

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

NOVO POINT, LLC., Et al.	§	
<i>Plaintiffs,</i>	§	
vs.	§	Civil Action No. 3:14-cv-1552-P
	§	
ELISA KATZ, Et al.	§	
<i>Defendants</i>	§	

APPENDIX OF EXHIBITS

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Exhibit A

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

O.A. No. /2014

IN THE MATTER

of the section 3(1)(b) of the Declaratory Judgments Act 1994 (the "Act")

AND

IN THE MATTER

of the Village Trust (the "Trust"), a Cook Islands trust registered as an international trust under the International Trusts Act 1984 (the "ITA")

AND

IN THE MATTER

of Novo Point LLC, a Cook Islands limited liability company established under the Limited Liability Companies Act 2008 (the "LLC Act")

AND

IN THE MATTER

of Quantec LLC a limited a Cook Islands limited liability company established under the LLC Act

AND

IN THE MATTER

of an application for declaratory order by David Robert McNair, Solicitor of Muri on the island of Rarotonga

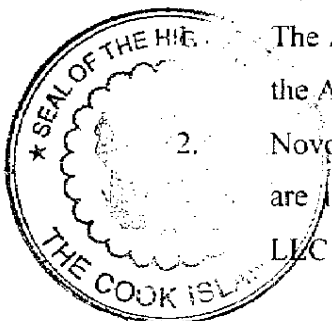
Applicant

EX PARTE APPLICATION TO A HIGH COURT JUDGE
DECLARATORY ORDERS

THE above named Applicants will apply to the High Court at on day, the day of , 2014, at o'clock in the noon, for an order that the rights and obligations of manager of Novo Point, LLC and Quantec, LLC are held by the Applicant as of the date of the Order UPON THE GROUNDS:

The Applicant is entitled to apply for such order pursuant to subsection 3(1)(b) of the Act.

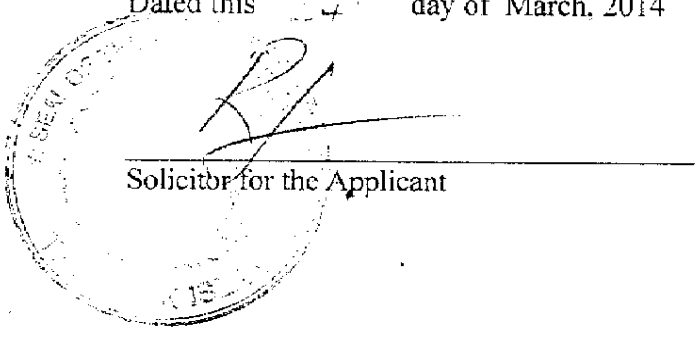
2. Novo Point, LLC and Quantec, LLC (when collectively referred to the "LLCs") are limited liability companies incorporated and currently registered under the LLC Act.



- 3. The sole member of each of the LLCs is RPV Limited ("RPV"), a company incorporated under the International Companies Act 1981-82 (the "ICA").
- 4. RPV holds its membership interest in LLCs, not in its own right, but in its capacity as trustee of the Village Trust.
- 5. Under each of the operating agreements of the LLCs the member has the power to appoint and remove managers.
- 6. By notice dated 18 February, 2014 RPV removed Elissa Katz, who was then the sole manager of the LLCs, as manager of the LLCs with effect from 3 July, 2014.
- 7. On the same day RPV appointed the Applicant the sole manager of the LLCs.
- 8. The Applicant has not received any notice of his removal as manager between the date of his appointment and the date of the application.

AND UPON THE FURTHER GROUNDS set out in the affidavit of the Applicant to be filed herein

Dated this 24th day of March, 2014



A handwritten signature in black ink is written over a horizontal line. To the left of the signature is a circular notary seal. The seal contains the text "I SERVED" at the top and "19" at the bottom. The signature is written in a cursive style, starting with a large "R".

Solicitor for the Applicant

THIS APPLICATION is filed by Brian Mason whose address for service is at the offices of Mason PC, Puaikura House, Avarua, Rarotonga.

Exhibit B

From: David McNair [mailto:david@mcnairpc.com]
Sent: Thursday, February 27, 2014 5:46 PM
To: Christopher A. Payne
Subject: RE: Novo Point LLC and Quantec LLC

Dear Mr. Payne

Thank you for your email and attached letter. I confirm I act for the trustee of the Village Trust, and through it, underlying entities including Novo Point LLC and Quantec LLC. In regard to your call, I did not receive instructions to reply.

Your letter purports to impugn a number of actions taken in relation to the trust. I have sighted your filing in *Netsphere v Jeffrey Barron* filed today and advise that it contains fundamental factual errors; in particular see note 3 on page 2.

Before dealing with those matters, I must ask that you provide me with documentary authority for your assertion that you represent Novo Point LLC and Quantec LLC.

Kind Regards

David McNair
Barrister & Solicitor
& Notary Public



PO Box 3104
Avarua
Rarotonga
Cook Islands

For US callers: 1 (949) 734-5216
Office: +++ (682) 21514
Cell: +++ (682) 79623
Fax: +++ (682) 21517
Email: david@mcnairpc.com
Website: www.mcnairpc.com

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From: Christopher A. Payne [mailto:cpayne@cappc.com]
Sent: Thursday, 27 February 2014 12:44 p.m.
To: David McNair
Subject: RE: Novo Point LLC and Quantec LLC

Mr. McNair,

Please see attached correspondence

Best regards,

Christopher A Payne

 Sandler Siegel, PLLC

6600 LBJ Freeway, Suite 183

Dallas, TX 75240

Phone 972 284-0731

Direct 972 239-1270

Fax 214 453-2435

Cell 214 675-2923

chris@sandlersiegel.com

From: David McNair [<mailto:david@mcnairpc.com>]

Sent: Tuesday, February 25, 2014 8:09 PM

To: Christopher A. Payne

Subject: Novo Point LLC and Quantec LLC

Dear Mr. Payne


I refer to my email to you of 18 February 2014 in which I forwarded the resolutions of the above LLC's directing you to withdraw pleading number 1360 in the Netsphere matter and to take no further action without further notice from RPV Limited, the sole member of both LLC's.

My understanding is that you have not complied with these directions. It is also my understanding that you appear to be unlawfully attempting to exercise control over Novo Point LLC and Quantec LLC for what appears to be your own benefit.

My further understanding is that this behaviour and activity is prohibited by your state's Bar Disciplinary Rules. I advise that I am seriously considering filing a complaint with the State Bar if you do not rectify this situation forthwith.

Kind Regards

David McNair

 PO Box 3104
Avarua
Rarotonga
Cook Islands

For US callers: 1 (949) 734-5216
Office: +++ (682) 21514
Cell: +++ (682) 79623
Fax: +++ (682) 21517
Email: david@mcnairpc.com
Website: www.mcnairpc.com

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SANDLER SIEGEL PLLC

February 26, 2014

Mr. David McNair
Barrister & Solicitor
& Notary Public
PO Box 3104
Avarua
Rarotonga
Cook Islands

RE: Novo Point LLC and Quantec LLC

Dear Mr. McNair,

Please accept this as my response to your e-mail from Tuesday February 25, 2014 regarding my activities as counsel for Novo Point LLC and Quantec LLC (“the LLCs”).

First, and I mean absolutely no disrespect by this statement as you may be the finest barrister and solicitor not only in the Cook Islands, but in the entire English legal system, but I do not know who you are. You and I have never met or had any conversations or communications of any kind that I am aware of until I was copied on an e-mail addressed to Lisa Katz on February 18, 2014. The only thing that I know about you is that you are a barrister and solicitor in the Cook Islands.

The e-mail from February 18, 2014 is not addressed to me. I am merely copied on it. I received the e-mail at 8:12PM CST. The document which is attached to the e-mail contains an apparent signature, which I cannot read. Below what is apparently the signature is additional writing which I also cannot read. There is no printed identification of the individual purporting to act, no identification of the position of the person purporting to act, or any demonstrable authority of any kind for the individual signing to bind the entity which purportedly enacted the resolution. The resolution is undated, is not verified, is not notarized or certified and bears no other information demonstrating the authenticity of the document. The document provided appears to bear the name of Elissa Katz as the author. Ms. Katz did not author or authorize the document. There are a number of other issues and concerns with the document which I will not take the time to go through at this point. Despite all of these issues, after I received the document I attempted to call you to speak to you about my concerns. I called you at 9:09 PM and again at 9:19 PM on February 18, 2014. I left a voice mail asking you to contact me. I have not received a return call as of the date and time of this e-mail.

**6600 LBJ Freeway, Suite 183
Dallas, Texas 75240
Phone: 972-284-0731
Fax: 972-239-9968**

Second, I received an e-mail from you on February 19, 2014 at 8:46 PM. Like the document attached to the e-mail of February 18, 2014, the document attached to this e-mail has significant concerns and issues as well. The document appears to be signed by you in your capacity as a director of CITP, Ltd. This is yet another entity that has never before contacted me. Nothing in this e-mail or the documents attached provide any documentation to identify who you are, the source of CITP Ltd's purported authority to act in any capacity which it purports to act, and other basic information that you as a barrister & solicitor would require before you took any action on behalf of your client, let alone an action such as withdrawing a pleading, when withdrawing that pleading might reasonably be construed as an action against the best interest of a client and a violation of fiduciary duties owed to that client. With respect to handling of the federal proceedings, you should be aware that in Texas a lawyer should assume responsibility for the means by which the client's objectives are best achieved; thus, a lawyer has very broad discretion to determine technical and legal tactics.

Third, on Friday February 19, 2014 and again on Saturday February 20, 2014, I spoke with Leonard Simon. I expressed my concerns that no one has provided me with the necessary documentation to demonstrate the authority of CITP Ltd and/or RPV to act. I also advised him that I had called you but had not received a return call. Perhaps incorrectly, I assumed he would communicate these concerns to you as well. Mr. Simon also asked me to submit invoices to you for my time and expenses so that arrangements could be made to get them paid.

Fourth, on Sunday February 21, 2014, Mr. Leonard sent me an e-mail suggesting "As a showing of good faith, please file a notice of withdrawal of the Reply you filed on 2/18/2014, Document No. 1360." He attached the same resolutions as included in your e-mail of February 19, 2014 with the same defects, issues and concerns as those contained in your e-mail. Receiving this e-mail from him did not cure these defects, issues and concerns. Moreover, Mr. Simon does not purport to represent the LLCs, and has not yet been authorized to substitute in as counsel in the federal court. I seriously doubt that you would accept such documents if they came from a foreign country as the basis for taking any action which might be construed as against the interest of your client without authenticated documentation and far more information than has been provided to me. With no disrespect intended, I do not believe the entities you represent hold the authority they are purporting to exercise. However, while it is not clear which, if any, parties you are representing as counsel, I am happy to look at whatever documentation you may provide.

As counsel for Novo Point LLC and Quantec LLC I have a fiduciary duty to both of these companies. I fully intend to discharge these responsibilities to the best of my abilities and am not about to take any action which I believe might likely harm the companies. I will also not be threatened into taking an action that I believe is in violation of my fiduciary duties to the LLCs and/or cannot verify is genuinely requested of me by someone who is authorized and actually understands the potential consequences of such actions.

I need, as a preliminary matter, documentation that can be authenticated and which evidences the authority of the entities your represent to take the actions reflected in the documents you sent me. That will allow me to determine what actions should be taken, if any, in light of the substance of

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Phone: 972-284-0731
Fax: 972-239-9968**

the documents. Please provide these to me at your earliest convenience. Once I receive these I will be happy to discuss this matter with you.

Best regards



Christopher A. Payne

**6600 LBJ Freeway, Suite 183
Dallas, Texas 75240
Phone: 972-284-0731
Fax: 972-239-9968**



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NOVO POINT, LLC, a Cook Islands limited liability company and QUANTEC, LLC, a Cook Islands limited liability company

CASE NO.

PLAINTIFFS' COMPLAINT

Plaintiffs,

vs.

DOMAIN HOLDINGS GROUP, INC., a Florida corporation, and DOES 1-5

Defendants.

_____ /

COMPLAINT

Plaintiffs, NOVO POINT, LLC, a Cook Islands limited liability company, and QUANTEC, LLC, a Cook Islands limited liability company, hereby sue Defendants DOMAIN HOLDINGS GROUP, INC., a Florida corporation, and DOES 1-5, alleging as follows:

PARTIES AND PARTICIPANTS

1. Plaintiff NOVO POINT, LLC (hereinafter "NOVO"), is a Cook Islands limited liability company, having its principal place of business in the Cook Islands. NOVO does not have a place of business in the State of Florida. NOVO is in good standing under the laws of the Cook Islands.
2. Plaintiff QUANTEC, LLC (hereinafter "QUANTEC"), is a Cook Islands limited liability company, having its principal place of business in the Cook Islands. QUANTEC does not have a place of business in the State of Florida. QUANTEC is in good standing under the laws of the Cook Islands.

3. Defendant DOMAIN HOLDINGS GROUP, INC., (hereinafter "DOMAIN HOLDINGS"), is a Florida corporation with its principal place of business in Delray Beach, Florida.

4. Defendants DOES 1 through 5 are other parties not yet fully identified who have apparently made a claim towards monies owed to NOVO and/or QUNATEC by DOMAIN HOLDINGS as more fully set forth below. The true names, whether corporate, individual or otherwise, of Defendants DOES 1 through 5 are presently not fully known to NOVO and/or QUANTEC. Accordingly, NOVO and QUANTEC file this action against DOMAIN HOLDINGS and said DOE Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained and adequately identified.

5. Plaintiffs are informed and believe and thereon allege that DOMAIN HOLDINGS is withholding the funds owed to NOVO and/or QUANTEC for multiple Internet domain names ("domains") owed by NOVO and/or QUANTEC, which domains generate money for NOVO and/or QUANTEC (such money being collected by DOMAIN HOLDINGS for the benefit of Plaintiffs as further alleged below).

JURISDICTION AND VENUE

6. This action arises under Declaratory Judgments, Title 28 U.S.C. §2201 and 2202.

7. This Court has diversity jurisdiction over this action and declaratory judgment claim pursuant to 28 U.S.C. §§1332(a)(2) and 1332(c)(1) because (a) the amount in controversy is greater than \$75,000, exclusive of interest and costs (28 U.S.C. §1332(a)); (b) DOMAIN HOLDINGS has a principal place of business within the territorial jurisdiction of the Court (namely, Delray Beach, FL); (c) NOVO is incorporated in the Cook Islands and is a citizen of a foreign state (namely, Cook Islands) and QUANTEC is also incorporated in the Cook Islands and is a citizen of a foreign state

(namely, Cook Islands)(see 28 U.S.C. §1332(c)(1)); and (d) neither NOVO or QUANTEC have a principal places of business in the State of Florida (see 28 U.S.C. §1332(c)(1)). Therefore, this Court has diversity jurisdiction over this dispute involving citizens of a foreign state and DOMAIN HOLDINGS, a local company in Florida.

8. Venue is proper in the Unites States District Court for the Southern District of Florida pursuant to 28 U.S.C. §1391, because Plaintiffs NOVO and QUANTEC have separate contractual agreements with DOMAIN HOLDINGS for the monetization of the multiple NOVO and/or QUANTEC domains, and whereas, DOMAIN HOLDINGS is a Florida corporation located in Delray Beach Florida, a substantial part, if not all, of the performance by DOMAIN HOLDINGS and events giving rise to the claims occurred in the State of Florida, Plaintiffs have suffered damages in Florida, and DOMAIN HOLDINGS solicits business from consumers in the State of Florida.

FACTS

9. Plaintiffs NOVO and QUANTEC register, purchase, monetize, develop and/or sell domains. NOVO and QUANTEC have been in this business since their inception, approximately June 30, 2009. NOVO and QUANTEC have collectively acquired over 200,000 domains (herein collectively "NQ Domains").

10. Currently NOVO owns approximately 170,000 domains (herein "NP Domains") and QUANTEC owns approximately 60,000 domains (herein "Q Domains"). Both the NP Domains and the Q Domains are the subject of this action.

11. NOVO is the owner of all the NP Domains. QUANTEC is the owner of all Q Domains. All the NP Domains and Q Domains are registered with two (2) Domain Registrars, namely Fabulous.com and Name.com. The concept of domain registrars are commonly before the courts as

shown in 15 U.S.C. §1125(d)(2)(A). As of the date of filing this action, both Registrars (Fabulous.com and Name.com) have placed a temporary lock of the NP Domains and Q Domains, in order to freeze any transfer or changes to the ownership or control thereof.

12. NOVO and QUANTEC, and each of them, entered into separate agreement(s) with DOMAIN HOLDINGS such that, among other things, DOMAIN HOLDINGS is permitted to utilize the domain names for the purposes of earning revenues ("monetization") and in exchange DOMAIN HOLDINGS pays to NOVO and/or QUANTEC as the case may be, a percentage of revenues and other consideration earned or received by DOMAIN HOLDINGS in connection with such monetization or a fixed fee.

13. On or before March 21, 2014, NOVO and QUANTEC were informed by DOMAIN HOLDINGS that it would not release the money owed to NOVO and/or QUANTEC relative to the monetization of the NQ Domains because one or more third parties (named herein as DOE defendants) have demanded that DOMAIN HOLDINGS pay all such amounts to them and not to plaintiffs.

14. The NP Domains and the Q Domains require the payment of annual registration fees to the registrars Fabulous and Name.com, respectively in order for NOVO and QUANTEC to continue to hold the registration rights therein. If the Registrars (Fabulous and Name.com as the case may be) are not paid then NOVO's and QUANTEC's respective ownership interests and registrations rights therein will be cancelled, thereby ending Plaintiffs', and each of their, rights therein, including any right to monetize such domains. NOVO and QUANTEC are informed and believe, and based thereon allege, that the annual registration fees for multiple NP Domains and Q Domains are coming due and require payment. Plaintiffs are further informed and believe, and based thereon allege, that

DOMAIN HOLDINGS possesses a complete list of the NP Domains and Q Domains which are at issue in this case, the Registrar at which such domains are registered, and the expiration dates prior to which annual registration fees are due thereon. Although requested to do so, DOMAIN HOLDINGS has refused to tender to Plaintiffs and/or to the Registrars (Fabulous.com and/or Name.com as the case may be) any part of the amount owed to Plaintiffs so that the domains at issue may be renewed and not cancelled.

15. Upon information and belief DOES 1-5 have laid claim to the money held by DOMAIN HOLDINGS for the NQ Domains. Currently, DOMAIN HOLDINGS owes NQ in excess of \$75,000.

16. In light of the large number of domains at issue, all of the renewal fees to keep the NQ Domains properly registered to and owned by NQ are paid from the DOMAIN HOLDINGS monetization funds. Plaintiffs are currently without funds necessary to pay the renewal fees and in the event amounts due are not paid to Plaintiffs, the domains at issue will expire all to the damage and detriment of Plaintiffs.

COUNT I:

DECLARATION OF OWNERSHIP FOR DOMAIN MONETIZATION FUNDS

17. Plaintiffs repeat each and every allegation set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

18. Both NOVO and QUANTEC have contractual agreements with DOMAIN HOLDINGS relative to the monetization of the NP Domains and Q Domains respectively.

19. NOVO and QUANTEC have informed DOMAIN HOLDINGS of NOVO and QUANTEC's respective rights and claims to the monetization funds.

20. DOMAIN HOLDINGS has failed to pay the monetization funds to NOVO and/or QUNATEC. DOMAIN HOLDINGS failure to turn over those monetization funds to NOVO and/or QUANTEC are causing damage and harm, to PLAINITFFS.

21. DOES 1-5 have asserted claims of ownership to the monetization funds held by DOMAIN HOLDINGS. These DOES 1-5 claims of right to these funds do not relieve DOMAIN HOLDINGS of their contractual obligations to NOVO and/or QUANTEC. Any claims by DOES 1-5 should only be directed to NOVO and/or QUANTEC.

22. NOVO and QUANTEC seek a Declaration of ownership as to the monetization funds for the NP Domains and the Q Domains.

COUNT II:

PRELIMINARY INJUNCTIVE RELIEF

23. Plaintiffs repeat each and every allegation set forth in the preceding paragraphs of this Complaint as if fully set forth herein.

24. Some NP Domains and Q Domains will be coming due for renewal within the next few weeks and/or months.

25. NOVO and QUANTEC rely almost exclusively on the monetization funds for the continued renewal and maintenance of ownership of the NP Domains and Q Domains. Some of the funds generated from the DOMAIN HOLDINGS monetization money is earmarked and used towards these renewals. PLAINTIFFS have instructed DOMAIN HOLDINGS to pay such renewal fees, and/or release the money to Plaintiffs for payment, but DOMAIN HOLDINGS has refused to do so. The failure of DOMAIN HOLDINGS to release these funds and effectuate the renewals will cause substantial and irreparable harm to NOVO and QUANTEC.

26. As a result, NOVO and QUANTEC seeks a preliminary injunctive order from this Court to command DOMAIN HOLDINGS to use the necessary portion of the current monetization funds owed to NOVO and QUANTEC in order to renew and maintain the soon-to-be expiring registrations of the NP Domains and/or Q Domains, or in the alternative to release those funds to NOVO and/or QUANTEC so that the renewals can be handled by NOVO and/or QUANTEC. Such expiration will cause these domains to end up on the open market, subject to any willing buyer to have a potential claim to ownership of said domains.

27. If NOVO and/or QUANTEC lose their ownership rights to these domains, due to DOMAIN HOLDINGS failure to release the funds allowing NOVO and/or QUATNEC to renew same, NOVO and/or QUANTEC will be irreparably injured and will suffer, and will continue to suffer, substantial damage to their businesses, as well as general and special damages, in an amount to be established at trial.

COUNT III:

PERMANENT INJUNCTIVE RELIEF

28. Plaintiffs repeat each and every allegation set forth in the preceding paragraphs of this Complaint as if fully set forth herein.\

29. Plaintiffs seek an Order from the Court commanding DOMAIN HOLDINGS to pay over to the respective plaintiffs their respective monetization funds as determined by the Court in the declaratory judgments action, Count 1.

30. Plaintiffs have suffered irreparable injury by the failure of DOMAIN HOLDINGS to (a) pay Plaintiffs their respective portions of the monetization funds and (b) pay the respective Registrars portions of the monetization funds to renew the various NP Domains and Q Domains.

31. Plaintiffs' remedies at law are not adequate to compensate Plaintiffs' injuries with respect to their respective NP Domains and Q Domains. For example, if certain NP Domains and/or Q Domains are not renewed and third parties purchase such non-renewed NP Domains and/or Q Domains, Plaintiffs' may not be able to re-purchase such domains from such third party purchasers.

32. Any injury suffered by DOMAIN HOLDINGS due to the issuance of the permanent injunction to turn over monetization funds to the respective plaintiffs is small when balanced against the injury to Plaintiffs.

33. The issuance of a permanent injunction serves the public's interest because the public, and various members of the public, including Plaintiffs, benefit when DOMAIN HOLDINGS adheres to the contractual arrangements with NOVO and with QUANTEC.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request judgment in their favor and against Defendants as follows:

1. A declaration that Plaintiffs are the owners of the respective monetization funds for the NP Domains and the Q Domains;
2. Entry of a preliminary injunctive relief instructing DOMAIN HOLDINGS to pay over to the respective Registrars respective portions of the monetization funds for the renewal of NP Domains and Q Domains which are subject to renewal;
3. Entry of a permanent injunctive relief instructing DOMAIN HOLDINGS to pay over to the respective plaintiffs monetization funds for the NP Domains and the Q Domains;
4. An award of attorneys fees per the DOMAIN HOLDINGS agreements with the respective plaintiffs;

5. An award of costs and expenses for this action; and
6. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: April 7, 2014

By: s/Robert Kain

Robert C. Kain, Jr. (Florida Bar No. 266760)

Rkain@ComplexIP.com

Darren Spielman (10868)

Dspielman@ComplexIP.com

KAIN & ASSOCIATES, Attorneys at Law, P.A.

900 Southeast 3rd Avenue, Suite 205

Fort Lauderdale, FL 33316

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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.

§
§
§ **CIVIL ACTION NO. 3:13-cv-03461-L**
§
§
§ **(Bankruptcy Case No. 12-37921)**
§
§
§
§

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 *Netsphere 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,

TAYARI LAW PLLC

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Attorneys for Jeffrey Baron on Appeal

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

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

Exhibit E

NETSPHERE, INC.,
MANILA INDUSTRY, INC.,
AND MUNISH KRISHAN

PLAINTIFFS,

v.

JEFFREY BARON AND
ONDOVA LIMITED COMPANY,

DEFENDANTS

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CIVIL ACTION NO. 3:09-cv-0988-L

**NOTICE OF APPEARANCE OF LEONARD H. SIMON OF THE PENDERGRAFT &
SIMON LAW FIRM AS ATTORNEY IN CHARGE FOR JEFFREY BARON**

PLEASE TAKE NOTICE that on behalf of Jeffrey Baron the undersigned hereby appears
as attorney-in-charge in the captioned proceeding:

Leonard H. Simon, Esq.
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Respectfully submitted this 25th day of February 2014.

/s/ Leonard H. Simon
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**ATTORNEY IN CHARGE FOR
JEFFREY BARON**

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served through the ECF system on February 25, 2014.

/s/ Leonard H. Simon
Leonard H. Simon

Exhibit F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JUDGE: Richard Schell

COURT REPORTER:
Jerry Kelley

COURTROOM DEPUTY:
Bonnie Sanford

MARGETIS, ET AL

vs.

CIVIL NO. 4:12cv753

FURGESON, ET AL

PRESENT: For Plaintiffs: Alan Baron (pro se), John Margetis (pro se)
For Defendants: Randi Russell, Bradley Visosky, Garin Reetz

This day, 3/21/14, came the parties and by their attorneys the following proceedings were held before Judge Richard Schell in Plano, Texas:

Motion Hearing [de#34]

10:02 pm The court called the case, noting the appearance of the parties and their attorneys.

10:04 am Ms. Mpatanishi Tayari Garret addresses the court, stating that Mr. Margetis had some travel issues and will be running late.

10:07 am Mr. Margetis is not present. However, the court is informed that he is en route.

10:08 am Mr. Baron presents filings to the court. The court informs Mr. Baron that they will be accepted, but as late filings and will not be read for this court hearing.

10:20 am Mr. Margetis appears and requests a restroom break.

10:22 am The court begins addressing the plaintiff's motions. The court addresses the motion to continue the hearing on the motion for sanctions [de#82].

10:37 am Mr. Margetis addresses the court regarding the Motion for Continuance..

10:39 am Mr. Russell addresses the court, opposing the Motion for Continuance.

10:43 am The court denies the Motion for Continuance [de#82].

10:44 am Mr. Margetis calls witness Michael Briscoe. The court addresses the reasons for calling this witness.

10:48 am Mr. Viosky addresses the court regarding any additional information to what's already in the record.

10:51 am The court addresses Mr. Margetis's request for Judge Schell to recuse.

11:02 am At Mr. Margetis request, court recessed for 10 minutes.

11:16 am Court resumes. Mr. Margetis begins presentation of his argument.

11:28 am Neither party wishes to invoke the rule.

11:29 am Mr. Margetis offers Plaintiff exhibit 1. Mr. Viosky objects and makes a global objection to all exhibits that have been presented at this hearing.

11:34 am Mr. Margetis calls himself as a witness and is sworn in.

11:48 am Mr. Viosky questions the witness, Mr. Margetis.

12:31 pm Mr. Margetis calls Mpatanishi Tayari Garrett. Ms. Garrett is sworn in.

12:52 pm The court questions Ms. Garrett.

12:58 pm Mr. Viosky questions the witness.

1:05 pm Govt (defense) exhibit 5 admitted.

1:18 pm Witness excused.

1:19 pm Court recessed until 2:20 pm.

2:19 pm Court resumes.

2:20 pm Mr. Margetis calls witness Andrea (DeeDee) Arnold. The court questions Mr. Margetis as to what Ms Arnold will testify to.

2:29 pm Ms. Andrea Arnold is sworn in. The court questions Ms. Arnold.

2:33 pm The court finds this witness is not relevant to this case. Ms. Arnold is excused.

2:34 pm Court and parties discuss the case.

3:23 pm Mr. Margetis calls Donna Baron. Ms. Baron is sworn in.

3:58 pm Witness is excused.

4:00 pm Mr. Margetis addresses the court.

4:15 pm Mr. Viskosky addresses the court.

4:29 pm Mr. Margetis addresses the court.

4:32 pm The court will give a ruling as soon as possible.

4:33 pm Court recessed.

I.

**MOTION FOR ADDITIONAL TIME
TO FILE RULE 9(b) AND RULE 12(b)(6) MOTION PREVIOUSLY FILED**

1. Defendant McNair previously filed a Motion for Additional Time to File Rule 9(b) and Rule 12(b)(6) Motion. ECF Doc 6. In said motion, Defendant McNair alerted the Plaintiff that there is no “summons executed” that appears in the file; thus, there is no way for Defendant McNair to determine when service occurred as to the Complaint and Summons in this case. Assuming that the date of service is the date Mr. McNair received the Complaint and Summons, April 24, 2014, the filing deadline would be the 19th of May, 2014, with the “three-day mailbox rule”. *See* FRCP Rule 6(e). Therefore, this Supplement is filed timely. In the event that this Court rules otherwise, Defendant McNair rests on his Motion for Additional Time.

II.

MOTION PURSUANT TO FRCP RULES 9(b) and 12(b)(6)

2. The Court reviews motions under Rule 12(b)(6) “accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiffs.” *Stokes v. Gann*, 498 F.3d 483, 484 (5th Cir. 2007) (per curiam). However, the Court “will not strain to find inferences favorable to the plaintiff.” *Southland Sec. Corp. v. INSpire Ins. Solutions Inc.*, 365 F.3d 353, 361 (5th Cir. 2004) (internal quotations omitted).

3. To avoid dismissal for failure to state a claim, a plaintiff must meet Fed. R. Civ. P. 8(a)(2)’s pleading requirements. Rule 8(a)(2) requires a plaintiff to plead “a short and plain statement of the claim showing that the pleader is entitled to relief.” In *Ashcroft v. Iqbal*, the Supreme Court held that Rule 8(a)(2) requires that “the well-

pleaded facts” must “permit the court to infer more than the mere possibility of misconduct.” 129 S.Ct. 1937, 1950 (2009) (quoting Rule 8(a)(2)). “Only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). “[A] complaint does not need detailed factual allegations, but must provide the plaintiff’s grounds for entitlement to relief—including factual allegations that when assumed to be true raise a right to relief above the speculative level.” *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009) (internal quotation marks removed).

4. FRCP Rule 9(b) provides that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.” In order to satisfy the pleading requirement pursuant to F.R.C.P. 9(b), the plaintiff must specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent. *Southland Sec. Corp. v Inspire Ins. Solutions Inc.*, 365 F.3d 353, 362 (5th Cir. 2004). “[M]ere conclusory allegations of fraud are insufficient.” *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989). See *Oppenheimer v. Prudential Sec. Inc.*, 94 F.3d 189, 195 (5th Cir. 1996) (upholding district court’s dismissal of fraud claims where the plaintiff failed to allege when an allegedly fraudulent sales charge was incurred or the extent of her damages); *Red Rock v. JAFCO Ltd.*, 1996 WL 97549, at *3 (5th Cir. Feb. 16, 1996) (holding that the plaintiff’s allegations did not satisfy Rule 9(b) where they failed to allege the time, place, or content of any misrepresentations). “To plead fraud adequately, the plaintiff must ‘specify the statements contended to be fraudulent, identify the speaker,

state when and where the statements were made, and explain why the statements were fraudulent.” *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 551 (5th Cir. 2010) (quoting *ABC Arbitrage v. Tchuruk*, 291 F.3d 336, 350 (5th Cir. 2002)).

III.

ANALYSIS OF COMPLAINT

5. Plaintiff is an LLC organized under the laws of the Commonwealth of Virginia. Paragraph 1 of the Complaint. Plaintiff was organized on or about March 12, 2014.² Paragraph 17 of the Complaint, Plaintiff alleges that “Baron conspired with the defendant McNair to have McNair use shell entities that he controlled in a concerted effort to **fraudulently** convince the U.S. District Court and other third-parties, that McNair’s shells were legitimate, authorized trustees, and that McNair had been duly and lawfully appointed as the manager of the LLCs since July 3, 2013.” However, Plaintiff fails to specify the statements alleged to be fraudulent, identify the speaker, identify the listener, state when and where the statements were made, explain why the statements were fraudulent as to Plaintiff, a complete stranger, and explain how Plaintiff herein was harmed by such alleged representations from a causation point of view.

6. Paragraph 18 alleges that “Baron and McNair conspired to have McNair and the entities he controlled use mail and wire fraud in a scheme to falsely represent that Lisa Katz was replaced as the operations manager of the LLCs and McNair had been the true manager since July 3, 2013. However, Plaintiff fails to specify the statements alleged to be fraudulent, identify the speaker, identify the recipient, state when and where

² The Court can take judicial notice of the Secretary of State’s Website where the Court can ascertain the date of organization of Plaintiff. For convenience, the internet page is attached hereto. The web page is: <https://sccefile.scc.virginia.gov/Business/>

the statements were made, and explain why the statements were fraudulent as to Plaintiff and how they caused Plaintiff injury and the extent of such injury.

7. In paragraph 19 of the Complaint, Plaintiff alleges: “The artifice was clearly devised and intended to defraud and obtain property by means of false and fraudulent representations made through wire communications from the Cook Islands to Dallas Texas and other locations in the United States beginning on or about March, 2014.” In making these allegations, Plaintiff fails to specify or describe what property was obtained, and fails to specify the statements contended to be fraudulent, identify the speaker or the listener, state when and where the statements were made, explain why the statements were fraudulent as to Plaintiff, the amount of damages caused by such alleged statements and how such damages were proximately caused by such statements.

8. In paragraph 20, Plaintiff alleges: “McNair is not, as he knowingly and fraudulently represented, the director of RPV Limited. Nor, pursuant to Cook Islands law, is RPV Limited authorized as the Trustee of the Village Trust. Rather, McNair conspired with Baron and Baron’s counsel Simon to make the fraudulent communications by wire in violation of 18 U.S.C. 1343. The action is a predicate RICO act in a scheme designed to use wire fraud to obtain control over millions of dollars in assets.” Plaintiff fails to allege when and where the statements were made, and explain why such statements were fraudulent as to Plaintiff or how Plaintiff was damaged and in what amount. Plaintiff fails to allege how Plaintiff, who was not even in existence at the time, was harmed by such alleged fraudulent statements.

9. In paragraph 21, Plaintiff alleges: “Specifically, in March 2014 McNair conspired with Baron’s counsel Simon to have Simon doctor an affidavit by

superimposing missing dates to a pdf copy of the document in an effort to fraudulently induce the judge into believing that the original affidavit and jurat were properly executed when they were not. Simon then fraudulently certified to the U.S. District Judge, by wire, that the doctored pdf copy of the affidavit he filed was a true and accurate copy of the original.” In making these allegations, Plaintiff fails to specify how the Plaintiff, who was not even in existence at the time, was damaged by such alleged fraud. There is simply no causation alleged or injury claimed that is cognizable based on the allegations.

10. In paragraph 24 of the Complaint, Plaintiff alleges: “Having failed in their attempt to persuade the Court, Baron and McNair conspired to redouble their efforts and engage on a stepped-up campaign of fraud to frustrate the Court’s orders. To that end, Baron and McNair conspired to engage in wire fraud and extortion to interfere with the possession of the assets released by the Court.” However, Plaintiff fails to allege when and where the statements were made, and explain why such statements were fraudulent, and fails to allege how Plaintiff, who was not even in existence at the time, was harmed by such alleged fraudulent statements.

11. In paragraph 25, Plaintiff alleges: The essence of the Baron-McNair scheme was to use wire fraud to convince third parties that McNair’s shell companies were legitimate and had appointed him, and not Lisa Katz, as the manager of Novo Point LLC and Quantec LLC. The scheme was designed to combine threats and fraud to secure the transfer of the assets to McNair– despite the U.S. District Court Order to the contrary. Plaintiff fails to allege the identities of the “third parties”, and fails to allege what the fraudulent statements were, when and where the statements were made, and explain why

such statements were fraudulent, and fails to allege how Plaintiff, who was not even in existence at the time, was harmed by such alleged fraudulent statements.

12. In paragraph 28, Plaintiff alleges: “McNair’s representations were fraudulent and known by him to be fraudulent. McNair received legal counsel from his own lawyer that where, under Cook Islands law his shell company RPV Limited was not authorized to act as trustee of the Village Trust, his shell company could not appoint him as manager or fire Lisa Katz.” Plaintiff fails to identify what legal counsel allegedly so advised McNair, when such advice was given, how Plaintiff came learn that such lawyer gave such advice. Again, to specific fraudulent statements are identified. No date is specified as to when such statements were made. There is no allegation as to how such alleged false statements harmed Plaintiff, who was not in existence at the time such alleged statements were made.

13. In paragraph 29, Plaintiff alleges: To further the carrying out of his scheme, as above described, McNair knowingly and fraudulently represented the opposite, that Payne was not authorized to act for the LLCs in any capacity. Plaintiff fails to identify to whom such representations were made, when they were made, whether they were made to Plaintiff, what the relationship is between Payne and Plaintiff, and how such alleged false statements harmed Plaintiff.

14. In Paragraph 30, Plaintiff alleges: “In light of Baron’s reputation for vexatious litigation, McNair’s fraud and threats have been effective in interfering with Domain Vault’s contracts with the domain name registrar and impeding Domain Vault’s access to domain development partners, causing an estimated annual loss to Domain Vault of \$500,000.00. The recipients of McNair’s letters acted in reliance on the

fraudulent representations and froze the domain names owned by Domain Vault LLC.” Plaintiff has failed to set forth with sufficient particularity any alleged fraudulent statements or threats that was made by McNair, when such alleged fraudulent statements and threats were made, how they was made, the parties such alleged fraudulent statements and threats were directed to, whether any such alleged fraudulent statements and threats were made to Plaintiff and how Plaintiff was harmed by such alleged fraudulent statements and threats. Plaintiff fails to explains how such alleged fraudulent statements and threats interfered with Plaintiff’s business when Plaintiff did not even exist at the time these alleged fraudulent statements and threats were made. Plaintiff fails to allege the name or each person who allegedly relied on such alleged fraudulent statements and threats. In paragraph 30, Plaintiff further alleges: “Thus, as the proximate result of McNair’s conspiracy to commit wire fraud and wire fraud, Domain Vault was cut off from management of its domain name assets and thereby suffered and continues to suffer substantial injury to its business including the ability to use or transfer its property.” Plaintiff fails to identify the domain names allegedly interfered with or when such domain names were actually transferred to Plaintiff, who transferred such domain names to Plaintiff or how McNair even knew about the existence of Plaintiff.

15. In paragraph 31, Plaintiff alleges: “Some of the domain names that McNair has interfered with directly effect and are engaged in interstate commerce. The business of Domain Vault that has been interfered is engaged in interstate commerce, including the interstate leasing of domain names. McNair has directly impeded Domain Vault’s interstate and international commercial activity by interfering with Domain Vault’s contractual relationship with its registrars, effectively cutting off Domain Vault’s

ability to contract for an income stream, and preventing Domain Vault from conducting its business operations.” Plaintiff fails to identify one domain name that is engaged in interstate commerce, nor has Plaintiff identified exactly what it is that McNair is alleged to have done to interfere with Plaintiff’s alleged domain names, nor has Plaintiff alleged any facts from which it can be ascertained when such interference and exactly how such alleged interference damaged Plaintiff. Further, Plaintiff has failed to suggest to the Court how it has any ongoing business given the fact that it only came into existence within the last 60 days. Plaintiff has failed to identify one act McNair has alleged engage in to impede Plaintiff’s interstate and international commercial activity, the date of such alleged acts, whether McNair had any knowledge of Plaintiff’s relationship with its registrars, whether McNair even had knowledge of Plaintiff’s existence at the time such acts allegedly occurred, and how Plaintiff could have been harmed by such acts.

16. Defendant McNair is a resident of the Cook Islands. McNair is a Barrister and Solicitor authorized to engage in the practice law in the Cook Islands. A true and correct copy of the initial page of Mr. McNair’s passport issued by New Zealand (Number LH454254) is attached to the McNair Declaration as **Exhibit “1”**. See ECF Doc 6-1, which is incorporated herein for all purposes as though fully set forth.

17. In paragraphs 32 and 33, Plaintiff describes McNair’s alleged RICO enterprise. Plaintiff alleges a “continuous pattern of related acts of wire fraud having the same purpose” However, RICO recovery requires detailed pleading of elements. Merely citing the correct legal formulations are insufficient, where there is no factual support for contentions made in the Complaint. See, e.g., *Davis v. Hudgins*, 896 F. Supp. 561, 573 (E.D.Va. 1995). In *Pelletier v. Zweifel*, 921 F.2d 1465 (11th Cir. 1991), the court stated:

When a private plaintiff relies on a violation of the mail or wire fraud statutes as a predicate act for civil RICO, he faces an additional hurdle before he can obtain recovery: he must show not only that the mail or wire fraud statutes have been violated, but also that he has suffered injury as a result of the violation. Section 1964(c) provides civil remedies to those persons who are injured “by reason of” racketeering activity. As we note above, when the government prosecutes a defendant under the mail and wire fraud statutes, it is not required to show that the intended victim was actually deceived and suffered injury. *See Durland*, 161 U.S. at 313–15, 16 S.Ct. at 511–12; *United States v. Dynalectric Co.*, 859 F.2d 1559, 1576 (11th Cir.1988). A civil RICO plaintiff must show, however, that he was injured by reason of the defendant's acts of deception. As the Supreme Court stated in *Sedima*, “the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation.” 473 U.S. at 496, 105 S.Ct. at 3285. The Court went on to hold that the plaintiff's damages must “flow from the commission of the predicate acts.” *Id.* at 497, 105 S.Ct. at 3285. Section 1964(c), as interpreted by the Supreme Court and lower courts, thus imposes a proximate cause requirement: the plaintiff's injury must have been proximately caused by the commission of the predicate acts. *See Zervas v. Faulkner*, 861 F.2d 823, 834–35 (5th Cir.1988); *Brandenburg v. Seidel*, 859 F.2d 1179, 1189 (4th Cir.1988); *Sperber v. Boesky*, 849 F.2d 60, 64 (2d Cir.1988).

Id. at 1499. Plaintiff's Complaint fails to state a claim because Plaintiff fails to allege that it has suffered injury as a result of the acts of deception allegedly engaged in by McNair. Paragraph 10 of Defendant McNair's declaration states:

- Defendant McNair has never met with or talked to any person representing himself to be an agent, officer, director or shareholder of Plaintiff.
- Defendant McNair never heard of or knew about Plaintiff or any transactions Plaintiff allegedly engaged in with Novo Point, LLC and Quantec, LLC.
- Defendant McNair is not engaged in any business in any jurisdiction in the United States.
- Defendant McNair is not in any contractual relationship with any resident of any jurisdiction in the United States.

- During the months of February and March 2014, Defendant McNair, solely in his representative capacity as a manager of Novo Point, LLC and Quantec, LLC, attempted to terminate a contract that was allegedly in existence between Lisa Katz, the alleged Texas Manager for Novo Point, LLC and Quantec, LLC, two Cook Island entities. Such activities were initiated by Defendant McNair from the Cook Islands, and were undertaken by several letters and emails by issuing notice of termination in accordance with the terms of the subject agreement.
- During the months of February and March 2014, Defendant McNair, solely in his representative capacity as a manager of Novo Point, LLC and Quantec, LLC, has also attempted to terminate a Texas attorney allegedly engaged by Ms. Katz to represent Novo Point, LLC and Quantec LLC, Gary Payne. Such activities were initiated by Defendant McNair solely from the Cook Islands and were undertaken by several letters and emails written and issued in the Cook Islands.
- The above activities were all undertaken by Defendant McNair in a representative capacity and not in an individual capacity. His capacity as a representative was explicitly stated in each communication.

18. Texas employs the fiduciary-shield doctrine. *Hollis v Hill*, 232 F.3d 460, 467 (5th Cir. [Tex] 2000). Under the fiduciary-shield doctrine, a person who enters the state solely as fiduciary for another may not be sued in Texas. In *Hollis*, the Court stated:

“We find our decision buttressed by the legal authority dealing with close corporations. We concede that many of Hill's alleged “oppressive” acts, including the diminution and eventual termination of salary, the failure to deliver financial information, the closing of one of the company's offices, termination of employment, and the cessation of benefits, are classic examples of acts typically shielded from judicial scrutiny under the business judgment rule. Generally, employees who are adversely affected by such officer and director decisions may not claim oppression by those in control of the corporation, even if they are also shareholders of the corporation.”

Id.

IV.

**CONCLUSION: PLAINTIFF'S LAWSUIT MUST
BE DISMISSED BECAUSE PLAINTIFF HAS NOT
STATED A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

19. Plaintiff has failed to state a claim upon which relief can be granted because, under both RICO and the two Texas state law causes of action alleged, Plaintiff cannot recover from a complete stranger for acts and alleged fraudulent statements that allegedly occurred before Plaintiff ever came into existence, and certainly before Plaintiff ever acquired the alleged domain names at issue. Here, there can be no causation because the acts complained of all occurred as between McNair, on the one hand, and Lisa Katz and Christopher Payne, on the other hand, as established by Plaintiff's allegations in the Complaint.

20. McNair never met Plaintiff, never heard of Plaintiff's name until McNair was served with Plaintiff's complaint on April 24, 2014, and never directed any of the alleged actions towards Plaintiff. There simply is no, and, as a matter of law, cannot be any, causation between the acts complained of and Plaintiff's alleged damages or injury.

21. In fact, no causation has been alleged by Plaintiff as between the acts complained of and Plaintiff. There can be no reliance. Furthermore, none of the allegedly fraudulent representations made by McNair were made to Plaintiff. Plaintiff cannot maintain a cause of action against McNair, individually, since every act Plaintiff complains of was engaged in by McNair in a representative capacity, and he is, therefore, protected by the fiduciary shield doctrine.

V.

**IF NECESSARY, COURT SHOULD TREAT
THIS MOTION AS A SUMMARY JUDGMENT MOTION**

22. A motion under Rule 12(b)(6) will be treated as one for summary judgment under Rule 56 when matters outside the pleadings are presented and not excluded by the Court. Fed. R. Civ. P. 12(d); Fed. R. Bankr. P. 7012(b). Under Rule 56, summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. In the event a motion to dismiss is converted to one for summary judgment, a court must first give the parties notice and then may consider all evidence presented. *Rodriguez v. Rutter*, 310 F. App’x 623, 626 (5th Cir. 2009).

Respectfully submitted this 19th day of May 2014.

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CERTIFICATE OF SERVICE

This is to certify that on the 19th day of May 2014, a true and correct copy of the above and foregoing was served through the Court's ECF filing system and by Email upon counsel for the Plaintiff,

Andrew C. Powell
5302A Beltline Rd.
Dallas, Texas 75254
Tel. 214-295-5058
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apowell@attorney-email.com.

/s/Leonard H. Simon
Leonard H. Simon



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Business Entities

UCC or Tax Liens

Court Services

Additional Services

Domain Vault LLC

General

SCC ID: S4959955
 Entity Type: Limited Liability Company
 Jurisdiction of Formation: VA
 Date of Formation/Registration: 3/12/2014
 Status: Active

Principal Office

Drawer 670804
 Dallas TX75367

Registered Agent/Registered Office

REGISTERED AGENTS INC.
 4445 CORPORATION LANE
 STE 264
 VIRGINIA BEACH VA 23462
 VIRGINIA BEACH CITY 228
 Status: Active
 Effective Date: 3/12/2014

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