated by the requirements placed upon the lawyer by the court, opposing counsel, and the parties involved. Therefore, it is impossible to determine in advance the amount of time that will be required to complete your case, and the amount of legal fees you will incur. Every effort will be made to provide you with reasonable and necessary legal services as promptly and as efficiently as possible. BUSCH may not make, and does not make, and you should not expect, solicit or rely upon, any representations, promises, predictions or guarantees as to the outcome of this dispute or any litigation arising therefrom.

VIII. Other Miscellaneous Matters

A. You understand that BUSCH may, from time to time, employ various technologies which are intended to make our service to you more efficient, responsive and effective. These technologies include facsimile transmissions, telephone (including cellular telephones), e-mail, voicemail, the Internet, and/or other technologies commonly used in the practice of law. While these systems offer certain benefits, there are certain security risks associated with their use; for example, and not by way of limitation, on rare occasions, conversations regarding privileged matters occurring over a cellular telephone may be subject to "bleeding through" or unauthorized monitoring, such that others not privileged to hear the conversation become privy thereto. You understand and authorize that BUSCH may continue to use such available technologies in connection with your case, and that you hold BUSCH harmless from any claims or damages associated with its use of these technologies or any privileged information which might be disseminated through any cause other than BUSCH's negligence. If you desire BUSCH to cease using any specific technologies, or that BUSCH take any special precautions to secure their use, then you will need to so advise BUSCH, in writing and in advance.

B. This agreement shall be construed in accordance with the Laws of the State of Texas, all obligations of the parties hereto are performable in Dallas County, Texas USA, and venue of any dispute regarding same shall be in Dallas County, Texas USA. This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors, heirs and assigns. In the event that any one or more of the provisions contained in this agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision did not exist, and, to the extent possible, in a manner consistent with all applicable laws. This agreement constitutes the only agreement of the parties in regard to the subject matter, and supercedes any prior written or oral understandings, agreements or representations made to or between the parties regarding the subject matter. This agreement shall be modified only in writing, which writing must be signed by all parties to the agreement.

C. The scope of this engagement is outlined on the first page of this agreement. Unless there is a subsequent client agreement between the Client and BUSCH to do so, any additional



Mr. Jeffrey Baron  
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H. BUSCH will notify Client and get written permission from him to incur any fees and/or expenses beyond the total sum of \$100,000.00. If fees or expenses beyond \$100,000.00 are requested and/or required by BUSCH in accordance herewith, but not promptly approved by the Client, BUSCH may withdraw from further representation of the Client. If the attorney is not allowed to withdraw, the limitation of this provision shall not apply to fees and expenses approved by the Court.

Sincerely,

*Alan Busch with permission CMA*

Alan L. Busch

ALB/kep

**AGREED AND ACCEPTED:**

**JEFFREY BARON**

By: *Jeff Baron*  
Jeffrey Baron

Date: 1-27-2013

**J**



conducted a hearing on April 28, 2014, at 1:30 pm. Plaintiff, Jeffrey Baron, appeared through his counsel, Leonard H. Simon, who made an appearance earlier that day, and Defendants appeared through their counsel, Gerrit Pronske. The Court Considered the arguments of counsel and the pleadings on file, and recited certain findings of fact and conclusions of law into the record, which are incorporated herein by reference for all purposes. The Court determined that the captioned adversary proceeding should be remanded. Accordingly, it is

**ORDERED** that the captioned adversary proceeding be, and it hereby is, remanded back to the 193<sup>rd</sup> Judicial District Court in and for Dallas County, Texas, Cause No. 10-11915, where the case was pending before it was removed.

###END OF ORDER###

ORDER PREPARED AND SUBMITTED BY:

/s/ Leonard H. Simon

Leonard H. Simon, Esq.

TBN: 18387400; SDOT: 8200

**PENDERGRAFT & SIMON, L.L.P.**

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 727-8207 (Direct Line)

(832) 202-2810 (Direct Telecopy)

lsimon@pendergrachtsimon.com

**ATTORNEY IN CHARGE FOR**

**JEFFREY BARON**

**K**

Teresa Jones

**CAUSE NO. DC-14-02619-C**

<b>PRONSKE GOOLSBY &amp; KATHMAN, PC</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>- and -</b>	§	
	§	
<b>POWERS TAYLOR LLP,</b>	§	
	§	
<b>Intervenor,</b>	§	<b>DALLAS COUNTY, TEXAS</b>
	§	
<b>v.</b>	§	
	§	
<b>JEFFREY BARON and EQUITY TRUST COMPANY f/k/a MID OHIO SECURITIES, custodian FBO IRA 19471,</b>	§	
	§	
<b>Defendants.</b>	§	<b>68th JUDICIAL DISTRICT COURT</b>

**POWERS TAYLOR, LLP’S PLEA IN INTERVENTION**

COMES NOW, POWERS TAYLOR, LLP (“Powers Taylor” or “Intervenor”), Intervenor in the above-styled and numbered cause, and pursuant to Rules 60 and 61 of the Texas Rules of Civil Procedure files this Plea in Intervention against Jeffrey Baron, as the Beneficiary of Equity Trust Company FBO IRA 19471 and against Equity Trust Company f/k/a Mid Ohio Securities, Custodian FBO IRA 19471 (“Equity Trust”) seeking actual damages for unpaid attorneys’ fees and expenses incurred by Powers Taylor during its representation of the Defendants. In addition, Intervenor seeks the recovery of attorneys’ fees, recoverable court costs, and statutory and contractual interest. In support, Intervenor respectfully shows the Court the following:

**I. DISCOVERY CONTROL PLAN DESIGNATION**

1. Plaintiff has previously requested that a Level 3 Discovery Control Plan govern this action under Rule 190.3 of the Texas Rules of Civil Procedure. Powers Taylor agrees with this request.

## **II. RULE 47 DESIGNATIONS**

2. In accordance with Rule 47(b) of the Texas Rules of Civil Procedure, Intervenor seeks damages in an amount within the jurisdictional limits of this Court. In accordance with Rule 47(c) of the Texas Rules of Civil Procedure, Intervenor seeks monetary relief of more than \$1,000,000. This amount is inclusive of all damages of any kind including penalties, costs, expenses, pre-judgment interest and attorneys' fees.

## **III. THE PARTIES**

3. Plaintiff Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, PC, is a Texas professional corporation with its principal place of business in Dallas, Texas. Plaintiff has appeared in this lawsuit, and may be served through its attorney Gerrit M. Pronske at 2200 Ross Avenue, Suite 350, Dallas, Texas 75201.

4. Intervenor Powers Taylor, LLP f/k/a Cash Powers Taylor LLP is a Texas limited liability partnership, organized and existing under the laws of the State of Texas, with its principal place of business in Dallas County, Texas.

5. Jeff Baron is a resident of Dallas County, Texas and may be served with process and citation at his home address of Unit 106, 2200 Trinity Mills Road, Carrollton, Texas 75006, or wherever he may be found.

6. Equity Trust Company f/k/a Mid Ohio Securities, the custodian for the benefit of IRA 19471, is a foreign corporation formed under the laws of the State of South Dakota, with its primary place of business at 225 Burns Road, Elyria, Ohio 44035. It may be served with process and citation through its registered agent, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

## **IV. JURISDICTION, VENUE, AND BASIS FOR INTERVENTION**

7. Subject-matter jurisdiction is proper in this Court because the amount in

controversy exceeds the minimum jurisdictional threshold of this Court.

8. The Court has personal jurisdiction over Defendant because Defendant is a Texas resident and the acts complained of were committed by Defendant in Dallas County, Texas.

9. Venue is proper in Dallas County Texas in accordance with TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) because all or a substantial part of the acts or omissions giving rise to the claims in this lawsuit occurred in Dallas County Texas.

10. This Plea in Intervention is permitted as a matter of right under Rule 60. Intervenor has a justiciable interest, because Intervenor seeks relief nearly identical in nature to the relief sought by Plaintiff, and had Plaintiff not initiated this action as the sole plaintiff, Intervenor would have been entitled to recover in its own name to the extent at least of a part of the relief sought. Specifically, Plaintiff has sought and obtained a pre-judgment garnishment of certain assets of Baron and/or his IRA account at Equity Trust Company, and Intervenor has an interest in recovering amounts owed to Intervenor from the same limited source of funds, especially given Baron's past attempts to shelter assets from judgment through the use of off-shore trusts and fraudulent IRA accounts. This intervention will not complicate the case by an excessive multiplication of the issues, since Plaintiff has already plead (and will be required to prove) a pattern of abuse by Baron in the hiring and firing of attorneys.

11. Intervenor claims a superior interest and right to payment to Plaintiff and all other intervenors with respect to the assets held in Equity Trust Company IRA 19471, since Equity Trust Company, as the custodian of the account, signed Intervenor's engagement agreement and promised to pay Intervenor from the funds held in that account.

#### **V. FACTS APPLICABLE TO ALL COUNTS**

12. Jeffrey Baron is a vexatious litigant with an extensive history of hiring lawyers and then refusing to pay them. Baron, both individually and on behalf of his IRA at Equity

Trust, hired Powers Taylor on August 28, 2009 to represent him in a lawsuit pending in this Court, which was styled *Equity Trust Co., et al. v. Rohit Krishan, et al.*, Cause No. DC-08-13925-C, in the 68<sup>th</sup> District Court of Dallas County (the “Phone Cards Litigation”). Powers Taylor was the fifth law firm to make an appearance for Baron in that case.

13. The written engagement agreement between Baron and Powers Taylor was a blended-fee agreement. Under the agreement, Powers Taylor was to be paid a reduced hourly rate for all time spent on the engagement, and a reduced contingency-fee percentage of 15% of the recovery made on Baron’s behalf.<sup>1</sup>

14. When Powers Taylor made its first appearance in the case, this Court was already concerned about Baron’s vexatious litigation tactics – which included the frequent hiring and firing of attorneys, and Baron’s lack of candor with the Court. Powers Taylor convinced this Court that such conduct would stop, at least in this case, and no sanctions were imposed. Powers Taylor then made significant strides towards prosecuting Baron’s claims, and built a compelling case against the defendants in the case.

15. The essence of the Phone Cards claims was that the Krishan brothers had convinced Jeffrey Baron to lease the *phonecards.com* domain name to the Krishans (or their company that was formed later, *CallingCards.com, LLC*). According to the terms of the lease, the Krishans were to use reasonable efforts to develop and manage the *phonecards.com* website and domain to generate the sale of pre-paid phone cards, and Baron was to receive 15% of all revenue generated from the website. Baron later learned that the Krishans were really devoting their efforts to develop and manage their own website at *callingcards.com* (where they were not obligated to pay Baron a royalty), and only devoting minimal efforts to *phonecards.com*. Baron sued for the royalties that would have been earned had the Krishans devoted similar efforts to

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<sup>1</sup> The engagement agreement had contingency fee percentages that increased from 12.5% to 20%, based upon the length of time between the filing of an appearance by Powers Taylor and execution of a settlement agreement. At the time Baron settled the claims, the percentage would have been 15%.

both the callingcards.com and phonecards.com websites.

16. During the course of Powers Taylor's representation, the work performed was extensive. Powers Taylor accomplished the following tasks: (1) responded to and defeated a special appearance by Munish Krishan; (2) conducted extensive discovery, including many out of town depositions; (3) pursued an aggressive motion practice, including at least one summary judgment motion; and (4) hired experts to establish liability and damages. This work was integral in turning the tide of the litigation between the Krishans and Baron – where the initial proceedings had been decidedly one-sided in favor of the Krishans.

17. During the time that Powers Taylor was litigating the Phone Cards case, there were other proceedings between the same parties (or their affiliates) in federal court. The federal court litigation consisted of: (1) bankruptcy proceedings related to a company known as Ondova; and (2) a civil action involving the business of Netsphere.

18. During the summer of 2010, the bankruptcy court ordered the parties to the bankruptcy to enter into settlement negotiations to resolve the wide-ranging disputes between the Krishans, Baron, and their related companies. During those negotiations, Baron contacted Powers Taylor to obtain an estimate of the settlement value of the Phone Cards claims. Powers Taylor provided Baron with its damage model, which totaled \$3,179,550, and recommended a conservative settlement value of \$802,812.

19. Without further consultation with Powers Taylor, Baron entered into a global settlement of his disputes with the Krishans which included the settlement of the Phone Cards claims and required the abatement of the action in this Court. The settlement agreement was approved by the bankruptcy court on July 27, 2010, and the Phone Cards Litigation was abated on August 2, 2010.

20. After receiving notification from Baron regarding the settlement, Powers Taylor

contacted Baron to discuss the valuation of the contingency fees due under the agreement and the payment of the remaining balances due for the hourly portion of the fees. Baron responded by informed Powers Taylor that he had hired a new lawyer, Stan Broome, and demanding that all files be turned over to him. Mr. Broome refused Powers Taylor's requests for payment.

21. Following that refusal of payment, Baron refused to comply with his obligations under the Global Settlement agreement, sparking a long and tortured dispute in the federal courts. After the appointment of a receiver over Baron and his companies, the federal court and the receiver fought through more of Baron's vexatious litigation tactics attempting to resolve and dispense with all disputes. During the course of those proceedings, Powers Taylor offered a compromise settlement on its fees, in the amount of \$78,050, based on the billable value of the time spent on the file (without regard to contingency fee portion of the engagement). The federal court held hearings on the reasonableness of this proposed settlement (and all other attorneys' fees claims asserted by Baron's 26 other former lawyers identified in those proceedings). The federal court ruled that the \$78,050 amount was reasonable and necessary. Yet Baron continued to oppose payment of the amount owed and to block the receiver from making the court ordered payment. Eventually, Baron was able to overturn the receivership on appeal, which ended any attempt by the federal court to facilitate the payment of Baron's lawyers.

22. At the time of Baron's breach of the agreement, Powers Taylor was owed \$2,512.50 in billable fees and expenses. Had Powers Taylor been paid its contingency fee on the conservative estimate of the settlement value of the Phone Cards claims, Powers Taylor would have received \$125,011.20 in fees, over and above their hourly fees. Powers Taylor also held a \$10,000 retainer, which has been applied to the balances due under the engagement agreement.

23. As of the filing of this lawsuit, Baron and/or his IRA owe Powers Taylor the net total amount of \$117,523.70 for the firm's services, exclusive of pre-judgment interest, post-

judgment interest, attorneys' fees, and costs of collection.

## VI. CLAIMS

### COUNT ONE: BREACH OF CONTRACT.

24. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

25. As set forth above, Defendant entered into a contract with Intervenor, performable in Dallas County, Texas, whereby Intervenor was to perform legal services relating to the Phone Cards Litigation. Intervenor performed, tendered performance of, or was excused from performing its contractual obligations.

26. While representing Defendant in the Phone Cards Litigation, Powers Taylor duly performed valuable legal services for Defendant under the parties' contract and as requested and approved by Defendant. For these legal services, Powers Taylor charged Defendant a reasonable rate, which fee rate Defendant agreed to in writing prior to the services being rendered. Defendant knew, prior to and while Powers Taylor was rendering these valuable legal services, that Powers Taylor expected Defendant to compensate Powers Taylor for these services.

27. For these services, Powers Taylor timely sent invoices to Defendant stating the nature of the services rendered, the nature of the expenses and other charges incurred, and the total amount due under each invoice. Although Defendant remitted payment for legal services and expenses under certain invoices, Defendant has refused to pay the remaining invoices for legal services rendered and refused to pay the contingency fees due on the settlement.

28. Powers Taylor provided and duly performed valuable legal services at Defendant's request and all together complied with all material terms of the agreement with Defendant. Despite multiple demands, Defendant has failed to pay for the services and is in breach of its contractual agreement and legal obligations to Powers Taylor.

29. Despite timely and proper demand presenting its claim for payment, as of the date of this lawsuit, the claim has not been paid or satisfied.

30. All conditions precedent have been performed, have occurred, or have been waived.

31. As a direct and proximate result of Defendant's breach of the agreements made the basis of this lawsuit, Intervenor has suffered and sustained substantial injury for which it seeks appropriate judicial relief including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, and attorneys' fees in a sum within the jurisdictional limits of the Court.

**COUNT TWO: QUANTUM MERUIT.**

32. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

33. In the alternative and/or in addition to Intervenor's breach of contract claim, Intervenor seeks damages from Defendant in quantum meruit. As set forth above, Intervenor provided Defendant with valuable legal services. These services were valuable, and Defendant accepted the services under circumstances in which Defendant knew or should have realized that Intervenor expected to be paid for the services.

34. Defendant's refusal to pay the balance due and owing for the services provided to Defendant by Intervenor entitles Intervenor to recover from Defendant in quantum meruit.

**COUNT THREE: PROMISSORY ESTOPPEL.**

35. Intervenor incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

36. In the alternative and/or in addition to Intervenor's breach of contract claim, through Defendant's conduct and oral representations, Defendant promised, among other

material promises, that Defendant would timely compensate Intervenor for the valuable legal services provided.

37. Intervenor reasonably and substantially relied on the promises described herein to its detriment. Injustice can be avoided only by enforcing Defendant's promises.

38. In reliance on these promises, Intervenor has sustained substantial injury for which it seeks appropriate judicial relief including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, costs of court, attorneys' fees, and exemplary damages in a sum within the jurisdictional limits of the Court.

**COUNT FOUR: UNJUST ENRICHMENT.**

39. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

40. In the alternative and/or in addition to Intervenor's breach of contract claim, Intervenor seeks damages from Defendant under the equitable theory of unjust enrichment.

41. Defendant has knowingly, unduly benefitted from its failure to pay Intervenor for valuable legal services sold and rendered to Defendant.

42. Defendant's actions were unjust, to the detriment of Intervenor, and were the cause of substantial damages to Intervenor, for which Intervenor seeks restitution from Defendant.

43. Intervenor has performed all conditions precedent to bring this action for unjust enrichment.

**COUNT FIVE: THEFT OF SERVICES.**

44. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

45. At the request of Baron, Powers Taylor provided legal services to Baron and his IRA.

46. Baron agreed to pay Powers Taylor individually and through the IRA account pursuant to the terms of the engagement agreement.

47. Powers Taylor provided legal services to Baron and his IRA as requested.

48. Baron knew that the services were being provided by Powers Taylor for compensation.

49. To date, notwithstanding the demands of Powers Taylor, Baron has failed and refused, and continues to fail and refuse, to pay Powers Taylor for the services rendered.

50. Baron intended to avoid payment for the services rendered by Powers Taylor by:

- a. Intentionally or knowingly securing the performance of the service by deception or false token; and by
- b. Intentionally or knowingly securing the performance of a service by agreeing to provide compensation and, after the service was rendered, failing to make payment after receiving notice demanding payment.

51. As a result of Baron's theft of service, Baron has proximately caused actual damages to Powers Taylor in the amount of \$117,523.70, plus consequential damages and pre-judgment and post-judgment interest as allowed by law.

52. Powers Taylor is entitled to exemplary damages for Baron's willful acts. *See* Tex. Civ. Prac. & Rem. Code §41.008(c). Baron has an extensive history of utilizing services of attorneys and either 1) discharging the attorneys when a bill is presented or, 2) not paying the attorneys when bills are presented, causing such attorneys to cease representation. There are currently no less than 6 lawsuits pending against Baron by law firms. Powers Taylor is aware of others that will likely be filed by lawyers whose services Baron has stolen. The bankruptcy

schedules of Ondova Limited Company, which was controlled by Baron, shows a “laundry list” of attorneys that Baron purposefully did not pay, but whose services he used until the attorneys realized that he had no intention of paying them. In each instance of intentional non-payment of attorneys, Baron fails to complain about the services until the “free” work has ceased, and then, when a bill is presented, alleges malpractice, breach of fiduciary duty and or/failure of the attorney to properly discharge duties of engagement. Baron has learned that many law firms “go away” and do not sue for compensation once a malpractice claim has been asserted. Additionally, these attorneys come to know that Baron has hidden all of his assets in an offshore trust (the Village Trust) in the Cook Islands, a country that has no treaty with the United States that permits United States litigants to sue Cook Island entities. Discouraged, most of these attorneys do not waste further legal time and expense pursuing Baron. There have been between 25 and 45 recent instances of Baron using attorneys and not paying them. This long list of unpaid lawyers has one common denominator – Jeffrey Baron. By engaging in theft of services, Baron has “saved” himself over \$1 million in attorneys’ fees and expenses at the expense of the attorneys from whom services have been stolen. Without punitive damages, Baron will be encouraged in the future to steal from other attorneys. Damages awarded for felony theft in the third degree or higher under Texas Penal Code Chapter 31 are exempt from the cap on exemplary damages. See Tex. Civ. Prac. & Rem Code 41.008(b), (c)(13); *Cooper v. Sony Music Entertainment Inc.*, No. 01-0941 (S.D. Tex. 2002) (no pub.; 2-02-02).

53. Powers Taylor requests this Court to award exemplary damages in an amount of no less than \$1,000,000 against Baron.

#### **VII. ATTORNEYS’ FEES AND COSTS OF COURT**

54. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

55. In accordance with Texas Business and Commerce Code §38.001, and any other applicable statutory provisions, Intervenor seeks and is entitled to recover its reasonable and necessary attorneys' fees and costs in pursuing this action in accordance. Intervenor further seeks its reasonable and necessary attorneys' fees and costs under the general principals of equity and the Court's inherent equitable power because such an award would be equitable and just.

56. All conditions precedent have been performed, have occurred, or have been waived.

### **VIII. STATUTORY AND CONTRACTUAL INTEREST**

57. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

58. Intervenor has suffered additional damages because Defendant has had use of the sums owed to Intervenor since the dates that the amounts were due. Intervenor is entitled to interest on each component of the entire sum claimed, at the rate set forth in the engagement agreement and/or the statutory interest rate, together with post-judgment interest, as allowed by law.

### **IX. PRAYER FOR RELIEF**

FOR THESE REASONS, Intervenor Powers Taylor, LLP prays for judgment against Defendant Jeffrey Baron and Equity Trust Company f/k/a Mid Ohio Securities, custodian for the Benefit of IRA 19471, providing for the following relief:

1. An award of Intervenor's actual and special damages as pleaded herein, and all compensatory, consequential, and economic damages within the jurisdictional limits of the Court;
2. Intervenor's reasonable attorneys' fees;
3. Intervenor's costs of Court;
4. Pre-judgment and post-judgment interest at the highest rate(s) allowed by law; and



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent to all parties or counsel of record listed below on May 8, 2014 as follows:

***Via Electronic Filing and Facsimile 214.658.6509***

Gerrit M. Pronske  
Melanie P. Goolsby  
PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201

***Via Electronic Filing and Facsimile 214.855.2871***

Alan L. Busch  
Christopher M. Albert  
BUSCH RUOTOLO & SIMPSON LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201

***Via Electronic Filing and Facsimile 972.770.2156***

Mark Stromberg  
STROMBERG STOCK, PLLC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, Texas 75240

***Via Certified Mail, RRR, First Class Mail, and Email [Jeffbaron1@gmail.com](mailto:Jeffbaron1@gmail.com)***

Jeffrey Baron  
2200 Trinity Mills Road  
Apartment 106  
Carrollton, Texas 75006

and

Jeffrey Baron  
P.O. Box 111501  
Dallas, Texas 75011

***Via Certified Mail, RRR and Email [lsimon@pendergraftsimon.com](mailto:lsimon@pendergraftsimon.com)***

Leonard Simon  
PENDERGRAFT & SIMON LLP  
The Riviana Building  
2777 Allen Parkway, Suite 800  
Houston, Texas 77019

*/s/ Mark L. Taylor*

Mark L. Taylor

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**CAUSE NO. 10-11915**

JEFF BARON,	§	IN THE DISTRICT COURT,
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GERRIT M. PRONSKE, INDIVIDUALLY	§	
AND PRONSKE & PATEL, P.C.	§	
	§	193 <sup>rd</sup> JUDICIAL DISTRICT
Defendants.	§	

**UNOPPOSED MOTION TO  
TRANSFER RELATED CASE TO THIS COURT**

This Unopposed Motion seeks to transfer a related case to this Court pursuant to Local Rule 1.06.

1. Defendant Pronske & Patel, P.C. n/k/a Pronske, Goolsby & Kathman, P.C. filed causes DC14-02619 and DC14-02622 on March 17, 2014, currently pending in the 68<sup>th</sup> District Court in Dallas County, Texas, bringing nearly identical claims to those brought in this Court.
2. This cause before this Court was instituted in 2010, and should be the Court of dominant jurisdiction over these matters.
3. Defendants have agreed to consolidating the causes before the 68th Judicial District Court, DC14-02619 and DC14-02622, into the captioned cause.

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff requests causes DC14-02619 and DC14-02622 be transferred to this Court and consolidated with the captioned cause. Plaintiff requests such other and further relief as is just.

Respectfully submitted this 10<sup>th</sup> day of May 2014.

/s/ Leonard H. Simon

Leonard H. Simon, Esq.  
Texas Bar No. 18387400  
2777 Allen Parkway, Suite 800  
Houston, Texas 77019  
Direct Tel. (713) 737-8207  
Direct Fax. (832) 202-2810  
Email: lsimon@pendergraftsimon.com  
**ATTORNEY IN CHARGE FOR JEFF BARON**

**OF COUNSEL:**

**PENDERGRAFT & SIMON, LLP**

William P. Haddock, Esq.  
Texas Bar No. 00793875 S.D.Tex. Adm. No. 19637  
Email: whaddock@pendergraftsimon.com  
2777 Allen Parkway, Suite 800  
Houston, Texas 77019  
Tel. (713) 528-8555  
Fax. (713) 868-1267

**CERTIFICATE OF CONFERENCE**

I certify that I conferred with Gerrit Pronske, counsel for Defendants, on the 9<sup>th</sup> day of June 2014, regarding the above motion and order accompanying this Motion. Mr. Pronske emailed me and approved the Motion and Order.

/s/ Leonard H. Simon

Leonard H. Simon

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served on counsel for Defendants, Gerrit Pronske, on this 10<sup>th</sup> day of June, 2014, via Email and Fax.

/s/ Leonard H. Simon

Leonard H. Simon

M



CAUSE N° DC-14-02619

GERRIT PRONSKE, et al  
vs.  
JEFF BARON

In the District Court  
of Dallas County, Texas  
193rd Judicial District

CAUSE N° DC-14-02622

GERRIT PRONSKE, et al  
vs.  
TD AMERITRADE, et. al.

In the District Court  
of Dallas County, Texas  
193rd Judicial District

**ORDER TO CLERK TO ADMINISTRATIVELY CLOSE CASE**

ON THIS DAY, this Court took notice that both the above-styled causes have been consolidated into another cause, DC-10-11915, pending before this Court. In the interest of judicial economy, the Court finds that it is practical to have only one open cause number for the case in dispute.

IT IS, THEREFORE, **ORDERED, ADJUDGED AND DECREED** by the Court that, while retaining jurisdiction over the case, the clerk of the Court shall close both the aforementioned cause numbers and remove them from the active docket of pending cases assigned to this Court until further Order of the Court. Cause DC-10-11915 shall remain open.

So **ORDERED** this 6/11/2014



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The Honorable Carl Ginsberg  
193<sup>rd</sup> Judicial District Court

**N**

Pointer Tonya

**CAUSE NO. DC-10-11915**

<b>PRONSKE GOOLSBY &amp; KATHMAN, PC,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>- and -</b>	§	
	§	
<b>GARY G. LYON,</b>	§	
	§	
<b>Intervenor,</b>	§	
	§	
<b>v.</b>	§	<b>DALLAS COUNTY, TEXAS</b>
	§	
<b>JEFFREY BARON and EQUITY TRUST</b>	§	
<b>COMPANY f/k/a MID OHIO SECURITIES,</b>	§	
<b>custodian FBO IRA 19471,</b>	§	
	§	
<b>Defendants.</b>	§	<b>193RD JUDICIAL DIST. COURT</b>

**GARY G LYON’S PLEA IN INTERVENTION**

COMES NOW, GARY G. LYON (“Gary G. Lyon” or “Intervenor”), Intervenor in the above-styled and numbered cause, and pursuant to Rules 60 and 61 of the Texas Rules of Civil Procedure files this Plea in Intervention against Jeffrey Baron, as the Beneficiary of Equity Trust Company FBO IRA 19471 and against Equity Trust Company f/k/a Mid Ohio Securities, Custodian FBO IRA 19471 (“Equity Trust”) seeking actual damages for unpaid attorneys’ fees and expenses incurred by Gary G. Lyon during its representation of the Defendant, Jeffrey Baron. In addition, Intervenor seeks the recovery of attorneys’ fees, recoverable court costs, and statutory and contractual interest. In support, Intervenor respectfully shows the Court the following:

### **I. DISCOVERY CONTROL PLAN DESIGNATION**

1. Plaintiff has previously requested that a Level 3 Discovery Control Plan govern this action under Rule 190.3 of the Texas Rules of Civil Procedure. Gary G. Lyon agrees with this request.

### **II. RULE 47 DESIGNATIONS**

2. In accordance with Rule 47(b) of the Texas Rules of Civil Procedure, Intervenor seeks damages in an amount within the jurisdictional limits of this Court. In accordance with Rule 47(c) of the Texas Rules of Civil Procedure, Intervenor seeks monetary relief of more than \$250,000. This amount is inclusive of all damages of any kind including penalties, costs, expenses, pre-judgment interest and attorneys' fees.

### **III. THE PARTIES**

3. Plaintiff Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, PC, is a Texas professional corporation with its principal place of business in Dallas, Texas. Plaintiff has appeared in this lawsuit, and may be served through its attorney Gerrit M. Pronske at 2200 Ross Avenue, Suite 350, Dallas, Texas 75201.

4. Intervenor, GARY G. LYON, is an Oklahoma and United States District Court for the Northern District of Texas licensed and admitted lawyer practicing law with his principal place of business in McKinney, Texas. Intervenor may be served at 6401 W. Eldorado Parkway, Suite 234, McKinney, Texas 75070.

5. Jeff Baron is a resident of Dallas County, Texas and may be served with process and citation at his home address of Unit 106, 2200 Trinity Mills Road, Carrollton, Texas 75006, or wherever he may be found.

6. Equity Trust Company f/k/a Mid Ohio Securities, the custodian for the benefit of IRA 19471, is a foreign corporation formed under the laws of the State of South Dakota, with its primary place of business at 225 Burns Road, Elyria, Ohio 44035. It may be served with process and citation through its registered agent, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

#### **IV. JURISDICTION, VENUE, AND BASIS FOR INTERVENTION**

7. Subject-matter jurisdiction is proper in this Court because the amount in controversy exceeds the minimum jurisdictional threshold of this Court.

8. The Court has personal jurisdiction over Defendant because Defendant is a Texas resident and the acts complained of were committed by Defendant in Dallas County, Texas.

9. Venue is proper in Dallas County Texas in accordance with TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) because all or a substantial part of the acts or omissions giving rise to the claims in this lawsuit occurred in Dallas County Texas.

10. This Plea in Intervention is permitted as a matter of right under Rule 60. Intervenor has a justiciable interest, because Intervenor seeks relief nearly identical in nature to the relief sought by Plaintiff, and had Plaintiff not initiated this action as the sole plaintiff, Intervenor would have been entitled to recover in its own name to the extent at least of a part of the relief sought. Specifically, Plaintiff has sought and obtained a pre-judgment garnishment of certain assets of Baron and/or his IRA account at Equity Trust Company, and Intervenor has an interest in recovering amounts owed to Intervenor from the same limited source of funds, especially given Baron's past attempts to shelter assets from judgment through the use of offshore trusts and fraudulent IRA accounts. This intervention will not complicate the case by an

excessive multiplication of the issues, since Plaintiff has already plead (and will be required to prove) a pattern of abuse by Baron in the hiring and firing of attorneys.

#### **V. FACTS APPLICABLE TO ALL COUNTS**

11. Jeffrey Baron is a vexatious litigant with an extensive history of hiring lawyers and then refusing to pay them. Baron, both individually and on behalf of his IRA at Equity Trust, hired Gary G. Lyon on or about April 23, 2010 to represent him in a bankruptcy pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, *In re Ondova Limited Company, Case No. 09-34784 sgj-11* and in federal court litigation pending the United States District Court for the Northern District of Texas, Dallas Division, *Netsphere, Inc., Manila Industries, Inc., and Munish Krishan versus Jeffrey Baron and Ondova Limited Company, Case No. 3-09-CV-988-F*. Gary G. Lyon was at least the twelfth lawyer to make an appearance on behalf of Baron and/or Ondova Limited Company in those cases.

12. The written engagement agreement between Baron and Gary G. Lyon provided that Gary G. Lyon was to be paid a reduced hourly rate for all time spent on the engagement at \$40 per hour based upon the represented poverty nature of Baron.

13. When Gary G. Lyon made its first appearance in the case, this Court was already concerned about Baron's vexatious litigation tactics – which included the frequent hiring and firing of attorneys, and Baron's lack of candor with the Court. Gary G. Lyon worked hand in hand with Baron to convince the Court that such conduct would stop, at least in this case. Gary G. Lyon then made significant strides towards prosecuting Baron's claims, and assisted in obtaining a global settlement of all issues as to Baron and Baron related entities.

14. During the course of Gary G. Lyon's representation, the work performed was extensive. Gary G. Lyon accomplished the following tasks: (1) handled all matters of appearance

before the United States Bankruptcy Court; and (2) handled all matters of guidance and direction of The Village Trust and working with the Protector and Trustee. This work was integral in reducing the possible litigation exposure between Baron and a number of adversaries.

15. Beginning in early 2010, the bankruptcy court ordered the parties to the bankruptcy to enter into settlement negotiations to resolve the wide-ranging disputes between the Krishans, Baron, and their related companies. Pronske and subsequently in addition, Gary G. Lyon represented Baron during those detailed and lengthy negotiations.

16. Baron entered into a global settlement of his disputes with the Krishans which included the settlement of all pending litigation, said settlement agreement being approved by the bankruptcy court on July 27, 2010.

17. After agreeing to the global settlement Gary G. Lyon continued to notify Baron of fees outstanding. Baron responded by informed Gary G. Lyon that he had hired several new lawyers, Martin Thomas and Stan Broome, and demanding that all files be turned over to him. Mr. Thomas refused Gary G. Lyon's requests for payment.

18. Following that refusal of payment, Gary G. Lyon sought to remove himself from representation of Baron based upon that refusal and that he had wholly refused to fully pay a number of counsel who had performed legitimate and beneficial work on his behalf. This refusal even continued when Baron retained more lawyers tasked with the goal of removing assets from the jurisdiction of the United States courts, sparking a long and tortured dispute in the federal courts. After the appointment of a receiver over Baron and his companies, the federal court and the receiver fought through more of Baron's vexatious litigation tactics attempting to resolve and dispense with all disputes. During the course of those proceedings, Gary G. Lyon offered a compromise settlement on its fees, in the amount of \$75,922.22, based on the billable value of

the time spent on the file. The federal court held hearings on the reasonableness of this proposed settlement (and all other attorneys' fees claims asserted by Baron's 26 other former lawyers identified in those proceedings). The federal court ruled that the \$75,922.22 amount was reasonable and necessary. Yet Baron continued to oppose payment of the amount owed and to block the receiver from making the court ordered payment. Eventually, Baron was able to overturn the receivership on appeal, which ended any attempt by the federal court to facilitate the payment of Baron's lawyers.

19. At the time of Baron's breach of the agreement, Gary G. Lyon was owed over \$75,000 in billable fees and expenses.

20. Subsequently, Gary G. Lyon has had to expend time and money to continue to seek to be paid and has also had to retain another lawyer to pursue Baron, activity consisting of tracking all litigation in the Federal Court that affects the claim of Gary G. Lyon and further, joining in an adversary proceeding against Baron to attempt to collect the amounts due and owing. To date, Gary G. Lyon has had to expend time in the amount of at least 545.75 hours in the approximate four years since breach, totaling at least \$218,300 in consequential damages.

21. As of the filing of this lawsuit, Baron and/or his IRA owe Gary G. Lyon the net total amount over \$225,000.00 for the attorney's services, exclusive of pre-judgment interest, post judgment interest, attorneys' fees, and costs of collection.

## **VI. CLAIMS**

### **COUNT ONE: BREACH OF CONTRACT.**

22. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

23. As set forth above, Defendant entered into a contract with Intervenor, performable in Dallas County, Texas, whereby Intervenor was to perform legal services on behalf of Baron in the Federal and Bankruptcy Court relating to all Litigation. Intervenor performed, tendered performance of, or was excused from performing its contractual obligations.

24. While representing Defendant in the Federal Court and in the Bankruptcy Court Litigation, Gary G. Lyon duly performed valuable legal services for Defendant under the parties' contract and as requested and approved by Defendant. For these legal services, Gary G. Lyon charged Defendant a substantially reduced rate, which fee rate Defendant agreed to in writing prior to the services being rendered that he requested based upon alleged indigency. Defendant knew, prior to and while Gary G. Lyon was rendering these valuable legal services, that Gary G. Lyon expected Defendant to compensate Gary G. Lyon for these services.

25. For these services, Gary G. Lyon timely presented invoices to Defendant stating the nature of the services rendered, the nature of the expenses and other charges incurred, and the total amount due under each invoice. Defendant routinely hesitated and/or refused to remit payment for legal services and expenses under certain invoices, Defendant has refused to pay the remaining invoices for legal services rendered and refused to pay the remaining fees due.

26. Gary G. Lyon provided and duly performed valuable legal services at Defendant's request and all together complied with all material terms of the agreement with Defendant. Despite multiple demands, Defendant has failed to pay for the services and is in breach of its contractual agreement and legal obligations to Gary G. Lyon.

27. Despite timely and proper demand presenting its claim for payment, as of the date of this lawsuit, the claim has not been paid or satisfied.

28. All conditions precedent have been performed, have occurred, or have been waived.

29. As a direct and proximate result of Defendant's breach of the agreements made the basis of this lawsuit, Intervenor has suffered and sustained substantial injury for which it seeks appropriate judicial relief including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, and attorneys' fees in a sum within the jurisdictional limits of the Court.

**COUNT TWO: QUANTUM MERUIT.**

30. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

31. In the alternative and/or in addition to Intervenor's breach of contract claim, Intervenor seeks damages from Defendant in quantum meruit. As set forth above, Intervenor provided Defendant with valuable legal services. These services were valuable, and Defendant accepted the services under circumstances in which Defendant knew or should have realized that Intervenor expected to be paid for the services.

32. Defendant's refusal to pay the balance due and owing for the services provided to Defendant by Intervenor entitles Intervenor to recover from Defendant in quantum meruit.

**COUNT THREE: PROMISSORY ESTOPPEL.**

33. Intervenor incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

34. In the alternative and/or in addition to Intervenor's breach of contract claim, through Defendant's conduct and oral representations, Defendant promised, among other

material promises, that Defendant would timely compensate Intervenor for the valuable legal services provided.

35. Intervenor reasonably and substantially relied on the promises described herein to its detriment. Injustice can be avoided only by enforcing Defendant's promises.

36. In reliance on these promises, Intervenor has sustained substantial injury for which it seeks appropriate judicial relief including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, costs of court, attorneys' fees, and exemplary damages in a sum within the jurisdictional limits of the Court.

#### **COUNT FOUR: UNJUST ENRICHMENT.**

37. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

38. In the alternative and/or in addition to Intervenor's breach of contract claim, Intervenor seeks damages from Defendant under the equitable theory of unjust enrichment.

39. Defendant has knowingly, unduly benefitted from its failure to pay Intervenor for valuable legal services sold and rendered to Defendant.

40. Defendant's actions were unjust, to the detriment of Intervenor, and were the cause of substantial damages to Intervenor, for which Intervenor seeks restitution from Defendant.

41. Intervenor has performed all conditions precedent to bring this action for unjust enrichment.

#### **COUNT FIVE: THEFT OF SERVICES.**

42. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

43. At the request of Baron, Gary G. Lyon provided legal services to Baron and his related entities.

44. Baron agreed to pay Gary G. Lyon individually and through his trust account pursuant to the terms of the engagement agreement.

45. Gary G. Lyon provided legal services to Baron and his related entities as requested.

46. Baron knew that the services were being provided by Gary G. Lyon for compensation.

47. To date, notwithstanding the demands of Gary G. Lyon, Baron has failed and refused, and continues to fail and refuse, to pay Gary G. Lyon for the services rendered.

48. Baron intended to avoid payment for the services rendered by Gary G. Lyon by:

- a. Intentionally or knowingly securing the performance of the service by deception or false token; and by
- b. Intentionally or knowingly securing the performance of a service by agreeing to provide compensation and, after the service was rendered, failing to make payment after receiving notice demanding payment.

49. As a result of Baron's theft of service, Baron has proximately caused actual damages to Gary G. Lyon in the approximate amount of \$225,000.00 in billable fees and expenses, plus consequential damages and prejudgment and post-judgment interest as allowed by law.

50. Gary G. Lyon is entitled to exemplary damages for Baron's willful acts. *See* Tex. Civ. Prac. & Rem. Code §41.008(c). Baron has an extensive history of utilizing services of attorneys and either 1) discharging the attorneys when a bill is presented or, 2) not paying the

attorneys when bills are presented, causing such attorneys to cease representation. There are currently no less than 6 lawsuits pending against Baron by law firms. Gary G. Lyon is aware of others that will likely be filed by lawyers whose services Baron has stolen. The bankruptcy schedules of Ondova Limited Company, which was controlled by Baron, shows a “laundry list” of attorneys that Baron purposefully did not pay, but whose services he used until the attorneys realized that he had no intention of paying them. In each instance of intentional non-payment of attorneys, Baron fails to complain about the services until the “free” work has ceased, and then, when a bill is presented, alleges malpractice, breach of fiduciary duty, failure of the attorney to properly discharge duties of engagement and/or alleges a bar complaint. Baron has learned that many law firms “go away” and do not sue for compensation once a malpractice claim has been asserted. Additionally, these attorneys believe and come to know that Baron has hidden all of his assets in an offshore trust (the Village Trust) in the Cook Islands, a country that has no treaty with the United States that permits United States litigants to sue Cook Island entities. Discouraged, most of these attorneys do not waste further legal time and expense pursuing Baron. There have been between 25 and 53 recent instances of Baron using attorneys and not paying them. This long list of unpaid lawyers has one common denominator – Jeffrey Baron. By engaging in theft of services, Baron has “saved” himself over \$5.2 million in attorneys’ fees and expenses at the expense of the attorneys from whom services have been stolen. Without punitive damages, Baron will be encouraged in the future to steal from other attorneys. Damages awarded for felony theft in the third degree or higher under Texas Penal Code Chapter 31 are exempt from the cap on exemplary damages. See Tex. Civ. Prac. & Rem Code 41.008(b), (c)(13); *Cooper v. Sony Music Entertainment Inc.*, No. 01-0941 (S.D. Tex. 2002) (no pub.; 2-02-02).

51. Gary G. Lyon requests this Court to award exemplary damages in an amount of no less than \$400,000.00 against Baron.

#### **VII. ATTORNEYS' FEES AND COSTS OF COURT**

52. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

53. In accordance with Texas Business and Commerce Code §38.001, and any other applicable statutory provisions, Intervenor seeks and is entitled to recover its reasonable and necessary attorneys' fees and costs in pursuing this action in accordance. Intervenor further seeks its reasonable and necessary attorneys' fees and costs under the general principals of equity and the Court's inherent equitable power because such an award would be equitable and just.

54. All conditions precedent have been performed, have occurred, or have been waived.

#### **VIII. STATUTORY AND CONTRACTUAL INTEREST**

55. Intervenor hereby incorporates and realleges the matters set forth in the preceding paragraphs as if set forth at length.

56. Intervenor has suffered additional damages because Defendant has had use of the sums owed to Intervenor since the dates that the amounts were due. Intervenor is entitled to interest on each component of the entire sum claimed, at the rate set forth in the engagement agreement and/or the statutory interest rate, together with post-judgment interest, as allowed by law.

#### **IX. PRAYER FOR RELIEF**

FOR THESE REASONS, Intervenor GARY G. LYON prays for judgment against Defendant Jeffrey Baron and Equity Trust Company f/k/a Mid Ohio Securities, custodian for the Benefit of IRA 19471, providing for the following relief:

1. An award of Intervenor's actual and special damages as pleaded herein, and all compensatory, consequential, and economic damages within the jurisdictional limits of the Court;
2. Intervenor's reasonable attorneys' fees;
3. Intervenor's costs of Court;
4. Pre-judgment and post-judgment interest at the highest rate(s) allowed by law; and
5. Such other and further relief, at law or in equity, to which Intervenor may be entitled and which this Court deems just and fair.

Respectfully submitted,

By: /s/ Jonathan B. Bailey  
Jonathan B. Bailey  
Texas Bar No. 24031712

**LAW OFFICE OF J B BAILEY**  
6401 W. Eldorado Parkway, Suite 234  
McKinney, Texas 75070  
Phone: 469.248.6430  
Fax: 469.521.7219  
Email: jbaileylaw@hotmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent to all parties or counsel of record listed below on July 3, 2014 as follows:

***Via Electronic Filing and Facsimile 214.658.6509***

Gerrit M. Pronske  
Melanie P. Goolsby  
PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201

***Via Electronic Filing and Facsimile 214.855.2871***

Alan L. Busch  
Christopher M. Albert  
BUSCH RUOTOLO & SIMPSON LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201

***Via Electronic Filing and Facsimile 972.770.2156***

Mark Stromberg  
STROMBERG STOCK, PLLC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, Texas 75240

***Via Electronic Filing and Facsimile 713.868.1267***

Leonard Simon  
PENDERGRAFT & SIMON LLP  
The Riviana Building  
2777 Allen Parkway, Suite 800  
Houston, Texas 77019

***Via Electronic Filing and Facsimile 214.239.8901***

Mark L. Taylor  
Meredith Matthews  
POWERS TAYLOR LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575  
Dallas, Texas 75206

*/s/ Jonathan B Bailey*

Jonathan B Bailey

0



CHRISTOPHER M. ALBERT  
Attorney at Law  
albert@buschllp.com

August 18, 2014

Via Facsimile: (214) 658-6509

Gerrit M. Pronske  
PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201

Via Facsimile: (496) 521-7219

Jonathan B. Bailey  
LAW OFFICE OF J B BAILEY  
6401 W. Eldorado Parkway, Suite 234  
McKinney, Texas 75070

Via Facsimile: (713) 980-1179

Leonard H. Simon  
PENDERGRAFT & SIMON, LLP  
The Riviana Building, Suite 800  
2777 Allen Parkway  
Houston, Texas 77019

Via Facsimile: (214) 239-8900

Mark L. Taylor  
POWERSTAYLOR LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575  
Dallas, Texas 75206

Via E-Mail: glyon.attorney@gmail.com

Gary Lyon

Re: *Cause No. DC-10-11915; Jeff Baron v. Gerrit M. Pronske et al.; and  
Pronske Goolsby & Kathman, PC v. Jeffrey Baron;  
In the 193<sup>rd</sup> Judicial District Court of Dallas County Texas*

Dear Counsel:

Please be advised that Busch Ruotolo & Simpson, LLP's and Stromberg Stock, PLLC's Motion for Summary Judgment will be heard in the 193<sup>rd</sup> District Court of Dallas County, Texas, on September 22, 2014, at 1:30 p.m.

Please do not hesitate to contact our office should you have any questions.

Sincerely yours,

Kevin E. Perry  
Paralegal

/kep

cc: Mark Stromberg (via e-mail)  
Clerk, 193<sup>rd</sup> District Court (via e-filing)

Busch Ruotolo & Simpson, LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201  
(o) 214 855 2880  
(f) 214 855 2871  
toll-free 1 855 855 2880

buschllp.com

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Gerrit Pronske  
 Leonard Simon  
 Jonathan Bailey  
 Mark Taylor

ERROR -----

## BUSCH RUOTOLO & SIMPSON LLP

### FACSIMILE COVER SHEET

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DATED: August 18, 2014

FROM: Christopher M. Albert

TO: Gerrit M. Pronske (214) 658-6509  
 PRONSKE GOOLSBY & KATHMAN, P.C.

Leonard H. Simon (713) 980-1179  
 PENDERGRAFT & SIMON, LLP

Jonathan B. Bailey (496) 521-7219  
 LAW OFFICE OF J B BAILEY

Mark L. Taylor (214) 239-8901  
 POWERS TAYLOR LLP

RE: Cause No. DC-10-11915; *Jeff Baron v. Gerrit M. Pronske et al.*; and  
*Pronske Goolsby & Kathman, PC v. Jeffrey Baron*; In the 193<sup>rd</sup> Judicial  
 District Court of Dallas County, Texas

COMMENTS: Please see attached correspondence regarding hearing on Busch Ruotolo  
 & Simpson, LLP's and Stromberg Stock, PLLC's Motion for Summary  
 Judgment set for September 22, 2014, at 1:30 p.m.

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If you do not receive all pages or if you have any difficulty receiving this transmission,  
 please contact Kevin Perry (214) 855-2880 as soon as possible.

P

**CAUSE NO. 10-11915**

JEFF BARON,	§	IN THE DISTRICT COURT,
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GERRIT M. PRONSKE, INDIVIDUALLY	§	
AND PRONSKE & PATEL, P.C.	§	
	§	193 <sup>rd</sup> JUDICIAL DISTRICT
Defendants.	§	

**PLAINTIFF'S MOTION TO STRIKE INTERVENTION**

COMES NOW Jeffrey Baron ("Baron"), and files *Plaintiff's Motion to Strike*

*Intervention* and would respectfully show the Court as follows:

1. On April 16, 2014, Bush Ruotolo & Simpson, LLP and Stromberg Stock, PLLC (Hereinafter "Intervenors") filed a Petition in Intervention.
2. As much as Defendants Pronske and PGK desire them to participate and complicate this proceeding, the Intervenors do not have standing to intervene. An intervening party must demonstrate a "justiciable interest" in the pending suit. *In re Union Carbine Corp.*, 273 S.W.3d 152, 155 (Tex. 2008); *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982); *Zeifman v. Michels*, 229 S.W.3d 460, 464 (Tex. App.-Austin 2007, pet. denied). The Intervenors have not and cannot do so.
3. The Texas Supreme Court explained the "justiciable interest" requirement: "Because intervention is allowed as a matter of right<sup>1</sup>, the "justiciable interest" requirement is of paramount importance: it defines the category of non-parties who may, without consultation with

<sup>1</sup> Texas Rule of Civil Procedure 60 provides that "[a]ny party may intervene by filing a pleading subject to being stricken out by the court for sufficient cause on the motion of any party."

or permission from the original parties or the court, interject their interests into a pending suit to which the intervenors have not been invited” *Union Carbide* at 154-55 (internal citations omitted) (emphasis added).

4. In *Union Carbide*, the Texas Supreme Court had an opportunity to examine an intervention similar to that of the Interveners in this case. In rejecting such intervention, the Court explained that disruptive interlopers are not entitled to intervene in a cause, keenly observing that “[t]he intervenor’s interest must be such that if the original action had never been commenced, and he had first brought it as the sole plaintiff, he would have been entitled to recover in his own name to the extent at least of a part of the relief sought” in the original suit. *Id.* quoting *King v. Olds*, 12 S.W. 65, 65 (Tex. 1888). “In other words, a party may intervene if the intervenor could have “brought the [pending] action, or any part thereof, in his own name.” *Id.*

5. Here, the Interveners are precisely the type of disruptive interlopers that the Supreme Court describes in *Union Carbide*<sup>2</sup>. The Interveners are entitled to bring their claims, provided that they can overcome the standard for bringing frivolous claims, in new actions; however, they are not entitled to disrupt and complicate this proceeding by intervening<sup>3</sup>

For the forgoing reasons, Plaintiff prays that the Court strike Interveners Petition in Intervention.

<sup>2</sup> “The justiciable interest requirement protects pending cases from having interlopers disrupt the proceeding. *Id.*

<sup>3</sup> Factors that a court may consider when faced with a motion to strike include whether the intervention will complicate the case by the “excessive multiplication of the issues” and whether the intervention is “almost essential to effectively protect the intervenor’s interest.” *Guaranty Fed Sav. Bank v. Horshoe Operating Co.*, 793 S.W.2d 652, 657; see *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 72 (Tex. App.-Fort Worth 2003, no pet.) (court may consider “other avenues available” to protect intervenor’s interest when determining whether intervention “almost essential”).

/s/ Leonard Simon

Leonard H. Simon, Esq

TBN: 18387400; SDOT: 8200

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 737-8207 – (Direct)

(832) 202-2810 – (Direct Fax)

Email: [lsimon@pendergraftsimon.com](mailto:lsimon@pendergraftsimon.com)

**ATTORNEY IN CHARGE FOR**

**JEFFREY BARON**

OF COUNSEL:

William P. Haddock, Esq.

Texas Bar No. 00793875

Email: [whaddock@pendergraftsimon.com](mailto:whaddock@pendergraftsimon.com)

PENDGRAFT & SIMON

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 528-8555 – (Main)

(713) 868-1267 – (Main Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2014 I served the above and foregoing by email and by electronically filing the foregoing with the Clerk of the Court using the Court's electronic filing system, which will send notification of such filing to:

Gerrit M. Pronske  
PRONSKE, GOOLSBY & KATHMAN, P.C.  
2200 Ross Avenue, Suite 5350  
Dallas, TX 75201  
Email: [gpronske@pgkpc.com](mailto:gpronske@pgkpc.com)

Alan L. Busch  
Christopher M. Albert  
Busch Ruotolo & Simpson LLP  
100 Crescent Court, Suite 250  
Dallas, TX 75201  
Email: [busch@buschllp.com](mailto:busch@buschllp.com)  
Email: [albert@buschllp.com](mailto:albert@buschllp.com)

Mark Stromberg  
Stromberg Stock, PLLC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
Email: [mark@strombergstock.com](mailto:mark@strombergstock.com)

Jonathan B. Bailey  
Law Office of J B Bailey  
6401 W. Eldorado Parkway, Suite 234  
McKinney, TX 75070  
Email: [jbaileylaw@hotmail.com](mailto:jbaileylaw@hotmail.com)

Mark L. Taylor  
Powers Taylor LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575  
Dallas, TX 75206  
Email: [mark@powerstaylor.com](mailto:mark@powerstaylor.com)

Gary Lyon  
Email: [glyon.attorney@gmail.com](mailto:glyon.attorney@gmail.com)

*/s/ Leonard H. Simon*

Q



and

JEFFREY BARON,

*Defendant.*

§  
§  
§  
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§  
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**BUSCH RUOTOLO & SIMPSON, LLP’S AND STROMBERG STOCK, PLLC’S  
RESPONSE TO PLAINTIFF’S MOTION TO STRIKE INTERVENTION**

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TO THE HONORABLE COURT:

Busch Ruotolo & Simpson, LLP<sup>1</sup> (“Busch”) and Stromberg Stock, PLLC<sup>2</sup> (“Stromberg”) (collectively “Intervenors”), files this response to *Plaintiff’s Motion to Strike Intervention*, and would show the Court the following:

I.  
INTRODUCTION

1. The Intervenors would direct the Court’s attention to their Petition in Intervention for a recitation of the background facts of this case.

2. Further, the Intervenors would direct the Court’s attention that this intervention was filed in a case<sup>3</sup> that was consolidated into this matter,<sup>4</sup> along with a garnishment action,<sup>5</sup> both of which were filed by Pronske Goolsby Kathman, P.C.

3. The Intervenors filed their Petition in Intervention on April 16, 2014, in original Cause No. DC-14-02619. It was on June 11, 2014, that Jeffrey Baron in Cause No. DC-10-11915 filed an *Unopposed Motion to Transfer Related Case to This Court*, almost two months after the filing of the Intervenors’ Petition. No notice of this motion to transfer, which

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<sup>1</sup> The term “Busch Ruotolo & Simpson, LLP” includes attorneys Alan L. Busch and Christopher M. Albert.

<sup>2</sup> The term “Stromberg Stock, PLLC” includes attorney Mark Stromberg.

<sup>3</sup> See *Pronske Goolsby & Kathman, PC v. Jeffrey Baron*, originally Cause No. DC-14-02619, filed in the 68<sup>th</sup> District Court.

<sup>4</sup> See *Agreed Order to Transfer to Consolidate Related Cases to This Court*.

<sup>5</sup> See *Pronske Goolsby & Kathman, PC v. Jeffrey Baron*, originally Cause No. DC-14-02622, filed in the 68<sup>th</sup> District Court.

culminated in the order consolidating the three aforementioned cases, was ever served upon the Intervenor. It was only by happenstance that in reviewing the online case docket in Cause No. DC-14-2619 about five days after the consolidation order was signed that the Intervenor discovered that this transfer and consolidation took place.

4. Approximately two months after the transfer and consolidation – four months after the filing of the petition in intervention – Jeffrey Baron filed his Motion to Strike in his capacity as Plaintiff in Cause No. 10-11915. This occurred soon after the Intervenor filed their Motion for Summary Judgment against Jeffrey Baron under the consolidated cause number, but under the caption of original Cause No. DC-14-02619.

## II.

### AUTHORITIES AND ARGUMENT

5. In his motion to strike, Jeffrey Baron argues that (a) the Intervenor do not have a “justiciable interest” in the original action, and (b) that the Intervenor’s claims would be disruptive and would complicate this proceeding.<sup>6</sup>

6. Texas Rule of Civil Procedure 60 provides that “any party may intervene by filing a pleading subject to being stricken out by the court for sufficient cause on the motion of any party.” The rule authorizes a party with a justiciable interest in a pending suit to intervene in the suit as a matter of right. *In re Union Carbide Corp.*, 273 S.W.3d 152, 154 (Tex. 2008) (quoting *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990)).

7. The Petition in Intervention was filed in the lawsuit filed by Pronske Goolsby & Kathman, P.C. (“Pronske Goolsby”), against Jeffrey Baron for the collection of attorneys’ fees owed by Jeffrey Baron to them for work originating out of a bankruptcy case. Pronske Goolsby

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<sup>6</sup> Plaintiff’s Motion to Strike Intervention at pp. 1 – 2.

had also filed an associated garnishment action to collect the funds from Jeffrey Baron.<sup>7</sup> The basis of the Intervenor's petition was almost identical to that of Pronske Goolsby: The collection of attorneys' fees for work owed by Jeffrey Baron for work originating out of a bankruptcy case. While the basis of the lawsuit brought by Jeffrey Baron in Cause No. DC-10-11915 may, *arguendo*, be different from the basis of the Intervenor's petition, it was Jeffrey Baron who successfully moved this Court to have original Cause No. DC-14-02619 (along with the Intervenor) to this Court and the consolidation of the cases. It would be inequitable for Jeffrey Baron to move for consolidation and then profit from the same in a motion to strike.

8. Jeffrey Baron makes the assertion that somehow the Intervenor's claims would be disruptive of this case. Both Pronske Goolsby and the Intervenor have brought simple claims for unpaid attorneys' fees. On August 25, 2014, this Court heard Pronske Goolsby's motion for summary judgment in this cause. The Court granted Pronske Goolsby summary judgment on its claims against Jeffrey Baron. This resolution greatly simplifies the remaining issues in the consolidated lawsuits, essentially leaving the Intervenor's cause of action against Jeffrey Baron as perhaps the only remaining live pleading. Certainly, based upon the Intervenor's pleadings and their motion for summary judgment, this is not a frivolous claim nor are they "disruptive interlopers" as asserted by Jeffrey Baron. The intervention is almost essential to effectively protect the Intervenor's interest<sup>8</sup> because the funds garnished by Pronske Goolsby would disappear, or at the least, make the Intervenor's have to duplicate the efforts of Pronske Goolsby.

9. The Intervenor would also argue to the Court that it would be of great judicial economy to allow the Intervenor to proceed in this consolidated case. In his motion, Jeffrey Baron is really requesting that the Intervenor's case be severed, which contradicts his earlier

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<sup>7</sup> See fn. 7, *supra*.

<sup>8</sup> See *Guaranty Fed. Sav. Bank*, 793 S.W.2d at 657.

actions of getting these cases consolidated before this Court. How would the Court's time and resources to be benefitted by this action? Jeffrey Baron didn't have to consolidate the various cases, but he did. It could be easily assumed that his motive for doing so was for judicial economy. To sever the Intervenor from this consolidated matter, would only created additional time and expense to the parties. The Intervenor ask that the Court deny Jeffrey Baron's motion and proceed to hear the Intervenor's claims, their Motion for Summary Judgment against Jeffrey Baron to be heard by this Court on September 22, 2014.

III.  
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Intervenor respectfully request that the Court deny Jeffrey Baron's *Motion to Strike Intervention*, and such further relief, at law or in equity, to which they may be justly entitled.

Respectfully submitted,

*/s/ Christopher M. Albert*

Alan L. Busch  
State Bar No. 03491600  
*busch@buschllp.com*  
Christopher M. Albert  
State Bar No. 24008550  
*albert@buschllp.com*

BUSCH RUOTOLO & SIMPSON LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201  
Telephone: (214) 855-2880  
Facsimile: (214) 855-2871

*Attorneys for the Intervenor  
Busch Ruotolo & Simpson, LLP*

- and -

STROMBERG STOCK, PLLC

By: /s/ Mark Stromberg  
State Bar No. 19408830  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, Texas 75240  
Telephone: 972/458-5335  
Facsimile: 972/770-2156

*Attorneys for the Intervenor  
Stromberg Stock, PLLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon all counsel of record listed as below via e-mail as identified below on this 26<sup>th</sup> day of August, 2014:

Gerrit M. Pronske  
PRONSKE GOOLSBY & KATHMAN, PC  
2200 Ross Avenue, Suite 5350  
Dallas, Texas 75201  
E-mail: gpronske@pgkpc.com

Leonard H. Simon  
PENDERGRAFT & SIMON, LLP  
The Riviana Building, Suite 800  
2777 Allen Parkway  
Houston, Texas 77019  
E-mail: lsimon@pendergraftsimon.com

Mark L. Taylor  
POWERSTAYLOR LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575  
Dallas, Texas 75206  
Email: mark@powerstaylor.com

Jonathan B. Bailey  
LAW OFFICE OF J B BAILEY  
6401 W. Eldorado Parkway, Suite 234  
McKinney, Texas 75070  
E-mail: jbaileylaw@hotmail.com

Gary Lyon  
E-mail: glyon.attorney@gmail.com

*/s/ Christopher M. Albert*  
Christopher M. Albert

**R**

**CAUSE NO. 10-11915**

JEFF BARON,	§	IN THE DISTRICT COURT,
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GERRIT M. PRONSKE, INDIVIDUALLY	§	
AND PRONSKE & PATEL, P.C.	§	
	§	
Defendants.	§	193 <sup>rd</sup> JUDICIAL DISTRICT

**PLAINTIFF’S MOTION TO STRIKE INTERVENTION**

COMES NOW Jeffrey Baron (“Baron”), and files *Plaintiff’s Motion to Strike Pleas in Intervention of Lyon and Taylor* and would respectfully show the Court as follows:

1. On July 3, 2014, Gary Lyon (“Lyon”) filed a Plea in Intervention
  
2. On May 8, 2014, Powers Taylor, LLP (“Taylor”) filed a Plea in Intervention (Collectively, Lyon, Taylor are hereinafter referred to as the “Interveners”)
  
3. Gary Lyon is a client of Defendants Gerrit Pronske and PGK. Mr Lyon, not licensed by the state Bar of Texas, entered into a written contract with Mr. Baron to provide legal services in the state of Texas. In 2010, Mr. Lyon released all claims against Baron and executed an accord and satisfaction with Mr. Baron. Despite this agreement and release, Mr. Lyon made a fraudulent claim in the receivership action along with Defendants Pronske and PGK, falsely claiming \$\_\_\_\_\_ against Mr. Baron. After being rebuffed by the 5th Circuit Court of Appeals in December 2012, Mr. Lyon took his same fraudulent claim to the bankruptcy court, filing an involuntary bankruptcy petition against Baron. The petition was dismissed for lack of standing.

4. Taylor and Powers is a client of Defendants Gerrit Pronske and PGP. Taylor and Powers represented Baron in a civil action. Taylor and Powers have a written engagement agreement with Baron and have been paid in full in accordance with the agreement. Taylor and Powers sent Baron confirmation that they considered Baron to have fully complied with the agreement. After being solicited by Lyon and Pronske, Taylor made a groundless claim in the bankruptcy court and in the receivership action suddenly alleging an additional \$\_\_\_\_\_ in fees. After being rebuffed by the 5th Circuit Court of Appeals in December 2012, Taylor took his same groundless claim to the bankruptcy court, filing an involuntary bankruptcy petition against Baron. The petition, like his claim in the receivership was dismissed for lack of standing.

5. A suit is currently pending in the bankruptcy court against Mr. Lyon, Mr. Taylor and Mr. Pronske for attorney fees and damages resulting from their bad faith filing of the involuntary bankruptcy against Baron. Defendants Pronske and PGK represent Mr. Lyon and Mr. Taylor in the bankruptcy court suit.

6. As much as Defendants Pronske and PGK desire them to participate and complicate this proceeding, the Intervenors do not have standing to intervene. An intervening party must demonstrate a “justicable interest” in the pending suit. *In re Union Carbine Corp.*, 273 S.W.3d 152, 155 (Tex. 2008); *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982); *Zeifman v. Michels*, 229 S.W.3d 460, 464 (Tex. App.-Austin 2007, pet. denied). The Intervenors have not and cannot do so.

7. The Texas Supreme Court explained the "justiciable interest" requirement: "Because intervention is allowed as a matter of right<sup>1</sup>, the "justiciable interest" requirement is of paramount importance: it defines the category of non-parties who may, without consultation with or permission from the original parties or the court, interject their interests into a pending suit to which the intervenors have not been invited" *Union Carbide* at 154-55 (internal citations omitted) (emphasis added).

8. In *Union Carbide*, the Texas Supreme Court had an opportunity to examine an intervention similar to that of the Interveners in this case. In rejecting such intervention, the Court explained that disruptive interlopers are not entitled to intervene in a cause, keenly observing that "[t]he intervenor's interest must be such that if the original action had never been commenced, and he had first brought it as the sole plaintiff, he would have been entitled to recover in his own name to the extent at least of a part of the relief sought" in the original suit. *Id* quoting *King v. Olds*, 12 S.W. 65, 65 (Tex. 1888). "In other words, a party may intervene if the intervenor could have "brought the [pending] action, or any part thereof, in his own name." *Id* .

9. Here, the Interveners are precisely the type of disruptive interlopers that the Supreme Court describes in *Union Carbide*<sup>2</sup>. The Interveners are entitled to bring their claims, provided

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<sup>1</sup> Texas Rule of Civil Procedure 60 provides that "[a]ny party may intervene by filing a pleading subject to being stricken out by the court for sufficient cause on the motion of any party."

<sup>2</sup> "The justiciable interest requirement protects pending cases from having interlopers disrupt the proceeding. *Id*."

that they can overcome the standard for bringing frivolous claims, in new actions; however, they are not entitled to disrupt and complicate this proceeding by intervening<sup>3</sup>

For the forgoing reasons, Plaintiff prays that the Court strike Interveners Petition in Intervention.

/s/ Leonard Simon

Leonard H. Simon, Esq

TBN: 18387400; SDOT: 8200

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 737-8207 – (Direct)

(832) 202-2810 – (Direct Fax)

Email: [lsimon@pendergraftsimon.com](mailto:lsimon@pendergraftsimon.com)

**ATTORNEY IN CHARGE FOR**

**JEFFREY BARON**

OF COUNSEL:

William P. Haddock, Esq.

Texas Bar No. 00793875

Email: [whaddock@pendergraftsimon.com](mailto:whaddock@pendergraftsimon.com)

PENDGRAFT & SIMON

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 528-8555 – (Main)

(713) 868-1267 – (Main Fax)

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<sup>3</sup> Factors that a court may consider when faced with a motion to strike include whether the intervention will complicate the case by the "excessive multiplication of the issues" and whether the intervention is "almost essential to effectively protect the intervenor's interest." *Guaranty Fed Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657; see *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 72 (Tex. App.-Fort Worth 2003, no pet.) (court may consider "other avenues available" to protect intervenor's interest when determining whether intervention "almost essential").

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2014 I served the above and foregoing by email and by electronically filing the foregoing with the Clerk of the Court using the Court's electronic filing system, which will send notification of such filing to:

Gerrit M. Pronske  
PRONSKE, GOOLSBY & KATHMAN, P.C.  
2200 Ross Avenue  
Suite 5350  
Dallas, TX 75201  
Email: [gpronske@pgkpc.com](mailto:gpronske@pgkpc.com)

Mark Stromberg  
Stromberg Stock, PLLC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
Email: [mark@strombergstock.com](mailto:mark@strombergstock.com)

Mark L. Taylor  
Powers Taylor LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575

Alan L. Busch  
Christopher M. Albert  
Busch Ruotolo & Simpson LLP  
100 Crescent Court, Suite 250  
Dallas, TX 75201  
Email: [busch@buschllp.com](mailto:busch@buschllp.com)  
Email: [albert@buschllp.com](mailto:albert@buschllp.com)

Jonathan B. Bailey  
Law Office of J B Bailey  
6401 W. Eldorado Parkway, Suite 234  
McKinney, TX 75070  
Email: [jbaileylaw@hotmail.com](mailto:jbaileylaw@hotmail.com)

Gary Lyon  
Email: [glyon.attorney@gmail.com](mailto:glyon.attorney@gmail.com)

*/s/ Leonard H. Simon*

S



**T**



**CHRISTOPHER M. ALBERT**  
Attorney at Law  
*albert@buschllp.com*

August 29, 2014

The Honorable Carl Ginsburg  
193rd District Court  
George L. Allen, Sr. Courts Bldg.  
8th floor New Tower  
600 Commerce Street  
Dallas, Texas 75202

*Re: Motion to Strike Intervention – Post-Hearing Letter Brief  
Cause No. DC-10-11915  
Jeff Baron v. Gerrit M. Pronske et al.; and  
Pronske Goolsby & Kathman, PC v. Jeffrey Baron;  
In the 193<sup>rd</sup> Judicial District Court of Dallas County, Texas*

Dear Judge Ginsburg:

In follow-up to this morning's hearing before the Court on Plaintiff's Motion to Strike Intervention, the Intervenors think it necessary to clarify a few issues:

1. There was and is a significant overlap of Baron's claims with those of Pronske Goolsby on the one hand, and the Intervenors' on the other hand, in at least two important respects:
  - a. Two of Baron's claims in this case were abuse of process and malicious prosecution, both of which involved the involuntary case in which the Intervenors represented Baron and incurred the legal fees for which the Intervenors are now bringing suit (and where Pronske Goolsby represented the petitioning creditors).
  - b. Baron will no doubt argue that he is entitled to offset his claims for damages under 11 U.S.C. § 303(i), which includes the very fees which Intervenors have sought herein, from the now-reversed involuntary bankruptcy court order for relief against any recovery being sought by Pronske Goolsby. If Baron intends to claim those fees as damages and/or an offset, it would not be legally consistent or proper for him to do so without acknowledging them as owed to Intervenors.

Busch Ruotolo & Simpson, LLP  
100 Crescent Court, Suite 250  
Dallas, Texas 75201  
(o) 214 855 2880  
(f) 214 855 2871  
toll-free 1 855 855 2880

buschllp.com

The Honorable Carl Ginsburg  
193rd District Court  
August 29, 2014  
Page 2

2. More critically, because of potential questions concerning the rights to the garnished funds (whether because of defenses by Baron to the garnishment or because of competing claims to the funds), if the intervention were struck, and separate garnishments (potentially or likely in different courts, presumably over the same funds) by intervenors would not only waste judicial resources on funds already tied up, it would carry the serious risk of multiple, inconsistent results.
3. Ironically, the only way to avoid the risk of inconsistent results from separate garnishments in other courts - - which would be necessitated by the striking of the intervention - - would be to consolidate the claims in this Court. Procedurally, the posture would be no different than the posture of the case as it stands now. Furthermore, the overlap of claims/offsets by Baron with the Pronske claims, just as with multiple garnishments, the litigation in multiple courts of the Intervenors' claims on the one hand, and Baron's use of our claims as offsets on the other, triggers the risk of multiple and inconsistent results and judicial estoppels based on inconsistent positions being taken simultaneously before different tribunals, Pronske Goolsby, who filed the original garnishment suit and claimed an interest in the garnished funds, does not oppose the intervention – only Baron does.
4. As the Intervenors pointed out this morning, with Pronske Goolsby's claims (and Baron's defenses thereto) being disposed of by summary judgment or withdrawal, there is no possibility of confusing the issues at trial. Unless the Intervenors' motion for summary judgment is granted (such that there is no trial), the only issues to be tried would be those relating to the Intervenors' claims, such that, there would be no "disruption" or complication of the case by excessively multiplying issues and thus that *Union Carbide* concern would not apply.
5. The other *Union Carbide* concern, *i.e.*, use of intervention for "forum shopping", also does not pertain to this case. Baron's allusion to this concern is ironic given the procedural posture of this case. After all, the intervention was in the 68<sup>th</sup> District Court, and the case was consolidated by Baron into the 193<sup>rd</sup>; so he is not in the forum of our choosing, but in the forum of his choosing.
6. The intervention in the garnishment suit was justified because of the potential shared or competing interest in the garnished funds as between the garnishor (Pronske Goolsby) and the Intervenors. If intervention was justified in the underlying suit, it should not be stricken because Baron decided to consolidate the cases.

The Honorable Carl Ginsburg  
193rd District Court  
August 29, 2014  
Page 3

In summary, when you view the relation or overlap of Baron's claims involving the involuntary bankruptcy with the Intervenor's cause of action for breach of contract for legal services, along with all the intervenors shared or competing interests in the garnished funds, it is clear that Intervenor's have a justiciable interest in this matter. Given the Intervenor's justiciable interest in this matter, the risk of inconsistent results from separate garnishments, and Baron's claims or offsets with the Pronske claims, denying Baron's motion to strike the intervention could not possibly be an abuse of this Court's discretion.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "CMA", with a long horizontal flourish extending to the right.

Christopher M. Albert

CMA/kep

cc:

Leonard H. Simon (*Via Facsimile: (713) 980-1179*)  
Jonathan B. Bailey (*Via Facsimile: (496) 521-7219*)  
Gerrit M. Pronske (*Via Facsimile: (214) 658-6509*)  
Mark L. Taylor (*Via Facsimile: (214) 239-8900*)  
Gary Lyon (*Via E-Mail: glyon.attorney@gmail.com*)

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CAUSE NO. DC-10-11915

JEFF BARON,

Plaintiff,

v.

GERRIT M. PRONSKE,  
INDIVIDUALLY, AND PRONSKE,  
GOOLBY & KATHMAN, P.C. f/k/a  
PATEL, P.C.,

Defendants.

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IN THE DISTRICT COURT,

DALLAS COUNTY, TEXAS

193<sup>rd</sup> JUDICIAL DISTRICT

PRONSKE, GOOLSBY & KATHMAN,  
P.C., f/k/a PRONSKE & PATEL, P.C.,

Counter-Plaintiffs,

v.

JEFF BARON,

Counter-Defendant.

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*INTERLUDE*

**ORDER GRANTING AMENDED MOTION FOR SUMMARY JUDGMENT**

On August 25, 2014, came on for consideration Defendants' First Amended Motion for Summary Judgment (the "Motion") in this cause, and all parties appeared through their attorneys of record. The Court has considered the pleadings and official records on file in in this cause, the evidence (including each the affidavits (together with exhibits) attached to the motion and the response), and the arguments of counsel, and finds that there is no genuine issue about any material fact, and that Defendants/Counter Plaintiffs, Gerrit M. Pronske and Pronske Goolsby & Kathman, P.C. are entitled to judgment as a matter of law. It is accordingly

ORDERED that the Motion is hereby GRANTED; it is further

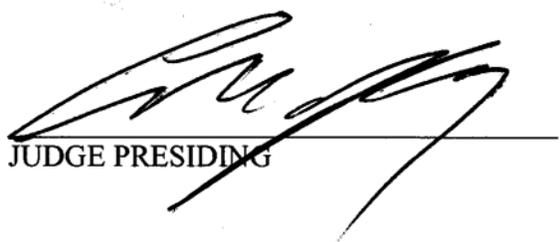
ORDERED that a Judgment shall be entered in this case shall providing that Jeffrey Baron, Plaintiff, recover nothing from Gerrit M. Pronske and Pronske Goolsby & Kathman, P.C., Defendants, on any of his causes of action filed in this case; it is further

ORDERED that the Judgment shall be entered in this case shall providing that Pronske Goolsby & Kathman, P.C., Counter-Plaintiffs, recover from Jeffrey Baron, Counter Defendant, Judgment for the following —

1. \$294,033.87 as the principal amount;
2. attorneys' fees and costs of court in an amount to be determined by subsequent Judgment pursuant to the procedures and terms specified in this Order;
3. exemplary damages in an amount to be determined by subsequent Judgment pursuant to the procedures and terms specified in this Order;
4. additional attorneys fees in the event of any appeals from the judgment to the Court of Appeal and/or the Texas Supreme Court in an amount to be determined by subsequent Judgment pursuant to the procedures and terms specified in this Order;
5. pre-judgment interest at the rate of five percent (5%) per annum running from November 30, 2012, the date of the entry of the Substantial Contribution Order in the bankruptcy case, through the date of the Judgment; and
6. post-judgment interest at the rate of five percent (5%) per annum on the total judgment from date of the Judgment until paid; it is further

~~ORDERED that Defendants/Counter Plaintiffs, Gerrit M. Pronske and Pronske Goolsby & Kathman, P.C., shall submit an affidavit proving their attorneys fees, costs of court, exemplary damages, additional attorneys fees for subsequent appeals, and pre-judgment interest related to this cause within ten (10) days of entry of this Order.~~

SIGNED August 28, 2014.

  
\_\_\_\_\_  
JUDGE PRESIDING

V

**CAUSE NO. DC 10-11915**

JEFF BARON,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GERRIT M. PRONSKE, INDIVIDUALLY	§	
AND PRONSKE & PATEL, P.C.	§	
	§	193 <sup>rd</sup> JUDICIAL DISTRICT
Defendants.	§	

**NOTICE OF HEARING**

Please be advised that Plaintiff’s Motion to Strike Intervention, filed on August 28, 2014, is set for oral hearing on Thursday, September 11, 2014 at 9:00 a.m. before the 193<sup>rd</sup> Judicial District Court of Dallas County, Texas, 600 Commerce St., 8<sup>th</sup> Floor New Tower, Dallas, Texas 75202.

Respectfully submitted,

/s/ Leonard Simon  
Leonard H. Simon, Esq  
TBN: 18387400; SDOT: 8200  
The Riviana Building  
2777 Allen Parkway, Suite 800  
Houston, Texas 77019  
(713) 737-8207 – (Direct)  
(832) 202-2810 – (Direct Fax)  
Email: lsimon@pendergraftsimon.com  
**ATTORNEY IN CHARGE FOR  
JEFFREY BARON**

OF COUNSEL:  
William P. Haddock, Esq.  
Texas Bar No. 00793875  
Email: whaddock@pendergraftsimon.com  
PENDGRAFT & SIMON  
The Riviana Building  
2777 Allen Parkway, Suite 800  
Houston, Texas 77019  
(713) 528-8555 – (Main)  
(713) 868-1267 – (Main Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2014 I served the above and foregoing by email and/or by electronically filing the foregoing with the Clerk of the Court using the Court's electronic filing system, which will send notification of such filing to:

Gerrit M. Pronske  
PRONSKE, GOOLSBY & KATHMAN, P.C.  
2200 Ross Avenue, Suite 5350  
Dallas, TX 75201  
Email: [gpronske@pgkpc.com](mailto:gpronske@pgkpc.com)

Alan L. Busch  
Christopher M. Albert  
Busch Ruotolo & Simpson LLP  
100 Crescent Court, Suite 250  
Dallas, TX 75201  
Email: [busch@buschllp.com](mailto:busch@buschllp.com)  
Email: [albert@buschllp.com](mailto:albert@buschllp.com)

Mark Stromberg  
Stromberg Stock, PLLC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
Email: [mark@strombergstock.com](mailto:mark@strombergstock.com)

Jonathan B. Bailey  
Law Office of J B Bailey  
6401 W. Eldoraado Parkway, Suite 234  
McKinney, TX 75070  
Email: [jbaileylaw@hotmail.com](mailto:jbaileylaw@hotmail.com)

Mark L. Taylor  
Powers Taylor LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575  
Dallas, TX 75206  
Email: [mark@powerstaylor.com](mailto:mark@powerstaylor.com)

Gary Lyon  
Email: [glyon.attorney@gmail.com](mailto:glyon.attorney@gmail.com)

*/s/ Leonard H. Simon*

W

CAUSE NO. 10-11915

JEFF BARON,

Plaintiff,

v.

GERRIT M. PRONSKE, INDIVIDUALLY  
AND PRONSKE & PATEL, P.C.

Defendants.

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IN THE DISTRICT COURT,

DALLAS COUNTY, TEXAS

193<sup>rd</sup> JUDICIAL DISTRICT

**PLAINTIFF’S EXPEDITED MOTION TO CONTINUE HEARING**

COMES NOW, Plaintiff and moves for a Continuance of hearing on Intervenor’s Motion for Summary Judgment.

1. On August 29, 2014, this Court denied Plaintiff’s Motion to Strike Intervention of Bush, Ruotolo and Simpson, LLP and Stromberg Stock (herinafter “Intervenors” ).
2. On August 18, 2014, this Court set Intervenor’s Motion for Summary Judgment for hearing on September 22, 2014 at 1:30 p.m.
3. In a case with nearly identical facts and circumstances , the Texas Supreme Court in *In re Union Carbine Corp.*, 273 S.W.3d 152, 155 (Tex. 2008) granted a petition for writ of mandamus at the request of the movant seeking to strike a petition in intervention. Similarly, Plaintiff is in the process of preparing a motion for writ of mandamus to the 5th District Court of Appeals (“5th District”) concerning the Court’s August 28 Order and moves this Court to continue the hearing on Intervenor’s Motion for Summary Judgment.
4. Plaintiff plans on filing his Petition for Writ of Mandamus to 5th District on Monday, September 8, 2014. If the Court determines Intervenor’s Motion for Summary Judgment before the Fifth District Court of Appeals has an opportunity to consider Plaintiff’s Petition for Writ of Mandamus, Plaintiff will be denied the opportunity to have its request for relief heard by the Court of Appeals.

5. Plaintiff brings this Motion in good faith and not solely for the purposes of delay, but that justice may be done.

6. WHEREFORE, Plaintiff respectfully requests this Honorable Court to Grant Plaintiff's Motion for a Continuance and to continue the hearing on Intervenor's Motion for Summary Judgment until such time that the 5th District determines Plaintiffs Petition for Writ of Mandamus.

/s/ Leonard Simon

Leonard H. Simon, Esq

TBN: 18387400; SDOT: 8200

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 737-8207 – (Direct)

(832) 202-2810 – (Direct Fax)

Email: [lsimon@pendergraftsimon.com](mailto:lsimon@pendergraftsimon.com)

**ATTORNEY IN CHARGE FOR**

**JEFFREY BARON**

OF COUNSEL:

William P. Haddock, Esq.

Texas Bar No. 00793875

Email: [whaddock@pendergraftsimon.com](mailto:whaddock@pendergraftsimon.com)

PENDGRAFT & SIMON

The Riviana Building

2777 Allen Parkway, Suite 800

Houston, Texas 77019

(713) 528-8555 – (Main)

(713) 868-1267 – (Main Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2014 I served the above and foregoing by email and by electronically filing the foregoing with the Clerk of the Court using the Court's electronic filing system, which will send notification of such filing to:

Gerrit M. Pronske  
PRONSKE, GOOLSBY & KATHMAN, P.C.  
2200 Ross Avenue  
Suite 5350  
Dallas, TX 75201  
Email: [gpronske@pgkpc.com](mailto:gpronske@pgkpc.com)

Mark Stromberg  
Stromberg Stock, PLLC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
Email: [mark@strombergstock.com](mailto:mark@strombergstock.com)

Mark L. Taylor  
Powers Taylor LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575  
Dallas, TX 75206  
Email: [mark@powerstaylor.com](mailto:mark@powerstaylor.com)

Alan L. Busch  
Christopher M. Albert  
Busch Ruotolo & Simpson LLP  
100 Crescent Court, Suite 250  
Dallas, TX 75201  
Email: [busch@buschllp.com](mailto:busch@buschllp.com)  
Email: [albert@buschllp.com](mailto:albert@buschllp.com)

Jonathan B. Bailey  
Law Office of J B Bailey  
6401 W. Eldorado Parkway, Suite 234  
McKinney, TX 75070  
Email: [jbaileylaw@hotmail.com](mailto:jbaileylaw@hotmail.com)

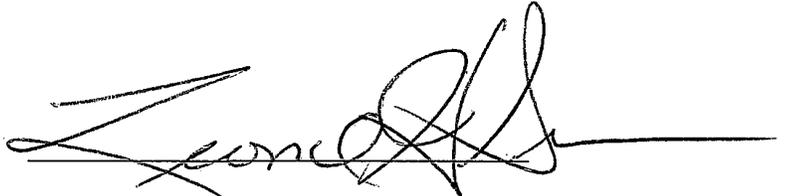
Gary Lyon  
Email: [glyon.attorney@gmail.com](mailto:glyon.attorney@gmail.com)

*/s/ Leonard H. Simon*

## Verification

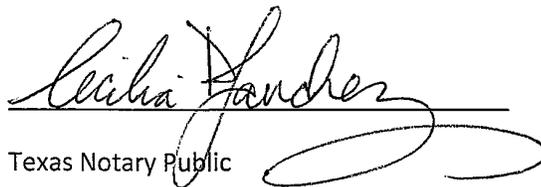
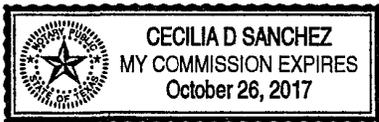
"My name is Leonard Simon. I am over 18 years of age, of sound mind, and have personal knowledge of the facts stated in Plaintiff's Motion to Continue Summary Judgment Hearing. I swear that the assertions therein are true and correct, and that I am fully competent to attest to them."

Signed on 09/04/2014.



Leonard Simon

Sworn and Subscribed on the 4<sup>th</sup> day of September, 2014.



Texas Notary Public

**X**

**CAUSE NO. DC 10-11915**

JEFF BARON,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
GERRIT M. PRONSKE, INDIVIDUALLY	§	
AND PRONSKE & PATEL, P.C.	§	
	§	193 <sup>rd</sup> JUDICIAL DISTRICT
Defendants.	§	

**NOTICE OF HEARING**

Please be advised that Plaintiff's Expedited Motion to Continue Hearing, filed on September 4, 2014, is set for oral hearing on Tuesday, September 9, 2014 at 9:30 a.m. before State Civil District Court Associate Judge, Honorable Monica McCoy Purdy, 600 Commerce St., 6<sup>th</sup> Floor West, Courtroom 6B, Dallas, Texas 75202.

Respectfully submitted,

/s/ Leonard Simon  
Leonard H. Simon, Esq  
TBN: 18387400; SDOT: 8200  
The Riviana Building  
2777 Allen Parkway, Suite 800  
Houston, Texas 77019  
(713) 737-8207 – (Direct)  
(832) 202-2810 – (Direct Fax)  
Email: lsimon@pendergraftsimon.com  
**ATTORNEY IN CHARGE FOR**  
**JEFFREY BARON**

OF COUNSEL:  
William P. Haddock, Esq.  
Texas Bar No. 00793875  
Email: whaddock@pendergraftsimon.com  
PENDGRAFT & SIMON  
The Riviana Building  
2777 Allen Parkway, Suite 800  
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Alan L. Busch  
Christopher M. Albert  
Busch Ruotolo & Simpson LLP  
100 Crescent Court, Suite 250  
Dallas, TX 75201  
Email: [busch@buschllp.com](mailto:busch@buschllp.com)  
Email: [albert@buschllp.com](mailto:albert@buschllp.com)

Mark Stromberg  
Stromberg Stock, PLLC  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
Email: [mark@strombergstock.com](mailto:mark@strombergstock.com)

Jonathan B. Bailey  
Law Office of J B Bailey  
6401 W. Eldorado Parkway, Suite 234  
McKinney, TX 75070  
Email: [jbaileylaw@hotmail.com](mailto:jbaileylaw@hotmail.com)

Mark L. Taylor  
Powers Taylor LLP  
Campbell Centre II  
8150 North Central Expressway, Suite 1575  
Dallas, TX 75206  
Email: [mark@powertaylor.com](mailto:mark@powertaylor.com)

Gary Lyon  
Email: [glyon.attorney@gmail.com](mailto:glyon.attorney@gmail.com)

/s/ Leonard H. Simon

**Y**

**IN THE SUPREME COURT OF TEXAS**

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Misc. Docket No. 14-**9023**

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**APPROVAL OF AMENDED LOCAL RULES FOR  
THE CIVIL COURTS OF DALLAS COUNTY**

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**ORDERED** that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following amended local rules for the Civil Courts of Dallas County.

Dated: January 15, 2014



Nathan L. Hecht, Chief Justice



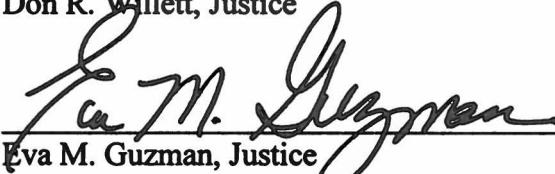
Paul W. Green, Justice



Phil Johnson, Justice



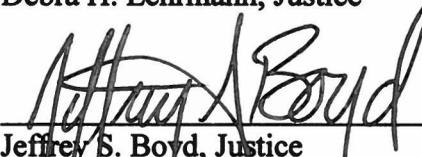
Don R. Willett, Justice



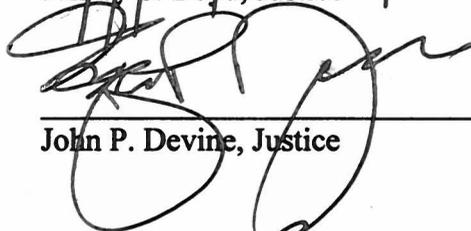
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

**LOCAL RULES of THE CIVIL COURTS OF DALLAS COUNTY, TEXAS--  
including revisions approved by the Texas Supreme Court**

**PART I - FILING, ASSIGNMENT AND TRANSFER**

- 1.01. RANDOM ASSIGNMENT
- 1.02. COLLATERAL ATTACK
- 1.03. ANCILLARY PROCEEDINGS (revised)
- 1.04. MOTION TO CONSOLIDATE
- 1.05. TRANSFER BY LOCAL ADMINISTRATIVE JUDGE
- 1.06. RELATED CASES
- 1.07. CASES SUBJECT TO TRANSFER (revised)
- 1.08. DISCLOSURE REGARDING CASES SUBJECT TO TRANSFER
- 1.09. SEVERANCE
- 1.10. SEVERANCE OF MULTIPLE PLAINTIFFS
- 1.11. TRANSFER OR APPEAL TO SPECIFIC DALLAS COURT INEFFECTIVE
- 1.12. PAYBACK OF TRANSFERRED CASES
- 1.13. SUGGESTION OF BANKRUPTCY

**PART II- MOTIONS AND DISCOVERY**

- 2.01. FILING WITH THE COURT IN EMERGENCY ONLY (revised)
- 2.02. APPLICATION FOR TRO AND OTHER EX PARTE ORDERS
- 2.03. JUDGMENTS AND DISMISSAL ORDERS
- 2.04. FILING OF PLEADINGS (revised)
- 2.05. SERVICE OF PAPERS FILED WITH THE COURT
- 2.06. UNCONTESTED OR AGREED MATTERS (revised)
- 2.07. CONFERENCE REQUIREMENT (revised)
- 2.08. SUBMISSION OF PROPOSED ORDERS BY COUNSEL (revised)
- 2.09. BRIEFS (revised)
- 2.10. DEFAULT PROVE-UPS
- 2.11. NOTICE OF HEARING (new)
- 2.12. EFFECT OF MOTION TO QUASH

**DEPOSITION PART III - TRIALS**

- 3.01. REQUESTS TO CONTINUE TRIAL DATE (revised)
- 3.02. ANNOUNCEMENTS FOR TRIAL
- 3.03. CONFLICTING ENGAGEMENTS OF COUNSEL
- 3.04. CARRYOVER CASES
- 3.05. COUNSEL TO BE AVAILABLE

**PART IV- ATTORNEYS**

- 4.01. ATTORNEY CONTACT INFORMATION (revised)
- 4.02. WITHDRAWAL OF COUNSEL

- 4.03. APPEARANCE OF ATTORNEYS NOT LICENSED IN TEXAS
- 4.04. VACATION LETTERS
- 4.05. SELF-REPRESENTED/PROSE LITIGANTS (revised)
- 4.06. GUARDIAN AD LITEM
- 4.07. LOCAL RULES AND DECORUM (revised)
- 4.08. PRO BONO MATTERS

#### **PART V- COUNTY COURT AT LAW MODIFICATIONS**

- 5.01. CLERK OF THE COURTS
- 5.02. RANDOM ASSIGNMENT
- 5.03. EMINENT DOMAIN CASES
- 5.04. COUNSEL TO APPEAR AT TRIAL

#### **PART VI-FAMILY, JUVENILE, CRIMINAL, & PROBATE COURTS**

- 6.01. RULES FOR OTHER COURTS

### **DALLAS CIVIL COURT RULES**

#### **PART I- FILING, ASSIGNMENT AND TRANSFER**

##### **1.01. RANDOM ASSIGNMENT**

All civil cases filed with the District Clerk shall be filed in the Civil District Courts in random order.

##### **1.02. COLLATERAL ATTACK**

Every proceeding seeking to attack, avoid, modify, or set aside any judgment, order or decree of a Civil Court of Dallas County shall be assigned to the Court in which such judgment, order or decree was rendered.

##### **1.03. ANCILLARY PROCEEDINGS (revised)**

Every proceeding ancillary to a civil action shall be assigned or transferred to the Court in which the suit to which the proceeding is ancillary is pending.

##### **1.04. MOTION TO CONSOLIDATE**

Every motion for consolidation or joint hearing of two or more cases under Texas Rules of Civil Procedure ("TRCP") Rule 174(a), shall be filed in the earliest case filed with notice to the later filed Court and all parties in each case.

##### **1.05. TRANSFER BY LOCAL ADMINISTRATIVE JUDGE**

The Local Administrative Judge may, upon request of a Court, transfer any case from that Court to any other Court having subject matter jurisdiction of the case. The selection of the transferee Court shall be by random or serial selection.

#### **1.06. RELATED CASES**

Whenever any pending case is so related to another case previously filed in or disposed of by another Court of Dallas County having subject matter jurisdiction that a transfer of the later case to such other Court would facilitate orderly and efficient disposition of the litigation, the Judge of the Court in which the earlier case is or was pending may, upon notice to all affected parties and Courts, transfer the later case to such Court.

#### **1.07. CASES SUBJECT TO TRANSFER (revised)**

Without limitation, the following types of cases shall be subject to transfer under Local Rule 1.06:

- a. Any case arising out of the same transaction or occurrence as an earlier case, particularly if the earlier case was dismissed by plaintiff before final judgment.
- b. Any case involving a plea that a judgment in the earlier case is conclusive of any of the issues of the later case by way of res judicata or estoppel by judgment, or any pleading that requires a construction of the earlier judgment or a determination of its effect.
- c. Any suit for declaratory judgment regarding the alleged duty of an insurer to provide a defense for a party to the earlier suit.
- d. Any suit concerning which the duty of an insurer to defend was involved in the earlier suit.
- e. Any application for approval of a transfer of structured settlement payment rights in which the original settlement pertained to a suit in a court of Dallas County, or in which a previous application involving the same transferor was filed in a court of Dallas County.

#### **1.08. DISCLOSURE REGARDING CASES SUBJECT TO TRANSFER**

The attorneys of record for the parties in any case within the categories of Local Rule 1.07 must notify the Judges of the respective Courts in which the earlier and later cases are assigned of the pendency of the later case. The attorney filing a case that is so related to another previously filed case shall disclose in the original pleading or in a separate simultaneous filing that the case is so related and identify by style, case number and Court the related case. If no such disclosure is made, the signature of the attorney filing the case on the original pleading shall be that attorney's certification that the case is not so related to another previously filed case. The attorney answering any filed case shall point out in the original defensive pleading or in a separate simultaneous filing any failure of the attorney filing the case to have made a proper and accurate disclosure. In the absence of any such plea, the signature of the attorney filing the original defensive pleading shall be that attorney's certificate either that the disclosure of the attorney filing the case was accurate, or, if no disclosure was made by the attorney filing the case, that the case is not so related to a prior filed or disposed of case.

#### **1.09. SEVERANCE**

Whenever a motion to sever is sustained, the severed claim shall be filed as a new case in

the same Court and shall be given the next number available at the filing desk in the office of the Clerk. Unless otherwise ordered, the Court assignment otherwise designated by that number shall be disregarded. Before the severed claim is assigned a new cause number, the attorney for plaintiff in the new cause shall meet the Clerk's requirement concerning deposit for costs.

#### **1.10. SEVERANCE OF MULTIPLE PLAINTIFFS**

If a single pending case with multiple plaintiffs includes causes of action that do not arise out of a common nucleus of operative facts, the Court may on its own motion or the motion of any party order that the claims be severed in accordance with Local Rule.

#### **1.11. TRANSFER OR APPEAL TO SPECIFIC DALLAS COURT INEFFECTIVE**

Whenever a case is transferred to Dallas County by a Court of another county, or is appealed, and the order of transfer or the appeal specifies the particular Court to which the case is transferred, such specification shall be disregarded and the case shall be assigned in the manner provided in Local Rule 1.01, and shall thereafter be subject to the provisions of this Part.

#### **1.12. PAYBACK OF TRANSFERRED CASES**

Any Court receiving a case transferred by judicial order may transfer a case of comparable age and complexity to the transferor Court.

#### **1.13. SUGGESTION OF BANKRUPTCY**

Any party to a pending case shall promptly notify the Court of the filing by any other party of a petition in bankruptcy. Such notice shall be made by filing a Suggestion of Bankruptcy with the clerk of the Court and serving copies on all counsel of record. The Suggestion of Bankruptcy shall be filed as soon as practicable, but in no event more than 20 days after a party receives notice of the filing of a petition in bankruptcy by any other party.

## **PART II - MOTIONS AND DISCOVERY**

### **2.01. FILING WITH THE COURT IN EMERGENCY ONLY (revised)**

a. Except in emergencies when the Clerk's office is not open for business, no application for immediate or temporary relief shall be presented to a Judge until it has been filed and assigned to a Court as provided in Local Rule 1.01.

b. Whenever immediate action of a Judge is required in an emergency when the Clerk's office is not open for business, the case shall nevertheless at the earliest practicable time be docketed and assigned to a Court as provided in Local Rule 1.01 and all writs and process shall be returnable to that Court. Any Judge taking such emergency action shall notify the Court in which such case is docketed at the earliest convenient and practical time.

### **2.02. APPLICATION FOR TRO AND OTHER EX PARTE ORDERS**

a) Counsel presenting any application for a temporary restraining order or other ex parte relief shall notify the opposing party's counsel, or the opposing party if unrepresented by counsel in the present controversy, and provide opposing counsel or party with a copy of the application and proposed order at least 2 hours before the application and proposed order are to be presented to the Court for decision, except as provided in subparagraph b) hereof.

b) Compliance with the provisions of subparagraph a) hereof is not required if a verified certificate of a party or a certificate of counsel is filed with the application,

1) That irreparable harm is imminent and there is insufficient time to notify the opposing party or counsel; or

2) That to notify the opposing party or counsel would impair or annul the court's power to grant relief because the subject matter of the application could be accomplished or property removed, secreted or destroyed, if notice were required.

c) Counsel presenting any application for a temporary restraining order shall at the time the application is presented further certify that to the best of counsel's knowledge, the case in which the application is presented is not subject to transfer under Local Rule 1.06. If the case is subject to transfer, counsel shall fully advise the Court of the circumstances, particularly as to whether there has been any previous application for the same or similar relief *or* whether the relief sought will conflict with any other previous order, and the Judge to whom the application is presented may decline to act and refer the application or the entire case to the Judge of the Court to which the earlier related case is assigned.

### **2.03. JUDGMENTS AND DISMISSAL ORDERS**

Within 30 days after the Court has announced a verdict or judgment or the Court receives a written announcement of settlement from either party or from a mediator, counsel shall submit to the Court a proposed judgment or dismissal order, unless ordered otherwise. Failure to so furnish the Court with such a proposed judgment or dismissal order will be interpreted to mean that counsel wish the Court to enter an Order of Dismissal with prejudice with costs taxed at the Judge's discretion.

### **2.04. FILING OF PLEADINGS, MOTIONS, BRIEFS, ORDERS, AND OTHER PAPERS (revised)**

All pleadings, motions, briefs, orders and other papers, including exhibits attached thereto, when offered for filing or entry, shall be descriptively titled. Each page of each instrument shall, in the lower margin thereof, be consecutively numbered and titled; e.g., "Plaintiffs Original Petition- Page 2." Page numbers should continue in sequential order through the last page of any attachments or exhibits (i.e. should not re-start with each succeeding document). Any reference to an attachment shall include the sequential page number where the reference can be found. Orders and Judgments shall be separate documents completely separated from all other papers. If documents not conforming to this Local Rule are offered, the Clerk before receiving them shall require the consent of a

Judge.

**2.05. SERVICE OF PAPERS FILED WITH THE COURT**

Other than original petitions and any accompanying applications for temporary restraining order, any documents filed with the Court that relate to requests for expedited relief or to matters set for hearing within seven days of filing must be served upon all opposing parties in a manner that will ensure receipt of the papers by them on the same day the papers are filed with the Court or Clerk.

**2.06. UNCONTESTED OR AGREED MATTERS (revised)**

The Court does not require a separate motion or hearing on agreed matters, except for continuances in cases over one year old or as otherwise provided. All uncontested or agreed matters should be presented with a proposed form of order and should reflect the agreement of all parties either (a) by personal or authorized signature on the form of order, or (b) in the certificate of conference on the motion. This Rule does not apply to cases involving financial settlements to minors.

**2.07. CONFERENCE REQUIREMENT (revised)**

a. No counsel for a party shall file, nor shall any clerk set for hearing, any motion unless accompanied with a “Certificate of Conference” signed by counsel for movant in one of the forms set out in Rule 2.07(c).

b. Prior to the filing of a motion, counsel for the potential movant shall personally attempt to contact counsel for the potential respondent to hold or schedule a conference to resolve the disputed matters. Counsel for the potential movant shall make at least three attempts to contact counsel for the potential respondent. The attempts shall be made during regular business hours on at least two business days.

c. For the purpose of Rule 2.07(a), a “Certificate of Conference” shall mean the appropriate one of the following four paragraphs (verbatim):

(1)

“Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of every item presented to the Court in this motion and despite best efforts the counsel have not been able to resolve those matters presented.

Certified to the Day of \_\_, 20\_\_ by”

, or (2)

“Counsel for movant has personally attempted to contact the counsel for respondent to resolve the matters presented as follows:

(Dates, times, methods of contact, results)

Counsel for the movant has caused to be delivered to counsel for respondent and counsel for respondent has received a copy of the proposed motion. At least one attempt to contact the counsel for respondent followed the receipt by counsel for respondent of the proposed motion. Counsel for respondent has failed to respond or attempt to resolve the matters presented.

Certified to the Day \_ of \_ , 20     by”

(3)

“Counsel for movant has personally attempted to contact counsel for respondent, as follows:

(Dates, times, methods of contact, results)

An emergency exists of such a nature that further delay would cause irreparable harm to the movant, as follows:

(details of emergency and harm).

Certified to the Day of \_ , 20     by”

, or (4) I, the undersigned attorney, hereby certify to the Court that I have conferred with opposing counsel in an effort to resolve the issues contained in this motion without the necessity of Court intervention, and opposing counsel has indicated that he does not oppose this motion.

Certified to the Day of \_ , 20     by”

d. Sections (a) and (b) of this Rule do not pertain to dispositive motions, motions for summary judgment, default judgments, motions to confirm arbitration awards, motions to exclude expert testimony, pleas to the jurisdiction, motions to designate responsible third parties, motions to strike designations of responsible third parties, motions for voluntary dismissal or nonsuit, post-verdict motions and motions involving service of citation.

## 2.08. SUBMISSION OF PROPOSED ORDERS BY COUNSEL

Counsel seeking affirmative relief shall be prepared to tender a proposed order to the court at the commencement of any hearing on any contested matter.

Should the court notify counsel of its decision at any time following the hearing on any contested matter and direct counsel to prepare one or more orders for submission to the court any such order shall be tendered to opposing counsel at least two working days before it is submitted to the court.

The opposing party must either approve the proposed order as to form or file objections in writing with the court. If an order is not approved as to form and no objections are

filed within five days of the submission of the proposed order to the court, the proposed order is deemed approved as to form. Nothing herein prevents the court from making its own order at any time after the hearing in accordance with the Texas Rules of Civil Procedure.

#### **2.09. BRIEFS, RESPONSES AND REPLIES (revised)**

Except in case of emergency, briefs, responses and replies relating to a motion (other than for summary judgment) set for hearing must be served and filed with the Clerk of the Court no later than three working days before the scheduled hearing. Briefs in support of a motion for summary judgment must be filed and served with that motion; briefs in opposition to a motion for summary judgment must be filed and served at or before the time the response is due; reply briefs in support of a motion for summary judgment must be filed and served no less than three days before the hearing. Briefs not filed and served in accordance with this paragraph likely will not be considered. Any brief that is ten or more pages long must begin with a summary of argument.

#### **2.10. DEFAULT PROVE-UPS**

Upon request by the Court, default prove-ups may be made through affidavits and without hearing.

#### **2.11. NOTICE OF HEARING (new)**

A party who sets for hearing any motion or other matter must serve written notice of such setting on all parties, with a copy to the Clerk of the Court, within one business day of receipt of such setting. Nothing in this rule shall be construed to shorten any notice requirement in the Texas Rules of Civil Procedure or other rule or statute.

#### **2.12. EFFECT OF MOTION TO QUASH DEPOSITION**

a. For purposes of this rule, the date of delivery of a notice of deposition or motion to quash a notice of deposition is the date of actual delivery to counsel or a party, unless received after 5:00 p.m. in which case the date of delivery is deemed to be the next day on which the courthouse is open. Delivery by mail is presumed to be the third business day following mailing.

b. The filing of a motion to quash a deposition with the district clerk and service on opposing counsel or parties in accordance with Local Rule 2.05, if done no later than the third day the courthouse is open after delivery of the notice of deposition, is effective to stay the deposition subject to determination of the motion to quash. The filing of a motion to quash does not otherwise stay a deposition.

c. The parties may, by Rule 11 agreement, agree to proceed with a partial deposition while still reserving part or all of the objections made in the motion to quash.

### **PART III- TRIALS**

#### **3.01. REQUESTS TO CONTINUE TRIAL DATE**

a. Unless otherwise permitted by Court policy, no request to pass, postpone or reset any trial shall be granted unless counsel for all parties consent, or unless all parties not joining in such request or their counsel have been notified and have had opportunity to object; provided, however, that failure to make an announcement under Local Rule 3.02 shall constitute that party's consent to pass, postpone, reset or dismiss for want of prosecution any case set for trial the following week.

b. After a case has been on file for one year, it shall not be reset for a party except upon written motion for continuance, personally approved by the client in writing, and granted by the Court. Except as provided by statute, no party is entitled of right to a "pass" of any trial setting.

### **3.02. ANNOUNCEMENTS FOR TRIAL**

a. In all cases set for trial in a particular week, counsel are required to make announcements to the Court Administrator on the preceding Thursday and in any event, no later than 10:30 A.M. on the preceding Friday concerning their readiness for trial. Such announcement shall include confirmation of compliance with Local Rule 2.08, if such compliance is required in the case. Any unqualified announcement of "ready" or "ready subject to" another Court engagement may be made to the Court Administrator in person or by telephone.

b. If Plaintiff does not make an announcement by 10:30 A.M. on Friday preceding the week in which the case is set for trial, the Court may dismiss the case for want of prosecution.

c. If one or more Defendants do not make an announcement by 10:30 A.M. on Friday preceding the week in which the case is set for trial, the Court may deem said Defendant(s) to be ready and may proceed with the taking of testimony, with or without the presence of said Defendant or Defendants or their respective counsel.

d. Counsel shall notify all parties of their announcement.

e. An announcement of "ready" shall be taken as continuing throughout the week in which the case is set for trial except to the extent that such announcement is qualified when it is made or later by prompt advice to the Clerk.

f. Whenever a non-jury case is set for trial at a time other than Monday, counsel are required to appear and make their announcements at the day and hour specified in the notice of setting without further notification.

### **3.03. CONFLICTING ENGAGEMENTS OF COUNSEL**

a. Where counsel has more than one trial setting in a case on call in the Courts of Dallas County in the same week, the Court in which the case is first reached for trial shall have priority. If cases are reached in more than one Court at the same time and day, any case specially set case has priority; if no case is specially set, the older case shall have priority.

b. Where counsel for either party has a conflicting trial setting in another county, the Court may, in its discretion, defer to the out of county court and hold the case until the trial in the other county is completed.

c. Where counsel has a conflicting engagement in any Court of the United States or in any Appellate Court, the case in Dallas County may be held until such engagement has been completed.

#### **3.04. CARRYOVER CASES**

If a case is not tried within the week, the Court may with prior written notice carry the case from week to week. Counsel are required to answer concerning their readiness for trial in these cases in the normal manner for the subsequent week.

#### **3.05. COUNSEL TO BE AVAILABLE**

Unless released by the Court, during the week a case is set for trial counsel are required to be available upon a telephone call from the Court Administrator. Telephone notice to counsel's office or such other telephone number as counsel may provide to the Court Administrator will be deemed actual notice that a case is called for trial. Counsel shall promptly advise the Court Administrator of any matter that arises during the week that affects counsel's readiness or availability for trial. If counsel is engaged during the week in trial in another Court, whether in Dallas County or elsewhere, counsel shall advise the Court Administrator upon completion of such other trial.

### **PART IV - ATTORNEYS**

#### **4.01. ATTORNEY CONTACT INFORMATION (revised)**

Every pleading of a party shall include the information required by Tex. R. Civ. P. 57. Attorneys are required to notify the District Clerk of any change in address, email address, telephone, or fax number. Any notice or communication directed to the attorney at the address, telephone, or fax number indicated in the records of the District Clerk will be deemed received.

#### **4.02. WITHDRAWAL OF COUNSEL**

No attorney of record shall be permitted to withdraw from any case without presenting a motion and obtaining from the Court an order granting leave to withdraw. When withdrawal is made at the request of or on agreement of client such motion shall be accompanied by the client's written consent to such withdrawal or a certificate by another lawyer that he has been employed to represent the client in the case. In the event the client has not consented, a copy of such motion shall be mailed by certified and regular first class mail to the client at his last known address, with a letter advising that the motion will be presented to the Court on or after a certain hour not less than ten days after mailing the letter, and that any objection to such withdrawal should be made to the Court in writing before such time. A copy of such letter shall be attached to the motion. A copy of the motion shall be served upon all counsel of record. Unless allowed in the discretion of the Court, no such motion shall be presented within 30 days of the trial date or at such

time as to require delay of the trial. After leave is granted, the withdrawing attorney shall send the client a letter by regular mail with a copy of the order of the withdrawal, stating any settings for trial or other hearings and any pending discovery deadlines, and advising him to secure other counsel, and shall forward a copy of such letter to all counsel of record and to the Clerk of the Court in which the case is pending. The requirements of this Local Rule are supplemental to, and not in place of, the requirements of TRCP Rule 10.

#### **4.03. APPEARANCE OF ATTORNEYS NOT LICENSED IN TEXAS**

A request by an attorney not licensed to practice law in the State of Texas to appear in a pending case must comply with the requirements of Rule XIX of the Rules Governing Admission to the Bar.

#### **4.04. VACATION LETTERS**

Any attorney may reserve up to three weeks in any calendar year for vacations by sending a "vacation letter" for each case (with appropriate cause number and style) to the Court Coordinator and opposing counsel, reserving weeks in which no hearings, depositions, or trials are set as of the date of the letter. Once a letter is on file, no hearings, depositions, or trials may be set during the reserved weeks except upon notice and hearing.

#### **4.05. SELF-REPRESENTED/PRO SE LITIGANTS (revised)**

All requirements of these rules applicable to attorneys or counsel apply with equal force to self-represented litigants. Self-represented litigants are required to provide address, email, and telephone listings at which they can be reached by Court personnel and opposing counsel. Failure to accept delivery or to pick up mail addressed to the address provided by a self-represented litigant will be considered constructive receipt of the mailed or delivered document and may be established by a postal service receipt for certified or registered mail or comparable proof of delivery. Wherever "counsel" is used it includes a party not represented by an attorney.

#### **4.06. GUARDIAN AD LITEM**

When it is necessary or appropriate for the Court to appoint a guardian ad litem for minor or incompetent parties or an attorney ad litem for absent parties, independent counsel, not suggested by any of the parties or their counsel, will be appointed.

#### **4.07. LOCAL RULES AND DECORUM (revised)**

All counsel and any self-represented person appearing in the civil courts of Dallas County shall by entering an appearance acknowledge that he or she has read and is familiar with these Local Rules, the Rules of Decorum set forth in Appendix 2, and The Texas Lawyers Creed set forth in Appendix 3.

Every attorney permitted to practice in these courts shall familiarize oneself with and comply with the standards of professional conduct required of members of the State Bar of Texas and contained in the Texas Disciplinary Rules of Professional Conduct, V.T.C.A. Government Code, Title 2, Subtitle G-Appendix and the decisions of any court

applicable thereto, which are hereby adopted as standards of professional conduct of these courts.

Counsel, witnesses under their control, and parties should exercise good taste and common sense in matters concerning dress, personal appearance, and behavior when appearing in court or when interacting with court personnel. All lawyers should become familiar with their duties and obligations as defined and classified generally in the Lawyers Creed, Disciplinary Rules, common law decisions, the statutes, and the usages, customs, and practices of the bar.

#### **4.08. PRO BONO MATTERS**

The civil courts of Dallas County encourage attorneys to represent deserving clients on a pro bono basis. An attorney representing a pro bono client on a matter, set for hearing on a docket for which multiple other cases are also set, may inform the appropriate court staff of his or her pro bono representation. The court will then attempt to accommodate that attorney by moving the matter towards the beginning of the docket, subject to the other scheduling needs of the court.

### **PART V- COUNTY COURT AT LAW MODIFICATIONS**

#### **5.01. CLERK OF THE COURTS**

In all matters before the County Courts at Law wherever "District Clerk" is used, "County Clerk" is substituted.

#### **5.02. RANDOM ASSIGNMENT**

Except as required in Local Rule 6.03, all civil cases filed with the County Clerk shall be filed in the County Courts at Law in random order.

#### **5.03. EMINENT DOMAIN CASES**

The County Clerk shall assign eminent domain cases to the County Courts at Law sequentially, pursuant to statute.

#### **5.04. COUNSEL TO APPEAR AT TRIAL**

Notwithstanding Rule 3.05, in all cases in the County Courts at Law, all parties and counsel are expected to be present at all trial settings, unless advised otherwise by the Court Administrator or the Judge. Failure to so timely appear may result in the rendering of a default judgment or in dismissal or in other action required by justice and equity.

### **PART VI- FAMILY, JUVENILE, CRIMINAL, & PROBATE COURTS**

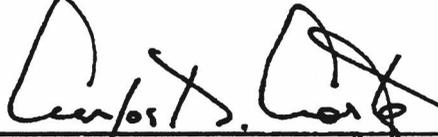
#### **6.01. RULES FOR OTHER COURTS**

"Civil District Courts" as used herein shall mean the 14th, 44th, 68th, 95th, 101st, 116th, 134th, 160th, 162nd, 191st, 192nd, 193rd, 298th District Courts and any district courts created hereafter for Dallas County which are designated to give preference to the trying of civil cases.

**“County Courts at Law” as used herein shall mean the County Court at Law No. 1, County Court at Law No. 2, County Court at Law No. 3, County Court at Law No. 4, County Court at Law No. 5, and any County Courts at Law created hereafter for Dallas County.**

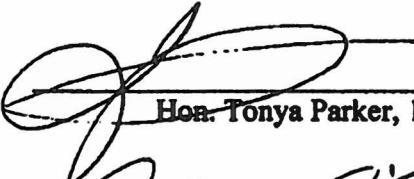
**The Dallas Civil Court Rules set forth herein govern and affect the conduct of the Civil District Courts and the County Courts at Law only. Nothing in these Local Rules shall repeal, modify, or affect any currently existing or subsequently adopted rules of the FAMILY, JUVENILE, CRIMINAL, or PROBATE COURTS of Dallas County.**

 9/5/12  
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Hon. Eric V. Moyé, 14<sup>th</sup> District Court

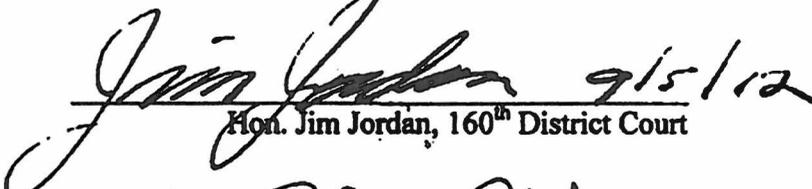
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Hon. Carlos Cortez, 44<sup>th</sup> District Court

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Hon. Martin Hoffman, 68<sup>th</sup> District Court

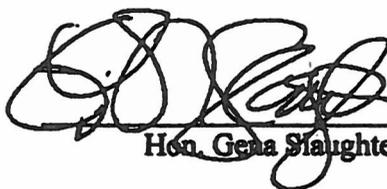
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Hon. Ken Molberg, 95<sup>th</sup> District Court

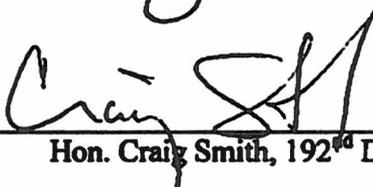
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Hon. Tonya Parker, 116<sup>th</sup> District Court

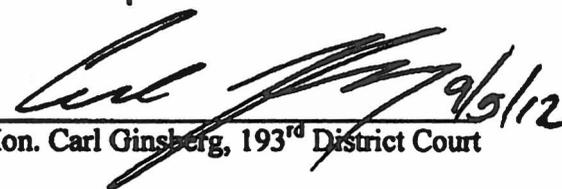
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Hon. Dale Tillery, 134<sup>th</sup> District Court

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Hon. Jim Jordan, 160<sup>th</sup> District Court

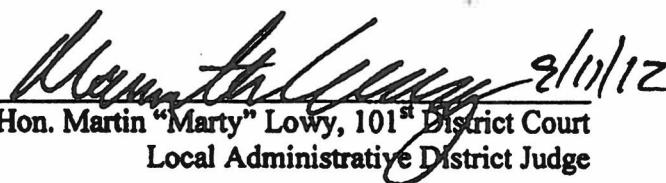
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Hon. Lorraine Raggio, 162<sup>nd</sup> District Court

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Hon. Gena Slaughter, 191<sup>st</sup> District Court

 9/5/12  
Hon. Craig Smith, 192<sup>nd</sup> District Court

 9/5/12  
Hon. Carl Ginsberg, 193<sup>rd</sup> District Court

 9/5/12  
Hon. Emily C. Tobowlowsky, 298<sup>th</sup> District Court

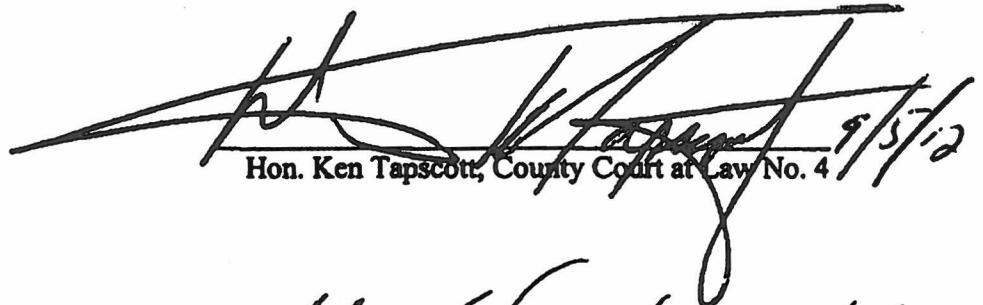
 9/11/12  
Hon. Martin "Marty" Lowy, 101<sup>st</sup> District Court  
Local Administrative District Judge

  
Hon. John D. Ovard, Regional Administrative Judge

  
Hon. D'Metria Benson, County Court at Law No. 1

  
9/5/2012  
Hon. King Eric, County Court at Law No. 2

  
9/7/2012  
Hon. Sally Montgomery, County Court at Law No. 3

  
9/5/12  
Hon. Ken Tapscott, County Court at Law No. 4

  
9/6/12  
Hon. Mark Greenberg, County Court at Law No. 5