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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09CV0988-F
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

MOTION FOR LEAVE TO RECONSIDER STAY PENDING APPEAL

TO THE HONORABLE ROYAL FURGESON, SENIOR U.S. DISTRICT JUDGE:

Defendant Jeff Baron moves for leave for the Court, pending appeal, to stay or partially stay the Vogel receivership order, based on new material which materially changes the facts considered by this Court in denying Baron's original Fed.R.App.P. 8 motion, as follows:

1. Movant understands the court does not want to retread water it has already passed over. However, the rules contemplate that sometimes, in the interest of justice, a case should be looked at anew. *Cf.* Fed.R.Civ.P. 60.

2. Attorneys have started to come forward and reveal information that was previously hidden. As the Court is aware, in September 2010 after the global settlement was completed Sherman had enough funds in the bank to pay all the creditors in full and still have around a Million Dollar cash surplus. What the Court is likely **unaware** is that instead of immediately closing the Bankruptcy, as was his duty under the global settlement agreement, Sherman **actively worked to**

generate claims to 'justify' his further involvement and putting off closing the case.

3. Recently, multiple attorneys came forward. One attorney was willing to provide a sworn statement regarding Sherman's solicitation. Then, another attorney was willing to provide a sworn statement to corroborate those facts. These corroborated **sworn** statements are attached as Exhibits "A" and "B" for the Court's consideration and attention.

4. As testified to by the attorneys, in September, 2010, Sherman, used his counsel Urbanik to actively and vigorously solicit attorneys to make claims against Baron. It appears, moreover, that Sherman and Urbanik attempted to actively and aggressively solicit every attorney they could find, seeking 'referrals'– names of other attorneys they could solicit to make more claims against Baron.

5. Further, as testified to in the attached exhibits, on Sherman's behalf **Urbanik solicited that claims for fees be filed, even when told that Baron did not owe any money.** See Exhibit "A".

6. New material has also been found that also materially changes the facts considered by this Court in denying Barons' FRAP 8 motion. The Court may recall (a review of the Court's order [DOC 268] denying FRAP 8 motion may refresh the Court's recollection if necessary) that the key *specific instance* which convinced the Court that Baron was firing lawyers **for the purpose of delay** was Baron's letter to his Bankruptcy Counsel Keiffer on September 1, 2009. On

September 1, Keiffer received a letter informing him he was fired and asking him to seek delay of the hearing (set that same day!). Taken at face value, that event certainly does make Baron look like he was abusively firing his counsel for delay. It clearly looked that way to the Bankruptcy Judge who the following day entered a Show Cause order to appoint a Trustee. See Exhibit "N".

7. As the Court is well aware, the undersigned is still unpaid as appellate counsel and can only work as time allows on matters outside of the appeal of this case, in order that the undersigned may work on paying cases and in turn pay his own bills. The undersigned has no funding for staff to go over the volumes of material related to the multiple matters involved in the underlying fact issues of this case. However, the undersigned does go over a few more pages as time permits, doing some of things that paid trial counsel (or their support staff) would do if Baron were allowed to hire such legal counsel. Thus, what might take a couple weeks for a paid trial lawyer with funding for staff to do the work, has taken the undersigned months, maybe years. As unpaid appellate counsel it is the best the undersigned is able to offer. The pace is slow but diligent. That diligence has paid off. The Court may be **shocked** to hear the facts disclosed by Exhibit "E".

8. As evidenced by Exhibit "E", Baron did not desire to fire Keiffer nor do so of his free will. Rather, Baron was **threatened** by Friedman On August 31, 2009, Friedman threatened Baron that this Court would confine Baron in prison and fine him if Baron did not *immediately* sign letters Friedman had prepared to

fire Keiffer. Friedman told Baron that he was at grave risk for being thrown in jail unless he did as Friedman demanded. Baron believed he had no choice, and complied. See Exhibit "P". Baron signed the letter Friedman prepared as Friedman demanded. Keiffer received it the next day, apparently from Friedman, and **because of that the Bankruptcy Court issued its show cause order for appointing a Trustee.** See Exhibit "N".

9. This Honorable Court placed the receivership over Baron based on the belief that Baron had abusively fired Keiffer to delay the September 1 hearing. The evidence attached as Exhibit "E" establishes that is not the case and that it was Freedman who was responsible.

10. Notably, there was no notice prior to the FRAP 8 hearing that Keiffer's firing was an issue. To the best of the undersigned's recollection, Keiffer was not mentioned before or at the FRAP 8 hearing. However, the Court clearly relied in denying stay upon the Keiffer firing as well as the appointment of a chapter 13 trustee that resulted out of the Keiffer firing. In light of the evidence offered as Exhibits "A", "B", and "E", reconsideration of allowing a stay or partial stay at this point will serve the interests of justice.

11. As discussed above, beginning immediately after the global settlement was reached and there was no work left other than closing the bankruptcy case, Sherman and Urbanik became a claim generation engine, vigorously attempting to generate claims to be made against Baron. All of this, of course, was going on behind the scenes. See Exhibits "A" and "B".

12. Sherman's action of generating a cloud of 'chaos' instead of closing the bankruptcy appears to be a pattern. The Court may take notice that when the "global settlement" was just about completed, literally hours away from agreement, Sherman refused to participate in the final settlement talks and filed a motion with the Bankruptcy Court to order the talks cancelled. The Bankruptcy Judge was surprised, and in a rare admonishment of Sherman, called his request "**unreasonable**". See Exhibit "C". Sherman was then ordered to continue to participate in the settlement negotiations. The global settlement was reached shortly thereafter. A copy of the Bankruptcy Judge's finding and order is attached as Exhibit "C".

13. A copy of the Hall contract has also been located and is attached as exhibit "L". No discovery was allowed Baron in objecting to the attorney 'claims', and Hall's contract was withheld by Hall at that time. As can be seen from the written contract, Hall's flat fee was $10,000.00 per month, an amount he acknowledged was paid, for ten full months. According to Hall, some months more money was paid, although not called for in the written contract, and in total, Hall was paid over $100,000.00. Hall's "claim", typical of the other claimants, is that the last month he was ***only*** paid the $10,000.00 **called for in his written contract**. Hall's claim, like almost every other claim made against Baron, **came after Sherman**, behind the scenes, **solicited** attorneys to make claims against Baron. Notably, Sherman sought attorneys to make claims even after being told that Baron didn't owe them any money. See Exhibit "A".

14. The Court has extensive experience in the law, and can form an opinion as to whether in state court summary judgment against Hall would be entered on his claim based on a written contract with a merger clause setting the monthly rate at $10,000.00, (See Exhibit "L") and the attorney's admission he was paid at least that amount every month.

15. At this point, in light of all the facts that have come to light since the receivership order was issued, the question is whether there really is cause to continue to subject Baron to what is truly **sub-human treatment**-- **denying** him (A) **the right to possess his own property**, (B) **the right to engage in business transactions**, **(**C) **the right to personal privacy in his private affairs**, (D) **the right to work**, (E) **earn money**, and (F) **retain hired counsel**, (G) **etc.**

16. Vogel and Sherman will blame Baron– this is the well-grooved pattern in these proceedings– and the Court may believe them. The undersigned notes that Baron still does not have a functional vehicle and is still trapped in an apartment with no air conditioning or heat. Vogel has refused to release funds for either of these. The undersigned has done all he can as unpaid appellate counsel to resolve the issues. At this late date, ordering Vogel to do this or that specific act is not the solution. **Staying the receivership, or partially staying it, is called for.**

17. In case the Court is influenced by the underlying allegations that the plaintiff had originally alleged against Baron, (i.e,, that Baron 'hijacked' the plaintiff's domains), Exhibit "M" is attached. As seen from the exhibit, the plaintiff's allegations should not be afforded credibility– The plaintiff is a convict

with **a string of felony indictments** for crimes of dishonesty including fraud and **forgery**.

18. Further, to make clear the relationship between the attorney claimants, their purpose and intent, and Mr. Baron, Exhibit "G" is attached for the Court's consideration. The exhibit is Mr. Garrey's email to Baron with a copy of the receivership order, and what appears to be a clear admission that Garrey played a concerted role in its issuance. Garrey's email to Baron states sarcastically "Happy Thanksgiving" and attached a copy of the receivership order.

19. Finally, attached for the Court's consideration are the following: (1) As Exhibit "F" are Emails showing that MacPete was not hired by the plaintiff's after Baron allegedly 'hijacked' domains as MacPete has represented to the Court. Rather, MacPete was hired by the Plaintiff and Baron jointly, and 'took sides' well prior to the joint breakup, and then 'took sides' with the plaintiff; (2) As Exhibit "H" are record transcripts making clear that Baron was not in breach of the global settlement agreement; (3) As Exhibit "I", an email showing Vogel's intention to liquidate **all** of the receivership assets (in case the Court was not aware of this); (4) As Exhibit "J", Pronske's testimony from the September Bankruptcy hearing showing the threat to 'move assets offshore' was actually the 'threat' to change the trustee of the Village Trust, as agreed to by all parties and approved by the Bankruptcy Court, and required under the global settlement agreement; As Exhibit "K", a docket sheet from the Bankruptcy court showing that Baron did not 'flood' the court with new counsel and only **two** (2) substantial contribution

claims were filed, not the "nineteen" represented by Urbanik on behalf of Sherman; As Exhibit "N", the Bankruptcy Court's show cause order that shows, contrary to the representations to this Court, the order was not imposed based on any finding (or even consideration) that Ondova filed bankruptcy so that Baron could avoid or delay a contempt hearing on discovery; and as Exhibit "O" the notice informing Baron that there would not be a hearing on the contempt motion, which Baron received *prior* to Ondova's filing for bankruptcy. The Court had apparently forgotten that the contempt motion was not set to be heard, and erroneously believed that Baron took Ondova bankruptcy to avoid the contempt hearing set on July 7, 2009. The exhibit shows that Baron did not take Ondova Bankruptcy to avoid the contempt hearing—the opposite, Baron only took Ondova into bankruptcy after he was informed that there would not be a contempt hearing.

WHEREFORE, Jeff Baron moves this Court to grant leave, and to stay, or partially stay the Vogel receivership order.

Respectfully submitted,

/s/ Gary N. Schepps

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CERTIFICATE OF SERVICE

This is to certify that this document was served this day on all parties who receive notification through the Court's electronic filing system.

CERTIFIED BY: /s/ Gary N. Schepps
Gary N. Schepps