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LEAD ATTORNEY FOR JEFFREY BARON

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

JEFFREY BARON,

Respondent,

vs.

ELIZABETH SCHURIG, et. al.,

Movants.

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§ **CIVIL ACTION NO. 3:13-cv-03461-L**
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§ **(Bankruptcy Case No. 12-37921)**
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BARON’S OBJECTION TO VOGEL’S STATUS REPORT [DOC 1352]

TO THE HONORABLE SAM A. LINDSAY,
UNITED STATES DISTRICT JUDGE:

NOW COMES, Jeffrey Baron (“Baron”) and files this Objection to to Vogel’s Status Report [Doc 1352, and in support thereof would respectfully show this Court as follows:

INTRODUCTION

1. On November 24, 2010, the District Court established a Receivership (“Receivership”). Pursuant to the Order creating the Receivership, the Receiver, Peter Vogel, took possession of the assets of Jeffrey Baron, and took control of two entities called Novo Point,

LLC (“Novo Point”) and Quantec, LLC (“Quantec”), two limited liability companies organized under the laws of the Cook Islands. Novo Point and Quantec, in turn, have always been owned by a trust called the Village Trust, also an entity organized under the laws of Cook Islands.

2. The Receivership and the appointment of the Receiver in this case for the purpose of marshalling Mr. Baron’s personal assets has turned into an unmitigated disaster for everyone but the Receiver and his attorneys, who have stripped all of Baron’s personal assets from him, including all of his exempt assets – IRA accounts and 401k accounts - and the assets of Quantec and Novo Point, and have used Baron’s assets to pay themselves at least \$5,200,000 in fees and expenses. Not one creditor of Baron has been paid in this case. Baron was deprived of the basic right to engage counsel to defend himself against the actions taken by the Petitioning Creditors¹ and the Receiver. *See* true and correct copy of an email dated December 2, 2010, from the Receiver’s attorney, Barry Golden, attached hereto and made a part here of as **Exhibit “1”**.

3. Two years later, and after the payment of at least \$5,200,000 in fees and expenses incurred by the Receiver and his attorneys, the Fifth Circuit found that the appointment of the Receiver was an abuse of discretion, and that “[e]stablishing a receivership to secure a pool of assets to pay Baron's former attorneys, who were unsecured contract creditors, was beyond the court's authority.” *Netsphere, Inc. v. Baron*, 703 F.3d 296, 308 (5th Cir. 2012).

4. The Fifth Circuit found no basis to support the Receiver’s and Petitioning Creditors’ contention that Baron was attempting to secret away from the jurisdiction of the Court any assets that were subject to the settlement in the *Netshpere v Baron* case:

“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

¹ The Petitioning Creditors are: Pronske Goolsby & Kathman, PC, f/k/a Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Dean Ferguson, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall, and David Pacione’s

the litigation. Rather, the receivership was established to pay the attorneys and to control vexatious litigation. We will now examine each of those reasons.”

Id. at 308. Nor could the Receiver or the Ondova Trustee point to one order that Baron violated in the District Court that might have resulted in a contempt of court:

“If the district court entered a sufficiently specific order, it could have held Baron in contempt, imposed a fine or imprisoned him for “disobedience ... to its lawful ... command.” 18 U.S.C. § 401. At oral argument in the appeal, it seemed conceded that no clear order existed. Instead, the receiver and trustee cited only to hearings at which the district court admonished Baron not to hire or fire any more attorneys.”

Id. at 311. All of the “mud slinging” of the Receiver was laid bare by the Fifth Circuit, and the Court vacated the Receivership Order. Yet in his Status Report, Vogel continues the “mud slinging”.

5. Within two hours of the Fifth Circuit’s issuance of the *Netsphere, Inc. v. Baron* opinion on December 18, 2012, instead of going to state court to liquidate their claims, as the Fifth Circuit so admonished them, the Petitioning Creditors filed an involuntary bankruptcy proceeding against Mr. Baron in an effort to circumvent the Fifth Circuit decision in *Netsphere v. Baron* and keep his assets frozen. Thus these Petitioning Creditors, unhappy with the ruling they had just received from the Fifth Circuit, decided to take action that was intentionally designed to circumvent, emasculate and defy the decision of the Fifth Circuit. 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 him. Baron believes that the Receiver and his attorneys actively participated in the meretricious efforts of the Petitioning Creditors to keep Baron’s assets frozen.

6. Then, in attempting to prove up their involuntary bankruptcy claims as being liquidated, and non-contingent in nature, the Petitioning Creditors again attempted to avoid a full

blown trial on the merits by relying on the May 18, 2011 Fee Order to support a summary judgment motion, making the ~~outrageous~~ unsupported argument that such order should have preclusive effect obviating the need to liquidate their claims for purposes of satisfying the requirements of 11 U.S.C. § 303. Again, Baron believes that ultimately he will be able to prove that the Receiver and his attorneys actively participated in the design of the Petitioning Creditors' tactics, which, again, "blew up in their faces".

7. One thing is for certain: at no time did the Receiver ever attempt to protect Baron and the Receivership Estate's assets from the meritorious claims of the Petitioning Creditors. Having left Baron totally crushed financially, and barred from defending himself, even using his exempt assets to do so, the Receiver and his attorneys frittered away \$5,200,000 of Baron's assets.

8. "Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims." *In re FEMA Trailer Formaldehyde Products Liability Litigation*, 668 F.3d 281, 286 (5th Cir. [La.], 2012), citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The Fifth Circuit in *Netsphere, Inc. v. Baron* held that the District Court neither had the jurisdiction to appoint the Receiver in this case,² nor the authority to do so,³ and then vacated the receivership order.⁴ This Honorable Court should adhere to the mandate of the Fifth Circuit in the *Netsphere, Inc. v. Baron* case, and not countenance any further delays in winding up this Receivership and discharging this Receiver

² In *Netsphere v. Baron*, 703 F.3d at 310, the Fifth Circuit stated: "A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy." Citing *Cochrane v. W.F. Potts Son & Co.*, 47 F.2d 1026, 1029 (5th Cir.1931).

³ "A court has undeniable authority to control its docket but not through creating a receivership over assets, including personal assets, that were not the subject of the litigation." *Netsphere v. Baron*, 703 F.3d at 311.

⁴ "We conclude that the receivership improperly targeted assets outside the scope of litigation to pay claims of Baron's former attorneys and control Baron's litigation tactics. This was an improper use of the receivership remedy. The order appointing a receiver is vacated." *Id.*

and his attorneys. This Court should not pay this Receiver and his professionals one additional penny in fees and expenses.⁵

9. As important, this Court should enforce its own mandate in the Court's Order dated January 6, 2014 directing the Receiver to take necessary steps to wind down and terminate the Receivership created in this case and return all Receivership assets to the parties from which the assets were received. ECF Document 1351.

10. Finally, this Court should keep in mind the limited nature of this Court's jurisdiction as enunciated by the Fifth Circuit in the *Netsphere v Baron* case. This Court should not be lured into the abyss of ruling on matters over which it has no jurisdiction.

QUANTEC AND NOVO POINT

11. On April 22, 2011, Judge Furgeson entered an Order Granting the Receiver's Motion to Appoint Damon Nelson as Permanent Manager of the LLCS and for Turnover of LLC Materials to Damon Nelson. ECF Document 473. Said order has never been vacated.

12. Novo Point and Quantec are Cook Islands Limited Liability Companies that are owned by the Village Trust, also organized under the laws of the Cook Islands.

13. The current trustee of the Village Trust is RPV Limited. RPV Limited replaced Southpac Trust International Inc. as the trustee of the Village Trust on or about July 3, 2013, approximately six months after the receivership was vacated. RPV Limited is also the sole member of Quantec and the sole member of Novo Point. RPV Limited has appointed Tayari Law PLLC of Dallas Texas, USA as its duly authorized legal representative in the United States. All of these matters are established by the Assignments and Resolutions attached hereto as **Exhibits "2" & "3"**,

⁵ Indeed, with the sweep of a pen this Court can and should, *sua sponte*, order the Receiver to unfreeze Jeff Baron's exempt property IRA and Retirement Accounts within twenty-four hours.

14. Damon Nelson and/or the Receiver have taken possession of bank accounts in the name of Novo Point and Quantec, and books and records of Novo Point and Quantec have been turned over to Damon Nelson and/or the Receiver as directed by the April 22, 2011 Order.

15. For nearly three years, the Receiver and/or Damon Nelson have been engaged in the control and operation of Novo Point and Quantec by virtue of the April 22, 2011 Order.

16. In winding up the affairs of the Receivership, the following simple tasks must be accomplished immediately:

- a. RPV Limited, as the sole manager of Quantec and Novo Point shall designate an entity in the United States to act as the local manager for Novo Point and Quantec, and shall provide such resolutions to its counsel in the United States, Tayari Law PLLC.
- b. Tayari Law PLLC shall provide such resolutions to the Receiver and Damon Nelson.
- c. The Court should enter an order vacating the April 22, 2011 Order, which should
 - (i) direct the Receiver and Damon Nelson, within two business days, to turn over the bank accounts of Novo Point and Quantec to the entity designated by RPV Limited to become the manager in the United States for Novo Point and Quantec;
 - (ii) direct the Receiver, Damon Nelson or any of their respective agents or employees to remove themselves as the signatories on such bank accounts;
 - (iii) direct the Receiver, Damon Nelson or any of their respective agents or employees to turn over to Tayari Law PLLC in an orderly fashion (boxes to be numbered and a summary document to be prepared identifying the numbered boxes and a description of the contents within each box) within five business days all originals

of the books and records of Novo Point and Quantec that are in their possession or subject to their control, including, but not limited to, any correspondence, memoranda, emails and facsimile documents, and including all attorney-client privileged information where such attorney-client privilege would belong to Novo Point, Quantec or the Receiver and/or Damon Nelson or any of their agents or employees insofar as they were acting as agents and representatives of Novo Point and Quantec.

JEFFREY BARON'S ASSETS

17. The Court should enter an Order In Aid of Winding Down the Receivership (the “Wind Down Order”).

18. The Wind Down Order should direct and compel the Receiver to accomplish the following:

- a. The Receiver and all of his agents or employees, within two business days, shall turn over to Jeffrey Baron all bank accounts containing moneys belonging to Jeffrey Baron.
- b. The Receiver any of his agents or employees shall, within two business days, remove themselves as the signatories on such bank accounts;
- c. The Receiver or any of his agents or employees shall, within five business days, turn over to Jeffrey Baron in an orderly fashion (boxes to be numbered and a summary document to be prepared identifying the numbered boxes and a description of the contents within each box) all originals of the books and records of Jeffrey Baron that are in their possession or subject to their control, including, but not limited to, any correspondence, memoranda, emails and facsimile

documents, and including all attorney-client privileged information where such attorney-client privilege would belong to Jeffrey Baron or the Receiver and/or any of his agents or employees insofar as they were handling the affairs of Jeffrey Baron.

- d. The Receiver shall, within one business day, take all steps necessary to unfreeze any bank accounts or other assets of Jeffrey Baron in Texas or in any other jurisdiction frozen or seized by the Receiver or any of the Receiver's agents or employees, including, but not limited to, all of Jeffrey Baron's exempt IRAs and 401Ks held by any institution in any jurisdiction. Such steps to unfreeze such assets shall include notice that such institutions shall forthwith take their instructions regarding disposition of such accounts or assets from Jeffrey Baron. All such steps to unfreeze such assets shall be in written form, and copies shall be mailed and emailed to Jeffrey Baron in pdf format.

**DOMAIN NAME DISPUTES AGAINST NOVO POINT LLC
AND QUANTEC LLC SHOULD BE ENJOINED FOR TWELVE MONTHS**

19. Novo Point and Quantec will require a short period to find and hire competent counsel to respond to the UDRP domain name disputes. The Receiver has wholly failed to respond to the UDRP domain name disputes.

20. Because Vogel has failed to respond to any UDRP disputes and, pursuant to his report, has allowed 800 disputes to accumulate over the past three years, it is estimated that a minimum of twelve months will be required for a staff of three attorneys, working solely on UDRP claim responses, to handle the backload of 800 claims resulting from Vogel's refusing to prepare responses to any of the claims over the past three years.

**RECEIVERSHIP FEES AND EXPENSES ALLOWED BY THIS COURT
PURSUANT TO INTERLOCUTORY ORDERS SHOULD BE REVIEWED AND
EXAMINED, PARTICULARLY THOSE FEES AND EXPENSES INCURRED
AFTER THE FIFTH CIRCUIT'S DECISION IN DECEMBER 2012**

21. The Fifth Circuit held in the *Netsphere v Baron* case as follows:

“In light of our ruling that the receivership was improper, equity may well require the fees to be discounted meaningfully from what would have been reasonable under a proper receivership. Fees already paid were calculated on the basis that the receivership was proper. Therefore, the amount of all fees and expenses must be reconsidered by the district court. Any other payments made from the receivership fund may also be reconsidered as appropriate.

“We also conclude that everything subject to the receivership other than cash currently in the receivership, which Baron asserts in a November 26, 2012 motion amounts to \$1.6 million, should be expeditiously released to Baron under a schedule to be determined by the district court for winding up the receivership. The new determination by the district court of reasonable fees and expenses to be paid to the receiver, should the amount be set at more than has already been paid, may be paid from the \$1.6 million. To the extent the cash on hand is insufficient to satisfy fully what is determined to be the reasonable charges by the receiver and his attorneys, those charges will go unpaid. No further sales of domain names or other assets are authorized.”

Netsphere v. Baron, 703 F.3d at 313-14. Under any set of circumstances, the fees and expenses of the Receiver and his attorneys from and after December 18, 2012, should be limited to the \$1,600,000 on hand as of November 26, 2012. Any additional fees and expenses should go unpaid, as clearly articulated by the Fifth Circuit. Baron believes that more than \$1,600,000 has been distributed since December 18, 2012, and would ask that the Receiver be ordered to account for such payments.

22. Furthermore, this Court should revisit the fees and expenses of the Receiver and his attorneys based on the failure of the Receiver to protect the Quantec and Novo Point assets, the damages incurred by Baron as a result of the Receiver's conduct in this proceeding, and the failure of the Receiver to accomplish much of anything other than the payment of his fees and expenses and the fees and expenses of his legal counsel.

CONCLUSION AND PRAYER

This Honorable Court should not rely upon Vogel's report and should not open new proceedings. Within the timeframe outlined above the receivership assets belonging to Baron should be returned to Baron and the receivership assets belonging to Novo Point and Quantec should be returned to the the United States Manager for Novo Point and Quantec duly appointed by the current Cook Island Manager for Novo Point and Quantec. There is no dispute and no other party that can lay claim to these assets. This Honorable Court should promptly terminate the receivership estate and discharge Vogel, without prejudice to a review and final approval of his fees and expenses and the fees and expenses of his professionals, and without prejudice to potential claims that Baron, Novo Point and Quantec may have against him and his agents and attorneys, all of this being in conformity with the mandate of the Court of Appeals.

Dated: February 11, 2014

Respectfully submitted,

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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 February 11, 2014.

/s/ Stephen R. Cochell