



assets that are at issue.” On page 9 of said order the Court 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.”

The Court summarized Payne’s request allegedly on behalf of Novo Point and Quantec for a twelve month injunction as follows:

“ . . . Novo Point and Quantec assert that if any party has an adverse claim to the assets of Novo Point and Quantec, these claims can be resolved by filing lawsuits against Novo Point and Quantec, just as they would have done if there had been no receivership.<sup>2</sup> Although Novo Point and Quantec contend that the court lacks jurisdiction to conduct proceedings to determine the ownership of the Novo Point and Quantec assets or claims as to those assets, they request that the court enter an order enjoining any such third party actions for twelve months.

As to such request, the Court ruled:

“Applying this test to the case at hand, the court concludes that the requested injunctive relief is not necessary to effectuate a winding down of the receivership in this case, and the parties have not pointed to any other authority that would permit the court to enjoin parties not before the court. Accordingly, the court declines to enter an order enjoining third-party actions regarding the Novo Point and Quantec assets for sixty days to twelve months.”

David McNair is not a party in the captioned case. There is no evidence that Baron has participated in any of the alleged conduct discussed in the Motion. Baron specifically denies that he is directing the actions of McNair or participating in any fashion in such alleged conduct. The Motion is moot by virtue of the very order relied upon by Movants, and is unsupported by any evidence, reliable, credible or otherwise, not even an affidavit or declaration swearing to facts. Baron would welcome the opportunity for an evidentiary

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<sup>2</sup> By the way, that is exactly what the true owners of the LLCs have done in Civil Case No. 14-cv-01552-L, pending before this Court.

	hearing so that Movants might present evidence to support their <i>ad hominem</i> and scurrilous allegations, including allegations that Baron and McNair hired “Mafia Bosses”. At such hearing, the Court could also determine the authority of Payne and Katz to even file pleadings on behalf of Movants. Such request is made below.
Paragraph 2.	Denied.
Paragraph 3.	Denied as to Baron. Baron has no control over and does not direct the actions of McNair. Page 3 of Movants’ Appendix does not support the allegations that Baron is engaged in any of the activities alleged.
Paragraph 4.	Denied. Baron disputes that either Lisa Katz or Payne has the authority to represent the interests of Movants and disputes that either Lisa Katz or Payne have any ownership interest in Movants.
Paragraph 5.	Baron is without sufficient information to admit or deny such allegations, and denies same for pleading purposes.
Paragraph 6.	Baron is without sufficient information to admit or deny such allegations, and denies same for pleading purposes.
Paragraph 7.	Denied. Such allegations are unsupported by any admissible evidence, are scurrilous and violate rule 11.
Paragraph 8.	Baron is without sufficient information to admit or deny such allegations, and denies same for pleading purposes.
Paragraph 9.	Denied that Baron has engaged in any such activities.
Paragraph 10.	Denied that Baron has engaged in any such activities. Baron denies that he has hired a “Mafia Boss”. Such allegations are scurrilous and vexatious and violate 28 U.S.C. §1927. <sup>3</sup>
Paragraph 11.	Denied.
Conclusion	Denied.

## II.

### ARGUMENTS AND AUTHORITIES

2. As this Court is aware, numerous parties and judges have questioned Payne’s authority to represent the LLCs. Payne’s Motion is yet another example of Payne and his client

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<sup>3</sup> 28 U.S.C. § 1927 provides:

“Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and veraciously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”

contact, Lisa Katz, acting without authority of the owners and managers of the LLCs. After hearing testimony, the bankruptcy court believed that Katz was nothing more than a Payne/Schepps' straw-man, acting at their direction and control. In a letter to the Fifth Circuit Court of Appeals, a copy of which was filed with this Court as a part of ECF Doc 912 (page 10 of Ex "A"), Judge Jernigan wrote:

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 court papers for Novo Point.

3. Baron believes 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 Circuit 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.

#### **A. Background**

4. Movants 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 Mr. David McNair dated June 24, 2014 ("McNair Supplemental Affidavit"),

previously filed in the captioned Civil Action,<sup>4</sup> establishes the authority of RPV to act as Trustee for the Trust and establishing the authority of Mr. McNair as the Manager of the LLCs.

5. Payne has never established the basis of his authority to act as counsel for either Novo Point or Quantec.<sup>5</sup> Payne has the burden of proof to establish that he has such authority.

**B. Katz's Authority is Limited by Contract**

6. Payne apparently bases his authority upon Eliza Katz ("Lisa Katz") and an assertion that SouthPac (the prior trustee) and Corporate Director Management Services, Inc. (the prior manager of the LLCs) approved his retention. Such rationale fails for several reasons.

7. Lisa Katz was allegedly retained by written agreement dated May 23, 2011 ("Katz/Novo Agreement"), the terms of which are subject to Cook Islands law. Katz has declared she has a substantially identical agreement with Quantec.

8. Section 5 of the alleged Katz/Novo Agreement limits her authority by requiring prior written consent of the principal:

(a) With the consent of the Manager **to sign on behalf of the Company any note, contract, deed, bill of sale, mortgage, lease or other commitment purporting to bind the Company to any action;**

(b) With the consent of the Manager to acquire, hold, lease, encumber, pledge, option, exchange, or otherwise dispose of real or personal property (or rights or interests therein) of any nature whatsoever as may be necessary or advisable for the operation of the Company; ...

(m) **With the prior consent of the Manager to control any matters affecting the rights and obligations of the Company, including the employment of**

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<sup>4</sup> See ECF Docs 1416-1-1416-2, pages 1-221, filed in the captioned Civil Action. To avoid repetitive filing of the same documents, Baron incorporates by reference the McNair Supplemental Affidavit as though fully set forth herein.

<sup>5</sup> Indeed, the Court expressly prohibited counsel from representing either LLC other than Mr. Cox and Mr. Jackson. See Doc 1377 filed 03/11/14, Page 2 of 8, referencing Doc 106. This order was never changed. There is no substitution on file with the Court.

**attorneys to advise and represent the Company, the conduct of any litigation and the settlement thereof, and any other incurring of legal expenses; ...”**

The agreement may not now be rewritten.

**C. The LLCs Did Not Consent to Payne’s Retention Herein**

9. Payne has previously asserted SouthPac and CDMS consented to his retention in 2011.<sup>6</sup> However, the “authority” attached to Doc 1360 (the “Ondova Consent”) expressly limited his representation to a specific bankruptcy matter (09-34784-sg11).<sup>7</sup> Doc 1360. The documents do not establish Payne’s authority in this Civil Action.

10. Judge Jernigan’s letter, noted above, provided that Payne was expressly prohibited from appearing before the Bankruptcy Court, stating:

“As further described below, the undersigned bankruptcy judge entered its order striking the said notices of appeal out of a concern that attorney Gary Schepps (and another attorney acting with Mr. Schepps, attorney Christopher Payne) were purporting to act for the entity Novo Point without any genuine corporate or legal authority.”<sup>8</sup>

11. Judge Jernigan further noted that she had issued an Order Finding Olson/Payne Have No Authority [DE # 605], in which she ruled that attorney 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 were prohibited from appearing before the Bankruptcy Court in the future for Novo Point “without filing first a motion for authority to do so.” Judge Jernigan stated that “any such motion must be supported by compelling evidence including live testimony from Brian Mason

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<sup>6</sup> Payne, filed Doc 1360, entitled *Reply of Novo Point LLC and Quantec LLC to Baron’s Response on Vogel’s Status Report [Docs 13565-6]*. See Exhibit “A” (page 9 of 9 thereof).

<sup>7</sup> The Ondova Consent uses the term “Proceeding” – a defined term to mean *only* the bankruptcy matter. At the time the *Netsphere Action* was pending. The narrow definition was thus an intentional limitation.

<sup>8</sup> ECF Doc 912, p. 7.

and Lisa Katz (the human beings who supposedly gave authority to Payne/Olson to take legal positions for Novo Point).”<sup>9</sup>

12. Payne has previously argued: “A lawyer’s duties to a client ‘extend only to dealings within a scope of the underlying relationship of the parties.’”<sup>10</sup> At most, Payne was authorized to act in the bankruptcy only.

**D. The Prior Court Orders Do Not Sustain Payne’s Authority**

13. Payne has also referenced the authority of Lisa Katz as noted in this Court’s order of February 28, 2014 (Doc 1368). In this Court’s subsequent orders of March 3, 2014, (ECf Doc 1369) and March 11, 2014 (Doc 1379), this Court clarified that it refused to issue any ruling as to the ultimate control of the LLCs or to establish findings as to the owner of either company. The March 11th Order states: “For the reasons previously explained, the court concludes that it would be improper for it to conduct proceedings regarding the ownership of Novo Point LLC and Quantec LLC” (ECF Doc 1379, p. 2, lines. 8-10; Doc 1368, p. 11).

14. The February 28th order directed the Receiver to deliver assets to Katz because Katz was the last caretaker of record, not because the Court conducted a hearing, upon notice, with pleadings framing the issue of whether Katz had the exclusive or non-exclusive authority over the LLCs for any or all purposes, or that Katz was the authorized agent. In fact, the Court did not frame the issue or conduct a hearing at all, largely because the Court specifically determined that, in the context of the captioned Civil Action, the Court lacked subject matter jurisdiction to make such determination.

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<sup>9</sup> ECF Doc 912, page 9, footnote 2. Emphasis added.

<sup>10</sup> In Civil Action 3:14-cv-01552-L, *see* Payne’s Motion to Dismiss, ECF Doc 37, p. 11, citing *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 159(Tex.2004).

**E. Payne Has Been Terminated From All LLC Representation**

15. Additionally, it should be noted that 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”).<sup>11</sup>

16. Payne therefore lacks authority and is in violation of the Texas Disciplinary Rules of Profession Conduct to continue to claim he represents the LLCs. *See* TEX. DISCL. RULES OF PROF. CONDUCT 1.12, 1.06, 1.07 and 1.08.

17. Despite all of the evidence otherwise, Payne has chosen to merely dispute the purported authority of RPV and Mr. McNair while presenting no affirmative evidence that he is indeed acting on behalf of his *principal* or provide any evidence he has investigated Ms. Katz’s authority upon whom he relies.

**PRAYER**

WHEREFORE, Baron respectfully requests that this Court conduct a hearing on the authority of Payne and Katz represent the LLCs, and to strike pleadings filed by Payne where he purports to represent the LLCs but as to which he can prove no authority. Baron prays for such other and further relief as is just.

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<sup>11</sup> *See* ¶¶39-42 of McNair Supplemental Affidavit, ECF Docs 1416-1 to 1416-2 in the captioned Civil Action, 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

Respectfully submitted this 11<sup>th</sup> day of September 2014.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served via ECF on all parties receiving ECF Notices in the above-captioned case on September 11, 2014.

*/s/ Leonard H. Simon*