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

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

**EXPEDITED MOTION TO CONFIRM SETTLEMENT
AUTHORITY AND TO ESTABLISH A PROCEDURE FOR
MOVING FORWARD WITH A PLAN OF REORGANIZATION**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, DALLAS, TEXAS 75242, BEFORE CLOSE OF BUSINESS ON MSARCH 5, 2015, WHICH IS AT LEAST 24 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

EXPEDITED RELIEF IS BEING REQUESTED, AND IF THE COURT GRANTS SUCH RELIEF, A HEARING MAY BE SET ON THIS MOTION ON AN EXPEDITED BASIS PRIOR TO THE EXPIRATION OF THE TWENTY-FOUR DAY NOTICE PERIOD

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

NOVOPOINT, LLC, QUANTEC, LLC (the “LLCs”) and JEFFREY BARON (collectively “Movants”), file this Joint Motion to Confirm Settlement Authority and to Establish a Procedure for Moving Forward With a Plan of Reorganization, and would respectfully show the court as follows:

I.

JURISDICTION

1. This case began on July 27, 2009, when Ondova, a company indirectly owned by Jeffrey Baron, filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code in this Court. On September 17, 2009, Daniel J. Sherman was appointed as Chapter 11 Trustee for Ondova (the “*Ondova Trustee*”).

2. In June 2010, the parties reached a global settlement, which was documented in a *Mutual Settlement and Release Agreement* (the “*GSA*”). On July 29, 2010, this Court approved the GSA.

3. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157, 1334, and Section 21 of the GSA, which provides:

“The United States Bankruptcy Court for the Northern District of Texas (Dallas Division) *shall have the exclusive jurisdiction over all disputes and/or matters whatsoever related to this Agreement, which involve the Estate as a party or that may directly or indirectly impact the Estate or any interest in property* (within the meaning of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code")) held by the Estate or the Chapter 11 Trustee (as trustee for Ondova). Subject to the foregoing, the United States District Court for the Northern District of Texas, The Honorable Royal Furgeson, shall have jurisdiction over any and all other disputes and/or matters related to this Agreement, whether related to its consummation, implementation, enforcement or otherwise. In the event that the Honorable Royal Furgeson is not available to hear a case related to this Agreement, then any other judge of the United States District Court for the Northern District of Texas shall have jurisdiction over such case.”

II.

INTRODUCTION

4. The LLCs are separate and apart from the Debtor, Ondova and Baron (although Baron is the primary beneficiary of the trust). Because of the complex procedural nature of this matter, however, the LLCs have been implicated in this case and continue to have disputes with the Ondova Estate in need of resolution. The LLCs respectfully request that this Court conduct a hearing limited in scope to help resolve these disputes in a way the LLCs believe will benefit the Ondova Estate and its creditors. As explained below, specifically, the LLCs request that this Court convene a hearing and order Payne, Schepps and Katz to show their authority to act for and in behalf of the LLCs with regard to settlement opportunities with the Estate.

5. As this Court has witnessed before, the participation of Payne, Schepps and Katz is disruptive, and their interference is now preventing the LLCs and Baron from resolving this

long-standing bankruptcy and making a distribution to the long-suffering Unsecured Creditors of the Ondova Estate. Payne, Schepps and Katz should also be compelled to account for the funds that have been stripped out of the LLCs and removed from control of the LLCs. Without this relief, the LLCs cannot effectuate a beneficial settlement with the Estate. The LLCs seek no other relief in this proceeding against any other party, but merely want to clarify authority to make a proposed settlement with the Estate.

6. Baron has asserted numerous claims against the Ondova Estate. In Adversary 14-03081, Baron is seeking recovery of the settlement proceeds held by the Trustee regarding the River Cruise Investments, Ltd. transaction and the \$330,000 security deposit placed with Sherman, Trustee pursuant to this Court's Order Directing Establishment of Security Deposit. BK ECF Doc 446. In Adversary No. 14-03121, filed by Baron against Sherman, Trustee, Munsch Hardt and Liberty Mutual Insurance Company on October 6, 2014, Baron has asserted, on behalf of the Ondova Estate, claims for breach of contract, fraud, malicious prosecution and gross negligence on the part of Sherman, Trustee and his attorneys, Munsch Hardt. Both adversary proceedings have been abated by this Court.

7. In an effort to resolve these seemingly never-ending proceedings that have been ongoing since 2009, Jeffrey Baron and the LLCs would welcome the opportunity to assist this Court in winding up the affairs of Ondova by filing a plan of reorganization designed to recover valuable assets that were assigned to the Village Trust pursuant to the GSA, including the LLCs, and commit resources towards the payment of the allowed claims of Unsecured Creditors.

8. Baron and the LLCs would ask this Court to conduct an Expedited Status Conference in the Ondova Case. At such status conference, Baron and the LLCs will present a proposed plan of reorganization, and after this Court has an opportunity to consider the terms of

same, will, with the advice and consent of the Court, follow that with the filing of a disclosure statement.

9. The disputes between the LLCs and the Ondova Estate can be segregated into two categories:

a. **CLAIMS FOR MONEY**: The Ondova Bankruptcy Estate has made various claims against the Village Trust and the LLCs for amounts claimed by the Bankruptcy Estate, pursuant to the GSA. On the other hand, the LLCs have made claims against the Estate for improper fees charged by Ondova after the GSA was executed.

b. **DISPUTES OVER DOMAIN NAMES**: The GSA expressly excluded 12 contested domain names from the settlement agreement, which had been in dispute between the LLCs and the Bankruptcy Estate. In the GSA, these name are slated for future resolution and termed Excluded Disputed Domains. The Excluded Disputed Domains are domain names that were transferred by Ondova to NovoPoint's predecessor in 2005. Ondova claimed that since these names were listed in a database as belonging to Onodva that the Estate had ownership rights to these domain names.

10. The LLCs are unable to resolve expeditiously these disputes because of the interference of Schepps, Payne and Katz (the "Katz Group"). Despite the Fifth Circuit's 2012 Opinion in *Netsphere v. Baron*, 703 F3d 296 (5th Cir 2012), directing that the LLCs' assets be

returned,¹ the assets of the LLCs have been unlawfully converted and co-opted by the Katz Group.² Because of this interference, the LLCs cannot effectuate a plan that would benefit the Estate and its creditors.

11. Despite every effort to wrest control of these assets from the Katz Group, the Katz Group have interposed every imaginable obstacle, to slow proceedings to a crawl or worse, to freeze them.

12. The Honorable Judge Sam A. Lindsay entered a series of orders in February and March 2014, returning the receivership assets to the receivership parties. The court ordered the placement of the assets of the LLCs in the custody of Lisa Katz, which was vigorously contested by Mr. Baron, but the court determined, based on the *Netsphere* decision, that it did not have jurisdiction to entertain a contested matter concerning the proper ownership of such assets. Since then, Katz has refused to account to the Trustee for the Village Trust, also a Receivership Party, who everyone acknowledges is the owner of the LLCs.

13. Accordingly, in the latter part of April 2014, the LLCs filed a state court case in Collin County, Texas, the county of residence of Payne, in an effort to accomplish what Judge Lindsay determined the district court did not have jurisdiction over, that is, the determination of the right to ownership and control over the LLCs and these entities' assets. The Collin County case was removed by Payne to the United States District Court for the Eastern District of Texas, and was subsequently transferred to the Northern District of Texas, and was assigned to Judge Lindsay, where there has been no consideration of the merits for months, largely due to the

¹ The Fifth Circuit stated that the assets be returned to Baron and later clarified that the court used "Baron" as shorthand when referring to the other receivership parties in context of return of receivership property.

² This Court has had substantial background experience with the Katz Group in the Ondova Chapter 11 Case and in the involuntary bankruptcy case of Jeffrey Baron.

meretricious motion practice by the Katz Parties designed to obfuscate, dissemble and obstruct.³ Recently, out of a sense of frustration, Baron's undersigned counsel wrote a letter to Judge Lindsay, a true and correct copy of which is on file in *NovoPoint, LLC, et al v Elisa Katz, et al*, Cause No. 3:14-cv-01552-L, ECF Doc 64. Judge Lindsay has finally taken note of the plight of the LLCs and has entered an order which seemingly will resolve this a remand back to state court. *Id.* ECF Doc 65. There issue of remand may not be decided for another month or more and the Katz Parties are likely to continue their dilatory litigation activities regardless of where the case ends up.

14. David McNair, the duly appointed Manager of the LLCs, and the manager of RVP Limited, the current duly appointed Trustee of the Village Trust, also attempted to resolve this in the Courts of the Cook Islands, but, again, through the dilatory motion practice of the Katz Parties, such proceedings have grinded to a halt.

15. Additionally, the Village Trust, through its Trustee, RPV, Ltd., has challenged the authority of Payne regarding his alleged representation of the LLCs before the Fifth Circuit Court of Appeals in Appellate Case No. 13-10696. *See* ECF Docs 1414 and 1416 in *Netsphere, et al, v. Jeffrey Baron, et al*, Civil Acton No. 3:09-cv-0988-L, in the United States District Court for the Northern District of Texas – Dallas Division (the “Netsphere DC Action”). Baron has also challenged the authority of Payne to represent the LLCs in yet another appeal before the Fifth Circuit. Finally, Baron has repeatedly questioned the authority of Katz and Payne in the Netsphere DC Action. ECF Docs 1374 and 1423, in Case 3:09-cv-00988-L, to no avail.

³ *Novo Point, LLC, Et Al, v. Elisa Katz, Et Al*, Civil Action No. 3:14-cv-01552-L, pending in the United States District Court for the Northern District of Texas - Dallas Division. Note that in that proceeding, the LLCs seek damages and other relief from the Katz and Payne; whereas, in this case, the LLCs merely seek authority to settle with the Estate.

**THE ONDOVA CASE MUST COME TO AN END AND
BARON AND THE LLCs CAN HELP TO ACCOMPLISH THIS.**

III.

FACTUAL BACKGROUND

A. The LLCs

16. The LLCs are limited liability companies formed and in good standing under the laws of the Cook Islands. The documented corporate history is set out in the sworn supplemental affidavit of attorney David McNair dated June 24, 2014 (“McNair Supplemental Affidavit”), a true and correct copy of which is already filed of record in the *Netshpere v. Baron* case, Cause No. 3:09-cv-00988-L, ECF Docs 1416-1 (Part 1) and 1416-2 (Part 2), and is incorporated herein by reference for all purposes. Said affidavit establishes the authority of RPV to act as Trustee for the Village Trust, and establishes the authority of Mr. McNair as the Manager of the LLCs.

B. Schepps, Payne and Katz’ Takeover of the LLCs

17. In early 2014, after Judge Lindsay announced that he would commence the process of winding down the receivership in light of the Fifth Circuit’s opinion in *Netsphere*, Payne, as the purported counsel for the LLCs, and Katz, purportedly as manager of the LLCs, began making representations to Judge Lindsay that were inconsistent with the LLCs’ manager, David McNair’s instructions, and contrary to the interests of the LLCs, Village Trust and its primary beneficiary, Jeffrey Baron. Payne and Katz took unauthorized actions to take control of all of the LLCs assets and use those assets to compensate themselves for fees they unilaterally claimed they were owed.

18. All of the Katz Parties' actions were taken without authority. On February 18 2014, David McNair issued a notice terminating (i) Payne's authority as counsel in any capacity, and (ii) any agreement Katz had with the LLCs ("Termination Notice").⁴ Payne and Katz ignored the Termination Notice.

19. Despite having no authority from the LLCs, Payne and Katz continued to assert their self-serving claims to authority over the LLCs' assets, in pleadings, ostensibly made on behalf of the LLCs. Meanwhile, with no control over their own assets, the LLCs were not able to contradict the Katz Parties' actions. Relying on Payne and Katz' unilateral misrepresentations to the District Court, on February 28, 2014, Judge Lindsay ordered that "all receivership assets of Novo Point and Quantec shall be returned to NovoPoint and Quantec's designated and authorized agent Lisa Katz."⁵ However, Judge Lindsay also stated:

"As herein discussed, the court will not consider evidence or conduct proceedings regarding the ownership of Novo Point LLC or Quantec LLC or the companies' assets at issue"

Id. at footnote 1 on page 1. On page 9 of said order, Judge Lindsay ruled as follows:

". . . While the ownership of Novo Point and Quantec may have been relevant in the bankruptcy proceeding, such a determination is not relevant or necessary to comply with the Fifth Circuit's mandate that the receivership, the creation of which was determined to be improper, be wound down expeditiously. Thus, any such determination is outside of the court's jurisdiction. For the same reason, the court does not and will not have jurisdiction in this case over any claims and disputes regarding the ownership of the receivership."

Provided this little wiggle-room, the Katz Parties have continued to run rough shod over the LLCs despite their termination.

⁴ See ¶¶39-42 of McNair Supplemental Affidavit, pp. 5-6, 190-202. A March 4th (pp. 196-202) email *ratifying* the Termination Notice and confirming McNair's authority was sent to both Katz and Payne by email on March 4, 2014.

⁵ ECF Doc 1419 in the Netsphere DC Case.

20. In the LLCs' above noted attempts to obtain relief, the Katz Group's dilatory tactics employed during the last nine months have achieved their intended result of bringing the litigation to a grinding halt, and it remains stuck in preliminary stages. Indeed, the Katz Group's vexatious filing of endless motions, pleadings and hoards of irrelevant documents in efforts to confuse, obfuscate and delay, render any determination on the merits a long way off.

21. As one might imagine, Payne and Katz' wrongdoing creates challenges for the Movants, who wish to resolve all remaining issues with the Bankruptcy Estate. Without relief from this Court, the Movants cannot effectuate their desired settlement with the Estate.

22. Further, the Katz Group has hijacked all of the LLCs' cash, assets and revenue stream. Specifically, Payne and Katz have misrepresented to the LLCs' suppliers (monetizers) that Katz and Payne have authority to receive the LLCs' revenue, and have directed the suppliers to disobey all requests from the LLCs, including requests to receive any information about their assets. By their fraud, Payne and Katz have successfully convinced the monetizers to transfer the LLCs money to accounts believed to be controlled by the Katz Group.

23. Moreover, the Katz Parties have transferred the domain names to third parties. For example, David McNair was sued in a case named *DomainVault LLC v. David McNair*, Civ. No. 3:14-CV-011-D ("DomainVault Complaint"). In that complaint, as stated in Paragraph 26, "For consideration received by Novo Point LLC and Quantec LLC, when the LLCs obtained return of their domain name assets, title to a small number of those assets was conveyed to Domain Vault LLC, ("Domain Vault")."

24. Domain Vault was formed March 12, 2014 – one day after Judge Lindsay's order dated March 11, 2014, that freed up some of the assets, including the domain names. Domain

Vault's address listed with the Virginia Secretary of State is the same as the address for attorney Gary Schepps. Schepps is also the organizer of the entity.

25. The dissipation of these assets makes it impossible for the Movants to effectuate a settlement with the Estate.

C. This Court is Familiar With Schepps, Payne and Katz' Gamesmanship

26. This Court is very familiar with Payne, Schepps and Katz. As the Court may recall, Payne and Schepps testified for three days at a hearing that this Court held to determine whether or not Schepps and Payne were in contempt. After three days of hearing where these lawyers "behaved with an utter lack of candor and respect to the bankruptcy court", the Court ultimately ordered Schepps barred and enjoined from participating in the case, and held that:

"Christopher Payne and his firm, and attorney Dennis Olson and his firm, had no authority to appear in the bankruptcy court for Novo Point and that they may not appear before the bankruptcy court in the future for Novo Point without filing first a motion for authority to do so, and any such motion must be supported by compelling evidence including live testimony from Brian Mason and Lisa Katz (the human beings who supposedly gave authority to Payne/Olson to take legal positions for Novo Point).

Response to Petition for Writ of Mandamus filed May 4, 2012.

The Court Further found Payne and Schepps "were falsely purporting to take instructions from someone on behalf of Novo Point that had no authority to give instructions" (id).

27. The Court conducted the show cause hearing because it was concerned that despite the Court providing Payne with an opportunity to show his authority to represent NovoPoint,

"Messrs Payne and Schepps showed up in the bankruptcy court with no witnesses and no documentation that might somehow support their authority to act for Novo Point, LLC."

See Order Granting, In Substantial Part, Trustee's Motion To Show Cause Why Christopher Payne And Gary Schepps Should Not Be Held In Contempt And Sanctioned, ECF Doc 648, at p.

7. This Court further noted that

“Mr. Payne and Mr. Schepps do not seem to understand basic notions of corporate governance”

Id. at 6.

28. At the same hearing, Schepps refused to testify, asserted his Fifth Amendment privilege against self-incrimination to numerous questions.

29. After considering three days of testimony, this Court concluded that Schepps and Payne’s alleged representation of NovoPoint were “a sham”, and noted, with respect to the purported LLC manager, Katz, that she

“testified that she was currently a part-time high school math tutor, who had attended Texas Wesleyan Law School with attorney Schepps at a time when it was unaccredited, and that she had never passed the bar exam, and that she had been called by Schepps and asked to fulfill the operations manager role for Novo Point, LLC in spring or summer 2011. Lisa Katz testified that she had done nothing in her role as manager of Novo Point, LLC (except for perhaps talk to a couple of people in the Cook Islands a couple of times—she could not remember the names of such people—and learned that there was nothing for her to do yet). Lisa Katz appeared to know very little about Novo Point, LLC, the litigation ongoing in the bankruptcy court or District Court, or why she was in court that day. Lisa Katz testified that she had never read any pleadings filed and had never talked to the Receiver nor the manager-of-record of Novo Point, LLC (i.e., the manager that is of record in the Receivership Proceeding). Lisa Katz testified that it was her understanding that she could not really do anything for Novo Point, LLC in light of the Receivership.

See November 15, 2011, Transcript, ECF Doc 716, pp. 1-40.⁶

30. In a letter to the Fifth Circuit Court of Appeals, this Court wrote:

⁶ Order Discharging Show Cause Matters Pertaining to Attorneys Gary Schepps and Christopher Payne, ECF Doc 807

To be clear, not only did the alleged client-representative (Lisa Katz) for Novo Point, wholly emasculate the position of attorneys Gary Schepps and Christopher Payne (*i.e.*, their position that she was in control of Novo Point and had given them instructions for Novo Point), but Gary Schepps behaved with an utter lack of candor and respect to the bankruptcy court by asserting the Fifth Amendment privilege not to testify, rather than explain how he had any corporate or legal authority to file This is a reference to Gary Schepps asserting the Fifth Amendment privilege and not testifying rather than explain how he had any corporate or legal authority to file court papers for Novo Point.

This Court's letter is attached to ECF Doc 912, in Case 3:09-cv-00988-L.

D. Payne, Schepps and Katz' amnesia regarding ownership and control of the LLCs is not credible.

31. While this Court has consistently recognized the fact that "Mr. Baron is the beneficiary of the Village Trust," astonishingly, Payne and Katz have adopted the position that the Trustee of the Village Trust does not own the LLCs and that Mr. Baron has no interest in the Village Trust. Payne began making these incredible representations when he appeared in this Court in December 2013, while Mr. Baron was unrepresented. This Court will recall that after hearing from Payne in the Baron involuntary bankruptcy case, it expressed grave concerns that Payne and others acting in concert with him may have ulterior motives and were not acting in Baron's best interest.⁷

IV.

RELIEF REQUESTED

⁷ The Court was also concerned that Payne was simultaneously representing Schepps against Mr. Baron, and Schepps had just filed a claim against Mr. Baron, through another sham entity created by the Katz Group. Status conference held November 22, 2013.

32. Movants believe this Court is required to act under the teachings of *In re American Airlines*, 972 F.2d 605 (5th Cir. 1992) *cert denied*, 113 S. Ct. 1262 (1993), where the court stated:

We have squarely rejected this hands-off approach in which ethical rules “guide” whether counsel’s presence will “taint” a proceeding, holding instead that a “[d]istrict [c]ourt is *obliged* to take measures against unethical conduct occurring in connection with any proceeding before it.” [citations omitted].

Id. at 611.

33. This Court has already determined that Payne, Schepps and Katz are engaging in wrongful conduct, if not outright fraud, in connection with their representation of the LLCs. These continuing acts are inhibiting the ability of Movants to make a good faith effort to settle outstanding matters with the Ondova Estate and to propose a plan of reorganization for Ondova. This Court should convene a hearing and order Payne, Schepps and Katz to show their authority to act for and in behalf of the LLCs. Payne, Schepps and Katz should also be compelled to account to this Court for the funds that have been stripped out of the estates of the LLCs. This Court should determine that Lisa Katz’ position as manager of the LLCs has been terminated, and that David McNair is the sole authorized manager of the LLCs.

34. Movants would ask that the Court set a status conference at which the Court can review the propose plan of reorganization that Movants will file with the Court.

Respectfully submitted this 9th day of February 2015.

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CERTIFICATE OF CONFERENCE

This is to certify that, on February 3, 2015, counsel conferred with counsel for the Trustee by email regarding the Motion. Counsel indicated that Daniel Sherman, the Chapter 11 Trustee, was unable to take a position on this motion on short notice, was uncertain the Bankruptcy Court had jurisdiction over this matter and therefore was opposed to the relief requested. Movants delayed filing of this motion, in part, to give the Trustee additional time, but has not heard of any change in opinion by the Trustee.

/s/ Leonard H. Simon
Leonard H. Simon

CERTIFICATE OF SERVICE

This is to certify that, on February 9, 2015, a copy of this Motion was served on all counsel through the Court's ECF system.

/s/ Leonard H. Simon
Leonard H. Simon