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

**IN RE:** §  
§  
**ONDOVA LIMITED COMPANY,** § **CASE NO. 09-34784-SGJ**  
§ **(CHAPTER 11)**  
**DEBTOR.** §

**JEFFREY BARON'S RESPONSE TO TRUSTEE'S COMMENT ON BARON'S  
EMERGENCY MOTION FOR STAY PENDING APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Jeffrey Baron ("Baron")<sup>1</sup> Appellant, files this Response to the Trustee's Comments Regarding Jeffrey Baron's Emergency Motion for Stay Pending Appeal [957] and states:

1. The Trustee's position underscores the need for a stay to allow investigation. As set out below, the Trustee's position appears to be a reaction to potential criticism of the United States Trustee's Office for violating the Congressional mandate in Rule

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<sup>1</sup> It is respectfully noted that the Trustee refers to Jeffrey "Barron" instead of Jeffrey "Baron" throughout her brief.

- 9003(b) prohibiting the Trustee from participating in *ex parte* discussions with bankruptcy or trial judges.
2. Baron objected to any *ex parte* communication between this court and Mr. Lieberman during the hearing but was particularly concerned that the witness was still on the witness stand testifying when the Court cleared the courtroom and engaged in an *ex parte* communication that was apparently designed to change the witness' refusal to testify in a way that allowed the Court to approve the sale. Counsel advised the Trustee of his concerns about the Trustee's failure to object to the communication prior to filing Baron's Motion for Stay Pending Appeal, at which time the Assistant United States Trustee became very incensed and angry at the suggestion that the Trustee failed to comply with Rule 9003(b).
  3. The Trustee engages in a series of *ad hominem* arguments that reflect that the Trustee's Office has lost objectivity about its role in this case. The Trustee did not merely participate in an "in camera session with the Court." [Doc. 957at 1]. Rule 9003(b) states, in pertinent part, that: "Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from *ex parte* meetings and communications with the court concerning matters affecting a particular case or proceeding." This Congressional prohibition is not optional and subject to the after-the-fact rationalization by any Trustee. Congress said what it meant and meant what it said. **Ex parte communications are prohibited.**

4. Counsel was unable to cross examine this witness on what happened at the hearing because he was not there. If there was a legitimate issue to be addressed, it should have been raised on the record, and subject to cross examination by Baron's counsel. The record is sealed, presumably because the Court felt there was something that should not be disclosed to the public, or to Baron. Baron moved to recuse the trial judge because of the *ex parte* communication and conduct of the trial judge. If the Court now believes that the communication is or was not improper, then the Court may decide to unseal the record.
5. The issue is not whether the Trustee supports or opposes unsealing of a transcript, or whether the communication, in the Trustee's opinion, did not impact confirmation. The issue is that an *ex parte* communication occurred in the middle of a witness' testimony, after counsel moved to strike the witness' testimony, and where the Court abandoned its role as neutral and impartial fact-finder by holding an *ex parte* hearing after which the witness changed his testimony. If this type of contact had been initiated by one of the trial attorneys in the middle of a witness' testimony, the Court would legitimately be concerned about witness tampering.
6. Since the Trustee raises the issue of its participation in the *ex parte* communication, counsel respectfully suggests that the United States Trustee should have been at counsel's side *objecting* to the *ex parte* communication---not *participating* in a communication prohibited by Congress. It is deeply disturbing that the Trustee fails to understand a basic duty *mandated* by Congress---to protect the integrity of bankruptcy process and maintain confidence in the judicial system.

7. The Trustee also seeks to redefine other issues raised by Baron. Baron is not objecting to the Court refusing to transfer domain names with sexually suggestive titles. Baron is objecting to unsupported, unnecessary character attacks suggesting that he is a pornographer. Baron testified and explained how the domain names were created and there is no evidence that shows that any of the domain names were actually used to sell pornography. Under a First Amendment analysis, the name itself is not “pornographic.” All that being said, Baron never objected, and does not object to the names being culled out. The Trustee’s argument on a non-issue is devoid of merit and again, suggests that the Trustee is not objectively viewing the facts in this case.
8. The Trustee then criticizes counsel for Baron for failing to produce evidence of the Receiver’s exclusion of competing bidders. Counsel for Baron represented to the Court that he had hearsay evidence of exclusion of a qualified bidder, but was not in a position to present the evidence that day, requesting a brief continuance.
  - a. Before this court confirmed the Chapter 11 Plan, counsel filed Jeffrey Baron’s Emergency Motion to Clarify [Dkt. 937] and specifically told the Court that he was prepared to submit the “declaration of a potential bona fide and qualified bidder who will testify that the was excluded from the auction by the receiver and/or his counsel.”
  - b. Counsel also warned that the Court “should not blindly accept the telephonic representations of an attorney withyout allowing discovery of Mr. Lieberman, the two off-shore companies and Domain Holdings to ensure the integrity of the bankruptcy process.”

- c. Regrettably, the Trustee did not join in Baron's Motion.
  - d. Counsel filed a Motion on Appearance of Impropriety [Dkt. 938] setting out in detail Baron's concerns about the integrity of the bankruptcy process.
  - e. Regrettably, the Trustee did not join in Baron's Motion.
  - f. The Court did not express interest in the declaration referred to, which has now been filed.
  - g. Baron's counsel has filed motions for continuance, a contempt motion and a motion to compel and for continuance---all designed to obtain information that clearly was relevant then, and that are still relevant to determining if the bankruptcy process has been tainted by misconduct.
9. The documents that would reveal the extent to which bidders were rejected by the Receiver, were ordered by the Court to be produced by the Receiver on October 19, 2012. The Trustee did not, and still does not express interest in these documents, which would appear directly relevant to the issue of exclusion of bidders. Instead, the Trustee seeks attorney work product information and privileged communications from counsel for Baron.
10. The Trustee asserts that: "While the Trustee's Office has worked and is working to gather the facts, the facts are not well developed. Additional evidence, including evidence in Barron's possession, is required. The issue is not ripe." [Doc. 957 at 4]. The Trustee did nothing while Baron filed motions and attempted to obtain evidence that would demonstrate the failure of the bankruptcy process, despite full knowledge of Baron's limited resources and the ability of one lawyer to oppose two large law firms without meaningful discovery.

11. The Trustee cannot have it both ways; that is, tell the Court that there is a need to investigate this case, but then suggest that a stay should not be granted. The Trustee's duty is to ensure the integrity of the bankruptcy process---not engage in procedural debate about a serious issue going to the heart of the bankruptcy process.
12. Incredibly, the Trustee fails to provide any guidance to the Court about the collusion between Special Jewel, Trans and Domain Holdings. There is now evidence before the Court that requires further investigation.
13. Regrettably, it appears that the United States Trustee does not intend to pursue a critical breakdown in the bankruptcy process.
14. In sum, Baron respectfully submits that the Trustee has lost objectivity about her role in this case and has simply become another advocate for the Receiver and Trustee.

WHEREFORE, Jeffrey Baron prays that this Court grant his Motion for Stay Pending Appeal and for such other and further relief to which it may show himself justly entitled.

Very respectfully,

/s/ Stephen R. Cochell  
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**CERTIFICATE OF SERVICE**

This is to certify that, on November 27, 2012, a copy of the above was served on all counsel of record through the Court's ECF filing system.

/s/ Stephen R. Cochell  
Stephen R. Cochell