The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 26, 2013

United States Bankruptcy Judge

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

IN RE:	§	
	§	
Jeffrey Baron,	§	**Bankruptcy Case No. 12-37921-**
	§	**SGJ-7**
Debtor.	§	
	§	
NetSphere, Inc., et al.	§	
	§	
Plaintiffs,	§	**Civ. Action # 3:09-CV-0988-L**
	§	
v.	§	
	§	
Jeffrey Baron, et al.	§	
	§	
Defendants.	§	

SUA SPONTE REPORT AND RECOMMENDATION TO THE DISTRICT COURT PROPOSING DISPOSITION OF ASSETS HELD IN THE OVERRULED RECEIVERSHIP OF JEFFREY BARON, IN ACCORDANCE WITH SECTIONS 541-543 OF THE BANKRUPTCY CODE

A. INTRODUCTION: PURPOSE AND CONTEXT FOR THIS REPORT AND RECOMMENDATION

This Report and Recommendation is made to the District Court

to propose a disposition of the assets that are currently being held by a court-appointed receiver (the "Receiver"),[1] in connection with the recently over-turned equitable receivership (the "Receivership") involving Mr. Jeffrey Baron ("Mr. Baron").

This Report and Recommendation is being submitted by the bankruptcy court to the District Court in a somewhat unusual context. By way of background, the Receivership was established by the previously presiding District Court Judge (Senior District Judge Royal Furgeson (Retired)), ***during and as a part of the above-referenced civil action in which Mr. Baron was a defendant***. Mr. Baron appealed the order that established the Receivership to the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), but obtained no stay pending appeal, so the administration of the Receivership proceeded for approximately two years. Then, on December 18, 2012, the Fifth Circuit held that the Receivership had been established in error, and that the District Court should wind down the Receivership (specifically mentioning that certain Receivership fees and expenses should be reconsidered and property other than cash in the Receivership should be released to Mr. Baron "under a schedule to be determined by the district court for winding up the

[1] The court-appointed Receiver is attorney Peter S. Vogel of the Gardere Wynne law firm.

receivership"). ***The mandate from the Fifth Circuit did not immediately issue.*** In fact, motions for rehearing were filed with the Fifth Circuit and briefing on the motions was ordered. Meanwhile, later in the day on December 18, 2012, certain creditors of Mr. Baron filed an involuntary Chapter 7 bankruptcy case against him, and the bankruptcy case was assigned to this bankruptcy judge. As will be explained in detail below, the bankruptcy court abated Mr. Baron's involuntary bankruptcy case for many weeks, to allow the motions for rehearing to proceed to conclusion at the Fifth Circuit, and to also allow global mediation to take place. Rehearing was ultimately denied by the Fifth Circuit and the global mediation was unsuccessful.[2] Accordingly, the bankruptcy court held a trial on the involuntary bankruptcy petition on June 17-18, 2013, and ruled on June 26, 2013, that the petitioning creditors who filed the involuntary bankruptcy case against Mr. Baron had properly invoked Section 303 of the Bankruptcy Code and, thus, Mr. Baron should remain in bankruptcy (*i.e.,* an Order for Relief was issued). The Findings of Fact and Conclusions of Law and Order for Relief of the bankruptcy court in Mr. Baron's involuntary bankruptcy case are

[2] The District Court also reconsidered and issued an order concerning certain professional fees and expenses incurred during the Receivership during the period of the bankruptcy court's abatement of the bankruptcy case of Mr. Baron.

being submitted to the District Court in separate paper copies for the Court's convenience. *See* DE (J. Baron) ## 39 & 40.[3]

As will be further explained herein, the assets that have been part of the Receivership (the "Receivership Assets") fall into two groups: (a) Mr. Baron's directly owned assets, that are cash, bank accounts, and investment accounts (the "Cash Receivership Assets"); and (b) assets in which Mr. Baron has an indirect, beneficial interest (and which Mr. Baron has historically controled), but which are allegedly, directly owned by certain offshore entities (the "Non-Cash Receivership Assets").[4] Section 543 of the Bankruptcy Code, and to a lesser extent Sections 541 and 542, are germane to this situation. Ordinarily, upon the commencement of a Chapter 7 bankruptcy case: (a) a debtor has the duty to cooperate with a bankruptcy trustee and, among other things, turn over his or her non-exempt assets for the trustee to administer (*e.g.,* 11 U.S.C. §§ 521(3), 704(1), (2) & 541(a)(1)); (b) any custodian/receiver that was in place prior to the bankruptcy case also has the duty to deliver to the bankruptcy trustee any property of the debtor held by or

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[3] "DE (J. Baron) # _" as used herein refers to the Docket Entry number at which a pleading is filed in the docket maintained by the Bankruptcy Clerk in the bankruptcy case of *In re Jeffrey Baron*, Case No. 12-37921-SGJ-7 .

[4] The Non-Cash Receivership Assets will be discussed in great detail herein.

transferred to such custodian, along with the proceeds or profits of such property, and provide an accounting to the bankruptcy trustee (*e.g.*, 11 U.S.C. § 543(b)); and (c) other entities, other than a custodian, which may be in possession, custody, or control of property that the bankruptcy trustee may use, sell or lease, or that the debtor may exempt, shall deliver such property to the bankruptcy trustee and account for such property (*e.g.*, 11 U.S.C. § 542(a)). ***Thus, in a typical situation of a receivership pre-dating a bankruptcy case, the protocol is clear: the receiver is superseded by a bankruptcy trustee and simply turns over the receivership assets to the bankruptcy trustee pursuant to Section 543 of the Bankruptcy Code.*** Here, the Receiver has delivered an accounting to the bankruptcy trustee assigned to Mr. Baron's bankruptcy case (and to the bankruptcy court) and appears fully prepared to turn over assets to the bankruptcy trustee—if so instructed. However, the bankruptcy court has had some concerns. For one thing, the bankruptcy court wanted to consider and give full deference to the fact that the Fifth Circuit instructed in its ruling of December 18, 2012 (prior to the involuntary bankruptcy case being commenced against Mr. Baron) that the Receivership was established in error and that the District Court should wind up the Receivership and that property other than cash should be released to Mr. Baron "under a schedule to be

determined by the district court for winding up the receivership"). Moreover, counsel for Mr. Baron and certain of his affiliates have argued that certain assets that were part of the Receivership res (*i.e.,* the Non-Cash Receivership Assets) were ***not Mr. Baron's property*** and should not be delivered to his bankruptcy trustee.

The bankruptcy court held a status conference on these matters on July 15, 2013, and invited parties-in-interest to make arguments, submit briefing, and/or present evidence. After hearing from the parties, this bankruptcy court has concluded as follows: all Receivership Assets should be ordered transferred to the bankruptcy trustee that has been appointed in the Chapter 7 bankruptcy case of Mr. Baron, subject to future adjudication and orders that may be issued in the bankruptcy case. This is the Report and Recommendation of the bankruptcy court. Clearly, the event of the filing of the bankruptcy case against Mr. Baron (almost immediately after the Fifth Circuit ruling on December 18, 2012) has created an intervening circumstance, and this bankruptcy court respectfully submits that the disposition of Receivership Assets, as set forth in this Report and Recommendation, is the proper result under the Bankruptcy Code.

B. BACKGROUND: THE LITIGATION LEADING UP TO TODAY.

1. First, the above-referenced District Court action

styled *Netsphere, Inc., Manila Industries, Inc. and Munish Krishan v. Jeffrey Baron and Ondova Limited Company,* Civil Action No. 3:09-CV-0988 (the "Federal District Court Action")—which was recently reassigned to the Honorable Sam Lindsay—was first commenced on May 28, 2009, and for the majority of its life, was presided over by Senior District Judge Royal Furgeson (Retired).

2. The Federal District Court Action was commenced by plaintiffs Netsphere, Inc. ("Netsphere"), Manila Industries, Inc. ("Manila"), and Munish Krishan ("Mr. Krishan") (collectively, the "Manila/Netsphere Parties"), based on diversity jurisdiction. The Federal District Court Action was filed for the purpose of enforcement of a so-called "MOU" or "Settlement Agreement," signed April 26, 2009 (hereinafter, the "April 26, 2009 Settlement Agreement"), that had been reached between: (a) the Manila/Netsphere Parties, on the one hand, and (b) Mr. Baron and his indirect, wholly-owned company Ondova Limited Company ("Ondova"), on the other.[5] The April 26, 2009 Settlement Agreement had been reached in certain state court litigation

[5] The April 26, 2009 Settlement Agreement is actually entitled "Settlement Agreement" on the first page and "MOU" on the third page (which obviously was an abbreviation for "Memorandum of Understanding"). This document was first submitted as an exhibit under seal to the bankruptcy court on August 26, 2009, at a hearing in the bankruptcy case of *In re Ondova Limited Company*, Case No. 09-34784-11, which bankruptcy case will be further discussed herein. The April 26, 2009 Settlement Agreement should also be on file in the Federal District Court Action.

styled *Ondova Limited Company v. Manila Industries, Inc., et al.*, Civ. Action # 06-11717, 68th Judicial District Court, Dallas County, Texas (Judge Merrill Hoffman) filed November 14, 2006 (the "Texas State Court Action").

3. The Texas State Court Action and the Federal District Court Action were just two of numerous civil court actions involving the Manila/Netsphere Parties and Mr. Baron/Ondova (there were other court actions in both the state of California and in the United States Virgin Islands). The subject matter of all of these court actions was: (a) a certain ***internet domain name portfolio, consisting of hundreds of thousands of domain names*** (hereinafter, the "Disputed Domain Name Portfolio"); and (b) a proposed tax and asset protection organizational structure set up in the United States Virgin Islands ("USVI") to ultimately hold and operate the Disputed Domain Name Portfolio. The Disputed Domain Name Portfolio will be further described below.

4. In any event, the April 26, 2009 Settlement Agreement appeared to resolve all of the disputes among the Manila/Netsphere Parties and Mr. Baron/Ondova, after two-and-a-half years of litigation and lengthy mediation. In the April 26, 2009 Settlement Agreement, the parties agreed to divide the Disputed Domain Name Portfolio "50-50" within fourteen days, pursuant to a specified, random procedure (that literally

included a coin flip). But the Manila/Netsphere Parties filed the Federal District Court Action, approximately one month later, when Mr. Baron/Ondova allegedly failed to comply with the April 26, 2009 Settlement Agreement by failing to cooperate in the split of the Disputed Domain Name Portfolio. Certain of the alleged acts of non-compliance involved domain names that somehow got deleted prior to the split of the portfolio—allegedly through the acts of Mr. Baron.

5. Judge Furgeson held numerous hearings, soon after the Federal District Court Action was filed. Judge Furgeson issued a Preliminary Injunction on June 26, 2009 (which was agreed to in form and substance and signed by the Manila/Netsphere Parties and Mr. Baron/Ondova) which basically ordered compliance with the material terms of the April 26, 2009 Settlement Agreement, including the splitting of the Disputed Domain Name Portfolio.

6. But, again, the splitting of the Disputed Domain Name Portfolio did not occur. In fact, things got very convoluted when, on July 22, 2009, three Cook Islands limited liability companies called ***Quantec, LLC, Iguana Consulting, LLC and Novo Point, LLC*** (describing themselves as "Derivative Plaintiffs"), through a new-on-the-scene attorney named Craig Capua,[6] filed a

[6] Mr. Baron and Ondova had six different attorneys appear for them at different times during the Texas State Court Action and also had multiple attorneys appear for them in the Federal District Court

motion for leave to intervene (the "Motion for Intervention") in the Federal District Court Action. These so-called Derivative Plaintiffs represented that: (a) ***they held assignments from two Cook Islands[7] trusts, (b) these Cook Islands trusts, in turn, held indirect equity ownership and control of certain Virgin Island companies,[8] (c) these Virgin Island companies, in turn, actually owned the Disputed Domain Name Portfolio,*** and (d) as a result, Mr. Baron/Ondova did not, in fact, have authority to enter into the April 26, 2009 Settlement Agreement, nor did he have authority to agree to the preliminary injunction in the Federal District Court Action that ordered the splitting of the Disputed Domain Names Portfolio. Ex. 14, pp. 15-27.[9] The Motion

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Action. To be clear, this new attorney was appearing for ***non-party entities*** that were ***related*** to Mr. Baron, as will later be described more herein, rather than Mr. Baron/Ondova.

[7] The court takes judicial notice that the Cook Islands constitute a sovereign government (in the South Pacific) that is in an associated state relationship with New Zealand.

[8] The Virgin Island companies that were said to actually own the Disputed Domain Name Portfolio (at least as of April 26, 2009 through the then-present) were Simple Solutions, LLC and Blue Horizons, LLC (both limited liability companies).

[9] All references to "Ex. __" herein refer to exhibits admitted by the bankruptcy court at a status conference held on July 15, 2013, at which the bankruptcy court had directed parties-in-interest to present arguments/positions as to whether the Receivership Assets should be turned over to the Bankruptcy Trustee presiding over the Chapter 7 bankruptcy case of Mr. Baron, pursuant to Section 543 or other authority.

for Intervention was supported by a verification of an individual named Adrian Taylor, who was represented to be the managing director of an entity named AsiaTrust Limited, which was, in turn, represented to be the Trustee of the two Cook Islands trusts. To be clear, these two Cook Islands trusts[10] were said to be the ultimate beneficial owners of the companies that owned the Disputed Domain Name Portfolio (see footnote 8, *supra*). These Cook Islands trusts were also represented to ***have assigned the trusts' interests in the Virgin Island companies that owned the Disputed Domain Name Portfolio to the Derivative Plaintiffs on July 6, 2009—just 16 days earlier—which was why the Derivative Plaintiffs, and not the Cook Islands trusts themselves, were moving to intervene in the Federal District Court Action***. Ex. 14, especially p.27, ¶6.19-6.21, and attachment B to Ex. 14. The fact that the two Cook Islands trusts had assigned their indirect interests in the companies that allegedly owned the Disputed Domain Name Portfolio to the Derivative Plaintiffs (on July 6, 2009—just 16 days before the Motion for Intervention was filed) seemed to be an obvious act to avoid any argument that the two Cook Islands trusts themselves had consented to the jurisdiction of a United States Court. Be that as it may, the Motion for

[10] The Cook Islands trusts were called the Village Trust and MMSK Trust.

Intervention stated: "The trustee for the Trusts [*i.e.,* the two Cook Islands Trusts] was a necessary party at the mediation for all the reasons stated in this Intervention. The failure of Defendants who attended the mediation to not only request the presence of the trustee, but also obtain the trustee's agreement to the proposed settlement terms causes the MOU to be VOID, rescinded, and set aside with no force and effect as a matter of law." Ex. 14, p.27, ¶6.19. Interestingly, the Motion for Intervention states that the beneficiaries of the Cook Islands trusts were Mr. Baron, Mr. Krishan (one of the Manila/Netsphere Parties), and family members of Mr. Krishan—and these were, of course, ***the very parties/beneficiaries to the April 26, 2009 Settlement Agreement that the Derivative Plaintiffs were now seeking to have rescinded***.

7. As if this were not all convoluted enough, before the Motion for Intervention was even considered by the Federal District Court, on July 27, 2009, Mr. Baron put his company Ondova into a voluntary Chapter 11 bankruptcy case, thus staying the Federal District Court Action (and all other litigation against Ondova). *See In re Ondova Limited Company*, a Texas limited liability company, d/b/a Compana, LLC or budgetnames.com, (Case No. 09-34784-SGJ-11). This court refers to Ondova as Mr. Baron's company because Mr. Baron was Ondova's former president

and its ultimate indirect equity owner.[11] Ondova filed bankruptcy on the day before a motion for contempt was set to be heard before Judge Furgeson, regarding Mr. Baron's alleged failure to comply with certain court orders.

8. Things soon got even more complicated because Mr. Baron testified early in the Ondova bankruptcy case (at a hearing on September 1, 2009), that a company named ***Manassas, LLC*** (a new company that had never been mentioned in any court presiding over the disputes between Manila/Netsphere and Mr. Baron/Ondova) received a transfer of the Disputed Domain Name Portfolio (or at least a part thereof) shortly before the April 26, 2009 Settlement Agreement. This was not consistent with the Motion for Intervention. In any event, the implication of Mr. Baron's testimony (just like the implication of the Motion for Intervention) was that the April 26, 2009 Settlement Agreement was not valid because Mr. Baron/Ondova did not have rights or authority over the Disputed Domain Name Portfolio to enter into any settlement. Manassas, LLC (a Texas limited liability company), was created on March 24, 2009—approximately one month

[11] Ondova was actually owned by an entity called Daystar Trust (*i.e.*, Daystar Trust was Ondova's sole member and manager), and Mr. Baron signed Ondova's bankruptcy petition as the Trustee of the Daystar Trust. On or around the Petition Date of Ondova's bankruptcy filing, Mr. Baron hired a new President for Ondova, a Mr. Damon Nelson. Ex. 9 (Transcript from September 9, 2009 Bankruptcy Court hearing, p. 111).

before the April 26, 2009 Settlement Agreement. Allegedly, the creation of Manassas, LLC happened at the direction of the trustee of the Cook Islands trusts. Ex. 9 (Transcript from September 1, 2009 Bankruptcy Court hearing, p. 145, line 10, through p. 149, line 1). To be clear, Manassas, LLC had not been mentioned in either the Texas State Court Action prior to the April 26, 2009 Settlement Agreement, nor in the Federal District Court Action prior to the June 26, 2009 Preliminary Injunction.

9. After many months of contested hearings in the Ondova bankruptcy case (including the appointment of a Chapter 11 Trustee, Daniel J. Sherman; hereinafter the "Ondova Chapter 11 Trustee"), a Mutual Settlement and Release Agreement (the "Global Settlement") was negotiated by the Ondova Chapter 11 Trustee and approved by the bankruptcy court on July 28, 2010 [DE (Ondova) # 394][12] that appeared to resolve not only many of the issues in the Ondova bankruptcy case, but also the Federal District Court Action, the Texas State Court Action, plus the many other pending lawsuits and disputes in various courts involving Mr. Baron/Ondova and the Manila/Netsphere Parties (a total of eight lawsuits were settled). The Global Settlement essentially adopted the split of the Disputed Domain Name Portfolio that the

[12] "DE (Ondova) # _" as used herein refers to the Docket Entry number at which a pleading is filed in the docket maintained by the Bankruptcy Clerk in the bankruptcy case of *In re Ondova Limited Company*, Case No. 09-34784-SGJ-11.

April 26, 2009 Settlement Agreement and the June 26, 2009 District Court Preliminary Injunction had contemplated. The Global Settlement was the product of months of negotiations, drafting and overall hard work. There were approximately 51 parties to this Global Settlement, including Mr. Baron and various offshore entities that Mr. Baron controlled directly or indirectly.[13] Among the offshore entities that signed the Global Settlement were representatives for every entity that had been named in recent history as potentially holding or controlling the Disputed Domain Name Portfolio—*e.g.,* the two Cook Islands trusts, Novo Point LLC, Quantec LLC, Iguana Consulting LLC, Simple Solutions, LLC, Blue Horizons, LLC, and Manassas, LLC (just to name a few). It is perhaps noteworthy that the Global Settlement provided that the United States District Court and the United States Bankruptcy Court for the Northern District of Texas

[13] At hearings in the Ondova bankruptcy case during year 2010, it was represented that Mr. Baron and/or Ondova had connections or affiliations with at least the following entities, and many of these parties (if not all) were parties to the Global Settlement: the DayStar Trust (apparently the sole member/100% owner of Ondova, with Mr. Baron being the trustee and sole beneficiary of the Daystar Trust); the Village Trust and MMSK Trust (the two Cook Islands trusts, mentioned earlier, apparently created by Mr. Baron and Manilla/NetSphere principals in connection with a proposed joint venture, which may or may not have been consummated between them in 2005); Belton Trust (sole member of Domain Jamboree, LLC); and the following United States Virgin Island entities—HCB, LLC; RIM, LLC; Simple Solutions LLC; Search Guide LLC; Blue Horizons LLC (f/k/a Macadamia Management, LLC); Four Points LLC; Marshden, LLC; Novo Point, Inc.; Iguana, Inc.; Quantec, Inc.; Diamond Key, LLC (nominee of Javelina, LLC); Manassas, LLC (nominee for Shiloh LLC).

(Dallas Division) would have exclusive jurisdiction over all disputes and/or matters whatsoever related to the agreement. *See* DE (Ondova) # 394, ¶ 21.

10. Unfortunately, the euphoria over the Global Settlement having been reached was short-lived. The Global Settlement was ***nearly*** fully implemented, but ***not quite***. Shortly after the Global Settlement was inked, Mr. Baron began taking actions that this court and certain parties believed were aimed at unraveling the Global Settlement, driving up costs, and delaying the Ondova bankruptcy case. Mr. Baron began bringing in a parade of different lawyers, purporting to represent Mr. Baron or offshore entities connected with Mr. Baron. One such entity, Quantec, LLC (which had earlier been one of the Derivative Plaintiffs in the Federal District Court Action), filed a pleading requesting "clarification of settlement provisions regarding the 'Remaining Allocated Names,'"[14] stating that the Manila/Netsphere Parties had been holding certain domain names (37,170 domain names were at issue, and they were referred to as the "Remaining Allocated Names") and the Manila/Netsphere Parties allegedly let certain of these domain names expire and this was allegedly a breach of the

[14] *See* DE (Ondova) # 451.

Global Settlement.[15] Additionally, a seemingly endless list of "open issues" kept cropping up, involving such things as who would be the successor trustees for the Cook Islands trusts; who would pay whose attorneys fees; who would be the new registrar of domain names; and other things that were driving up the costs for the Ondova bankruptcy estate.

11. Judge Furgeson and this bankruptcy judge had threatened the possibility of an equity receiver being appointed over Mr. Baron many times, due to what seemed like vexatious, obstructionist, and irrational behavior on his part.

12. Eventually, upon motion filed by the Ondova Chapter 11 Trustee, Judge Furgeson indeed appointed a receiver (the "Receiver") over Mr. Baron's assets and personal affairs. As mentioned earlier, Judge Furgeson did this within the confines of the pending Federal District Court Action (when referred to separately, the "Receivership Action"). Judge Furgeson signed an Order Appointing Receiver on November 24, 2010, as clarified by a second order on December 17, 2010 (collectively, the "Receivership Orders") [DE (Furgeson) ## 130, 176].[16] The

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[15] Interestingly, this argument was remarkably similar to an argument that Manila/Netsphere had made against Mr. Baron in the Federal District Court in May 2009, when they argued that Mr. Baron had breached the April 26, 2009 Settlement Agreement in essentially the same way.

[16] "DE (Furgeson) # _" as used herein refers to the Docket Entry number at which a pleading is filed in the docket maintained by the District Court in the Federal District Court Action.

Receivership Orders did the following, among other things: (a) put the assets and business affairs of Mr. Baron into the Receivership, with attorney Peter S. Vogel as the Receiver—mostly so that the Global Settlement could be at long-last fully and finally implemented through an independent party stepping into Mr. Baron's shoes, so to speak; and (b) clarified that various entities that Mr. Baron seemed to control, including the entity known as Novo Point, LLC and the entity known as Quantec, LLC, were parties included as part of the Receivership (the "Receivership Parties"). Recall, again, that Novo Point, LLC and Quantec, LLC had been the so-called "Derivative Plaintiffs" that tried, in July 2009, to intervene in the Federal District Court Action—at that time claiming to be the assignees of the two Cook Islands trusts, and, by virtue of their assignments, to be in control over the entities that owned the Disputed Domain Name Portfolio. Fast-forwarding to November and December 2010 (when the Receivership Orders were entered), Quantec, LLC and Novo Point, LLC still claimed to be the entities with rights in the split-portion of the Disputed Domain Name Portfolio that had gone to affiliates of Mr. Baron in the Global Settlement (henceforth, for ease of reference, this split-up portion of domain names will be referred to as the "Quantec/Novo Point Domain Names," and are the same as the "Non-Cash Receivership Assets"–defined earlier). There are approximately 153,000 Quantec/Novo Point Domain Names.

13. Subsequently, as earlier mentioned, Mr. Baron appealed the Receivership Orders to the Fifth Circuit. Mr. Baron also appealed many dozens of orders issued by Judge Furgeson ***during*** the Receivership Action. To be clear, Mr. Baron never obtained a stay of the Receivership Orders, so the Receivership essentially "marched on" for approximately two years. Mr. Baron's appeals were pending at the Fifth Circuit until late 2012.

14. On December 18, 2012, the Fifth Circuit issued its ruling holding that the appointment of the Receiver was in error and that the Federal District Court should expeditiously wind up the Receivership (although no mandate immediately issued). The Fifth Circuit, in its ruling, suggested that different remedies as to Mr. Baron would have been more appropriate than imposing an equitable receivership, such as imposing monetary sanctions or incarceration for contempt of court. *Netsphere, Inc. v. Baron*, 703 F.3d 296 (5th Cir. 2012).

15. On that same day (December 18, 2012), shortly after the Fifth Circuit issued its ruling, the involuntary Chapter 7 bankruptcy petition against Mr. Baron was filed by various "Petitioning Creditors." 11 U.S.C. § 303.

16. This bankruptcy court subsequently entered its Order for Relief against Mr. Baron, which brings us to the present.

17. A Chapter 7 bankruptcy trustee was randomly assigned to this matter, by the United States Trustee, John Litzler ("Baron

Chapter 7 Bankruptcy Trustee"), and he now stands poised to administer Mr. Baron's bankruptcy case. The Baron Chapter 7 Bankruptcy Trustee is charged with administering Mr. Baron's assets for the benefit of Mr. Baron's creditors.

18. To be clear, normally, in the case of a receivership that exists prior to a bankruptcy filing, section 543 of the Bankruptcy Code governs and it simply requires a custodian (including a receiver) to deliver to a bankruptcy trustee (or debtor-in-possession, if one) any property the receiver is holding, along with an accounting. No disbursements of property are permitted. ***In the typical case, the receivership is essentially superseded and replaced with the bankruptcy case.*** *See* 11 U.S.C. §§ 541 & 543. Here, of course, there is a unique issue overlapping all of this: the Fifth Circuit ***reversed*** the order appointing the Receivership (just ***prior*** to the involuntary bankruptcy case being commenced). ***However, it would appear that what is left of the Receivership (limited as it is) is still superseded by the involuntary bankruptcy filing.*** The question is simply whether all of the Receivership Assets, ***including the Non-Cash Receivership Assets (i.e., the Quantec/Novo Point Domain Names***) should be turned over to the Baron Chapter 7 Bankruptcy Trustee. This court believes "yes," since: (a) Mr. Baron is ultimately the beneficiary of the Village Trust (the Cook Islands

trust, that owns the entities that own the Quantec/Novo Point Domain Names); (b) Mr. Baron contributed assets he controlled to the Village Trust and likely should be considered a settlor of it; and (c) Mr. Baron has at all times (through an elaborate web of entities) controlled the quite amorphous Quantec/Novo Point Domain Names.

19. Mr. Baron's ultimate beneficial interest and control over the Quantec/Novo Point Domain Names is more fully explained in the discussion below concerning: (a) the Internet domain names industry generally; and (b) Mr. Baron's and Ondova's role in the industry.

C. INTERNET DOMAIN NAMES: HOW THE INDUSTRY WORKS, WHY DOMAIN NAMES ARE SO AMORPHOUS, AND WHY "CONTROL" MEANS ALMOST EVERYTHING AND "OWNERSHIP" MEANS ALMOST NOTHING

20. As discussed above, this is the second bankruptcy case involving Mr. Baron. On July 27, 2009, the ***business entity*** controlled by Mr. Baron, known as Ondova, filed a voluntary Chapter 11 bankruptcy case in this same bankruptcy court. Ondova was actually owned by an entity called Daystar Trust (*i.e.*, Daystar Trust was Ondova's sole member and manager), and Mr. Baron signed Ondova's bankruptcy petition as the trustee of the Daystar Trust.

21. Ondova was formerly in the business of being an ***internet domain name registrar*** ("***Registrar***"). To understand this

Report and Recommendation, and its ultimate conclusions, some explanation of the internet domain name industry is crucial.

22. ***Internet Domain Names***. First, starting with the basics, as is fairly well known, an "internet domain name" is a term that most typically ends in the characters ".com" or ".net" (in the United States) and is essentially an internet address. Domain names are similar to "virtual real estate" on the world wide web.

23. ***Registrar.*** What is a "Registrar," such as Ondova? A Registrar is a type of "middle man" company that, for a fee, will register a ".com" or ".net" domain name for a person wanting to own and use a domain name (the latter person being referred to as a "***Registrant***"). A Registrar such as Ondova performs this "middle man" registration activity: (a) pursuant to an accreditation it obtains from an entity known as the Internet Corporation for Assigned Names and Numbers ("ICANN")—which is, essentially, a creature of the United States Department of Commerce;[17] and (b) also pursuant to an agreement with Verisign,

[17] ICANN has been described as the "agency responsible for managing and coordinating the Domain Name System ("DNS") to ensure that every address is unique and that all users of the Internet can find all valid addresses. It does this by overseeing the distribution of unique IP addresses and domain names. It also ensures that each domain name maps to the correct IP address. ICANN is also responsible for accrediting the domain name registrars." *M. Honig, The Truth About the Truth in Domain Names Act: Why this Recently Enacted Law is Unconstitutional*, 23 J. MARSHALL J. COMPUTER & INFO. L. 141, 150 n.70 (Fall 2004).

Inc. ("Verisign")—which is a private corporation that essentially acts as the operator of the huge ".com" and ".net" registries. To be clear, Verisign is the entity that maintains the national registry for domain names. Verisign is not in any way related to Ondova and is not a government entity.

24. ***Registrant.*** As mentioned above, a "Registrant" is a person that has rights to utilize a domain name—sometimes referred to or thought of as the ***owner*** of the domain name. But the term "ownership" *vis-a-vis* an internet domain name is somewhat imprecise. A member of the public can obtain through registration (through a Registrar) ***the right to use a domain name on the internet***, and thereby become known as the "registrant" for the name. But this is more similar to a lease right to use the name, as opposed to ownership of the name. In contrast, there are often individuals or companies who register ***a trademark*** for certain names and these people are more in the nature of owners of names. In any event, the Registrant only has the ability to utilize a domain name for a finite period of time—there are always expiration dates that apply.

25. ***Activities of a Registrar.*** What does a "Registrar" actually do with regard to a domain name? When a Registrar registers a domain name, the Registrar is basically an "interface" with Verisign, the operator of the national registry.

Verisign requires the Registrar, when registering a domain name, to submit certain information known as the ***"WHOIS" information*** into Verisign's database—which information consists of the Registrant's personal contact information including name, address, phone number, email address, domain name expiration date, website hosting IP address and website host name. Again, this all goes into what is known as the "WHOIS" database. It should be noted that there are companies that, for a fee, will act as a proxy for the Registrant on the database, so that the true Registrant can remain private. In any event, the Registrar has significant power and control. It is the submitter of the WHOIS information on domain names, which, among other things, includes the IP address and name server to which internet traffic is directed when persons type in a domain name on a web browser.

26. ***IP Addresses and Name Servers.*** Further, on the topic of registering a domain name, the concepts of "IP address" and "name servers" bear further mention. Every domain name must have an IP address associated with it, and the IP address essentially routes to a website any domain name request that is entered into a web browser. And every domain name must have a name server associated with it; name servers essentially manage massive databases that map domain names to IP addresses and, essentially, the "name server" is where various web pages are hosted.

27. ***Summarizing the Registrar Function.*** In summary, the Registrar performs a very crucial, "electronic middle man" function for a Registrant (or holder) of a domain name: (1) it registers the domain name with Verisign—assuming that the name is not already registered by someone else (paying Verisign a registration fee—with the Registrar charging the Registrant a higher fee, so that the Registrar can make money on the "spread"), (2) it reports the WHOIS information (personal contact information for the Registrant) to Verisign, (3) it reports to Verisign an IP address to be associated with the domain name (so that people who input the domain name when web surfing are routed to a certain website), (4) it reports to Verisign a "name server" to be associated with the domain name, which name server will essentially manage a massive database that maps domain names to IP addresses, and (5) it renews the domain names with Verisign (again charging renewal fees) when the domain names are set to expire (if expiration occurs, a domain name might become available for some new Registrant to register and hold). In theory, a Registrar could create havoc (if it was so inclined) by reporting to Verisign the wrong IP address, wrong name server, or by letting a name expire and not renew it. Finally, one clarification should be made with regard to Ondova. Ondova was a ***bulk*** domain name Registrar who merely registered domain names for

a handful of Registrants, each of whom owned thousands of domain names (and most of these Registrants were indirectly related to Ondova's president, Mr. Baron). In other words, Ondova did not register domain names for retail customers (*i.e.,* random members of the American public)—such as the well-known registrar companies such as GoDaddy.com and Network Solutions.

28. ***Monetization Companies.*** Finally, frequently "in between" the Registrant and Registrar are companies that do such things as: (a) host or operate websites for the Registrant (some of which websites may simply contain advertising links that make money for the Registrant of the domain name—this is known as "domain parking"); and (b) undertake activities to increase traffic to websites. An example of how this works is as follows: A Registrant may, through a Registrar, obtain the right to hold and use a domain name such as "auto.com." Then, the Registrant may hire a monetization company to create a website for "auto.com" that web surfers are routed to if they type "auto.com" into a web browser. On the website, the Monetization Company may sell/post advertisements for car companies (*e.g.,* John Doe Ford Dealership) and if web surfers, in turn, click on the John Doe Ford Dealership advertisement, then the Monetization Company (and, in turn the Registrant) receive advertisement revenue. Ex. 9 (Jeff Baron testimony, 9/1/09).

29. Against this backdrop, we must analyze the Quantec/Novo

Point Domain Names (*i.e.,* the Non-Cash Receivership Assets). ***They are the names that did not go to the Manila/Netsphere Parties in the domain name "split" that finally occurred pursuant to the Global Settlement in 2010***.

30. The Charts attached hereto collectively in the Appendix (which have been created from Exs. 8, 9, 13, and 14) show the four phases of corporate structure in which the Disputed Domain Name Portfolio were held, registered, and monetized. To be clear, the Quantec/Novo Point Domain Names (and before, them the full Disputed Domain Name Portfolio) are assets (very amorphous assets) that are not directly held or owned by Jeff Baron. But as shown in the charts, it appears that Mr. Baron controls and has controlled the entities that have the rights in the Quantec/Novo Point Domain Names for many years, and, thus, pursuant to Section 541 of the Bankruptcy Code, the equity interest in the entities (and the right to control the names), should come into his bankruptcy estate to be controlled by the Baron Chapter 7 Bankruptcy Trustee (subject to further and final adjudication, perhaps, in a bankruptcy adversary proceeding—such as a Declaratory Judgment Action).

31. To be clear, internet domain names are as amorphous an asset as any this bankruptcy judge has ever seen (although they seem to have value since they can produce revenue). Not only are

domain names amorphous, but Mr. Baron has transferred the names to different Registrants, has changed the monetizers many times—most often among offshore entities with no real paper trail—only a hard-to-follow electronic trail.

32. At a plan confirmation hearing in the Ondova bankruptcy case in November 2012, this bankruptcy court had the opportunity, for the first time, to review the Quantec/Novo Point Domain Names. In this court's Findings of Fact and Conclusions of Law in Support of Order Confirming Plan, entered November 21, 2012 [DE # 944 (Ondova)], the bankruptcy court defined the Quantec/Novo Point Domain Names as follows: "The Domain Names are approximately 153,000 ".com" and ".net" internet domain names (approximately 3,300 of which are held in Novo Point and the remainder of which are held in Quantec). . . . The Domain Names can be described and categorized as follows: (a) a relatively small percentage of the 153,000 Domain Names are what the court would refer to as generic names (*e.g.*, "eyedoctors.com" or "dinnerware.com") that do not appear to be obviously trademark-infringing in any way (hereinafter, the "Generic Names");[18] (b) an extremely large percentage of the Domain Names are what the court would refer to as intentionally misspelled names

[18] It appears that the roughly 3,300 names in the Novo Point portfolio are largely Generic Names but in the much larger Quantec portfolio the Generic Names seem to be a small percentage of the names.

(hereinafter, the "Typosquatting Names")—in other words, names that any reasonable person would consider strikingly similar to some commercial entity that likely owns a trademark in connection with its business (such as a banking institution or movie company), but certain letters have been transposed or added to the Domain Name such that the Domain Name is not exactly the same as the commercial business's name (*e.g.*, "wellsfagro.com"); (c) another portion of the Domain Names are names of schools, cities, municipalities that may not be trademarked (the "Institutional Names"); (d) another portion of the names are in the nature of gaming ("Gaming Names"); and (e) a very large percentage of the Domain Names are clearly, under the "know-it-when-you-see-it" definition of former Justice Potter Stewart,[19] pornography-oriented (the "Pornography Names"). Within the category of Pornography Names, is a very disturbing subset of Domain Names that no reasonable person could deny are descriptive of child pornography (*e.g.,* "childsexporn.com," "pedophilesex.com," "naked13yearolds.com"—with there being many, many names that are far more coarse than these three examples (the "Child Pornography Names"). There are also a small percentage of very disturbing racial/hate crime oriented names (the "Race/Hate Names").

33. The bankruptcy court has never heard any evidence to

[19] *Jacobellis v. Ohio,* 378 U.S. 184, 197 (1964) (concurring opinion of J. Stewart).

explain ***why*** Mr. Baron and his colleagues and/or professionals created such an elaborate offshore structure to hold and monetize the Quantec/Novo Point Domain Names. At a hearing on September 10, 2009, before Judge Furgeson, then-counsel for Mr. Baron (a Mr. Ryan Lurich) stated, in response to Judge Furgeson stating that "my view is Mr. Baron owns those domain names" (Ex. 17, p. 24, lines 22-23), that "Mr. Baron has a beneficial interest in the domain names through a very complicated corporate structure ***that I don't understand why was ever implemented***. . . . And I agree with your Honor that he does have that interest. He doesn't own them individually, and I think there is a distinction, but I do not disagree." Ex. 17, page 25, lines 10-22 (emphasis added). The bankruptcy court has heard evidence that the joint venture among the Manila/Netsphere Parties and Mr. Baron/Ondova was first discussed in ***2003***, and then discussions with consultants followed soon thereafter. *E.g.,* Ex. 14, p. 22. ¶ 6.04. The court takes judicial notice that in April 2003, a new federal law was signed into law called the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (the PROTECT Act), and within that law is something known as the Truth in Domain Names Act (TDNA), 18 U.S.C. § 2252B. Under TDNA it was made a criminal offense to use a misleading Internet domain name to "deceive a person into

viewing material constituting obscenity" and, for the first time, it became unclear ***whether a Registrar might be prosecuted*** (as opposed to simply the Registrant). *Id. See generally M. Honig, The Truth About the Truth in Domain Names Act: Why this Recently Enacted Law is Unconstitutional*, 23 J. MARSHALL J. COMPUTER & INFO. L. 141, 143 (Fall 2004). While this court is not opining in any way that there are names in the Quantec/Novo Point Domain Name Portfolios that might run afoul of the TDNA, this court can state unequivocally that misleading domain names are quite common in the Quantec/Novo Point Domain Name Portfolios, and the evidence is clear that both cyberquatting and typosquatting have been a significant component of the Disputed Domain Names Portfolio in the past.[20] Clearly, in the early 2000's, the law was evolving

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[20] "Cyberquatting has been defined as the 'bad faith, abusive registration and use of distinctive trademarks of others as Internet domain names, with the intent to profit from the goodwill associated with those trademarks' [citing *Shields v. Zuccarini*, 254 F.3d 476, 481 (3d Cir. 2001)]. In the typical cyberquatting case, a party will register the name of an already established company, brand, or celebrity with the intent to sell that domain name back to the rightful owner for a large profit [citations omitted]. In other instances, cybersquatters will use the domain name to sell competing products or generate revenues by posting advertisements." *M. Honig, The Truth About the Truth in Domain Names Act: Why this Recently Enacted Law is Unconstitutional,* 23 J. MARSHALL J. COMPUTER & INFO. L. 141, 143 (Fall 2004).

"Another common way of misdirecting Internet users is a form of cyberquatting known as typosquatting. Typosquatting involves the 'registering [of] domain names that are intentional misspellings of distinctive or famous names.' The purpose of typosquatting is to siphon traffic from a popular Web site to another similarly named site. In most cases, a typosquatter will then attempt to generate a profit by displaying advertisements on his or her website." *Id.*

and shifting to curb abuses on the Internet, with regard to misleading and infringing domain names, and it is not farfetched to assume that anyone in the business of registering domain names might have had growing concern about legal liability.[21]

34. This court believes, based on the totality of evidence, that the offshore structure (illustrated in the Appendix hereto) was largely intended to shield the human beings involved (*e.g.*, Mr. Baron) from potential liability for any infractions of the myriad of new laws pertaining to internet domain names and websites and from trademark infringement actions. ***The obvious goal was obfuscation and remoteness to protect assets***. To be clear, it is common in the corporate world for complex organizational structures to be devised to isolate assets and businesses from other businesses in a corporate family, to

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[21] *See, e.g.*, Federal Trademark Dilution Act ("FTDA") of 1995, Pub. L. No. 104-98, 109 Stat. 985 (1995) (codified at 15 U.S.C. § 1125(c), 1127), which was enacted to prevent "the lessening of the capacity of a famous mark to identify and distinguish goods or services"; Anticybersquatting Consumer Protection Act ("ACPA"), Pub. L. No. 106-113, 113 Stat. 1501A-545 (1999) (codified at 15 U.S.C. § 1125(d)), which provided that anyone who registers a domain name that is identical or confusingly similar to another party's protected name or trademark with the Bad Faith intent to profit from that name or trademark will be found liable in a civil action by the mark's owner; ICANN, Uniform Dispute Resolution Policy http://www.icann.org/udrp-policy-24oct99.htm (Oct. 24, 1999) (on file with Rutgers Computer & Technology Law Journal), which are rules to oversee disputes between parties regarding domain names and, under this policy, applying for a domain name serves as a representation by the registrant that he or she is registering a domain name in good faith. Note, that disputes among parties are often brought before a body known as the World Intellectual Property Organization ("WIPO") and can often result in forfeiture of the domain name.

potentially limit or separate liability among the entities. Plenty of times this is prudent and sensible and not sinister. "Ring fencing" can sometimes be legitimate to protect stakeholders in one corporation from being exposed to liability from the acts of a totally separate business enterprise in which a related corporation is engaging. But there has never been any evidence presented suggesting anything legitimate was taking place in the Jeff Baron offshore business enterprise. Rather, all of the evidence suggests that the structure was about obfuscation and confusion, designed to protect assets and value from plaintiffs/trademark owners who might want to sue Registrants and Registrars (and potentially those associated with them) for trademark infringement, and generally avoiding potential ramifications (criminal or otherwise) from ownership of "toxic" domain names (such as pornography, especially child pornography, and names of a race-hate nature).[22]

35. Regardless of motives,[23] the Quantec/Novo Point Domain

[22] It is the bankruptcy court's understanding that the Receiver and Ondova Chapter 11 Trustee made some efforts to purge some of the toxic names from the Quantec/Novo Point Domain Name Portfolios, such as those that were child pornography or race/hate in nature.

[23] One other point bears mentioning here. The Petitioning Creditors who filed the involuntary bankruptcy case against Mr. Baron were all unpaid former lawyers of Mr. Baron. As was described in the bankruptcy court's Findings of Fact and Conclusions of Law in Support of Order for Relief, Mr. Baron has hired and fired a lot of lawyers during the past decade and there are millions of dollars of attorneys fees owing. Some may argue that these lawyers may be less-than-sympathetic creditors—especially if they participated in the creation

Names should be turned over to the Baron Chapter 7 Trustee. As shown in the Appendix, Mr. Baron is the beneficiary of the Village Trust (which assigned its interests in the entities that are Registrants for the domain names to Quantec and Novo Point). Mr. Baron admits he is the beneficiary of the Village Trust. Mr. Baron represented himself to be the beneficiary of the Village Trust in the Global Settlement. DE (Ondova) # 394, Ex. A, p.1; *see also* Ex. 14, p. 23, ¶ 6.06. He ultimately controls everything. "It is notable that unlike an individual, control of a corporation is a property interest." *E.g., United States v. Wallach,* 935 F.2d 445, 462 (2d Cir. 1991). Similarly, ownership rights in a corporation constitute property. *See* 11 FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 5097, at 92 (Perm. Ed. 1990). Moreover, Mr. Baron has always controlled the Registrar of these domain names. The Registrar controls in whose identity the domain names are established. He has had 100% control over the names. The whole dispute with Manila/Netsphere was based on allegations that Mr. Baron "hijacked" domain names (transferred them to different Registrants and Monetizing Companies)

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and maintenance of the offshore organizational structure creation. However, the impression of this bankruptcy court has long been that many of the creditor-lawyers "came on the scene" well after the offshore organizational structure was created and were mostly involved in trying to fix the "mess" that has resulted from Mr. Baron's business and legal practices. Many of these lawyer-creditors, in fact, have worked tirelessly to try to solve Mr. Baron's legal and business problems, but it has been to no avail thus far.

unilaterally without permission from others with rights in the names. As mentioned earlier, "ownership" is a misnomer with domain names. What matters is who holds them, uses them, and is entitled to revenue associated with them. Mr. Baron has controlled these functions. Finally, the organizational structure appears to be a fiction not borne of legitimate business reasons but designed to obfuscate, confuse and shield.

36. Mr. Baron may argue that Novo Point, LLC and Quantec, LLC exist as legal entities pursuant to the law of the sovereign government of the Cook Islands, and that, pursuant to the law of the Cook Islands, the property and membership rights of Cook Islands LLCs may not be executed upon by judicial process or otherwise controlled by any court other than the courts of the Cook Islands (citing Art. 45, Cook Islands Limited Liability Companies Act (2008)). Ex. 11, p. 102. But, among other things, it appears that Novo Point and Quantec have submitted to the jurisdiction of the United States courts many times, by filing numerous pleadings.[24] E.g., Exs. 3, 5, 6, 7, 8, 9, 11, 12, and 14. On one occasion, the Trustee of the Village Trust even

[24] Quantec, LLC, Iguana Consulting, LLC and Novo Point, LLC first filed a Notice of Appearance in the Ondova Bankruptcy Case on September 3, 2009, through attorney Craig A. Capua, of West & Associates, representing themselves to be "creditors" in the bankruptcy proceeding. DE (Ondova) # 64. Another virtually identical Notice of Appearance was filed by them through the same attorney [DE (Ondova) # 103] on September 10, 2009.

submitted a declaration in support of a pleading. Ex. 14. And the Village Trust was a signatory to the Global Settlement and agreed it could be enforced by United States courts. DE (Ondova) # 394, Ex. A, p.24, ¶ 21. *See also* DE (Ondova) # 394, Ex. A, p.1. Finally, the Village Trust, through its then-trustee Asia Trust Limited, appeared in the bankruptcy court in the Ondova bankruptcy case on September 10, 2009, when it filed a pleading entitled "Joinder in Motion to Dismiss Bankruptcy Case" [DE (Ondova) # 77], through attorney Eric Taube. Without any reservation of rights, this Joinder stated the Village Trust's support for a pending motion to dismiss the bankruptcy case filed by Manilla/NetSphere and stated: "Though it does not agree with, join in or adopt the factual allegations made by the NetSphere Parties within their Motion to Dismiss, for its own independence reasons, Asia Trust filed this Joinder in the Motion to Dismiss and requests this Court grant the relief sought in the Motion to Dismiss, based upon the argument and authority contained therein, Asia Trust hereby joins and adopts those legal arguments here, as if fully set forth herein." On the very same day, an identical pleading entitled "Joinder in Motion to Dismiss Bankruptcy Case [DE (Ondova) # 78] was filed by Mr. Baron, individually, through attorney Gerrit Pronske. Then attorney Eric Taube filed an Amended Joinder in Motion to Dismiss [DE (Ondova) #82] later in the day on September 10, 2009, this time indicating he was

representing Quantec, LLC, Iguana Consulting, LLC and Novo Point, LLC, rather than the Trustee for Village Trust.

D. LEGAL CONCLUSIONS AND RECOMMENDATION

37. Under section 541 of the Bankruptcy Code, a bankruptcy estate is created at the commencement of a bankruptcy case. The bankruptcy estate includes, with some exceptions, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). One exception is in connection with certain types of trusts: "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." 11 U.S.C. § 541(c)(2). This has been referred to as the "spendthrift trust" exception. *See, e.g., Bradley v. Ingalls (In re Bradley)*, 501 F.3d 421, 428 (5th Cir. 2007). "In general, a spendthrift trust is one in which the right of the beneficiary to future payments of income or capital cannot be voluntarily transferred by the beneficiary or reached by his creditors. . . . Pursuant to § 541(c)(2), the property of a spendthrift trust is excluded from the bankruptcy estate if those assets are protected from the beneficiary's creditors under state law." *Id.* But the Fifth Circuit has noted that the spendthrift trust exception ***does not apply*** if it is a ***self-settled*** trust and that the rationale for this is obvious: "a debtor should not be able to escape claims of his creditors by

himself setting up a spendthrift trust and naming himself as a beneficiary." *Id. See also Shurley v. Tex. Commerce Bank-Austin, N.A. (In re Shurley)*, 115 F.3d 333, 336-37 (5th Cir. 1997); *Brooks v. Interfirst Bank (In re Brooks)*, 844 F.2d 258, 263 (5th Cir. 1988); *Phillips v. MBank Waco, N.A. (In re Latham)*, 823 F.2d 108, 111 (5th Cir. 1987). Notably, in the *Brooks* case, the Fifth Circuit stated that a person who provides consideration for a trust is a settlor even if ***another*** person or entity nominally creates the trust, specifically: "The mold in which the transaction is cast does not determine who is the settlor of a trust. The person who provides the consideration for the trust is the settlor even if another person or entity nominally creates the trust. Neither Texas courts, nor federal courts that follow Texas law, ought to follow a purely paper trial. We look instead to the reality that lies behind." *Brooks*, 844 F.2d at 263.

38. This court has never been presented with the paper trail for the Village Trust. The trust documents seem to be as amorphous as the domain names themselves. However, all evidence and argument suggests that the Village Trust was a self-settled trust with Mr. Baron as the settlor, transferring what was at one time property in which he had rights. The evidence suggests he has controlled it.

39. As noted by the court in *Siegel v. FDIC (In re Indy Mac*

Bancorp, Inc.), Adv. No. 2:09-ap-01698-BB, 2012 WL 1037481, at *12 (Bankr. C.D. Cal. Mar. 29, 2012):

> The scope of an estate's property interests is broad. *E.g., United States v. Whiting Pools, Inc.,* 462 U.S. 198, 204, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983); *In re Central Ark. Broad. Co.,* 68 F.3d 213, 214 (8th Cir.1995). Estate property includes all of a debtor's rights and expectancies and is a concept that "has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed." *Segal v. Rochelle,* 382 U.S. 375, 379, 86 S.Ct. 511, 15 L.Ed.2d 428 (1966); *see also, e.g.,* 11 U.S.C. § 541(c)(1)(A) (providing that assets become estate property notwithstanding any provision of nonbankruptcy law that would prevent their being liquidated or transferred by the debtor); H.R. REP. No. 95–595, at 175–76 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6136 (making clear that "property of the estate" includes all "contingent interests and future interests, whether or not transferable by the debtor").

40. Furthermore, as Bankruptcy Judge Hale noted in *In re Smith*, No. 09-30531, DE # 52, at p. 15 (Bank. N.D. Tex. Sept. 3, 2009), wherein he, among other things, concluded that funds from a Cook Islands Trust were property of a bankruptcy estate, "bankruptcy courts are courts of equity where the definition of property of the estate is to be interpreted broadly and substance often trumps form." *See Burgess v. Sikes (In re Burgess)*, 438 F.3d 493, 510 (5th Cir. 2006) ("The Supreme Court has routinely concluded that, to fulfill the purposes of bankruptcy law, the definition of property of the debtor's estate must be broadly

interpreted"); *see also Gaudet v. Babin (In re Zedda)*, 103 F.3d 1195, 1203-04 (5th Cir. 1997) (substance trumps form to achieve the equitable purpose of bankruptcy); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1231 (9th Cir. 1999) (affirming district court's rejection of argument that Cook Islands trust law divested ownership interest, noting that "a district court judge and his common sense" are not "easily parted").

41. In summary, this court sees no valid reason to deviate from Section 543 of the Bankruptcy Code. Section 543 of the Bankruptcy Code requires a receiver to deliver to a bankruptcy trustee any property of the debtor he holds so that it can be administered in the bankruptcy case as property of the estate. Thus, the Receiver should be required to turnover to the Baron Chapter 7 Trustee all of the Receivership Assets including the Quantec/Novo Point Domain Names. There appears to be overwhelming evidence and argument that these are property of Mr. Baron, under his dominion and control, even if he contributed them on paper to a Cook Islands trust.

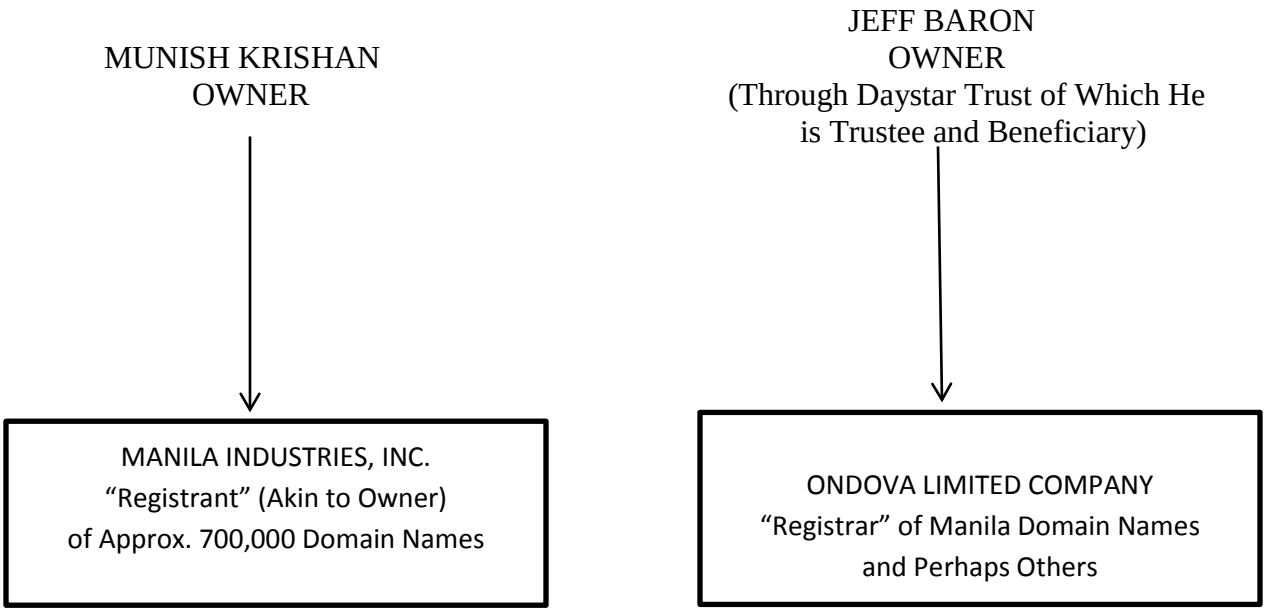
42. Moreover, due process will be preserved, as any future disposition of these assets will only occur upon further orders of the bankruptcy court after notice, hearing, and an opportunity to object. Transfer to the Baron Bankruptcy Trustee would be without prejudice to anyone's right to bring a declaratory

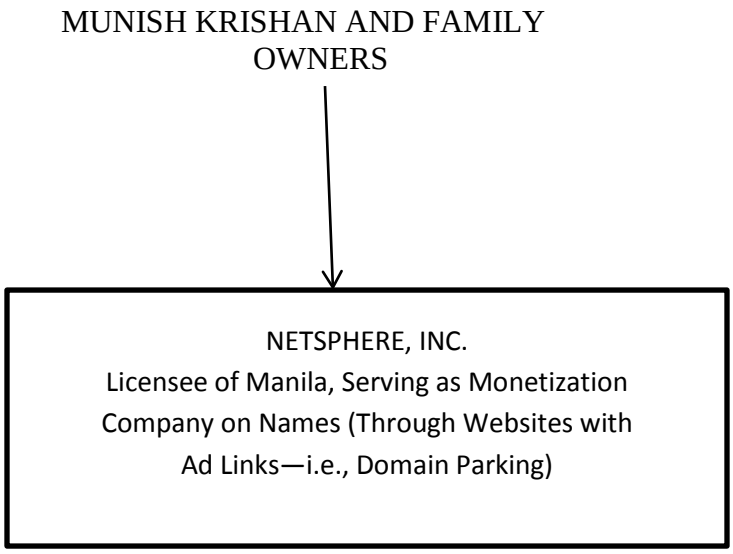
judgment action as to ownership of the Quantec/Novo Point Domain Names.

IT IS SO RECOMMENDED.

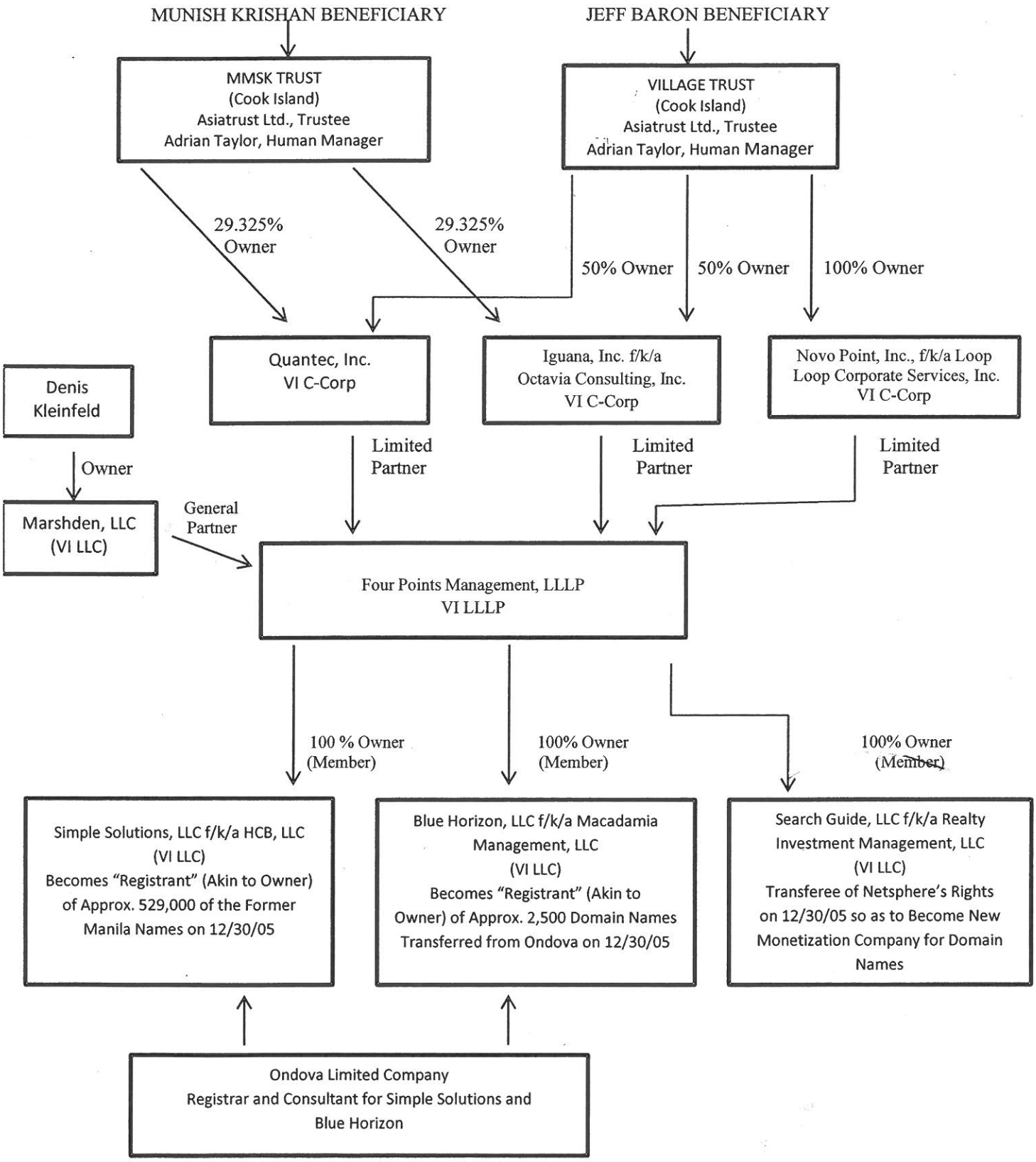
*** * * * END OF REPORT AND RECOMMENDATION * * * ***

PHASE I OF THE DISPUTED DOMAIN NAMES
(APPROX. 2001 THROUGH 2005 OR 2006)



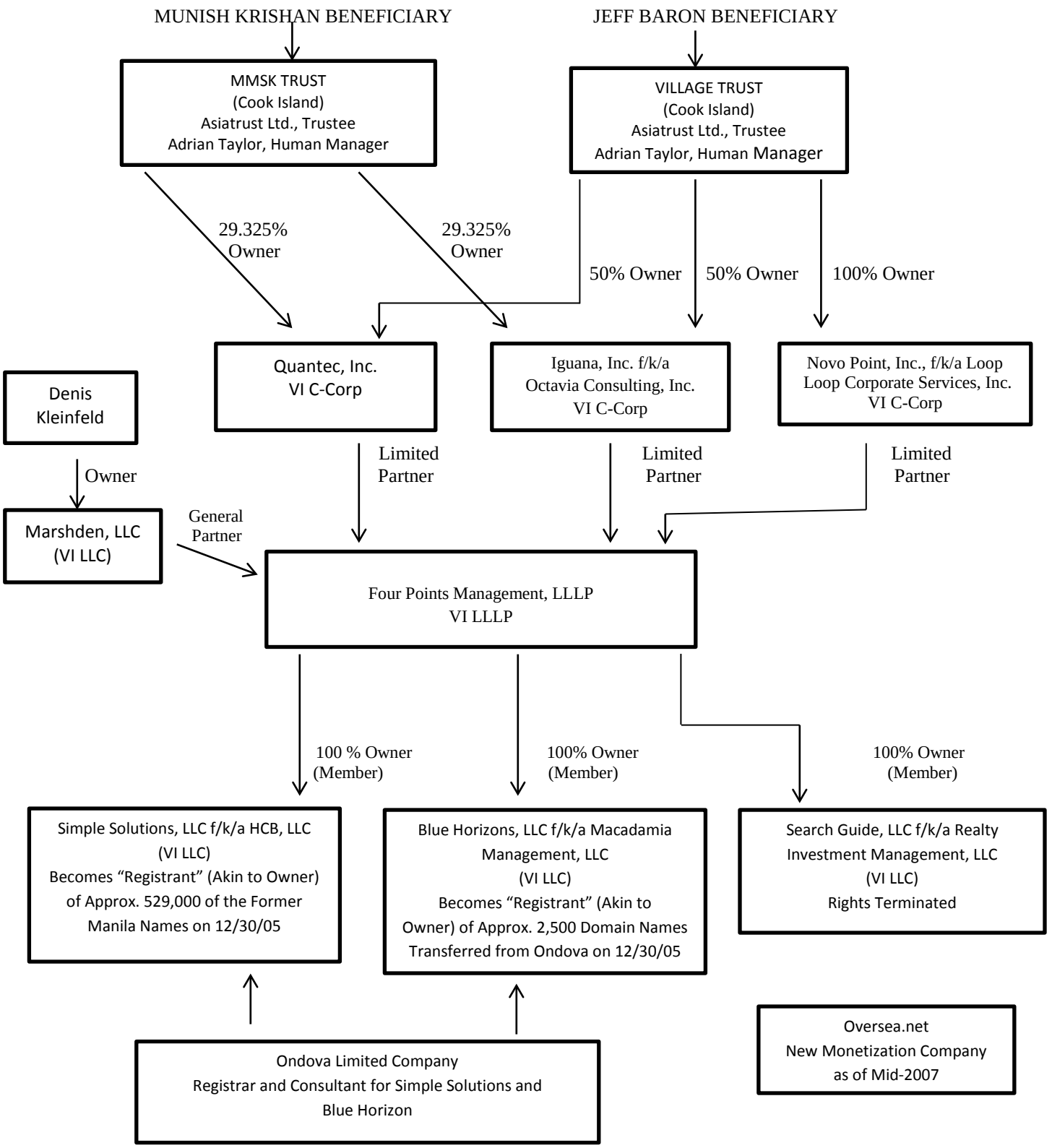


PHASE II OF THE DISPUTED DOMAIN NAMES (DECEMBER 30, 2005 – NOVEMBER 13, 2006): BEGINNING OF DOING BUSINESS THROUGH UNITED STATES VIRGIN ISLANDS ("VI") ECONOMIC DEVELOPMENT PROGRAM STRUCTURE[1]



[1] Attorney Elizabeth Shrurig set up Village Trust and has also been counsel to Jeff Baron personally and Ondova on occasion. Ex. 9, pp. 99-100 (Jeff Baron Testimony). Note that Manila/Netsphere Parties dispute that this structure was ever finally agreed upon by them.

PHASE III OF THE DISPUTED DOMAIN NAMES
(NOVEMBER 13, 2006 – MID-2007)



PHASE III OF THE DISPUTED DOMAIN NAMES
(November 13, 2006 - Mid 2007)

Same Organizational Structure as Phase II Except:

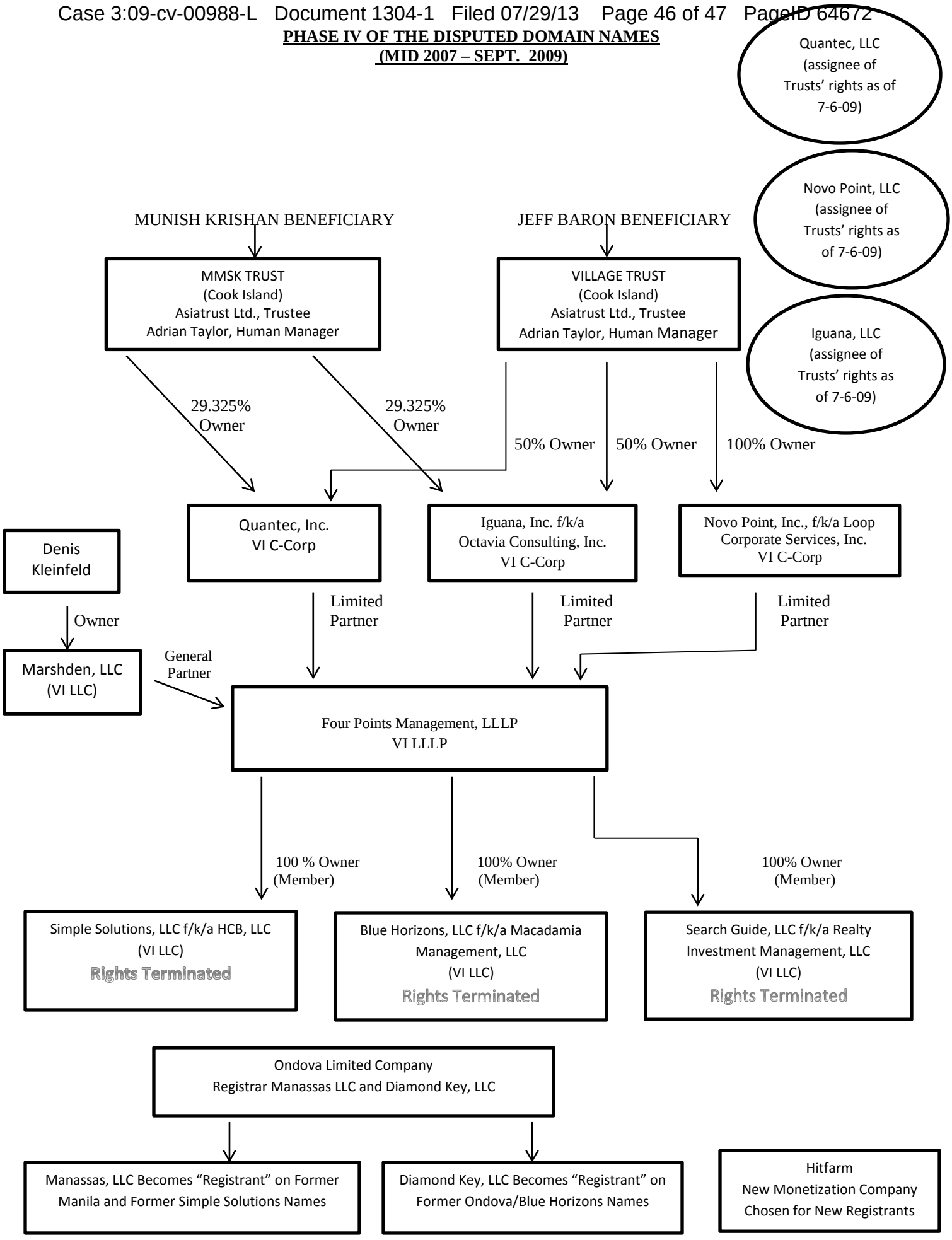
(1) On November 13, 2006, monetization company is changed from Search Guide, LLC to Oversea.net (at Ondova's Direction, in its consultant role to Simple Solutions and Blue Horizons, Registrants).

(2) Oversea.net does not pay monetization fees to Registrants (at least not Simple Solutions) because they allegedly have not paid Registrar fees to Ondova, Registrar.

(3) Meanwhile, Registrant Simple Solutions (holder of original Manila domain names) has sued Ondova in U. S. District Court, Virgin Islands, for fraud and breach of contract.

(4) Meanwhile, Netsphere/Manila sue Ondova and Jeff Baron in U. S. District Court, Central District of California, and Ondova and Jeff Baron sue in 68th Judicial District Court in Dallas County, Texas, with the issues largely involving whether parties fully agreed to the whole Virgin Island ownership structure and whether Jeff Baron converted the Disputed Domain Names and monetization revenue therefrom.

PHASE IV OF THE DISPUTED DOMAIN NAMES
(MID 2007 – SEPT. 2009)



PHASE IV OF THE DISPUTED DOMAIN NAMES
(Mid 2007 - Sept. 2009)

(1) In Mid 2007, Ondova changes monetization company for the Disputed Domain Names (again) from Oversea.net to Hitfarm.

(2) Hitfarm later (for many months) escrows monetization revenue because of confusion as to who owns Disputed Domain Names.

(3) In March 2009, a Texas LLC called Manassas LLC was formed. Ex. 8.

(4) In March 2009, a Texas LLC called Diamond Key LLC was formed. Ex. 8.

(5) On April 26, 2009, Jeff Baron and Ondova, on the one hand, and the Manila/Netsphere Parties, on the other, enter into a Memorandum of Understanding, after mediation, agreeing to divide between them the Disputed Domain Names.

(6) On May 28, 2009, Manila/Netsphere Parties file Federal District Court Action (Judge Furgeson), alleging breach of settlement agreement, when Jeff Baron and Ondova allegedly failed to perform the division of Disputed Domain Names. Injunctive relief is agreed to by parties and promptly ordered on June 26, 2009, requiring division of the Disputed Domain Names.

(7) On July 22, 2009, three Cook Island entities called Quantec, *LLC*, Iguana Consulting, *LLC*, and Novo Point, *LLC*, move to intervene in Federal District Court Furgeson Action, representing that they are assignees of the Village Trust and MMSK Trust (as of assignments executed July 6, 2009 by the Trustees), and that the April 26, 2009 Memorandum of Understanding and June 26, 2009 Preliminary Injunction issued by Judge Furgeson were ineffective because done without the Trusts' knowledge or consent. Village and MMSK Trusts allegedly did not know about Manila/Netsphere and Ondova/Jeff Baron litigation until March 2009. Ex. 14.

(8) July 22, 2009, Ondova files Chapter 11.

(9) Late August 2009, Jeff Baron reveals Disputed Domain Names were transferred from Simple Solutions and Blue Horizons, as Registrants, to Manassas and Diamond Key, as Registrants, respectively (at direction of Trustees of Cook Island Trusts) in March or April 2009. Owner of Manassas undisclosed.

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

In re:	§	
	§	**Case No. 12-37921-7**
JEFFREY BARON,	§	
	§	**Involuntary Chapter 7**
DEBTOR.	§	

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	**CIVIL ACTION NO. 3:09-CV-0988-F**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

Motion For Extension of Time to File Objections to Sua Sponte Report and Recommendation filed by the Bankrutpcy Court [Dkt. 1304] or, the Alternative, Provisional Objections

Defendant Jeffrey Baron moves for an extension of time of 21 days to file objections to Sua Sponte Report and Recommendation concerning the involuntary bankruptcy case that is currently pending appeal. In the alternative, Baron files the following provisional objections. Adequate presentation of the issues in the Sua Sponte Report and Recommendation (SSR) will require additional time because the issues raised in the SSR concern winding down the receivership and ongoing litigation of bankruptcy matters, in which Mr. Baron is currently unrepresented.

As a result, Mr. Baron has been actively seeking experienced bankruptcy counsel to properly represent his interests in the current bankruptcy and receivership wind-down processes, but as of this filing, he has not yet secured such counsel. Mr. Baron believes that it will take at least 21 days to secure such adequate bankruptcy counsel because such actions require both the approval of the Bankruptcy Court to substitute counsel, as well as filing the proper motions and holding a hearing upon same so Mr. Baron may seek funds from the estate to retain such counsel. Additional time will also be needed for any new counsel to be brought up to speed with the case proceedings. Mr. Baron has been in discussions with prospective bankruptcy counselors, some of which have expressed the desire and possess the knowledge to represent Mr. Baron and properly respond to the SSR to protect Mr. Baron's interests and obtain due process.

As the court is aware, Mr. Baron is currently represented by the undersigned, who is a solo practitioner, does not practice bankruptcy law but rather civil law, and must also attend to other clients and pressing cases at the same time he is preparing Mr. Baron's response to the SRR. The undersigned is without support staff and is incapable of adequately objecting to the Report and Recommendation or further work on this case without support or funding. In light of the aforementioned limitations, and without being a bankruptcy attorney, the undersigned counsel has attempted to provide the Court with what he believes are important objections, however, concedes he has been unable to spend the adequate time or have the resources to address the many other important issues and facts required to be presented for the Court to make a full and proper decision on the merits of the SSR.

As the court is aware, beginning in November 2010 with the imposition of the receivership, Mr. Baron has been denied access to his assets in order to hire counsel. After two years of Mr. Baron being denied access to his funds for counsel, this Court, in September 2012, allowed the undersigned to obtain $50,000 from the receivership estate for a retainer, but counsel's further requests for additional funds have been denied and his retainer has long been exhausted. In stark contrast, during the same period of time, the Court has approved funding from the estate in excess of $4,000,000 to the Receiver to pay his attorneys, and an additional approximate $2,000,000 in either private estate funds or Mr. Baron's company's funds to Mr. Baron's other adversaries. The undersigned simply cannot continue to expend the resources necessary to represent Mr. Baron without receiving payment, which has been denied, and in doing so, must instead work on cases that compensate him for his time.

An extension of time would not be prejudicial to any of the parties, as it does not appear that there are any pending orders or payments concerning the property whereas Mr. Baron is facing the liquidation of his life's work.

Subject to his Motion for Extension of Time, Jeffrey Baron hereby provisionally files his objections to the SSR contained herein

The Report and Recommendation should be stricken in its entirety as it was not requested by this Court and asserts numerous facts that are not supported and are unrelated to any issue that needs to be addressed by this Court at this time.[1] As set out below, the bankruptcy judge has been a long-time advocate for selling Baron's assets through the receivership despite the Fifth Circuit's mandate to vacate and reverse that receivership order--- a receivership that was championed by Judge Jernigan in her 2009 Report and Recommendation to this Court. Exhibit A, Ondova Bankruptcy Dkt 118.[2]

There are three cases at issue*: Netsphere v. Baron*, *In re Ondova* (N. Dist.Tx. Bk, 09-34784-sgj11) and *In re Jeffrey Baron (N. Dist Tx Bk,* 12-37921-7**)**. It all started after a global settlement was reached in various cases in 2009. After settlement, the lawyers in these cases, having already been paid over $4 million of Baron's money, got Baron's assets frozen by receivership. They quickly proceeded to sell off a substantial part of the assets while billing approximately $6 million dollars to the receivership estate. Using this mechanism, the lawyers

[1] [1] Mr. Baron is being denied due process in this proceeding. Since September 2010, the receiver has had control over Mr. Baron's assets and Mr Baron has been enjoined from using any of his assets to employ counsel. During this same period, the receiver and his lawyers have billed over $5.2 million and paid over $4 million of Mr. Baron's money. Mr. Baron still does not have paid counsel in this proceeding and has no counsel in the bankruptcy proceeding

[2] Due to a technical problem, the exhibits to these objections will be filed separately.

paid themselves an additional approximately $5 million using Baron's assets and assets of a trust, whose property was not the subject of the dispute..

Two and a half years later, the Fifth Circuit Court of Appeals reversed the receivership, and numerous interlocutory orders, on the basis that the receivership was an *abuse of discretion.*

In all three cases at issue, the Receiver, the Trustee and the alleged creditors (now "Petitioning Creditors") fervently represented to the bankruptcy court and the district court that their receivership of Baron would be upheld, while they repeated the propaganda that Baron was a "vexatious", "conniving" and "evil" person who had deprived lawyers of fees. Ironically, the very same lawyers who brought the reversed receivership, are now, just as fervently trying to "sell" this Court on the notion that the involuntary bankruptcy against Jeff Baron will be upheld by the appellate courts. The problem for these lawyer claimants is that the Fifth Circuit made it clear that federal courts, including bankruptcy courts, are not a tool for them—non-judgment creditors—to freeze an individual's assets in the hope of obtaining a judgment on their unsecured claims. Judge Jernigan, the judge who recommended the receivership to the district judge, and who has done everything possible to advance the receivership and sell Mr. Baron's assets, now invites this Court to make the **same mistake** condemned by the Fifth Circuit---use the federal courts to freeze an individual's assets for and on behalf of non-judgment creditors.

I. The Bankruptcy Court Has Been Divested of Jurisdiction

On July 8, 2013, Mr. Baron filed notice of appeal of the Order for Relief in the bankruptcy. Bankruptcy Court. Exhibit B, Dkt 253. It is a fundamental principle of law that the filing of a notice of appeal divests the Bankruptcy Court of jurisdiction, except in very limited respects, including authority to act in aid of the appeal process, such as resolving "what items should be included in the designation of record." *Brandt v. Carlson (In re Carlson),* 247 B.R. 754, 756 (Bankr. N.D. Ill. 2000). An order granting an order for relief in an involuntary

bankruptcy is deemed to be final for purposes of appeal because the consequences of such an order are so significant. *In re Mason*, 709 F.2d 1313, 1316, 1317 (9th Cir. 1983). ("[W]e are convinced that orders for relief should be considered final for purposes of appeal because they 'may determine and seriously affect substantive rights' and '**cause irreparable harm** to the losing party if he had to wait to appeal to the end of the bankruptcy case.")(Emphasis added.)

In being divested of jurisdiction, the Bankruptcy Court may not enter orders or take other action that would have the effect of mooting the appeal. In *In re Madill*, 65 B.R. 729, 733 (D. Mont. 1986)., for example, an order denying confirmation of a Chapter 13 plan was on appeal as to two secured creditors, but the Bankruptcy Court moved forward and granted relief from stay to one of those creditors to proceed against the collateral. The District Court explained that the Bankruptcy Court lacked jurisdiction to grant relief from the stay:

> The facts and issues presented in the instant case are similar to those in *In re Hardy*, 30 B.R. 109 (Bankr. S.D. Ohio 1983), *aff'd*, 755 F.2d 75 (6th Cir. 1985). In *Hardy*, debtors appealed the Bankruptcy Court's order rejecting the proposed chapter 13 plan. Thereafter, the creditor filed a motion for relief from the automatic stay provisions. The Bankruptcy Court concluded it retained jurisdiction only so long as any relief granted would not impinge on the appeal of the chapter 13 plan. **The court held it could not lift the stay since to do so would in practical effect moot the appeal of the chapter 13 plan**. It instead required debtor to pay an amount each month into a trust fund to protect the creditor. *Id.* at 111.
>
> Like in *Hardy*, to allow the Bankruptcy Court to lift the automatic stay in the instant case, would in practical effect moot a substantial issue raised in the appeal of the April 8 order. Even under Bankruptcy Rule 8005, the Bankruptcy Court may only make those orders that 'will protect the rights of all parties in interest.' Lifting the automatic stay works to the substantial detriment of the debtors' rights to appeal the April 8 order. Because the collateral released from the automatic stay also is a subject of the appeal of the April 8 order, the bankruptcy court lacked jurisdiction to issue the May 20 order.

Id. Similarly, the Bankruptcy Court here may not issue orders in Baron's Chapter 7 case that would moot the appeal. The point is that, because the Bankruptcy Court's exercise of

jurisdiction necessarily is inconsistent with the matters on appeal, it *must* be deemed to have been divested of jurisdiction.

In *Neary v. Padilla (In re Padilla)*, 222 F.3d 1184, 1187 (9th Cir. 2000), the Bankruptcy Court granted a Chapter 7 trustee's motion to dismiss a petition on bad faith grounds; the Bankruptcy Appellate Panel (the "BAP") in that jurisdiction reversed and remanded the case for reinstatement of the petition; the trustee then appealed the BAP's decision to the Ninth Circuit; but while the appeal was pending, the Bankruptcy Court discharged the debtor. The debtor argued that his discharge mooted the trustee's appeal to the Ninth Circuit. The Ninth Circuit disagreed, finding that the Bankruptcy Court lacked jurisdiction to enter the discharge order in the bankruptcy that had been reinstated. The Court explained:

> Padilla maintains that this appeal is moot because the Bankruptcy Court has discharged his debts already. Federal courts lack jurisdiction to decide moot claims. See *Village of Gambell v. Babbitt*, 999 F.2d 403, 406 (9th Cir. 1993). This appeal is not moot if the Bankruptcy Court lacked jurisdiction to proceed with Padilla's bankruptcy during the pendency of this appeal. As is discussed below, with the timely filing of this appeal by the Trustee, the Bankruptcy Court was divested of jurisdiction to proceed with Padilla's bankruptcy. This court therefore has jurisdiction.

Id., at 1189-1190 (emphasis added). *See, Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 74 L. Ed. 2d 225, 103 S. Ct. 400 (1982) ('The filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'); *Hill & Sandford, LLP v. Mirzai (In re Mirzai)*, 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999) ('If a district court would be forbidden to act because of an appeal pending before the court of appeals, then both the bankruptcy appellate panel and the Bankruptcy Court would be similarly constrained.') Accord. *McDow v. Dudley*, 431 B.R. 703, 706 (Bankr. W.D. Va. 2010); *United States v. Schultz*, 2008 U.S. Dist. LEXIS 57948 (N.D.N.Y. 2008);

Africh v. Musselman (in re Seminole Walls & Ceilings Corp.), 412 B.R. 878, 885 (M.D. Fla. 2008).

An order for relief keeps a debtor in bankruptcy, just as the BAP order did in *Padilla* when it reinstated the petition. Just as the trustee's appeal in *Padilla* divested the Bankruptcy Court of jurisdiction to "proceed with Padilla's bankruptcy," Baron's appeal from the order for relief divested the Bankruptcy Court of jurisdiction to proceed with Baron's Chapter 7 case.

The Bankruptcy Court's loss of jurisdiction makes logical sense as a lower court should not be allowed to "moot the appeal" or to "change the status quo" while the case is on appeal. Another important practical consideration is avoiding multiple appeals. One reason interlocutory orders are not appealable is that Courts want only one appeal from a final order. As noted in *Mason*, 709 F.2d at 1317, an order for relief is a final, appealable order. Multiple appeals in this case can be avoided through concluding that the Bankruptcy Court was divested of jurisdiction upon the filing of the appeal from the order for relief. Otherwise, appeals could be taken from various subsequent orders of the Bankruptcy Court that are entered on the incorrect assumption that it has continuing jurisdiction.

II. The Bankruptcy Judge's Approach Contravenes the Fifth Circuit's Rulings

A reading of *Netsphere v Baron*, 703 F.3d 296 (5th Cir. 2012) compels the conclusion that: (1) the Fifth Circuit found the alleged creditors (now the "Petitioning Creditors") are nothing more than non-judgment creditors; and that (2) the freezing of assets to protect their unliquidated, contested claims by the district court was an improper use of a receivership. These findings and conclusions of law by the Fifth Circuit *collaterally estop* the very same creditors alleging the very same debts when they filed an involuntary bankruptcy. The bankruptcy judge

appears to be "tone deaf" to this concept. . The bankruptcy judge reasons that the Fifth Circuit really didn't reverse the order of the district court despite the fact that the opinion of the Court concludes with the statement "Reversed with directions to vacate the receivership…." 703 F.3d at 315. The result-oriented reasoning and apparent abandonment of impartiality by the bankruptcy judge is not binding on this Court.

The bankruptcy judge proposes that the Court approve the transfer of assets that were improperly seized in the receivership (NovoPoint and Quantec, LLC) and "transfer" these assets to a Chapter 7 involuntary bankruptcy[34]. These assets and cash[5] belong to non-parties, NovoPoint, LLC and Quantec, LLC which are owned by RPV Management. The Fifth Circuit *clearly* and *unequivocally* held that the receivership had no right to seize property that was unrelated to the underlying litigation. 703 F.3d at 305. If a court had no right to seize property in the first instance, the court cannot violate the Fifth Circuit's order and "transfer" the property to a bankruptcy estate. The proceeds belong to other parties and, as mandated by the Fifth Circuit, cannot be treated as Jeff Baron's personal assets.

Moreover, this Court made it clear that Quantec and NovoPoint should not be transferred to the bankruptcy court nor subject to its jurisdiction:

> MR. SCENCK(Counsel for Receiver): With respect to withdrawing the reference to the bankruptcy, we have suggested that before as a way to, frankly, get the Fifth Circuit's mandate implemented and the receiver discharged and his professionals released. We believe that's the appropriate way to wind this down, and we have a mechanical challenge that's presented now that I wanted to make sure I present to everybody at the same time. And the receivership order that I read earlier that charged my client with a number of tasks included Mr. Baron and series of trusts -- Novo Point, Quantec, Village Trust -- where many of his assets are. **Right now those entities have not been brought in the bankruptcy.** So the receivership is here with those

[3] It is important to note that nearly all of the cash currently held by the receivership belongs to NovoPoint, LLC and to Quantec, LLC and not to Baron

> assets waiting for a wind-down pursuant to the Fifth Circuit's mandate. We have an order in the bankruptcy court directed to the receiver to maintain all the receivership assets. There is a need to weave these things together. Either to withdraw the reference and the orderly wind-down or conclusion of the receivership and assets properly directed according to whatever disposition is made of them into the bankruptcy. But I think all of the parties need to be aware of that issue.
>
> THE COURT: I think that's a great point. The fact that it's only Mr. Baron who's sought to be put in involuntary bankruptcy and there is no effort to do anything with Novo Point or Quantec or any of that, then I know this would be hard to do for the new judge. The parties go to the judge and say, Judge, somewhere I realize there is this automatic stay, but the reference should be withdraw, and those parties should be spun off and sent back to where they should be. Judge Jurnigan as far as I know is not going to have any authority over those companies at all, if there is a bankruptcy.

Exhibit C, May 10, 2012 Dist Court Tr. At page 26-27 (Emphasis Added). Respect for the law requires that lower court judges, including bankruptcy judges, rule in accordance with the opinions of appellate courts. Result-oriented decisions work significant harm to the judicial process and public respect for the principle of due process of law. It is readily apparent that Judge Furgeson did not support a transfer of Novo Point, Quantec and other assets to the bankruptcy because the Fifth Circuit made it abundantly clear that these assets should have never been seized in the first place. *Id.*

III. This Court Did Not Request a Report and Recommendation from the Bankruptcy Court.

This Court knows how to ask a bankruptcy judge to provide input and guidance to the district court, and determines the time and circumstances for making such a request. Section 636 does not permit U.S. Magistrates or bankruptcy judges to assign themselves the authority to submit a Report and Recommendation to a district judge.

The stated reason Judge Jernigan asserts for submitting the Report and Recommendation is to discuss the operation of 11 U.S.C. § 543 and erroneously asserts that all assets held by the

invalid receivership should be turned over to the Trustee in the involuntary bankruptcy. [Dkt. 1304 at 6]. It is important to note that Judge Jernigan previously approved a Chapter 11 Plan to sell Novo Point and Quantec, but this plan was enjoined by the Fifth Circuit, which forbade the sale. Exhibit D, COA5 Case 10-11202, Document: 00512066702.

In this latest attempt to continue an illegal seizure of assets, the bankruptcy judge has provided the Court with what is tantamount to an appellate brief advocating positions taken by Baron's opponents in Netshpere and Ondova, accompanied by numerous conclusory, unsupported statements that have nothing to do with the narrow issue at bar---whether assets that the Fifth Circuit ordered be returned to Baron[6] or their rightful owners should be returned.[7] The Fifth Circuit made clear that Quantec, LLC and NovoPoint, LLC, were not properly part of the receivership as they were not part of the property subject to the dispute in the receivership. 703 F.3d at 305 ("equity does not allow a receivership to be imposed over property that was not the subject of the underlying dispute.") The Fifth Circuit debunked various myths raised against Baron; most notably, raised by counsel for Petitioning Creditors. The Court held that Baron was not moving assets to an off-shore company to evade creditors. "neither the trustee nor the receiver has pointed to record evidence that Baron failed to transfer the domain names in accordance with the [Netsphere global settlement] agreement. He had other obligations, but *there is no record evidence brought to our attention that any discrete assets subject to the*

[6] NovoPoint and Quantec are owned by a trust created in 2005, well before the disputes in the case arose.-.

[7] Mr Baron has not been represented in the bankruptcy court since the order for relief was entered and his requests for release of some of his funds to retain counsel have been denied by Judge Jernigan.

settlement agreement were being moved beyond the reach of the court. *Id* At 307 (emphasis supplied). The Fifth Circuit also addressed the conduct of the bankruptcy judge:

> In addition to addressing the few minor unresolved issues with respect to domain names to be conveyed to Baron, the trustee's attorney discussed the increasing number of attorneys who had formerly represented Baron and Ondova and were now making claims against the bankruptcy estate. At this point, when the bankruptcy court considered recommending the district court appoint a receiver, the bankruptcy court was not responding to a threatened loss of control over domain names or other discrete property. Instead it was trying to prevent the loss of the funds against the Ondova bankruptcy estate. It was at this hearing that the bankruptcy court heard testimony from Baron's attorney, Pronske, explaining that he had learned Baron was planning to transfer "assets" offshore." *Id*. at 305-306.

The Fifth Circuit's criticism of Judge Jernigan cannot be ignored where, as here, Judge Jernigan again engages in result-oriented legal reasoning that manifests contempt for the Fifth Circuit's judgment and mandate in the *Netsphere* case. Review of the totality of Judge Jernigan's decision reveals that this bankruptcy judge has abandoned her role of impartiality and is prepared to misuse the powers of the Bankruptcy Code to reach the desired goal of freezing Jeff Baron's assets for the purpose of paying non-judgment creditors. In fact, the Fifth Circuit Opinion, rendered over seven months ago, requires the expeditious return of all property. "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".[8] 703 F.3d at 314. Again, the issue of transferring all assets was raised with Judge Furgeson, who determined that the assets of NovoPoint and Quantec should not be part of the bankruptcy. Exhibit E, May 10, 2013 Dist. Court Tr.at 27.

[8] The Fifth Circuit later clarified that "Baron" was used as shorthand for all of the property owners who were subject to the receivership. COA5, # 10-11202, Doc. 00512097486 At 7.

IV. Objections to the Numbered Paragraphs of the Sua Sponte Report and Recommendation

The following objections are made to each "finding" or "conclusion of law" offered by Judge Jernigan. Counsel generally objects because, in many cases, it is unclear whether the "facts" referred to, or the conclusions expressed by Judge Jernigan are from the Netsphere case, the Ondova case or in the involuntary bankruptcy.

With some exceptions, the SSR does not cite to a record that Baron, or this Court, can actually refer to in making his objections. Subject to these limitations,counsel for Baron has reviewed as much of the record as possible and made diligent inquiry of his client to formulate the following objections. Baron has been unable to complete his objections because of other court deadlines and a lack of resources to simultaneously file pleadings in various pending cases. In addition, Judge Jernigan, in Docket 1304-1, did not provide the exhibits referenced in the SRR that purportedly support the Report and Recommendation.

2. Baron disputes that the April 26, 2009 Memorandum of Understanding was a "settlement agreement." This has been a disputed fact among the parties. as to whether this was a term sheet for further negotiation among other things.

3. Baron disputes the characterization by the Court that there was a "proposed tax and asset protection organizational structure set up in the United States Virgin Islands."

4. Baron disputes that the April 26, 2009 Memorandum of Understanding was a "settlement agreement." This has been a disputed fact among the parties. as to whether this was a term sheet for further negotiation among other things

6. Baron disputes the Court's conclusion that the split of names did not occur. In fact, the split of names did occur. Exhibit F, Dist Court Tr. July 1, 2009 At 19 line 23-25

7. Baron disputes that: "Ondova filed bankruptcy on the day before a motion for contempt was set to be heard before Judge Furgeson, regarding Mr. Baron's alleged failure to comply with certain Judge Jernigan orders". In fact, Baron was informed that the hearing had been taken off of the docket. Exhibit G, email from counsel Kraus.

8. Baron disputes the "finding" that "Manassas, LLC had not been mentioned in either the Texas State court Action prior to the April 26, 2009 Settlement Agreement, nor in the Federal District Action prior to the June 26, 2009 Preliminary Injunction"

9. (a) Baron disputes the "finding" that "There were approximately 51 parties to this Global Settlement, including Mr. Baron and various offshore entities that Mr. Baron controlled directly or indirectly". (emphasis supplied).

9. (b) Baron disputes the finding that" "hearings in the Ondova bankruptcy case during year 2010, it was represented that Mr. Baron and/or Ondova had connections or affiliations with at least the following entities, and many of these parties (if not all) were parties to the Global Settlement: the DayStar Trust (apparently the sole member/100% owner of Ondova, with Mr. Baron being the trustee and sole beneficiary of the Daystar Trust); the Village Trust and MMSK Trust (the two Cook Islands trusts, mentioned earlier, apparently created by Mr. Baron and Manilla/NetSphere principals in connection with a proposed joint venture, which may or may not have been consummated between them in 2005); Belton Trust (sole member of Domain Jamboree, LLC); and the following United States Virgin Island entities—HCB, LLC; RIM, LLC; Simple Solutions LLC; Search Guide LLC; Blue Horizons LLC (f/k/a Macadamia Management, LLC); Four Points LLC (NOT RELATED; Marshden (NOT RELATED), LLC; Novo Point, Inc.; Iguana, Inc.; Quantec, Inc.; Diamond Key, LLC (nominee of Javelina, LLC); Manassas, LLC (nominee for Shiloh LLC).

10. There is insufficient or no support on the record for the findings that: "Shortly after the Global Settlement was inked, Mr. Baron began taking actions that this Court and certain parties believed were aimed at unraveling the Global Settlement, driving up costs, and delaying the Ondova bankruptcy case" In fact, the trustee testified that Baron had complied with the Settlement Agreement Exhibit H, Bankruptcy Court Tr. 11-14-2012 At 58.

14. The following statement by the Court mischaracterizes the Fifth Circuit's opinion: "The Fifth Circuit, in its ruling, suggested that different remedies as to Mr. Baron would have been more appropriate than imposing an equitable receivership, such as imposing monetary sanctions or incarceration for contempt of Court." The Fifth Circuit Opinion suggested that these remedies ***might*** be appropriate, in the hypothetical, "if the district court entered a sufficiently specific order…." (and if Baron would have violated it).306 F.3d . at 311

18. There is no support on the record for the finding of fact that "Mr. Baron has at all times (through an elaborate web of entities) controlled the quite amorphous Quantec/Novo Point Domain Names" This statement is particularly problematic and reveals a disregard for due process of law. At no time in the *Netsphere* or the *Ondova* proceeding has any party filed an adversary action or an appropriate pleading, such as a complaint or adversary action, to pierce the corporate veil between Jeffrey Baron or to make a determination that he "at all times (through an elaborate web of entities controlled the quite amorphous Quantec/Novo Point Domain Names." While it may be convenient for a bankruptcy judge to gratuitously make a "finding" in a Sua Sponte Report and Recommendation without notice or due process to Mr. Baron or the entities involved, this Court must demand proof.

19-27. As set out above, Judge Jernigan provides no support in a record, any record, to support her conclusions. While some of Judge Jernigan's conclusory statements may be partially correct, it would be important to know which witness testified to what facts and how those facts actually relate to her conclusions. For these reasons, the "findings" should be rejected. Baron disputes Judge Jernigan's conclusion that Ondova was a "bulk domain name Registrar who merely registered domain names for a handful of Registrants, each of who owned thousands of domain names (and most of these Registrants were indirectly related to Ondova's

President, Mr. Baron)." Ondova was a registrar accredited by the Internet Corporation for Assigned Names and Numbers (ICANN). Customers of Ondova had as few as a single domain name registration.

29. There is no support on the record for any of the explanations, findings of fact that purportedly support the conclusions stated. Charts relied on by Judge Jernigan are not evidence and cannot be considered in the absence of record support. There is no support on the record for the findings of fact that "the Quantec/Novo Point Domain Names (and before, them the full Disputed Domain Name Portfolio) are assets (very amorphous assets) that are not directly held or owned by Jeff Baron. But as shown in the charts, it appears that Mr. Baron controls and has controlled the entities that have the rights in the Quantec/Novo Point Domain Names for many years." The conclusion of law that "the equity interest in the entities (and the right to control the names), should come into his bankruptcy estate to be controlled by the Baron Chapter 7 Bankruptcy Trustee" is erroneous.

30. Baron disputes the conclusion that Baron controlled the entities that have the rights in the Quatntec/Novo Point domain Names for many years, and thus, pursuant to Section 541 of the Bankrtupcy Code, the equity interest in the entities (and the right to control the names), should come into his bankruptcy estate to be controlled by the Baron Chapter 7 bankrutpcy Trustee (subject to further and final adjudication ,perhaps, in a bankruptcy adversary proceeding—such as a Declaratory Judgment Action)." It should be noted that Judge Jernigan now concedes that due process may be required to do what she has assumed throughout the proceedings—that Jeff Baron controls the domain names. At the same time, however, Judge Jernigan is asking this Court to "transfer" the domain names from the receivership to the Chapter 7 Bankruptcy Trustee. Clearly, **Judge Jernigan refuses to understand the Fifth Circuit's holding---litigants may not use the federal courts to freeze assets for non-judgment creditors**.

31. Baron disputes the conclusory statements that: "Mr. Baron has transferred the names to different Registrants, has changed the monetizers many times—most often among offshore entities with no real paper trail—only a hard-to-follow electronic trail". The statement is

false and not based on the record.

32-33. Baron disputes Judge Jernigan's Findings of Fact and Conclusions of Law in Support of Order Confirming Plan, entered November 21, 2012 [DE # 944 (Ondova)]. Baron objected to the Findings of Fact on the Plan {Exhibit I, Ondova Bankruptcy Dkt. 1000] and attaches these Objections for the Court's consideration. The proceedings regarding the Chapter 11 Confirmation Plan were eventually mooted by the Fifth Circuit's ruling vacating the receivership.

Baron specifically notes that the Court has blatantly mischaracterized the evidence on so-called "Pornography Names" characterizing them as "a very large percentage of the Domain Names" and are clearly, under the "know-it-when-you-see-it" definition of former Justice Potter Stewart, pornography-oriented (the "Pornography Names"). First, the so-called "Pornography Names" are **not** a "very large percentage" of the domain names and, quite the opposite, comprise about 100 to 200 names out of 153,000 (Bankruptcy Court Tr. 9-17-2012) and were **not** created by Baron. In addition, the web sites of these names have never had any pornographic content. Thus, there simply was no "pornography." Even the receiver, Peter Vogel, who registered these names during the receivership, explained to Judge Jernigan that the domain names were not unlawful (Bankruptcy Court Tr. 9-17-2012). Moreover, it is readily apparent that Judge Jernigan holds Baron responsible for creating this small sub-set of names and obviously would like to see him prosecuted under the Prosecutorial Remedies and other Tools to end the Exploitation of Children Today Act of 2003 (the PROTECT Act). Judge Jernigan has heard uncontroverted testimony that these domain names were a tiny fractional component of a large lot of domain names registered by automated computer programs without selection by a human (Bankruptcy Court Tr. 9-17-2012). Other than her prosecutorial interest against Mr. Baron, the bankruptcy judge fails to draw any connection between these-called Pornography Names and transferring the Receivership Assets to the Chapter 7 involuntary bankruptcy case. There is absolutely no reason for Judge Jernigan's report on alleged pornography when the issue is transfer of assets. This Court should scrutinize the motives and bias of a bankruptcy judge who seems committed to freezing and selling all assets in which Baron may have some beneficial

interest despite the Fifth Circuit's opinion prohibiting sale of the assets and its order to return the assets,

The judge clearly erred in her findings of fact that "At a hearing on September 10, 2009, before Judge Furgeson, then-counsel for Mr. Baron (a Mr. Ryan Lurich) stated, in response to Judge Furgeson stating that "my view is Mr. Baron owns those domain names" (District Court Tr 9-10-2009, p.24, lines 22-23)". This statement was not made by Mr. Baron's counsel.

33. Baron also objects to the bankruptcy judge's speculation and conjecture about the Pornography Names, the off-shore entities, and potential reasons as to why the off-shore entities were created. Simply stated, these types of comments in Judge Jernigan's Report and Recommendations appear to be more suitable to a prosecutor making recommendations to a United States Attorney---not an Article I judicial officer. Baron disputes Judge Jernigan's comments about the composition of the Novo Point/Ondova portfolio of names as "the evidence is clear that both cybersquatting and typosquatting have been a significant component of the disputed Domain Names portfolio in the past." The Court may have "eyeballed" some of 153,000 names at issue, but it is improbable, *at best*, to believe that the Court made any studied analysis of the entire portfolio, and is not qualified to make such conclusions.

34. Baron again disputes Judge Jernigan's unsupported conclusions that the offshore structure was intended to shield Jeff Baron from potential liability for violations of law. After conceding that a declaratory action or some other proceeding must be instituted to determine if Jeff Baron controlled the domain names, and conceding that "ring fencing" can be legitimate to protect stakeholders in one company from being exposed to liability in the acts of another company, Judge Jernigan then makes the quantum leap to stating that "there has never been any evidence presented suggesting anything legitimate was taking place in the Jeff Baron offshore business enterprise." If no such evidence has been presented, it is because the assets were not properly in the receivership, the Ondova bankruptcy nor are they at issue in this case. The Fifth Circuit made it clear that these assets were not properly in the receivership, and should be returned to their owner. The Court should not allow the Bankruptcy Court to engage in a prosecutorial exercise designed to freeze Jeff Baron's assets and ultimately sell the assets to satisfy debts of

lawyers who should secured a judgment in state court before wasting the time and resources of the federal courts.

35. Baron objects to this conclusory finding. Judge Jernigan literally engages in the reasoning: (a) Baron is a beneficiary of the Village Trust; (b) he represented himself as a beneficiary of the Village Trust; (c) therefore, he "ultimately controls everything." Being a beneficiary of the Village Trust does not *ipso facto* translate to "control" of "everything." The bankruptcy judge's speculation and conjecture are no substitute for notice and due process that a court is going to attempt to pierce the corporate veil and seize a third party's property. Indeed, the only competent testimony at trial in the Chapter 7 case was that the offshore entities were created for estate planning purposes.

36. Baron objects to this conclusory finding which reads like an adversary's brief on jurisdiction. Whether various off shore entities have subjected themselves to the jurisdiction of this court is an argument for another day, and irrelevant to whether the Court should transfer the assets of one or more of these companies to the Chapter 7 involuntary bankruptcy where, as here, the Fifth Circuit found that the assets were never properly part of the receivership.

37. Baron disputes the legal analysis of the bankruptcy court which concludes that the Village Trust was a self-settled trust as the record is not supported by a full record after notice and due process.

38. While Judge Jernigan concedes that "This court has never been presented with the paper trail for the Village Trust[.]," the Court then proceeds to conclude that "all evidence and argument suggests that the Village Trust was a self-settled trust with Mr. Baron as the settlor…." After notice and hearing, it would be prudent to have evidence taken on the issue before drawing any judicial conclusions.

39, 40, 41. There is no support on the record for the conclusion that: "There appears to be overwhelming evidence and argument that these are property of Mr. Baron, under his dominion and control, even if he contributed them on paper to a Cook Islands trust". Moreover, both the

Fifth Circuit and Judge Furgeson made it clear that Quantec and NovoPoint should not be transferred to the bankruptcy court. May 10, 2012 Dist Court Tr. At page 27). udge Jernigan's legal analysis fails to recognize that the Fifth Circuit has already held that the receivership never had the right to take possession of Novo Point and Quantec as part of a receivership proceeding. A judge cannot confer jurisdiction over assets that were never properly seized by the Court. This type of result oriented legal reasoning has been rejected by the Fifth Circuit and should receive short shrift from this Court.

42. Baron disputes the bankruptcy court's notion of due process. The proposal to seize property first, because a future disposition of the property will only occur if there is an order of the bankruptcy court after notice, hearing and an opportunity to object does not inspire faith that the bankruptcy judge understands the history of the Fourth Amendment, or that of the Fifth Amendment. It is for this Court to shut down this sort of "freeze-first-due process-maybe-later" approach to the Fifth Amendment. The Fifth Circuit spoke, but the bankruptcy court appears to be motivated by a desire to help the Petitioning Creditors "transfer" assets from the receivership to a bankruptcy proceeding. This "transfer" is nothing more than an end-run to circumvent the Fifth Circuit's mandate. The Court should strike the Report and Recommendation and order the Bankruptcy Court to comply with the Fifth Circuit mandate.

Attachments appearing at page 42-47 of the SSR are not based on evidence on the record and are also inadmissible based on Rule 1006, Federal Rules of Evidence, which requires that a summary be: (1) accurate, non-prejudicial; (2) that the documents underlying the summary must be made available for examination at a reasonable time and place prior to seeking its introduction; (3) and must be introduced through a competent witness who supervised its preparation. *See United States v. Buck*, 324 F.3d 786 790 (5th Cir. 2003); *United States v Modena*, 302 F.3d 626, 633 (6th Cir. 2002). None of these requirements were met with these exhibits.

WHEREFORE, Jeffrey Baron requests this Honorable Court grant an extension of 21 days for Mr. Baron to supplement his Objections, strike the Sua Sponte Report and Recommendation or, in the alternative, to reject the findings and conclusions of law asserted in the Report and Recommendation.

Respectfully submitted,

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

In re:	§	
	§	**Case No. 12-37921-7**
JEFFREY BARON,	§	
	§	**Involuntary Chapter 7**
DEBTOR.	§	

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	**CIVIL ACTION NO. 3:09-CV-0988-F**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

Motion For Extension of Time to File Objections to Sua Sponte Report and Recommendation filed by the Bankrutpcy Court [Dkt. 1304] or, the Alternative, Provisional Objections

Defendant Jeffrey Baron moves for an extension of time of 21 days to file objections to Sua Sponte Report and Recommendation concerning the involuntary bankruptcy case that is currently pending appeal. In the alternative, Baron files the following provisional objections. Adequate presentation of the issues in the Sua Sponte Report and Recommendation (SSR) will require additional time because the issues raised in the SSR concern winding down the receivership and ongoing litigation of bankruptcy matters, in which Mr. Baron is currently unrepresented.

As a result, Mr. Baron has been actively seeking experienced bankruptcy counsel to properly represent his interests in the current bankruptcy and receivership wind-down processes, but as of this filing, he has not yet secured such counsel. Mr. Baron believes that it will take at least 21 days to secure such adequate bankruptcy counsel because such actions require both the approval of the Bankruptcy Court to substitute counsel, as well as filing the proper motions and holding a hearing upon same so Mr. Baron may seek funds from the estate to retain such counsel. Additional time will also be needed for any new counsel to be brought up to speed with the case proceedings. Mr. Baron has been in discussions with prospective bankruptcy counselors, some of which have expressed the desire and possess the knowledge to represent Mr. Baron and properly respond to the SSR to protect Mr. Baron's interests and obtain due process.

As the court is aware, Mr. Baron is currently represented by the undersigned, who is a solo practitioner, does not practice bankruptcy law but rather civil law, and must also attend to other clients and pressing cases at the same time he is preparing Mr. Baron's response to the SRR. The undersigned is without support staff and is incapable of adequately objecting to the Report and Recommendation or further work on this case without support or funding. In light of the aforementioned limitations, and without being a bankruptcy attorney, the undersigned counsel has attempted to provide the Court with what he believes are important objections, however, concedes he has been unable to spend the adequate time or have the resources to address the many other important issues and facts required to be presented for the Court to make a full and proper decision on the merits of the SSR.

As the court is aware, beginning in November 2010 with the imposition of the receivership, Mr. Baron has been denied access to his assets in order to hire counsel. After two years of Mr. Baron being denied access to his funds for counsel, this Court, in September 2012, allowed the undersigned to obtain $50,000 from the receivership estate for a retainer, but counsel's further requests for additional funds have been denied and his retainer has long been exhausted. In strong contrast, during the same period of time, the Court has approved funding from the estate in excess of $4,000,000 to the Receiver to pay his attorneys, and an additional approximate $2,000,000 in either private estate funds or Mr. Baron's company's funds to Mr. Baron's other adversaries. The undersigned simply cannot continue to expel the resources

necessary to represent Mr. Baron without receiving payment, which has been denied, and in doing so, must instead work on cases that compensate him for his time.

An extension of time would not be prejudicial to any of the parties, as it does not appear that there are any pending orders or payments concerning the property whereas Mr. Baron is facing the liquidation of his life's work.

Subject to his Motion for Extension of Time, Jeffrey Baron hereby provisionally files his objections to the SSR contained herein

The Report and Recommendation should be stricken in its entirety as it was not requested by this Court and asserts numerous facts that are not supported and are unrelated to any issue that needs to be addressed by this Court at this time.[1] As set out below, the bankruptcy judge has been a long-time advocate for selling Baron's assets through the receivership despite the Fifth Circuit's mandate to vacate and reverse that receivership order--- a receivership that was championed by Judge Jernigan in her 2009 Report and Recommendation to this Court. Exhibit A, Ondova Bankruptcy Dkt 118..

There are three cases at issue*:* *Netsphere v. Baron*, *In re Ondova* (N. Dist.Tx. Bk, 09-34784-sgj11) and *In re Jeffrey Baron (N. Dist Tx Bk,* 12-37921-7**)**. It all started after a global settlement was reached in various cases in 2009. After settlement, the lawyers in these cases, having already been paid over $4 million of Baron's money, got Baron's assets frozen by receivership. They quickly proceeded to sell off a substantial part of the assets while billing approximately $6 million dollars to the receivership estate. Using this mechanism, the lawyers

[1] [1] Mr. Baron is being denied due process in this proceeding. Since September 2010, the receiver has had control over Mr. Baron's assets and Mr Baron has been enjoined from using any of his assets to employ counsel. During this same period, the receiver and his lawyers have billed over $5.2 million and paid over $4 million of Mr. Baron's money. Mr. Baron still does not have paid counsel in this proceeding and has no counsel in the bankruptcy proceeding

paid themselves an additional approximately $5 million using Baron's assets and assets of a trust, whose property was not the subject of the dispute..

Two and a half years later, the Fifth Circuit Court of Appeals reversed the receivership, and numerous interlocutory orders, on the basis that the receivership was an *abuse of discretion.*

In all three cases at issue, the Receiver, the Trustee and the alleged creditors (now "Petitioning Creditors") fervently represented to the bankruptcy court and the district court that their receivership of Baron would be upheld, while they repeated the propaganda that Baron was a "vexatious", "conniving" and "evil" person who had deprived lawyers of fees. Ironically, the very same lawyers who brought the reversed receivership, are now, just as fervently trying to "sell" this Court on the notion that the involuntary bankruptcy against Jeff Baron will be upheld by the appellate courts. The problem for these lawyer claimants is that the Fifth Circuit made it clear that federal courts, including bankruptcy courts, are not a tool for them—non-judgment creditors—to freeze an individual's assets in the hope of obtaining a judgment on their unsecured claims. Judge Jernigan, the judge who recommended the receivership to the district judge, and who has done everything possible to advance the receivership and sell Mr. Baron's assets, now invites this Court to make the **same mistake** condemned by the Fifth Circuit---use the federal courts to freeze an individual's assets for and on behalf of non-judgment creditors.

I. The Bankruptcy Court Has Been Divested of Jurisdiction

On July 8, 2013, Mr. Baron filed notice of appeal of the Order for Relief in the bankruptcy. Bankruptcy Court. Exhibit B, Dkt 253. It is a fundamental principle of law that the filing of a notice of appeal divests the Bankruptcy Court of jurisdiction, except in very limited respects, including authority to act in aid of the appeal process, such as resolving "what items should be included in the designation of record." *Brandt v. Carlson (In re Carlson),* 247 B.R. 754, 756 (Bankr. N.D. Ill. 2000). An order granting an order for relief in an involuntary

bankruptcy is deemed to be final for purposes of appeal because the consequences of such an order are so significant. *In re Mason*, 709 F.2d 1313, 1316, 1317 (9th Cir. 1983). ("[W]e are convinced that orders for relief should be considered final for purposes of appeal because they 'may determine and seriously affect substantive rights' and '**cause irreparable harm** to the losing party if he had to wait to appeal to the end of the bankruptcy case.")(Emphasis added.)

In being divested of jurisdiction, the Bankruptcy Court may not enter orders or take other action that would have the effect of mooting the appeal. In *In re Madill*, 65 B.R. 729, 733 (D. Mont. 1986)., for example, an order denying confirmation of a Chapter 13 plan was on appeal as to two secured creditors, but the Bankruptcy Court moved forward and granted relief from stay to one of those creditors to proceed against the collateral. The District Court explained that the Bankruptcy Court lacked jurisdiction to grant relief from the stay:

> The facts and issues presented in the instant case are similar to those in *In re Hardy,* 30 B.R. 109 (Bankr. S.D. Ohio 1983), *aff'd*, 755 F.2d 75 (6th Cir. 1985). In *Hardy*, debtors appealed the Bankruptcy Court's order rejecting the proposed chapter 13 plan. Thereafter, the creditor filed a motion for relief from the automatic stay provisions. The Bankruptcy Court concluded it retained jurisdiction only so long as any relief granted would not impinge on the appeal of the chapter 13 plan. **The court held it could not lift the stay since to do so would in practical effect moot the appeal of the chapter 13 plan**. It instead required debtor to pay an amount each month into a trust fund to protect the creditor. *Id.* at 111.
>
> Like in *Hardy*, to allow the Bankruptcy Court to lift the automatic stay in the instant case, would in practical effect moot a substantial issue raised in the appeal of the April 8 order. Even under Bankruptcy Rule 8005, the Bankruptcy Court may only make those orders that 'will protect the rights of all parties in interest.' Lifting the automatic stay works to the substantial detriment of the debtors' rights to appeal the April 8 order. Because the collateral released from the automatic stay also is a subject of the appeal of the April 8 order, the bankruptcy court lacked jurisdiction to issue the May 20 order.

Id. Similarly, the Bankruptcy Court here may not issue orders in Baron's Chapter 7 case that would moot the appeal. The point is that, because the Bankruptcy Court's exercise of

jurisdiction necessarily is inconsistent with the matters on appeal, it *must* be deemed to have been divested of jurisdiction.

In *Neary v. Padilla (In re Padilla)*, 222 F.3d 1184, 1187 (9th Cir. 2000), the Bankruptcy Court granted a Chapter 7 trustee's motion to dismiss a petition on bad faith grounds; the Bankruptcy Appellate Panel (the "BAP") in that jurisdiction reversed and remanded the case for reinstatement of the petition; the trustee then appealed the BAP's decision to the Ninth Circuit; but while the appeal was pending, the Bankruptcy Court discharged the debtor. The debtor argued that his discharge mooted the trustee's appeal to the Ninth Circuit. The Ninth Circuit disagreed, finding that the Bankruptcy Court lacked jurisdiction to enter the discharge order in the bankruptcy that had been reinstated. The Court explained:

> Padilla maintains that this appeal is moot because the Bankruptcy Court has discharged his debts already. Federal courts lack jurisdiction to decide moot claims. See *Village of Gambell v. Babbitt*, 999 F.2d 403, 406 (9th Cir. 1993). This appeal is not moot if the Bankruptcy Court lacked jurisdiction to proceed with Padilla's bankruptcy during the pendency of this appeal. As is discussed below, with the timely filing of this appeal by the Trustee, the Bankruptcy Court was divested of jurisdiction to proceed with Padilla's bankruptcy. This court therefore has jurisdiction.

Id., at 1189-1190 (emphasis added). *See, Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 74 L. Ed. 2d 225, 103 S. Ct. 400 (1982) ('The filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'); *Hill & Sandford, LLP v. Mirzai (In re Mirzai)*, 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999) ('If a district court would be forbidden to act because of an appeal pending before the court of appeals, then both the bankruptcy appellate panel and the Bankruptcy Court would be similarly constrained.') Accord. *McDow v. Dudley*, 431 B.R. 703, 706 (Bankr. W.D. Va. 2010); *United States v. Schultz*, 2008 U.S. Dist. LEXIS 57948 (N.D.N.Y. 2008);

Africh v. Musselman (in re Seminole Walls & Ceilings Corp.), 412 B.R. 878, 885 (M.D. Fla. 2008).

An order for relief keeps a debtor in bankruptcy, just as the BAP order did in *Padilla* when it reinstated the petition. Just as the trustee's appeal in *Padilla* divested the Bankruptcy Court of jurisdiction to "proceed with Padilla's bankruptcy," Baron's appeal from the order for relief divested the Bankruptcy Court of jurisdiction to proceed with Baron's Chapter 7 case.

The Bankruptcy Court's loss of jurisdiction makes logical sense as a lower court should not be allowed to "moot the appeal" or to "change the status quo" while the case is on appeal. Another important practical consideration is avoiding multiple appeals. One reason interlocutory orders are not appealable is that Courts want only one appeal from a final order. As noted in *Mason*, 709 F.2d at 1317, an order for relief is a final, appealable order. Multiple appeals in this case can be avoided through concluding that the Bankruptcy Court was divested of jurisdiction upon the filing of the appeal from the order for relief. Otherwise, appeals could be taken from various subsequent orders of the Bankruptcy Court that are entered on the incorrect assumption that it has continuing jurisdiction.

II. The Bankruptcy Judge's Approach Contravenes the Fifth Circuit's Rulings

A reading of *Netsphere v Baron*, 703 F.3d 296 (5th Cir. 2012) compels the conclusion that: (1) the Fifth Circuit found the alleged creditors (now the "Petitioning Creditors") are nothing more than non-judgment creditors; and that (2) the freezing of assets to protect their unliquidated, contested claims by the district court was an improper use of a receivership. These findings and conclusions of law by the Fifth Circuit *collaterally estop* the very same creditors alleging the very same debts when they filed an involuntary bankruptcy. The bankruptcy judge

appears to be "tone deaf" to this concept. . The bankruptcy judge reasons that the Fifth Circuit really didn't reverse the order of the district court despite the fact that the opinion of the Court concludes with the statement "Reversed with directions to vacate the receivership…." 703 F.3d at 315. The result-oriented reasoning and apparent abandonment of impartiality by the bankruptcy judge is not binding on this Court.

The bankruptcy judge proposes that the Court approve the transfer of assets that were improperly seized in the receivership (NovoPoint and Quantec, LLC) and "transfer" these assets to a Chapter 7 involuntary bankruptcy[23]. These assets and cash[4] belong to non-parties, NovoPoint, LLC and Quantec, LLC which are owned by RPV Management. The Fifth Circuit *clearly* and *unequivocally* held that the receivership had no right to seize property that was unrelated to the underlying litigation. 703 F.3d at 305. If a court had no right to seize property in the first instance, the court cannot violate the Fifth Circuit's order and "transfer" the property to a bankruptcy estate. The proceeds belong to other parties and, as mandated by the Fifth Circuit, cannot be treated as Jeff Baron's personal assets.

Moreover, this Court made it clear that Quantec and NovoPoint should not be transferred to the bankruptcy court nor subject to its jurisdiction:

> MR. SCENCK(Counsel for Receiver): With respect to withdrawing the reference to the bankruptcy, we have suggested that before as a way to, frankly, get the Fifth Circuit's mandate implemented and the receiver discharged and his professionals released. We believe that's the appropriate way to wind this down, and we have a mechanical challenge that's presented now that I wanted to make sure I present to everybody at the same time. And the receivership order that I read earlier that charged my client with a number of tasks included Mr. Baron and series of trusts -- Novo Point, Quantec, Village Trust -- where many of his assets are. **Right now those entities have not been brought in the bankruptcy.** So the receivership is here with those

[2] It is important to note that nearly all of the cash currently held by the receivership belongs to NovoPoint, LLC and to Quantec, LLC and not to Baron

> assets waiting for a wind-down pursuant to the Fifth Circuit's mandate. We have an order in the bankruptcy court directed to the receiver to maintain all the receivership assets. There is a need to weave these things together. Either to withdraw the reference and the orderly wind-down or conclusion of the receivership and assets properly directed according to whatever disposition is made of them into the bankruptcy. But I think all of the parties need to be aware of that issue.
>
> THE COURT: I think that's a great point. The fact that it's only Mr. Baron who's sought to be put in involuntary bankruptcy and there is no effort to do anything with Novo Point or Quantec or any of that, then I know this would be hard to do for the new judge. The parties go to the judge and say, Judge, somewhere I realize there is this automatic stay, but the reference should be withdraw, and those parties should be spun off and sent back to where they should be. Judge Jurnigan as far as I know is not going to have any authority over those companies at all, if there is a bankruptcy.

Exhibit C, May 10, 2013 Dist Court Tr. At page 26-27 (Emphasis Added). Respect for the law requires that lower court judges, including bankruptcy judges, rule in accordance with the opinions of appellate courts. Result-oriented decisions work significant harm to the judicial process and public respect for the principle of due process of law. It is readily apparent that Judge Furgeson did not support a transfer of Novo Point, Quantec and other assets to the bankruptcy because the Fifth Circuit made it abundantly clear that these assets should have never been seized in the first place. *Id.*

III. This Court Did Not Request a Report and Recommendation from the Bankruptcy Court.

This Court knows how to ask a bankruptcy judge to provide input and guidance to the district court, and determines the time and circumstances for making such a request. Section 636 does not permit U.S. Magistrates or bankruptcy judges to assign themselves the authority to submit a Report and Recommendation to a district judge.

The stated reason Judge Jernigan asserts for submitting the Report and Recommendation is to discuss the operation of 11 U.S.C. § 543 and erroneously asserts that all assets held by the

invalid receivership should be turned over to the Trustee in the involuntary bankruptcy. [Dkt. 1304 at 6]. It is important to note that Judge Jernigan previously approved a Chapter 11 Plan to sell Novo Point and Quantec, but this plan was enjoined by the Fifth Circuit, which forbade the sale. Exhibit D, COA5 Case 10-11202, Document: 00512066702.

In this latest attempt to continue an illegal seizure of assets, the bankruptcy judge has provided the Court with what is tantamount to an appellate brief advocating positions taken by Baron's opponents in Netshpere and Ondova, accompanied by numerous conclusory, unsupported statements that have nothing to do with the narrow issue at bar---whether assets that the Fifth Circuit ordered be returned to Baron[5] or their rightful owners should be returned.[6] The Fifth Circuit made clear that Quantec, LLC and NovoPoint, LLC, were not properly part of the receivership as they were not part of the property subject to the dispute in the receivership. 703 F.3d at 305 ("equity does not allow a receivership to be imposed over property that was not the subject of the underlying dispute.") The Fifth Circuit debunked various myths raised against Baron; most notably, raised by counsel for Petitioning Creditors. The Court held that Baron was not moving assets to an off-shore company to evade creditors. "neither the trustee nor the receiver has pointed to record evidence that Baron failed to transfer the domain names in accordance with the [Netsphere global settlement] agreement. He had other obligations, but *there is no record evidence brought to our attention that any discrete assets subject to the*

[5] NovoPoint and Quantec are owned by a trust created in 2005, well before the disputes in the case arose.-.

[6] Mr Baron has not been represented in the bankruptcy court since the order for relief was entered and his requests for release of some of his funds to retain counsel have been denied by Judge Jernigan.

settlement agreement were being moved beyond the reach of the court. *Id* At 307 (emphasis supplied). The Fifth Circuit also addressed the conduct of the bankruptcy judge:

> In addition to addressing the few minor unresolved issues with respect to domain names to be conveyed to Baron, the trustee's attorney discussed the increasing number of attorneys who had formerly represented Baron and Ondova and were now making claims against the bankruptcy estate. At this point, when the bankruptcy court considered recommending the district court appoint a receiver, the bankruptcy court was not responding to a threatened loss of control over domain names or other discrete property. Instead it was trying to prevent the loss of the funds against the Ondova bankruptcy estate. It was at this hearing that the bankruptcy court heard testimony from Baron's attorney, Pronske, explaining that he had learned Baron was planning to transfer "assets" offshore." *Id*. at 305-306.

The Fifth Circuit's criticism of Judge Jernigan cannot be ignored where, as here, Judge Jernigan again engages in result-oriented legal reasoning that manifests contempt for the Fifth Circuit's judgment and mandate in the *Netsphere* case. Review of the totality of Judge Jernigan's decision reveals that this bankruptcy judge has abandoned her role of impartiality and is prepared to misuse the powers of the Bankruptcy Code to reach the desired goal of freezing Jeff Baron's assets for the purpose of paying non-judgment creditors. In fact, the Fifth Circuit Opinion, rendered over seven months ago, requires the expeditious return of all property. "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".[7] 703 F.3d at 314. Again, the issue of transferring all assets was raised with Judge Furgeson, who determined that the assets of NovoPoint and Quantec should not be part of the bankruptcy. Exhibit E, May 10, 2013 Dist. Court Tr.at 27.

[7] The Fifth Circuit later clarified that "Baron" was used as shorthand for all of the property owners who were subject to the receivership. COA5, # 10-11202, Doc. 00512097486 At 7.

V. Objections to the Numbered Paragraphs of the Sua Sponte Report and Recommendation

The following objections are made to each "finding" or "conclusion of law" offered by Judge Jernigan. Counsel generally objects because, in many cases, it is unclear whether the "facts" referred to, or the conclusions expressed by Judge Jernigan are from the Netsphere case, the Ondova case or in the involuntary bankruptcy.

With some exceptions, the SSR does not cite to a record that Baron, or this Court, can actually refer to in making his objections. Subject to these limitations,counsel for Baron has reviewed as much of the record as possible and made diligent inquiry of his client to formulate the following objections. Baron has been unable to complete his objections because of other court deadlines and a lack of resources to simultaneously file pleadings in various pending cases. In addition, Judge Jernigan, in Docket 1304-1, did not provide the exhibits referenced in the SRR that purportedly support the Report and Recommendation.

2. Baron disputes that the April 26, 2009 Memorandum of Understanding was a "settlement agreement." This has been a disputed fact among the parties. as to whether this was a term sheet for further negotiation among other things.

3. Baron disputes the characterization by the Court that there was a "proposed tax and asset protection organizational structure set up in the United States Virgin Islands."

4. Baron disputes that the April 26, 2009 Memorandum of Understanding was a "settlement agreement." This has been a disputed fact among the parties. as to whether this was a term sheet for further negotiation among other things

6. Baron disputes the Court's conclusion that the split of names did not occur. In fact, the split of names did occur. Exhibit F, Dist Court Tr. July 1, 2009 At 19 line 23-25

7. Baron disputes that: "Ondova filed bankruptcy on the day before a motion for contempt was set to be heard before Judge Furgeson, regarding Mr. Baron's alleged failure to comply with certain Judge Jernigan orders". In fact, Baron was informed that the hearing had been taken off of the docket. Exhibit G, email from counsel Kraus.

8. Baron disputes the "finding" that "Manassas, LLC had not been mentioned in either the Texas State court Action prior to the April 26, 2009 Settlement Agreement, nor in the Federal District Action prior to the June 26, 2009 Preliminary Injunction"

9. (a) Baron disputes the "finding" that "There were approximately 51 parties to this Global Settlement, including Mr. Baron and various offshore entities that Mr. Baron controlled directly or indirectly". (emphasis supplied).

9 (b) Baron disputes the finding that" "hearings in the Ondova bankruptcy case during year 2010, it was represented that Mr. Baron and/or Ondova had connections or affiliations with at least the following entities, and many of these parties (if not all) were parties to the Global Settlement: the DayStar Trust (apparently the sole member/100% owner of Ondova, with Mr. Baron being the trustee and sole beneficiary of the Daystar Trust); the Village Trust and MMSK Trust (the two Cook Islands trusts, mentioned earlier, apparently created by Mr. Baron and Manilla/NetSphere principals in connection with a proposed joint venture, which may or may not have been consummated between them in 2005); Belton Trust (sole member of Domain Jamboree, LLC); and the following United States Virgin Island entities—HCB, LLC;

RIM, LLC; Simple Solutions LLC; Search Guide LLC; Blue Horizons LLC (f/k/a Macadamia Management, LLC); Four Points LLC (NOT RELATED; Marshden (NOT RELATED), LLC; Novo Point, Inc.; Iguana, Inc.; Quantec, Inc.; Diamond Key, LLC (nominee of Javelina, LLC); Manassas, LLC (nominee for Shiloh LLC).

10. There is insufficient or no support on the record for the findings that "Shortly after the Global Settlement was inked, Mr. Baron began taking actions that this Court and certain parties believed were aimed at unraveling the Global Settlement, driving up costs, and delaying the Ondova bankruptcy case" In fact, the trustee testified that Baron had complied with the Settlement Agreement Exhibit H, Bankruptcy Court Tr. 11-14-2012 At 58.

14. The following statement by the Court mischaracterizes the Fifth Circuit's opinion: "The Fifth Circuit, in its ruling, suggested that different remedies as to Mr. Baron would have been more appropriate than imposing an equitable receivership, such as imposing monetary sanctions or incarceration for contempt of Court." The Fifth Circuit Opinion suggested that these remedies ***might*** be appropriate, in the hypothetical, "if the district court entered a sufficiently specific order…." (and if Baron would have violated it).306 F.3d . at 311

18. There is no support on the record for the finding of fact that "Mr. Baron has at all times (through an elaborate web of entities) controlled the quite amorphous Quantec/Novo Point Domain Names" This statement is particularly problematic and reveals a disregard for due process of law. At no time in the *Netsphere* or the *Ondova* proceeding has any party filed an adversary action or an appropriate pleading, such as a complaint or adversary action, to pierce the corporate veil between Jeffrey Baron or to make a determination that he "at all times (through an elaborate web of entities controlled the quite amorphous Quantec/Novo Point Domain Names." While it may be convenient for a bankruptcy judge to gratuitously make a "finding" in a Sua Sponte Report and Recommendation without notice or due process to Mr. Baron or the entities involved, this Court must demand proof.

19-27. As set out above, Judge Jernigan provides no support in a record, any record, to support her conclusions. While some of Judge Jernigan's conclusory statements may be partially

correct, it would be important to know which witness testified to what facts and how those facts actually relate to her conclusions. For these reasons, the "findings" should be rejected. Baron disputes Judge Jernigan's conclusion that Ondova was a "bulk domain name Registrar who merely registered domain names for a handful of Registrants, each of who owned thousands of domain names (and most of these Registrants were indirectly related to Ondova's President, Mr. Baron)." Ondova was a registrar accredited by the Internet Corporation for Assigned Names and Numbers (ICANN). Customers of Ondova had as few as a single domain name registration.

29. There is no support on the record for any of the explanations, findings of fact that purportedly support the conclusions stated. Charts relied on by Judge Jernigan are not evidence and cannot be considered in the absence of record support. There is no support on the record for the findings of fact that "the Quantec/Novo Point Domain Names (and before, them the full Disputed Domain Name Portfolio) are assets (very amorphous assets) that are not directly held or owned by Jeff Baron. But as shown in the charts, it appears that Mr. Baron controls and has controlled the entities that have the rights in the Quantec/Novo Point Domain Names for many years." The conclusion of law that "the equity interest in the entities (and the right to control the names), should come into his bankruptcy estate to be controlled by the Baron Chapter 7 Bankruptcy Trustee" is erroneous.

30. Baron disputes the conclusion that Baron controlled the entities that have the rights in the Quatntec/Novo Point domain Names for many years, and thus, pursuant to Section 541 of the Bankrtupcy Code, the equity interest in the entities (and the right to control the names), should come into his bankruptcy estate to be controlled by the Baron Chapter 7 bankrutpcy Trustee (subject to further and final adjudication ,perhaps, in a bankruptcy adversary proceeding—such as a Declaratory Judgment Action)." It should be noted that Judge Jernigan now concedes that due process may be required to do what she has assumed throughout the proceedings—that Jeff Baron controls the domain names. At the same time, however, Judge Jernigan is asking this Court to "transfer" the domain names from the receivership to the Chapter 7 Bankruptcy Trustee. Clearly, **Judge Jernigan refuses to understand the Fifth Circuit's holding---<u>litigants may not use the federal courts to freeze</u>**

assets for non-judgment creditors.

31. Baron disputes the conclusory statements that: "Mr. Baron has transferred the names to different Registrants, has changed the monetizers many times—most often among offshore entities with no real paper trail—only a hard-to-follow electronic trail". The statement is false and not based on the record.

32-33. Baron disputes Judge Jernigan's Findings of Fact and Conclusions of Law in Support of Order Confirming Plan, entered November 21, 2012 [DE # 944 (Ondova)]. Baron objected to the Findings of Fact on the Plan {Exhibit I, Ondova Bankruptcy Dkt. 1000] and attaches these Objections for the Court's consideration. The proceedings regarding the Chapter 11 Confirmation Plan were eventually mooted by the Fifth Circuit's ruling vacating the receivership.

Baron specifically notes that the Court has blatantly mischaracterized the evidence on so-called "Pornography Names" characterizing them as "a very large percentage of the Domain Names are clearly, under the "know-it-when-you-see-it" definition of former Justice Potter Stewart, pornography-oriented (the "Pornography Names"). First, the so-called "Pornography Names" are **not** a "very large percentage" of the domain names and, quite the opposite, comprise about 100 to 200 names out of 153,000 (Bankruptcy Court Tr. 9-17-2012) and were **not** created by Baron. In addition, the web sites of these names have never had any pornographic content, thus there simply was no pornography. Even the receiver, Peter Vogel, who registered these names during the receivership, explained to Judge Jernigan that the domain names were not unlawful (Bankruptcy Court Tr. 9-17-2012). Moreover, it is readily apparent that Judge Jernigan holds Baron responsible for creating this small sub-set of names and obviously would like to see him prosecuted under the Prosecutorial Remedies and other Tools to end the Exploitation of Children Today Act of 2003 (the PROTECT Act). Judge Jernigan has heard uncontroverted testimony that these domain names were a tiny fractional component of a large lot of domain names registered by automated computer programs without selection by a human (Bankruptcy Court Tr. 9-17-2012). Other than her prosecutorial interest against Mr. Baron, the bankruptcy judge

fails to draw any connection between these-called Pornography Names and transferring the Receivership Assets to the Chapter 7 involuntary bankruptcy case. There is absolutely no reason for Judge Jernigan's report on alleged pornography when the issue is transfer of assets. This Court should scrutinize the motives and bias of a bankruptcy judge who seems committed to freezing and selling all assets in which Baron may have some beneficial interest despite the Fifth Circuit's opinion prohibiting sale of the assets and its order to return the assets,

The judge clearly erred in her findings of fact that "At a hearing on September 10, 2009, before Judge Furgeson, then-counsel for Mr. Baron (a Mr. Ryan Lurich) stated, in response to Judge Furgeson stating that "my view is Mr. Baron owns those domain names" (District Court Tr 9-10-2009, p.24, lines 22-23)". This statement was not made by Mr. Baron's counsel.

33. Baron also objects to the bankruptcy judge's speculation and conjecture about the Pornography Names, the off-shore entities, and potential reasons as to why the off-shore entities were created. Simply stated, these types of comments in Judge Jernigan's Report and Recommendations appear to be more suitable to a prosecutor making recommendations to a United States Attorney---not an Article I judicial officer. Baron disputes Judge Jernigan's comments about the composition of the Novo Point/Ondova portfolio of names as "the evidence is clear that both cybersquatting and typosquatting have been a significant component of the disputed Domain Names portfolio in the past." The Court may have "eyeballed" some of 153,000 names at issue, but it is improbable, *at best*, to believe that the Court made any studied analysis of the entire portfolio, and is not qualified to make such conclusions.

34. Baron again disputes Judge Jernigan's unsupported conclusions that the offshore structure was intended to shield Jeff Baron from potential liability for violations of law. After conceding that a declaratory action or some other proceeding must be instituted to determine if Jeff Baron controlled the domain names, and conceding that "ring fencing" can be legitimate to protect stakeholders in one company from being exposed to liability in the acts of another company, Judge Jernigan then makes the quantum leap to stating that "there has never been any evidence presented suggesting anything legitimate was taking place in the Jeff Baron offshore business

enterprise." If no such evidence has been presented, it is because the assets were not properly in the receivership, the Ondova bankruptcy nor are they at issue in this case. The Fifth Circuit made it clear that these assets were not properly in the receivership, and should be returned to their owner. The Court should not allow the Bankruptcy Court to engage in a prosecutorial exercise designed to freeze Jeff Baron's assets and ultimately sell the assets to satisfy debts of lawyers who should secured a judgment in state court before wasting the time and resources of the federal courts.

35. Baron objects to this conclusory finding. Judge Jernigan literally engages in the reasoning. (a) Baron is a beneficiary of the Village Trust; (b) he represented himself as a beneficiary of the Village Trust; (c) therefore, he "ultimately controls everything." Being a beneficiary of the Village Trust does not *ipso facto* translate to "control" of "everything." The bankruptcy judge's speculation and conjecture are no substitute for notice and due process that a court is going to attempt to pierce the corporate veil and seize a third party's property. Indeed, the only competent testimony at trial in the Chapter 7 case was that the offshore entities were created for estate planning purposes.

36. Baron objects to this conclusory finding which reads like an adversary's brief on jurisdiction. Whether various off shore entities have subjected themselves to the jurisdiction of this court is an argument for another day, and irrelevant to whether the Court should transfer the assets of one or more of these companies to the Chapter 7 involuntary bankruptcy where, as here, the Fifth Circuit found that the assets were never properly part of the receivership.

37. Baron disputes the legal analysis of the bankruptcy court which concludes that the Village Trust was a self-settled trust.

38. While Judge Jernigan concedes that "This court has never been presented with the paper trail for the Village Trust[.]," the Court then proceeds to conclude that "all evidence and argument suggests that the Village Trust was a self-settled trust with Mr. Baron as the settlor…." After notice and hearing, it would be prudent to have evidence taken on the issue before drawing any judicial conclusions.

39, 40, 41. There is no support on the record for the conclusion that: "There appears to be overwhelming evidence and argument that these are property of Mr. Baron, under his dominion and control, even if he contributed them on paper to a Cook Islands trust". Moreover, both the Fifth Circuit and Judge Furgeson made it clear that Quantec and NovoPoint should not be transferred to the bankruptcy court. May 10, 2012 Dist Court Tr. At page 27). udge Jernigan's legal analysis fails to recognize that the Fifth Circuit has already held that the receivership never had the right to take possession of Novo Point and Quantec as part of a receivership proceeding. A judge cannot confer jurisdiction over assets that were never properly seized by the Court. This type of result oriented legal reasoning has been rejected by the Fifth Circuit and should receive short shrift from this Court.

42. Baron disputes the bankruptcy court's notion of due process. The proposal to seize property first, because a future disposition of the property will only occur if there is an order of the bankruptcy court after notice, hearing and an opportunity to object does not inspire faith that the bankruptcy judge understands the history of the Fourth Amendment, or that of the Fifth Amendment. It is for this Court to shut down this sort of "freeze-first-due process-maybe-later" approach to the Fifth Amendment. The Fifth Circuit spoke, but the bankruptcy court appears to be motivated by a desire to help the Petitioning Creditors "transfer" assets from the receivership to a bankruptcy proceeding. This "transfer" is nothing more than an end-run to circumvent the Fifth Circuit's mandate. The Court should strike the Report and Recommendation and order the Bankruptcy Court to comply with the Fifth Circuit mandate.

Attachments appearing at page 42-47 of the SSR are not based on evidence on the record and are also inadmissible based on Rule 1006, Federal Rules of Evidence, which requires that a summary be: (1) accurate, non-prejudicial; (2)that the documents underlying the summary must be made available for examination at a reasonable time and place prior to seeking its introduction; (3) and must be introduced through a competent witness who

supervised its preparation. *See United States v. Buck*, 324 F.3d 786 790 (5th Cir. 2003); *United States v Modena*, 302 F.3d 626, 633 (6th Cir. 2002). None of these requirements are met.

WHEREFORE, Jeffrey Baron requests this Honorable Court grant an extension of 21 days for Mr. Baron to supplement his Objections,, strike the Sua Sponte Report and Recommendation or, in the alternative, to reject the findings and conclusions of law asserted in the Report and Recommendation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this date, I electronically submitted the foregoing document with the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I also filed Baron's Objections to Report and Recommendation [Dkt. 1305] on the date reflected on August 9, 2013 but inadvertently failed to include a certificate of service. I hereby certify that I have served all parties who receive notification through the electronic filing system.

/s/ Stephen R. Cochell
Stephen R. Cochell

BTXN 138 (rev. 07/08)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re: Ondova Limited Company	§	Case No.: 09-34784-sgj11
	§	Chapter No.: 11
Debtor(s)	§	Civil Case No.: 3:09-CV-0988-F
Netsphere, Inc., et al.	§	
Movant(s)	§	
vs.	§	
Jeffrey Baron, et al.	§	
Respondent(s)	§	

NOTICE OF TRANSMITTAL REGARDING WITHDRAWAL OF REFERENCE

I am transmitting:

- ☐ Two copies of the Motion to Withdraw Reference (USDC Civil Action No. – DNC Case) **NOTE**: A Status Conference has been set for at , in _ before U.S. Bankruptcy Judge _. The movant, respondents or other affected parties are required to attend the Status Conference.
- ☑ Two copies of: Report and Recommendation .

TO ALL ATTORNEYS: F.R.C.P. 5011(a) A motion for withdrawal of a case or proceeding shall be heard by a district judge, [*implied*] that any responses or related papers be filed likewise.

DATED: 10/13/10

FOR THE COURT:
Tawana C. Marshall, Clerk of Court

by: /s/Sheniqua U. Whitaker, Deputy Clerk

I hereby certify that the foregoing is a true copy of the original thereof now in my office this the 13th day of October 2010 at Dallas, Texas
Tawana C. Marshall, Clerk
United States Bankruptcy Court
Northern District of Texas
By Sheniqua Whitaker Deputy

ORIGINAL

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

IN RE:	§	
	§	
ONDOVA LIMITED COMPANY,	§	Case No. 09-34784-SGJ-11
DEBTOR.	§	
	§	
	§	
NETSPHERE, INC., ET AL.,	§	
PLAINTIFFS,	§	
	§	
VS.	§	Civil Action No. 3-09CV0988-F
	§	
JEFFREY BARON, ET AL.,	§	
DEFENDANTS.	§	

REPORT AND RECOMMENDATION TO DISTRICT COURT (JUDGE ROYAL FURGESON): THAT PETER VOGEL, SPECIAL MASTER, BE AUTHORIZED AND DIRECTED TO MEDIATE ATTORNEYS FEES ISSUES

The undersigned bankruptcy judge makes this Report and Recommendation to the Honorable Royal Furgeson, who presides over litigation related to the above-referenced bankruptcy case styled *Netsphere v. Baron*, Case # 3-09CV0988-F (the "District Court Litigation"). The purpose of this submission is: (a) to report the status of certain matters pending before the bankruptcy court, that are related to the District Court Litigation; and (b)

to recommend that His Honor appoint Peter Vogel, Special Master in the District Court Litigation, to mediate issues relative to attorneys fees that are further described below.

I. BACKGROUND.

The bankruptcy court has held four status conferences in recent weeks in connection with the above-referenced bankruptcy case (on September 15, 22, and 30, 2010 and October 8, 2010). The bankruptcy court has heard reports and evidence at each status conference regarding the extent to which the so-called "Global Settlement Agreement" has been consummated. The "Global Settlement Agreement" refers to the Mutual Settlement and Release Agreement approved by the bankruptcy court on July 28, 2010 [*see* Order at Docket No. 394][1], involving, among other things: (a) dozens of parties, but primarily the Ondova bankruptcy estate (through Chapter 11 Trustee, Daniel Sherman), Jeffrey Baron, the Manilla/NetSphere parties, the Village Trust, the MMSK Trust, and various United States Virgin Island entities; (b) a split of a portfolio of internet domain names; (c) certain payments to the Ondova bankruptcy estate by Manilla/NetSphere and the Village Trust; (d) the settlement of more than a half-dozen lawsuits involving Ondova and/or Jeffrey Baron; and (e) a broad release of claims. While the bankruptcy court has heard positive statements

[1] All docket number references herein refer to the docket entry numbers on the PACER/ECF docket maintained in the *In re Ondova Limited Company* ("Ondova") bankruptcy case (Case No. 09-34784-sgj-11).

from the Chapter 11 Trustee indicating that there has been substantial consummation of the Global Settlement Agreement (*i.e.*, payment of more than one million dollars of settlement funds to the Ondova bankruptcy estate by Manilla/NetSphere; payment of certain additional settlement funds to the Ondova bankruptcy estate from the Village Trust; dismissals of all lawsuits except for the District Court Litigation;[2] appointment of a successor Trustee and Protector over the Village Trust; steps toward transferring the so-called "Odd Names Portfolio" portion of the internet domain names to a new Registrar away from Ondova), the bankruptcy court has had lingering concerns at each of the status conferences regarding Jeffrey Baron's commitment to completing his obligations under the Global Settlement Agreement, and possibly taking actions to frustrate the Global Settlement Agreement. Part of the bankruptcy court's concerns in this regard have been fueled by the fact that Jeffrey Baron has continued to hire and fire lawyers for himself and certain entities that are parties to the Global Settlement Agreement (*e.g.*, Quantec), and has instructed such lawyers to file pleadings—even after entry into the Global Settlement Agreement—

[2] The District Court Litigation, as well as the bankruptcy case of Ondova, remain open, so that there will be fora in which the parties can seek relief to enforce or interpret the Global Settlement Agreement. Additionally, there is remaining case administration needed in the Ondova bankruptcy case (namely, resolution and payment of claims—now that there are funds to pay creditors).

as though the matters resolved in the Global Settlement Agreement are far from over.

But the concern over the hiring-and-firing of lawyers is even more problematic than what the bankruptcy court mentions above. The bankruptcy court has had a growing concern that Jeffrey Baron's actions ***may be exposing the Ondova bankruptcy estate to possible administrative expense claims*** for amounts owed to attorneys that ***Jeffrey Baron should pay or entities with which he is connected (Quantec, Village Trust, etc.) should rightfully pay***. To further explain, the court summarizes below some of what has occurred before and after the Global Settlement Agreement was reached.

II. THE CAVALCADE OF ATTORNEYS.

When Jeffrey Baron started hiring and firing lawyers shortly after the Global Settlement Agreement was reached, the bankruptcy court took judicial notice (at a September 15, 2010 status conference) that Jeffrey Baron and Ondova have had ***dozens of sets of lawyers*** in the past four years, since the litigation with Manilla/NetSphere and other parties commenced. At least the following lawyers have served as former counsel to Ondova and/or Jeffrey Baron in the litigation with Manilla/NetSphere that started in the state district court in Dallas County (before the next phase of litigation between the parties started in the District Court Litigation): (i) Mateer & Schaffer; (ii)

Carrington Coleman Sloman & Blumenthal; (iii) Bickel & Brewer; (iv) The Beckham Group; (v) The Aldous Law Firm; (vi) The Rasansky Law Firm; (vii) Fee Smith Sharp & Vitullo; and (viii) Friedman & Feiger.

Additionally, far more than a dozen attorneys' names were listed in Ondova's Bankruptcy Schedules (Schedule F—the list of pre-bankruptcy unsecured creditors of Ondova) as being owed significant sums of money by Ondova (not the least of which was the Carrington Coleman law firm, that filed a claim for $224,233.27, and Bickel & Brewer which is scheduled as being owed $42,500).

Fast forwarding to the post-bankruptcy time period, at least the following lawyers have become engaged by Jeff Baron or entities he directs (or is the ultimate owner/beneficiary of) ***since*** the Ondova bankruptcy case was filed: (i) Paul Keiffer (Wright, Ginsburg & Brusilow) for Ondova;[3] (ii) Gerrit Pronske (Pronske & Patel) for Jeffrey Baron individually;[4] (iii) Steven

[3] Mr. Keiffer and his firm filed an application to be employed by Ondova on July 29, 2009 [Doc. No. 5], which application was granted by this court [Doc. No. 57]. Then, Mr. Keiffer moved to withdraw just a month-and-a-half later, on September 11, 2009 [Doc. No. 83], which the court granted on October 1, 2009 [Doc. No. 108].

[4] Pronske & Patel moved to withdraw from representing Jeffrey Baron on September 7, 2010, after representing Mr. Baron for many months in the bankruptcy case [Doc. No. 419], citing nonpayment of more than $200,000 of fees during the Ondova bankruptcy case, conflicts of interest—as Jeffrey Baron has now sued them—and also a concern that Jeffrey Baron may be engaging in fraudulent transfers. This request to withdraw was granted by the bankruptcy court [Doc. No. 449].

Jones for Jeffrey Baron individually;[5] (iv) Gary Lyon for Jeffrey Baron individually;[6] (v) Dean Ferguson for Jeffrey Baron individually;[7] (vi) Martin Thomas for Jeffrey Baron individually;[8] (vii) Stanley Broome for Jeffrey Baron individually;[9] and (viii) James Eckles for Quantec.[10] Several

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[5] Mr. Jones made a brief cameo appearance as criminal counsel to Mr. Baron during the Ondova bankruptcy case on September 11 and 28, 2009.

[6] Attorney Gary Lyon, who has been representing Jeffrey Baron individually for many months in the bankruptcy court and District Court, recently requested to have attorney Martin Thomas substituted in his place or approved as co-counsel with him [*see, e.g.*, Doc. No. 458]. For the first time, Mr. Lyon announced in September 2010 that he is only admitted to practice law in the State of Oklahoma, although admitted in the courts in the Northern District of Texas, and Mr. Lyon felt this was an ethical problem unless he associated with co-counsel (here, suggesting Martin Thomas).

[7] Dean Ferguson appeared for Jeffrey Baron individually at one hearing in the Ondova bankruptcy case (on September 15, 2010) and said he had been representing Jeffrey Baron for some time in connection with out-of-court negotiations relating to the Ondova bankruptcy case, but he would not be seeking to go forward because of non-payment of fees.

[8] Attorney Martin Thomas (who has newly filed a notice of appearance in the bankruptcy case) [Doc. No. 37, filed on September 14, 2010] seeks to be primary counsel now to Jeffrey Baron individually. The court signed an order on October 12, 2010 allowing Martin Thomas to represent Mr. Baron (with Gary Lyon) in the bankruptcy case.

[9] Attorney Stanley Broome (who has newly sued Pronske & Patel for Jeffrey Baron in September 2010) has filed a notice of appearance for Jeffrey Baron in the bankruptcy case [Doc. No. 438, filed September 15, 2010].

[10] Attorney James Eckles filed a notice of appearance for Quantec, LLC on September 21, 2010 [Doc. No. 450]. He has already filed a request that the court interpret part of the Global Settlement Agreement in a way that the court found unsupportable. His request was stricken. It appears to the bankruptcy court that Mr. Eckles is acting primarily for Mr. Baron, individually. He admitted that he had

lawyers have appeared for the Virgin Island entities of which Jeffrey Baron is the beneficiary including (i) Eric Taube (Hohmann, Taube & Summers), (ii) Hitchcock Everitt LLP, (iii) Craig Capua (West & Associates, LLP), and (iv) Shrurig Jete Becket Tackett.

Jeffrey Baron's habit of hiring and then firing lawyers, in many cases after they have incurred significant fees on his or Ondova's behalf (or on behalf of other entities he controls or is beneficiary of), has grown to a level that is more than a little disturbing. As the court noted in court on September 15, 2010, at the very least, it smacks of the possibility of violating Rule 11 (*i.e.*, it suggests a pattern of perhaps being motivated by an improper purpose, such as to harass, cause delay, or needlessly increase the cost of litigation for other parties). Still more troubling is the possibility to the court that Jeffrey Baron may be engaging in the crime of theft of services. *See* Texas Penal Code §§ 31.01(6) & 31.04 ("A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation: (1) he intentionally or knowingly secures performance of the service by deception, threat, or false token"; "services" includes "professional services"). This crime can be a misdemeanor or a felony—depending on the amount involved. If Jeffrey Baron is constantly engaging lawyers

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represented Mr. Baron individually in another matter.

without ever intending to pay them the full amounts that they charge, and then terminating them when they demand payment, this court is troubled that there are possibly criminal implications for Jeffrey Baron.

The bankruptcy court has announced that it will not allow this pattern to occur any further in these proceedings, and Jeffrey Baron will not be allowed to hire any additional attorneys. Mr. Baron has been told that he can either retain Gary Lyon and Martin Thomas through the end of the bankruptcy case (which this court does not expect to last much longer) or he can proceed *pro se*. The bankruptcy court has further warned Mr. Baron that if he chooses to proceed *pro se* and does not cooperate in connection with final consummation of the Global Settlement Agreement, he can expect this court to recommend to His Honor that he appoint a receiver over Mr. Baron, pursuant to 28 U.S.C. §§ 754 & 1692, to seize Mr. Baron's assets and perform the obligations of Jeffrey Baron under the Global Settlement Agreement.[11]

III. RECOMMENDATION.

As alluded to above, the bankruptcy court's concerns over the above hiring and firing of lawyers by Mr. Baron is multi-faceted (*e.g.*, Rule 11 implications; frustration of the Global

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[11] The bankruptcy court is concerned that it would not have the power to appoint a receiver over Mr. Baron, due to language in section 105(b) of the Bankruptcy Code.

Settlement Agreement; possible criminal theft of services, *etc.*). But, at this juncture, the bankruptcy court is perhaps most concerned about the risk that the bankruptcy estate has and will be exposed to administrative expense claims as a result of Mr. Baron's behavior (*e.g.*, claims occurring during the post-bankruptcy time period, with regard to which payment may be sought from the Ondova bankruptcy estate, and which claims would "prime" pre-bankruptcy unsecured claims). For example, the Pronske & Patel law firm has taken the position that they are owed and have not been paid approximately $200,000 incurred representing Mr. Baron. Pronske & Patel may seek a "substantial contribution" administrative expense claim against the Ondova bankruptcy estate (*see* 11 U.S.C. §503(b)(3)(D) & (4), which contemplate that an administrative expense claim may be allowed for a creditor or professional for a creditor who makes a "substantial contribution" in a case under chapter 9 or 11 of this title). Pronske & Patel have already filed a counterclaim against Mr. Baron in an adversary proceeding Mr. Baron has filed against them. Similarly, certain law firms who have represented the Virgin Island entities of which Jeffrey Baron is the beneficiary (specifically, Hohmann, Taube & Summers, Hitchcock Everitt LLP, West & Associates, LLP, and Shrurig Jete Becket Tackett) have filed a Motion for Allowance of Attorneys Fees Pursuant to the Supplemental Settlement Agreement in the Ondova

bankruptcy case [Doc. No. 452, on September 21, 2010], which represents that they have incurred approximately $150,000 in fees, after the execution of the Global Settlement Agreement, as a result of status conferences and Show Cause hearings involving Mr. Baron and his entities and that there are specific provisions of certain settlement documents that may permit them to seek a court order allowing these to be paid. If the Ondova bankruptcy estate is imposed with administrative expense claims from these or other attorneys (the risk of which appears to be genuine), then it should be entitled to a claim for reimbursement against Mr. Baron or the entity that incurred the fees. It was because of this risk—and also because of the risk that the bankruptcy court believed it might ultimately find Jeffrey Baron in contempt of the bankruptcy court's order approving the Global Settlement Agreement—that the court ordered on September 16, 2010 [Doc. No. 441] that the Village Trust be instructed by Jeffrey Baron to immediately remit $330,000 to the Ondova Bankruptcy Trustee as a "security deposit" against these risks. Bankruptcy Trustee Daniel Sherman currently holds this $330,000 of funds, pending further orders of the court.

The bankruptcy court now recommends that His Honor appoint his Special Master, Peter Vogel, to conduct a global mediation among Daniel Sherman, Jeffrey Baron, and the various attorneys who may make a claim to this $330,000 of funds or otherwise may

assert an administrative expense claim against the Ondova bankruptcy estate, in respect of attorneys fees they incurred postpetition for services provided to Jeffrey Baron or entities he controls or is the beneficiary of, and which services may have provided a substantial contribution to the estate. This court has subject matter jurisdiction to make this recommendation, as there could conceivably be an impact on the Ondova bankruptcy estate, if attorneys who represented Jeffrey Baron and his related entities go unpaid and make "substantial contribution" claims against the bankruptcy estate. The bankruptcy court believes that some of these "substantial contribution" claims could be meritorious.

The bankruptcy court has been informed that Mr. Vogel agrees to perform a mediation and that he and Bankruptcy Trustee Sherman are prepared to recommend a format and structure for the mediation and for the participants. The bankruptcy court would defer to Mr. Vogel, Mr. Sherman, and His Honor with regard to the details of the mediation.

Dated: October 12, 2010

Respectfully submitted,

Stacey G. C. Jernigan
United States Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Dallas Division

In re:	§	
	§	Case No. 12-37921-SGJ-7
JEFFREY BARON,	§	
	§	
Debtor.	§	

NOTICE OF APPEAL

Jeffrey Baron, involuntary debtor, hereby appeals to the United States District Court for the Northern District of Texas, Dallas Division, under 28 U.S.C. § 158(a) from the bankruptcy court's ***Order for Relief in an Involuntary Case,*** entered on June 26, 2013 (Docket. No. 240).

The names of all parties to the judgment, order or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

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Tel: (214) 658-6500
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mgoolsby@pronskepatel.com

Dated: July 8, 2013

Very respectfully,

The Cochell Law Firm, P.C.

By: /s/ Stephen R. Cochell
Stephen R. Cochell
Sexas Bar No. 24044255
7026 Old Katy Rd., Ste 259
Houston, Texas 77096
(713)980-8796 (phone)
(713)980-1179 (facsimile)
srcochell@cochellfirm.com

CERTIFICATE OF SERVICE

On this date, I electronically submitted the foregoing document with the Bankruptcy Clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties who receive notification through the electronic filing system.

/s/ Stephen R. Cochell
Stephen R. Cochell

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

NETSPHERE, INC., ET AL, Plaintiff,
vs.
JEFFREY BARON, ET AL., Defendant.

Number 3: 09-CV-0988-F

May 10, 2013

Excerpt of Volume 3
Trial on Attorney's Fees
Before the Honorable Royal Furgeson

A P P E A R A N C E S:

For Jeffrey Baron: STEPHEN R. COCHELL
THE COCHELL LAW FIRM
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Houston, TX 77024
Phone: 713-980-4381
Email: srcochell@gmail.com

EDWIN E WRIGHT , III
STRADLEY & WRIGHT
Abrams Centre
9330 LBJ Freeway Suite 1400
Dallas, TX 75243
Phone: 972/231-6001

For Netsphere: JOHN W. MACPETE
P.O. Box 224726
Dallas, TX 75222
Phone: 214/564-5205
Email: jmacpete@macpeteiplaw.com

Let me tell you, unless I'm wrong, that's all they told me to do.

MR. SCHENCK: My position which I will amplify in the brief next week, all of those reversal orders they are, in fact, reversals, but they refer back to the opinion where they tell you to reconsider the fees.

THE COURT: They say nothing about me doing anything else about anything. Just do the fees. And they say we're not going to void the receivership.

MR. SCHENCK: In fact, there is a word in the sentence that everyone uses which is "current." The receivership is where it is right now. And then we talk about cash on hand when we do the wind down. On a global matter, I think this is an important housekeeping matter. The first time I can say I agree with Mr. Cochell with respect to the substance of the case.

With respect to withdrawing the reference to the bankruptcy, we have suggested that before as a way to, frankly, get the Fifth Circuit's mandate implemented and the receiver discharged and his professionals released. We believe that's the appropriate way to wind this down, and we have a mechanical challenge that's presented now that I wanted to make sure I present to everybody at the same time. And the receivership order that I read earlier that charged my client with a number of tasks included

Mr. Baron and a series of trusts -- Novo Point, Quantec, Village Trust -- where many of his assets are. Right now those entities have not been brought in the bankruptcy. So the receivership is here with those assets waiting for a wind-down pursuant to the Fifth Circuit's mandate. We have an order in the bankruptcy court directed to the receiver to maintain all the receivership assets. There is a need to weave these things together. Either to withdraw the reference and the orderly wind-down or conclusion of the receivership and assets properly directed according to whatever disposition is made of them into the bankruptcy. But I think all of the parties need to be aware of that issue.

THE COURT: I think that's a great point. The fact that it's only Mr. Baron who's sought to be put in involuntary bankruptcy and there is no effort to do anything with Novo Point or Quantec or any of that, then I know this would be hard to do for the new judge. The parties go to the judge and say, Judge, somewhere I realize there is this automatic stay, but the reference should be withdraw, and those parties should be spun off and sent back to where they should be. Judge Jurnigan as far as I know is not going to have any authority over those companies at all, if there is a bankruptcy.

MR. SCHENCK: Just to be clear, in the brief we

11:15

C E R T I F I C A T I O N

I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing pages 1 through 35 and that said transcript is true and correct.

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11:15

s/Cassidi L. Casey

_____

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
CSR NUMBER 1703

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
December 18, 2012

Lyle W. Cayce
Clerk

No. 10-11202

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

CONS. w/ 11-10113

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON, ET AL,

Defendants

v.

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

CONS. w/ 11-10289

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

v.

DANIEL J. SHERMAN,

Appellee

CONS. w/ 11-10290

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON, ET AL,

Defendants

v.

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

CONS. w/ 11-10390

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

ONDOVA LIMITED COMPANY,

Defendant - Appellee

PETER S. VOGEL,

Appellee

CONS. w/ 11-10501

NETSPHERE, INC., ET AL,

Plaintiffs

v.

No. 10-11202

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.,

Appellant

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

CONS. w/ 12-10003

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC, L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

GARY SCHEPPS,

Appellant

v.

No. 10-11202

PETER S. VOGEL,

Appellee

CONS. w/ 12-10444

In re: NOVO POINT, L.L.C.,

Petitioner

CONS. w/ 12-10489, 12-10657, and 12-10804

NETSPHERE, INC., ET AL,

Plaintiffs

v.

JEFFREY BARON,

Defendant - Appellant

NOVO POINT, L.L.C.; QUANTEC, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL; DANIEL J. SHERMAN,

Appellees

CONS. w/ 12-11082

NETSPHERE, INCORPORATED, ET AL

Plaintiffs

No. 10-11202

v.

JEFFREY BARON,

Defendant - Appellant

QUANTEC L.L.C.; NOVO POINT, L.L.C.,

Movants - Appellants

v.

PETER S. VOGEL,

Appellee

Appeals from the United States District Court
for the Northern District of Texas

Before DeMOSS, SOUTHWICK, and HIGGINSON, Circuit Judges.

LESLIE H. SOUTHWICK, Circuit Judge:

These consolidated interlocutory appeals arise from the district court's appointment of a receiver over Jeffrey Baron's personal property and entities he owned or controlled. The district court sought to stop Baron's practice of regularly firing one lawyer and hiring a new one. This practice vexed the litigation involving Baron's alleged breaches of a settlement agreement and a related bankruptcy. It also created new claims in bankruptcy by unpaid attorneys. Baron appealed the receivership order and almost every order entered by the district court thereafter. We hold that the appointment of the receiver was an abuse of discretion and REVERSE and REMAND.

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

NETSPHERE, INC., ET AL, Plaintiff,
vs.
JEFFREY BARON, ET AL., Defendant.

Number 3: 09-CV-0988-F

May 10, 2013

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s/Cassidi L. Casey

_____

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
CSR NUMBER 1703

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

NETSPHERE, INC., ET AL.	(	Number 3: 09-CV-0988-F
Plaintiff,	(	
	(	
vs.	(	
	(	
	(	
	(	
JEFFREY BARON, ET AL.	(	
	(	
Defendant.	(	July 1, 2009

Status Conference
Before the Honorable Royal Furgeson

A P P E A R A N C E S:

For the Plaintiff: JOHN W. MACPETE
LOCKE LORD BISSELL & LIDDELL LLP
2200 Ross, Suite 2200
Dallas, Texas 75201
Phone: 214/740-8662
Email: jmacpete@lockelord.com

For the Defendant: JAMES KRAUSE
RYAN LURICH
FRIEDMAN & FIGER
5301 Spring Valley Rd., Suite 200
Dallas, Texas 75254
Phone: 972/788-1400
Fax: 972/788-2667 FAX
Email: jkrause@fflawoffice.com

Reported by: Cassidi L. Casey
1100 Commerce Street, Rm 15D6L
Dallas, Texas 75242
Phone: 214-354-3139

Court. Is that permissible?

THE COURT: That certainly is.

MR. KRAUSE: Your Honor, my firm was fully retained on the afternoon that these documents had to be produced.

We received a copy of the Court's order on expedited discovery at 4:10, 10 minutes after the deadline. I know you are familiar with Caleb Rawls. When he saw the order, he knew we immediately had a problem because there at the hearing the lawyers on our side came away with a very different understanding of what had to be produced than what ended up in the order. The order is much more specific and requires additional copies of several of the items. It also requires financials -- which we obtained the transcript yesterday. The Court clearly ruled at the hearing no financials had to be produced. We knew we had a problem. And I'm not criticizing anyone for that. I'm just saying we immediately knew we had a problem. That's why we worked out the injunction. My client -- The idea that my client would now have to pay the $40 fee, we took the burden in the mechanics of the preliminary injunction of all of those deleted names. The domain names on the Manila list have been split. We have done the coin flip. They are analyzing how many of the deleted names showed up on their

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CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
CSR NUMBER 1703

-----Original Message-----
From: Jim Krause [mailto:jkrause@fflawoffice.com]
Sent: Monday, July 27, 2009 3:06 PM
To: jeff@ondova.com; Carter Boisvert
Cc: Larry Friedman; Ryan Lurich
Subject: RE: Response to Motion

Jeff,
The Court has notified us that there will not be a hearing on the contempt motion tomorrow. Instead, there will be a 'status conference' at 9:00 that Larry and Ryan will attend.

Ryan, Larry and Carter will finalize the response on their own after Ryan gets back tonight, and will likely not file the response until the new hearing time is determined.
--Jim

James Robert Krause, Esq.
Friedman & Feiger, L.L.P. | 5301 Spring Valley Road | Suite 200 | Dallas, Texas 75254 | Direct Dial 972-450-7320 | Fax 972-788-2667 | Firm 972-788-1400 | jkrause@fflawoffice.com

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

In Re:	)	**Case No. 09-34784-sgj-11**
	)	Chapter 11
ONDOVA LIMITED COMPANY,	)	
	)	Dallas, Texas
Debtor.	)	November 14, 2011
	)	
	)	CONFIRMATION HEARING
	)	
	)	Excerpt: Daniel Sherman Testimony
_____	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For Jeffrey Baron:	Stephen Rudolph Cochell THE COCHELL LAW FIRM 7026 Old Katy Road, Suite 259 Houston, TX 77024 (713) 980-8796
For Peter S. Vogel, Receiver:	Jeffrey R. Fine Christopher Kratovil DYKEMA GOSSETT, PLLC 1717 Main Street, Suite 4000 Dallas, TX 75201 (214) 462-6455
For Daniel J. Sherman, Chapter 11 Trustee:	Raymond J. Urbanik MUNSCH, HARDT, KOPF & HARR P.C. 500 N. Akard Street, Suite 3800 Dallas, TX 75201-6659 (214) 855-7590
For the U.S. Trustee:	Lisa Laura Lambert OFFICE OF THE UNITED STATES TRUSTEE 1100 Commerce Street, Room 976 Dallas, TX 75242 (214) 767-8967 Ext. 1080
For Manila Industries, Inc. and Netsphere, Inc.:	John W. MacPete P.O. Box 224726 Dallas, TX 75222 (214) 564-5205

Baron, he agreed to go to work for him representing Novo Point and Quantec, and when he got there he found out that Baron wanted him to do things that were really representing Jeff Baron personally and were designed to violate orders that he said existed in the district court and the bankruptcy court and said, none of that has anything to do with Novo Point/Quantec, and so Baron fired him.

Q Ultimately, Mr. Baron hasn't managed to successfully breach this agreement, though, has he? He may have talked about --

THE COURT: I'm going to interrupt, because all of our time is very important. You're going to have to tell me where you're going with this. Why is this relevant?

MR. MACPETE: There was a suggestion by the Chapter 11 Trustee that there might be another claim against the receivership which would be predicated on the idea that Mr. Baron had breached the global settlement agreement to the Chapter 11 Trustee. And with all due respect, Your Honor, there is no performance in the global settlement agreement from Mr. Baron directly to the Chapter 11 Trustee. The payments that were all made --

THE COURT: Okay. Just ask him what was meant by that. Okay?

MR. MACPETE: Okay.

THE COURT: Why are we dancing around 42 questions getting there? Just, what did he mean by that?

BY MR. MACPETE:
Q Isn't it true that Mr. Baron didn't actually owe any performance under the global settlement agreement directly to the Chapter 11 Trustee?
A Maybe not.
Q In fact, isn't it true that the payments that were being made to the Chapter 11 Trustee were essentially being made by my client, Netsphere?
A True.
Q The bottom line is Mr. Baron hasn't breached any obligation to the Chapter 11 Trustee under the global settlement agreement because he didn't have any. Isn't that right?
A Maybe not.
Q Thank you.
MR. MACPETE: I have nothing further.
THE COURT: All right.
MR. MACPETE: Oh, wait. Actually, I need to move this into evidence as Netsphere Exhibit 1.
THE COURT: I assume no one has any objection?
MR. URBANIK: No objection.
MR. KRATOVIL: None, Your Honor.
THE COURT: N-1 is admitted.
(Netsphere's Exhibit 1 is received into evidence.)
THE COURT: All right. Mr. Cochell?
MR. COCHELL: May I have a brief break, Your Honor?

MR. COCHELL: No, Your Honor.

THE COURT: All right.

(Conclusion of transcript excerpt at 5:13 p.m.)

(Proceedings concluded at 6:09 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

Kathy Rehling

Digitally signed by K Rehling
Transcripts
Date: 2012.11.16 01:56:38 -06'00'

Kathy Rehling Date
Certified Electronic Court Transcriber
CET**D-444

Stephen R. Cochell
The Cochell Law Firm, P.C.
7026 Old Katy Road, Ste. 259
Houston, Texas 77096
Telephone: (713)980-8796
Facsimile: (214) 980-1179
srcochell@gmail.com
Counsel for Jeffrey Baron

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 OBJECTIONS TO BANKRUPTCY COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jeffrey Baron, by and through counsel, objects to the Court's Report and Recommendations to the U.S. District Court (hereafter "FOF") and requests a hearing as follows:

1. The Court's finding on jurisdiction is erroneous because the Court lacks jurisdiction over non-debtor assets. Baron is a creditor of Ondova and neither Baron, Novo Point, LLC, ("Novo Point"), Quantec, LLC ("Quantec") are bankrupt, nor have any claims been made against Novo Point or Quantec by any creditors in the instant case. Proceedings were never instituted, in either the district court receivership action (Case No. 3:12-0098) or in this court to seek the substantive consolidation between Baron, Novo Point or Quantec. The Fifth Circuit does not allow merger or consolidation with another person or entity

unless that person or entity is a "debtor" under the Code. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn. 7 (5th Cir. 2007).

2. FOF 1, Second Sentence. To the extent the court suggests that Baron controlled Novo Point and Quantec, there is no evidence to support that conclusion. Novo Point and Quantec were controlled and operated by an irrevocable trust. Mr. Baron as trustor retained only a beneficial interest as trustor, and the Trust's beneficiary is a charity devoted to research on juvenile diabetes mellitus. The Global Settlement Agreement resolved any and all alter possible ego claims involving Mr. Baron and the trust. [11/14/12 Tr., Sherman at 48-49].

3. FOF 6 is clearly erroneous. The district court was not presented with evidence, nor did it make findings that Baron controlled Novo Point or Quantec. In fact, all such allegations were fully and finally resolved by the Global Settlement Agreement.

4. FOF 7 is conclusory, overstated and reveals an underlying prejudice erroneously assuming that any actions taken by either the bankruptcy court and district court are correct, and Mr. Baron is improperly taking appeal. Mr. Baron had a right to oppose actions in both the bankruptcy and district court cases. The appellate court, during oral argument in the receivership case, reportedly did not criticize or suggest that Baron's appeals were vexatious. Indeed, one of the judges informed counsel for the Receiver that the case would not be subject to "summary affirmance." As this Court knows, after oral argument, the Fifth Circuit issued an indefinite stay on closing the sale on the domain names.

5. FOF 8 is clearly erroneous. The Receiver testified that Judge Furgeson ordered him to come up with a plan to end the receivership and close the bankruptcy case. The Chapter 11 Trustee testified that the United States Trustee came up with the idea of a liquidating trust resulting in the proposed plan. The evidence is comprised of unpaid administrative claims; however, many of these claims are subject to further proof and a ruling by the Fifth Circuit Court of Appeals. The University of Texas claim was settled for an amount far less than its claim. However, it appears that all lawyer claims will be fully paid--100% regardless of the evidence available to the Trustee or the Receiver. This type of claims "settlement" supports a public perception that lawyers "protect their own" and make sure that they get paid while non-lawyer creditors must settle for pennies on the dollar. Moreover, the "Plan" violates public policy because the Receiver and the Trustee have reached an agreement to channel assets through the Bankruptcy to "launder" claims and assets.

6. FOF 9 is clearly erroneous. The Global Settlement Agreement resolved all claims of "alter-ego" status vis a vis Mr. Baron, Novo Point, Quantec or the Village Trust. The record is devoid of any evidence supporting a post-receivership claim that Mr. Baron controlled, managed or operated any entity after the receivership was established on November 24, 2010.

   a. If the Global Settlement Agreement is to be enforced, it must be enforced as to all parties, and not used as a pretext to punish Mr. Baron for defending himself.

   b. To the extent that substantial contribution is upheld by the appellate court, the standard has not been met in this case including, for example, Pronske&Patel's claim,

which is unsupported by evidence that Pronske made a "substantial contribution" to the estate that was distinct and different from the services rendered by the Trustee. [11/14/12 Tr., Sherman at 63].

c. As entered by this Court, an award of $294,033.87 pays Pronske money for services and costs of collection that do not constitute a "substantial contribution" that allows payment of attorney's fees under a "substantial contribution" theory.

d. FOF 9 is also clearly erroneous in that the Court finds that the Chapter 11 Trustee should be reimbursed by the Receivership for "fees incurred at the Fifth Circuit." This finding is unsupported by evidence that this was a *bona fide* settlement of a dispute reached at arms length. The testimony of Daniel Sherman and Peter Vogel established only that Vogel felt it was a moral obligation to pay the Receiver and admitted that there was no legal theory or support for payment of a claim that was not based on breach of contract or quantum meruit. [11/14/12 Tr., Sherman at 34, 38].The Fifth Circuit denied Sherman and/or Vogel the right to re-designate the Receiver as Appellee in at least one appellate proceeding. Sherman admitted that the Fifth Circuit's denial of the motion to re-designate the Receiver as appellee for the appeals was the "law of the case." Sherman at 36. Thus, Sherman was obligated to respond on behalf of the bankruptcy estate. The fees associated with such a response was an expense of the bankruptcy estate, as implicitly, if not expressly determined by the Fifth Circuit Court of Appeals. The remaining portion of this finding is conclusory and describes the Court's view of various aspects of the proposed Plan, to which substantive objections are described in other paragraphs and incorporated herein. As a matter of controlling precedent, where an

appeal is allowed from an interlocutory order, the lower court may proceed only with matters not involved in the appeal because the lower court is divested of jurisdiction as to matters relating to the interlocutory appeal. *Taylor v. Sterrett*, 640 F.2d 663, 668 (5th Cir. 1981). For that reason, in the lower court "fees cannot be recovered for work relating to these orders" while those matters are on appeal. *Id*.

7. FOF 10 is clearly erroneous. Section 1123(a)(5)(C) states that a bankruptcy plan shall: 5) provide adequate means for the plan's implementation, such as—(C) merger or consolidation of the debtor with one or more persons…." First, the Code does not contemplate merger or consolidation of an estate with a non-debtor. Under current law, the Fifth Circuit has made clear that does not allow merger or consolidation with another person or entity unless that person or entity is a "debtor" under the Code. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn,. 7 (5th Cir. 2007). Second, any evidence that might have supported substantive consolidation existed before the Global Settlement Agreement, which fully and finally resolved all alter ego claims by all parties to the Agreement, including the Trustee, Daniel Sherman.

    a. FOF 10 is also clearly erroneous because the "Plan Settlement" is nothing more than a plan to pay the Trustee's legal fees. Unfortunately, a "Plan Settlement" is not an appropriate "bail-out" plan to extend to trustees whose fees should not be paid from non-debtors.

    b. As a matter of bankruptcy policy, such "plans" threaten confidence in the bankruptcy process. The instant case proves the point. Baron, an Ondova creditor, pays $1.8 million as part of the Global Settlement Agreement to pay

any claims of former lawyers, amounting to about $767,000. In direct violation of the order of the Bankruptcy Court, the Trustee, with impunity, failed to file a chapter 11 plan and failed to satisfy the claims of the former Baron lawyers and instead incurred substantially more fees than reasonable, and obtained a receivership order against Baron based on allegations that Baron caused the mediation to fail, which the Trustee now has shown by his sworn testimony to be a false allegation, and yet the Trustee seeks approximately$2 million in additional fees for defending an unlawful and unconstitutional receivership that should have never been created in the first place.[11/14/12 Tr., Sherman at 50, 58.] The receiver's bad faith is established in the record of the district court wherein the attorneys for the receiver only started to research the law relating to receiverships *after* the receivership order was appealed from.

c. The Court's finding that there are many claimants "who could cogently argue claims against both the Ondova and the Baron entities[.]" is unsupported by any specific details and is therefore clearly erroneous.

d. The Court's reference to the "alter-ego facts and arguments" is unsupported by facts, evidence or findings of law in support and is therefore clearly erroneous.

e. The Court's finding that the Plan Settlement is "fair and equitable", is in the best interests of the two estates, the creditors and Baron is not supported by facts and evidence and is therefore clearly erroneous. There was no

compromise of a claim that could be supported as a matter of law or equity—only an agreement to pay 100% of legal fees. The Receiver has a fiduciary duty to safeguard and protect the assets from all claimants who make unsupported claims—even if they involve legal fees. Payment of fees to lawyers who have no cognizable claim to the estate's assets is a waste of the receivership assets and breach's the Receiver's duties. The Receiver similarly admitted that there was no contract or promise to pay the Trustee's legal fees and did not testify to facts that supported quantum meruit. [11/13/12 Tr., Vogel at 160-162]. The Trustee admitted that he did not have a contract and did not testify to facts that supported quantum meruit. *Id.* The Trustee sought a receivership that resulted in a seizure of property without a sworn showing of probable cause. **The Fifth Circuit required the Trustee to defend the receivership order**---not the Receiver. The fees are properly the responsibility of the estate, and not the receivership. Both the Receiver and the Trustee proposed the Joint Plan to "end-run" the Fifth Circuit's holding.

f. In virtually every bankruptcy or receivership, there are claims made against the estate that are unsupported, questionable, or where the cost of litigation may justify a compromise or settlement. The Court cited the University of Texas settlement, where the Trustee settled a $4 million claim for a fraction of that amount. Yet, in the instant case, the Receiver "settled" a meritless claim, and "settled" by paying the entire amount. The entire dispute process was a sham, unsupported by any "demand letters", no lawsuit was ever drafted or filed, and appears to have been comprised solely of an appearance by the

Receiver and the Trustee before Judge Furgeson who generally thought the idea of paying Mr. Sherman was "fair" and authorized payment to Sherman on an *interim* basis based on the expectation that the bankruptcy court was policing the billing and fee issues.

g. The Court erred by finding that the Receiver acted in good faith by "settling" a case with the Trustee over fees incurred by the Trustee on behalf of the bankruptcy estate.

h. Moreover, it is neither fair nor is it equitable to approve a Plan that uses funds from a receivership that was not properly imposed on Baron. In his testimony, Sherman admitted that Baron did not breach the Global Settlement Agreement "other than an intent not to perform." [11/14/12 Tr., Sherman at 56] and further admitted that Baron did not breach any obligation to the Trustee under the global settlement agreement.

8. The Court erroneously found that it had authority to sell the Domain Names as part of the joint plan to approve the Chapter 11 Plan, relying on Section 363(f) and 105 of the Bankruptcy Code, and pursuant to the equitable jurisdiction referred to the Court by Judge Furgeson. FOF 11 is clearly erroneous. A bankruptcy court cannot exercise Article III jurisdiction.

a. The Court found that "in late September and early October 2012, both the District Court and the bankruptcy court approved certain sale procedures to be undertaken by the Receiver and Chapter 11 Trustee to attempt to market and sell the Domain Names." The Court found that the district court vetted and approved the procedures

on September 27, 2012. The Receiver and Trustee took the position that Judge Furgeson "vetted" and "approved" the procedures when, in fact, he did not. Judge Furgeson merely stated that the procedures sounded "reasonable".

b. The Court's findings on the marketing process, however, are imprecise. The Court approved "permission to engage in certain advertising and other marketing efforts to attempt to find interested bidders of the Domain Names." In fact, the Court granted the Receiver unlimited discretion as to how, where, or what would be advertised. There were advertisements in the Wall Street Journal, but the record does not reflect attempts to reach specific domain name portfolio owners who would be interested in the names. The Receiver did not propose a marketing plan other than a plan allowing him discretion to advertise.

c. The Court found that the winning bidder was Trans, Ltd. and Special Jewel, Ltd. The "representative" of these two companies testified based on hearsay that the two companies were competitors and were not affiliated with one another. Counsel orally moved for discovery as to these bidders, which the Court denied. The Court's rulings are clearly erroneous. Subsequent discovery highlights the fact that the Court did not receive full, complete or accurate testimony from the Trans and Special Jewel's representative. Both companies have been discovered to be owned by the same owner, Despen Trust of Nevis. It appears that this Court was misled as to the corporate affiliation of these two companies due to the Court's clearly erroneous failure to allow discovery to be conducted prior to confirmation as to the identity and ownership of the two corporations and their relationship to insiders.

d. Further evidence of the connection between these two companies exists due to Stevan Lieberman's testimony that he represents both companies and also represents Domain Group Holdings, LLC, the monetizer for the Receiver and an insider, which has full knowledge, possession and control of all electronic information and data for the Domain Names. The testimony and evidence shows that electronic information is vital to determining the value of domain names, particularly when buying or selling domain names. [11/14/12 Tr., Baron at 163].

e. In a post-hearing development that also reaffirms the scope and extent of the Receiver's discovery violations, and the prejudice to Baron, the Receiver just disclosed, for the first time, emails to the Court from an individual named Eric Rice showing that failure to provide electronic information to interested, qualified bidders discouraged the participation by truly qualified bidders. [Dkt. 976-1, Exhibit 12, Trustee's Exhibit List,]. Access to this electronic information provides a bidder with the kind of information that allows industry-accepted due diligence and a significant advantage over bidders who might have reviewed paper documents at DykemaGosset's offices. It is important to note that the emails of Mr. Rice were not disclosed to counsel for Baron pursuant to the Court's Expedited Discovery Order [Dkt. 858], which ordered the Receiver to produce "correspondence between the producing party and any third party (including emails) concerning the potential or proposed purchase, sale transfer or hypothecation of the Domain Names." The Court clearly erred in denying Mr. Baron the discovery previously ordered by the Court.

f. Mr. Rice stated, in pertinent part, that:

> Having done this for many years and been involved in something like $50 million in deals, we just could not even begin to bid on the data given. I would liken it to buying a portfolio of real estate but not knowing anything about the condition of the properties or if they were apartment buildings, condo's, land or houses, or a variety of other factors…
>
> The info sent is very appreciated but it's probably like 20% of the "industry standard" info that would allow someone to do due diligence on the list to spend 4MM to 6 MM dollars.It would quite simply be crazy for us to roll the dice and buy on the info provided…
>
> I am totally guessing but my assumption would be that anyone bidding on the info you provided somehow has some prior data aout the makeup of the domains and stats from some other source. I really can't imagine a scenario where I could personal ly broker a large portfolio basically blind and just gross revenue numbers. (I broker many large portfolios each year and know most of the buyers.) (emphasis supplied).

g. This email was sent on October 23, 2012, prior to depositions of the Receiver and the Receiver's expert, and Baron's expert witness. Counsel was deprived of the opportunity to depose Mr. Rice, or to use his information to impeach the Receiver and his expert, or to provide further evidence of the "industry standard" described by Mr. Rice.

h. Mr. Rice corroborates the testimony of Baron, Dr. Lindenthal and the arguments of counsel stating that the marketing of the Domain Names in this unique industry was fatally flawed.

9. The Court's findings in FOF 12 are clearly erroneous and appear intended to serve as a generalized description and attempt to categorize the Domain Names. To ensure the record is clear, Baron objects to this finding because the testimony showed that an analysis and review of a paper version of the domain name list (Exhibit 42), would require about one minute per name multiplied by 153,000. In other words, the finding

should be clarified as a general observation, as opposed to a detailed study of Exhibit 42. Baron objects to reference to "Pornography Names" as inaccurate, inflammatory and a reflection of bias. None of the names, in and of themselves are "pornographic" within the meaning of the First Amendment. Domain names are not "pornographic" unless one populates the actual domain site with pornographic images or otherwise publishes. The unrebutted testimony of Jeffrey Baron reflects that: (a) the names were computer generated; (b) the names were managed and controlled by Peter Vogel since November, 2010. The mere fact that a name may be sexually suggestive does not violate the law. One may find the name repugnant and disagree violently with the suggestion implied in the name, but that does not mean that someone who might have had some historical connection to the name should be vilified. It is clearly erroneous for the Bankruptcy Court to refuse to protect lawful property rights because of a personal bias against the subject matter or content of the property.

10. The finding in FOF 13 are clearly erroneous. The Court finds that Mr. Baron "believes they [the Domain Names] are worth $60 million, which is far less than the $5.2 millon Winning Bid for the Domain Names." Contrary to the clearly erroneous finding of the Bankruptcy Court, $60 million is more than ten times greater than the $5.2 million Winning Bid for the Domain Names.

    a. The Court's finding on the value of the so-called "Typo-Squatting Names as being culled out by the purchaser is speculative and unsupported by evidence.

    b. The Generic Names have great value, as evidenced by the testimony of Dr. Lindenthal and by evidence of prior sales of Domain Names generating millions of dollars in revenues. The Receiver violated the Expedited Discovery Order by

failing to produce the majority of Damon Nelson's affidavits setting out the names and sales price of domain names previously sold from the two portfolios. This evidence would have refuted the unsupported opinions of the Receiver and Matthew Morris, as evidenced by the chart provided to the Court in Dkt. 956, Jeffrey Baron's Motion for Stay Pending Appeal, Exhibit A, Income Ratio Chart of Sold Domain Names.

c. The Court's finding that "it does not pass the 'smell test' (or good faith notions) to ask this court or any other court to value or protect Mr. Baron's right to Child Pornography Names such as 'nake13yearolds.com[.]'" reflects the Court's bias and inelastic attitude against Mr. Baron in this case. At the hearing, the Court asked counsel for their position on segregating and not selling the names. Mr. Baron's lawyer did not object to the Court segregating any questionable names from the sale and disposing them. Moreover, the revenues generated by these names were reported by Mr. Vogel as minimal. Thus, the Court's finding is clearly erroneous and unsupported.

d. The undisputed testimony is that neither the Receiver nor the Trustee conducted a valuation of the Domain Names prior to seeking a sale of the Domain Names value did not conduct a valuation of the Domain Names.

11. The Court's findings in Paragraph 14 are clearly erroneous. The sale of all the Domain Names were never necessary to resolve all creditor claims and conclude the receivership and Chapter 11 case, as evidenced by testimony that over a million dollars, and perhaps two million in funds will be returned to Mr. Baron from the proceeds of the sales. As to

attempts to obtain loans against the Domain Names, Baron testified that Mr. Vogel filed a motion to prevent him from funding a loan. [11/14/12 Tr., Baron at 67]. Baron testified that he previously obtained a loan on the portfolio. *Id.* at 67-68]. Trans obtained a loan for $5 million. [11/19/12 Tr., Lieberman at 13]. Thus, the Receiver clearly did not sufficiently know the industry to fund a loan.. The Receiver's testimony regarding the remaining value of the Novo Point and Quantec portfolios stands in stark contrast to the Estibot and Sedo valuations, which the Receiver relied upon in submitting sworn affidavits submitted to Judge Furgeson seeking the sale of other domain names from the portfolios. Many of these affidavits were not produced in violation of the Court's Expedited Discovery Order [Dkt. 858]. Moreover, to the extent that the Receiver portrays himself as an expert in valuation, the uncontradicted evidence is that the Receiver has no personal experience in selling domain names to third parties. Assisting clients in selling domain names, while interesting, does not qualify Mr. Vogel to portray himself as an expert in valuation. Vogel is judicially estopped from asserting that Estibot valuations are not accurate, as Vogel has repeatedly taken the opposite position and has been granted the court's approval to sell millions of dollars in assets based on Vogel's representation to the Court that the Estibot valuations could be relied upon. JB Exhibit 1, JB Exhibit 2, JB Exhibit 4.

12. The findings of FOF 15 are clearly erroneous and considers evidence that should have been excluded by virtue of violation of the Court's Expedited Discovery Order.

    a. The Court ordered that the Receiver produce "Correspondence between the producing party and any third party (including emails) concerning the potential or proposed purchase, sale transfer or hypothecation of the Domain Names." [Dkt.

858 at 3, Section II(2)(b)]. Counsel for Baron filed three Motions [Dkt. 895, 916 & 929] seeking relief from the Court regarding these documents which were denied [Dkt. 944].

b. The Court allowed testimony of Mr. Vogel and Mr. Morris over the objection of counsel regarding the alleged negotiations between Damon Nelson and alleged interested parties. Vogel at __; Morris at __. Vogel testified that Damon Nelson had the documents and would have produced them on request [11/13/12 Tr., Vogel at 214-215], he learned of "about five or six where there was actually a valuation that was offered" [Id.], and that he had not seen any documents supporting the chart of the 24 brokers/investors [Id.].

c. None of the documents from these discussions between Nelson and parties listed on Exhibit 41 (not admitted into evidence) were ever produced to counsel for Baron. The Court erred in allowing the testimony of Mr. Vogel and/or Mr. Morris on the alleged value of the portfolios because the Receiver intentionally failed to produce the documents, as previously ordered by the Court.

d. The testimony that, in September, 2012, Mr. Vogel got an "unsolicited offer"[11/13/12 Tr., Vogel at 235] from Special Jewel, Ltd. is contradicted by a Baron exhibit which shows that Special Jewel's agent, "Merlin" was negotiating with Damon Nelson and made an offer in June, 2012. In other words, Special Jewel had already conducted its due diligence and had already determined that it wanted to buy the portfolio well two months before Mr. Vogel supposedly started negotiating with Special Jewel. The testimony that an unsolicited offer was made by Special Jewel in September, 2012 is false.

e. As previously set out, the Receiver and Trustee represented to the Bankruptcy Court on September 28, 2012, that Judge Furgeson authorized a bid process for the Domain Names. That representation was untrue. Judge Furgeson merely stated, on the record, that the approach was reasonable and informed the parties that he would defer to the Bankruptcy Court to devise specific procedures.

13. The findings in FOF 16 are clearly erroneous. As previously set out, the Court erroneously denied Baron's motion to depose and conduct discovery of the bidders. Subsequent discovery shows that Trans and Special Jewel are not separately owned companies but are owned by Despen Trust of Nevis.

14. The findings in FOF 20 are clearly erroneous. The findings are one-sided and fail to take into account Mr. Baron's prior experience in the domain name industry. There was no evidence to contradict Mr. Baron's testimony that electronic information and statistics on the performance of the domain names was essential to conducting due diligence in making a decision to purchase domain names, and that providing such information in paper form available only in a law office in Houston would discourage international bidders from participating in an auction. [11/14/12 Tr., Baron at 160-165]. Mr. Baron further testified that the estate would obtain much higher prices by selling the domain names in smaller portfolios organized around an industry or business concept.[11/14/12 Tr., Baron at 32-33, 41].Dr. Lindenthal also testified that it was not commercially reasonable to sell all the Domain Names at once, as the estate could, in three to six months, satisfy its revenue needs with a sale of smaller portion of the Novo Point portfolio. This testimony was uncontradicted by Vogel or Morris, who simply *preferred* to sell all the domain names at one time.

15. The findings in FOF 21 are erroneous. Matthew Morris testimony on valuation was not proper expert testimony.

    a. Morris had no prior experience at valuing portfolios of domain names for sale [Dkt. 952 Morris at 7]. Morris never bought or sold a domain name personally, or for a client. *Id.*at 6. Morris' experience in valuation sale assets was valuing stocks and bonds. *Id.* at 7. Morris admitted that he had very limited experience in valuing domain names, and only in the context of attempting to attribute some value to domain names in the context of an overall business valuation, and not for sale in the domain name market. *Id.* at 8-10.

    b. The Court clearly erred in allowing Morris to testify as Morris relied on anonymously published articles on internet valuation in forming his opinions on determining whether to value the Domain Names on an individualized domain name basis, or as a portfolio. *Id.* at 45-47.

    c. Morris had no knowledge of a treatise or authoritative support within the domain name industry for valuing the Domain Names as a portfolio instead of valuing the Domain Names individually. *Id.* at 48.

    d. The Court clearly erred in allowing Morris to testify as Morris was not provided any evidence of prior sales of domain names from the Novo Point and Quantec and based his opinion on the erroneous assumption that the maximum income to domain sales price ratio was 8. *Id.* at 43. Of the few unredacted affidavits of Damon Nelson produced by the Receiver the day before the Confirmation Hearing, a comparison of the income to sale price indisputably showed that an

income approach grossly understated the value of the Domain Names. [Dkt. 956 Exhibit A].

e. Mr. Morris' untested, unsupported and uninformed testimony regarding valuation of domain names is inadmissible under Fed. R. Evid. 702.

16. The findings in FOF 22 are clearly erroneous. Morris never participated in a domain name auction and did not provide any support for his opinion that an auction of domain names was the best method for selling the Domain Names. He admitted that he had never heard of an auction of domain names of more than five or ten thousand names, but admitted that each domain name was "inherently unique." [11/16/12 Tr., Morris at 16. Morris' analogy of selling 153,000 unique names to an art auction reveals his lack of expertise in valuing domain names. One might sell a group of paintings in an auction at Sothebys, but not 153,000 unique works of art. As with domain names, most potential bidders would need more than two weeks to make a decision regarding "inherently unique" works of art. Morris' opinions on "price discovery" under the facts and circumstances of this auction were wholly unsupported by any technical or scientific expertise, and therefore inadmissible under Fed. R. Evid. 702.

17. The findings in FOF 23 are erroneous. Morris' opinion that the Domain Names lost value because they were held by an individual who had been involved in litigation is speculative, and not based on any expertise held by Morris nor upon any known methodology. The testimony regarding potential purchasers being deterred from bidding was based on hearsay. Morris did not specifically testify to any names of individuals

who were interested in purchasing the Domain Names but declined to do so due to potential litigation. Thus, Morris' testimony lacked foundation.

18. The findings in FOF 24 are clearly erroneous.

19. The findings in FOF 25 are irrelevant because the value of domain names must be conducted on an individualized basis. In other words, an individual name may be at risk of being subject to a UDRP claim, but still have value that must be determined before selling the name. Mr. Morris' opinions were not supported by any objective data or evidence and was therefore inadmissible under Fed. R. Evid. 702.

20. The findings in FOF 26 are clearly erroneous because Morris lacks any experience in buying or selling domain names, nor did he have any scholarly data or treatises to support his opinions in this case.[Dkt. 952 Morris at 7, 48]. Dr. Lindenthal, on the other hand, provided testimony that the market has already adjusted the prices and value of domain name prices to these future events. Dr. Lindenthal also testified that the value of domain names has not dropped in the last seven months, and that there is no market indication that the value of .com names will be dropping in the short term. Dr. Lindenthal is immersed in the literature on domain valuation and market conditions for the sale of domain names. This portion of Dr. Lindenthal's testimony and expertise was not the subject of challenge by the Trustee or Receiver.

21. The findings in FOF 28 is clearly erroneous as Morris did not testify to any specific details regarding this information, and was not qualified as an expert on vexatious litigation.

22. The findings in FOF 29 are clearly erroneous. Baron testified that he had no evidence in his *possession*. The record is clear that all his information was seized by the Receiver, so

Mr. Baron's lack of documentary evidence should not be a surprise, or be construed against Mr. Baron. Morris' testimony is based solely on data that he was provided from the Receiver. Morris stated that it would have been preferable to have as much historical data as possible before reaching a conclusion on the value of the names (the more data, the better). [Dkt. 952 Morris at 8, 43]. The Receiver opposed, and the Court limited any discovery of the Domain Names prior to November 24, 2010 [Dkt. 858, Expedited Discovery Order, Section II(1)(c)]. Morris did not ask, nor does it appear that he was provided any data prior to that date. Thus, any inference that Morris conducted any "research" or analysis prior to November 24, 2010 is clearly erroneous.

23. The finding in FOF 30 is clearly erroneous. There was no evidence to refute or cast any doubt as to Mr. Baron's "business model or stature in the internet industry." The Court's finding of "fact" appears to be a result of bias against Mr. Baron.

24. The finding in FOF 31 is clearly erroneous. Dr. Lindenthal's testified that he owned a company in Germany that was engaged in the purchase and sale of domain names for over ten years, that he obtained a Ph.D. in Finance focusing on valuation of real estate in depressed market conditions, and that he was a visiting scholar at M.I.T. to advance knowledge in valuation and market analysis of domain names, and that he was a Product Manager at Sedo.com valuing and engaged in the purchase and sale of large and small portfolios of domain names.

    a. Dr. Lindenthal possessed substantially greater academic qualifications that Morris, and possessed over a decade more experience in valuing, buying and selling domain names and engaging in the valuation, purchase and sale of domain names for Sedo.com.

b. In contrast, Morris was an experienced "testifier" retained in cases, but never valued a domain name for commercial sale or purchase. [Dkt. 952 Morris at 7]. As previously set out, Morris relied on anonymous internet articles to help guide his expert testimony on valuation and lacked any support whatsoever, providing an opinion on the validity of providing reliable values on selling domain names in a portfolio. [Dkt. 952 Morris at 44-48].

c. Morris did not dispute that the domain name industry, or evidence that Damon Nelson, on behalf of the Receiver, predominantly used the market approach followed by Dr. Lindenthal, or that the industry relied on Estibot and Sedo.com's automated valuation systems. *Id.* at 52.

d. Without any scholarly or empirical support, Morris opined that the market approach was unreliable, so he did not even attempt to value the Domain Names using the market approach. This testimony was inadmissible under Fed.R. Evid. 702.

e. Dr. Lindenthal's did testify that it would take a very long time to manually appraise the entire portfolio of 153,000. However, Dr. Lindenthal also testified that it would not take that long to appraise select groups of generic names from the Novo Point portfolio as it looked that there was some great names.

f. Dr. Lindenthal's opinion on TLD's and iPhone Apps was different from Morris, but his opinions were grounded on experience in valuing, buying and selling domain names, as opposed to Morris' expertise in stocks and bonds.

25. Part of the Court's finding in FOF 32 is clearly erroneous in that the Court focuses on one unsuccessful attempt by Sedo.com to sell one domain name. However, reaching a

"favorable", or negotiated price in a high value domain name is not logically related to whether use of an experienced broker with hundreds, if not thousands of contacts in the domain name industry is preferable to using a Dallas-based law firm with no experience in selling large portfolios of domain names. Indeed, a sale of 153,000 domain names is unprecedented and will result in severe loss of value because it is commercially unreasonable and being directed by lawyers—not professionals in the domain name market.

26. The Court's finding in FOF 33 is clearly erroneous for the reasons previously stated herein, as the evidence did not show broad market exposure to the domain name market, the auction and sale price are not fair, reasonable or the product of reasonable business judgment, or an "arms length, good faith and fair process."

    a. Although the Court granted limited time, and limited discovery on issues relating to the marketing, sale, and valuation of the Domain Names, the Court did not enforce the Expedited Discovery Order despite the following motions filed by Mr. Baron: Jeffrey Baron's Objections to Chapter 11 Plan and Emergency Motion to Strike or Continue Auction and Sale of Non-Bankruptcy Assets and Request For Hearing [Dkt. 895], Jeffrey Baron's Motion to Show Cause Why The Receiver and Dykema Gosset Should Not Be Held in Contempt and Sanctioned [Dkt. 917], and Jeffrey Baron's Emergency Motion For Continuance Or, In The Alternative To Exclude Testimony And Evidence**.** [Dkt. 929].

    b. Counsel became aware of evidence that shows the Receiver excluded a qualified bidder from the auction and raised the issue during arguments to the Court and asked the Court for additional time to gather admissible evidence to present to the

Court, which was denied. Counsel was able to obtain a declaration from Eli Pearlman to support this claim and filed a Motion to Clarify, offering to provide the Court with the Declaration prior to entering its findings. However, the Court denied this Motion. [Dkt. 944].

c. The Court denied Jeffrey Baron's request for additional time for expedited discovery at the September 27, 2012 Scheduling Conference, and his subsequent requests, including his Objections to Chapter 11 Plan and Emergency Motion to Strike or Continue Auction and sale of Bankruptcy Auction [Dkt. 895]. The reality is that the Receiver: (1) engaged in rolling production of documents which resulted in Baron's counsel receiving piecemeal discovery that was received after depositions were taken, or on the eve of the Confirmation Hearing; and (2) violated the Expedited Discovery Order by failing to produce documents in two critical areas including correspondence between the Receiver and interested parties regarding the purchase or sale of the Domain names, and unredacted copies of all of Damon Nelson's affidavits documenting the valuation and the sales price of domain names sold by the Receiver from the Novo Point and Quantec portfolios.

d. As a result, counsel was unable to effectively prepare his expert witness with this information, unable to effectively examine Damon Nelson, Peter Vogel or the Receiver's expert at deposition and Mssrs. Vogel and Morris at hearing. Specifically, counsel for Baron should have had the correspondence between Damon Nelson and the alleged twenty-four brokers or investors to use in discovery at deposition and for cross examination at hearing. Dr. Lindenthal

testified that Kathy Neilson, the Sedo.com representative listed on Exhibit 41, was never provided the list of domain names by Damon Nelson. However, because the underlying correspondence underlying the list were not provided, additional discovery could not be conducted. Similarly, a comparison of the unredacted affidavits of Damon Nelson provide a stark contrast between Morris' uninformed opinions on the reliability of his revenue method valuations and the sales prices in Nelson's affidavits. Indeed, this evidence punctures any notion that Morris revenue approach has any relationship to the real world market and sales of domain names.

e. The Receiver's discovery abuse also resulted in key evidence that would have revealed evidence of collusion earlier rather than later. For example, on Friday, November 30, 2012, the Receiver produced, *for the first time*, evidence that an attorney, Eric Rice, who apparently assists in buying and selling large portfolios of domain names, was interested in obtaining information from the Receiver and participating in the auction for a client. [Dkt. 976, Exhibit 12]. This correspondence should have been produced pursuant to Section II(2) (b) of the Expedited Discovery Order [Dkt. 858] but was not. The email exchange reveals that this attorney raised the same objection as Baron to the nature of the auction, severe limitations on information provided to potential bidders (number of years and lack of statistics) and their inability to make an informed decision to purchase the Domain Names. As Mr. Rice put it:

> The info sent is very appreciated but its probably like 20% of the "industry standard" info that would allow someone to do due diligence on the list to spend 4MM to 6MM dollars. **It would quite simply be crazy for us to roll the dice and buy on the info**

> **provided**. Although that info has us moving in the direction of being very very interested.
>
> I am totally guessing but my assumption would be **that anyone bidding on the info you provided somehow has some prior data about the makeup of the domains and stats from some other source.**(emphasis supplied).

f. The contemporaneous statement of Mr. Rice, a disinterested witness-potential purchaser should be accorded great weight by the Court. Moreover, the fact that the receiver failed to produce this, and other documents, reveal misconduct by a party that caused material prejudice to Baron's right to a fair hearing.

27. The finding in FOF 34 is clearly erroneous. The Court finds that the bidders are good faith purchasers for value. In fact, they are not. The testimony of Stevan Lieberman was either misinformed or false. Mr. Lieberman testified that there is no common ownership between Trans LLC and Special Jewel [Dkt. 953, Lieberman at 10, 67]. However, as set out in the Motion for Stay Pending Appeal [Dkt. 956], it is now clear that these two St. Kitts-Nevis companies are related to each other, are not competitors and are owned by another shell company Despen Trust of Nevis, which is also located in St. Kitts Nevis, which is known for tax havens and shell companies.

a. In the face of this evidence, the Trustee apparently confirms that these two companies are owned by Despen Trust, but asserts that the Court should not be concerned because everyone, including counsel, knows that "Despen Trust is an entity used to conceal ownership…." [Dkt. 973, ¶ 29]

b. If a witness/representative is asked to identify the owners of a company, it is not unreasonable to expect the witness to be fully informed and tell the truth. Following the Trustee's *bizarre* logic, the truth is that Despen Trust is nothing but a device to hide the identities of the true owners. In sum, the ownership of Despen Trust and the "Winning Bidder" has been concealed from the Court.

c. The Court approved a sale to Trans, LLC, Special Jewel without knowing that Despen Trust (or whoever owns these companies) is the true owner. Until full disclosure of ownership can be determined, a real determination is not possible. Approving the sale with or without the Section 363 status should not be allowed until the Court actually knows who is buying the Domain Names.

28. The Court's finding in FOF 35 is clearly erroneous as to the facts and is erroneous as to the Court's authority to approve sale of assets in the possession of the Receivership. The issue may well be mooted if the Receivership is vacated by the Fifth Circuit Court of Appeals. However, as previously set out, Section 1129(a)(5)(c) does not allow merger or consolidation with another person or entity unless that person or entity is a "debtor" under the Code. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn,. 7 (5th Cir. 2007). Moreover, the Court's finding that the Plan Settlement was fair, equitable, and in the best interests of the bankruptcy estate, the Receivership and Mr. Baron, is not supported by the evidence, as previously stated. Sale and transfer of all the assets of Novo Point and Quantec to a liquidating trust far exceeds the debts of the bankruptcy estate

and is not in the best interest of the receivership estate. [11/14/12 Tr., Sherman at 92].

29. Counsel for Baron respectfully submits that the Plan Settlement is not fair, equitable or in the best interests of receivership or Mr. Baron. The assets of two companies owned by Village Trust are being used to pay the legal fees of the Trustee and provide the Receiver and his lawyers with Section 363 protection. [Third Amended Joint Plan § 6.2]Baron has alleged misconduct by the Receiver and Trustee in obtaining a receivership on statutory and constitutional grounds, and many of these issues will be resolved by the Fifth Circuit. The Receiver and his lawyers have great incentive to enter into a "settlement" with the Trustee to settle a non-existent claim and obtain a high level of protection for their participation in selling assets that are worth $60 million plus, but are being sold to off-shore companies whose true ownership is not and was not known at the time of the Confirmation hearing.

30. Counsel for Baron respectfully submits that a Trustee or Receiver who fail to obtain a valuation. [11/14/12 Tr., Sherman at 59 &11/13/12 Tr., Vogel at 175-6], or follow their own valuation process before selling an asset (to wit, 153,000 assets) that they know is worth millions, have breached their fiduciary duty to the estate. Similarly, when confronted with their failure to obtain valuations, the Trustee and Receiver are judicially estopped from denying that that the proper business process is to adopt the valuations of Estibot, Sedo.com in determining whether a revenue appraisal is sufficient to support a planned auction sale.

a. Jeffrey Baron was denied due process of law as he was not represented by bankruptcy counsel prior to and leading up to September 28, 2012, when new counsel entered an appearance. The "withdrawal" of Martin Thomas was in name only. Baron testified that Mr. Thomas did not provide advice to him regarding the liquidating trust.

b. The emails from Mr. Thomas to other bankruptcy counsel reflected that he was a "minister without portfolio", and the September 27, 2012 proceedings before Judge Furgeson reflected that the district court was surprised and irate that Mr. Thomas had not been directly representing Mr. Thomas on objections or other issues in the bankruptcy court.

c. The emails reflect that Mr. Thomas had been directed by the Trustee, the Receiver or other parties named by him in his email that he could not file pleadings for Mr. Baron in the Bankruptcy Court.

d. The undersigned counsel entered an appearance on September 28, 2012, and requested additional time to prepare an argument to the Court on the auction and sales procedures, as he had only been authorized by Judge Furgeson to act in the case the day before. The request was denied.

e. As a result, the Court entered an order that limited discovery in ways that obstructed Baron's ability to conduct discovery and prepare for the Confirmation hearing including, but not limited to denying Baron's counsel and his attorneys access to electronic information and limiting discovery only to the auction and sales procedures, valuation and refusing to allow Baron discovery of ____ that related to the receivership proceedings.

f. Both the Trustee and the Receiver proposed a Joint Chapter 11 Plan in what appears to have been a closely coordinated litigation effort undertaken by them before the bankruptcy court, district court and on appeal. Once the Receiver becomes a party and engages in joint efforts with the Trustee, the Receiver's conduct in the receivership case becomes highly relevant to determining whether the proceedings in both courts is fair, reasonable and equitable. Narrow limitations on discovery to only the bankruptcy process violated Baron's right to discovery and due process.

31. The Court's Conclusions of Law are partially erroneous. While the Notice of the Joint Plan complied with the Code and creditors were notified, and ballot certifications were proper, The Court erroneously found that all pending objections to the Plan "should be overruled."

a. Jeffrey Baron was denied due process of law as he was not represented by bankruptcy counsel prior to and leading up to September 28, 2012, when new counsel entered an appearance. The "withdrawal" of Martin Thomas was in name only, as he had not filed pleadings or objections after being told by Judge Furgeson to represent Baron. Mr. Baron testified that Mr. Thomas did not provide advice to him regarding the liquidating trust.

b. The emails from Mr. Thomas to other bankruptcy counsel reflected that he was a "minister without portfolio", and the September 27, 2012 proceedings before Judge Furgeson reflected that the district court was surprised and irate that Mr. Thomas had not been directly representing Mr. Thomas on objections or other issues in the bankruptcy court.

b. The emails reflect that Mr. Thomas had been directed by the Trustee, the Receiver or other parties named by him in his email that he could not file pleadings for Mr. Baron in the Bankruptcy Court.

c. The undersigned counsel entered an appearance on September 28, 2012, and requested additional time to prepare an argument to the Court on the auction and sales procedures, as he had only been authorized by Judge Furgeson to act in the case the day before. The request was denied.

d. As a result, the Court entered an order that limited discovery in ways that hobbled Baron's ability to conduct discovery and prepare for the Confirmation hearing including, but not limited to denying Baron's counsel and his attorneys access to electronic information and limiting discovery only to the auction and sales procedures, valuation and refusing to allow Baron discovery of Trustee and Receiver correspondence that related to the receivership proceedings despite the fact that both the Trustee and the Receiver proposed a Joint Chapter 11 Plan and what appears to have been a closely coordinated litigation effort before the bankruptcy court, district court and on appeal. Indeed, the Receiver sold the Domain Names.

e. The requirements of due process are not satisfied simply because "procedures are followed" that create the appearance, but not the reality of due process of law. The appearance of due process has been "created" in the following ways: (1) Allowing Baron to be represented by counsel, but directing his attorney not to file pleadings; (2) Allowing discovery but failing to enforce court-ordered discovery despite several motions filed by Baron's counsel documenting violations of the Court's Expedited Discovery Order; and (3) Allowing discovery but imposing unreasonable limitations on Baron's discovery denying Baron's counsel and experts the same

access to electronic information routinely granted to counsel under an Attorneys-Eyes-Only protective in virtually every major trade secret case litigated in the United States.

g. One of the pending motions includes Baron's Motion on Impropriety [Dkt. 938], which should have been granted by the Court. Regardless of intent, the Court abandoned her role as a neutral and impartial decision-maker to intervene in the middle of witness testimony to persuade and/or counsel a witness regarding their refusal to testify regarding the identity of the "owners" of the two companies and their connections to Domain Holdings, thereby violating Mr. Baron's Constitutional due process right of a fair and *impartial* tribunal. *Gibson v. Berryhill*, 411 U.S. 564, 569, 93 S.Ct. 1689, 1693, 36 L.Ed.2d 488 (1973). (holding that The basic requirement of constitutional due process is a fair and impartial tribunal, whether at the hands of a court, an administrative agency or a government hearing officer.). The witness came back and changed his testimony from a refusal to testify to providing information that was not subject to effective cross examination by counsel. Evidence discovered after the testimony revealed that the two companies are related, owned by Despen Trust, also located on St. Kitts-Nevis. These companies "bid against" each other to create the *appearance* of competitive public bidding. The reality is that the Court should not approve any purchase from a "public auction" where, as here, the overall testimony of the witness was evasive at best and, at worst, false and intended to mislead the Court. As this Court knows, counsel moved for discovery of the bidders, which was denied. This denial sets a *precedent* that off-shore bidders seeking to conceal their identities can have a representative provide hearsay to obtain approval of a plan that sells the Plan to reluctantly identified officers of a company, which later transfers the Domain Names to the real purchaser. While there may be cases where assets may be purchased by an off-shore bidder, this is not that case.

h. The Court overlooked Baron's argument that the purchaser is not a good faith purchaser because the Stalking Horse Bidder supposedly required the Receiver to insert a provision in the Asset Purchase Agreement ("APA") to prevent Baron and his attorneys and experts from receiving electronic information regarding the domain names. The Receiver breached his fiduciary duty to Baron in entering into this contract, which also violated public policy and tainted the auction process, as all successive bidders signed the same APA. It is one thing to negotiate an agreement that Baron may disagree with; it is something quite different to use the contract in denying Baron's attorney the right to Attorneys Eyes Only information based on an argument that the Stalking Horse Bidder will withdraw from the auction if Baron's counsel receives electronic information. [District Dkt. 1070]. Moreover, the Stalking Horse Bidder likely received electronic information denied Baron's counsel, as he made offers to buy the portfolio in June 2012 [JB Exhibits 22-23]--almost two months before he supposedly made an "unsolicited offer" through Domain Holdings, an insider, to Peter Vogel in late August-September, 2012. [JB Exhibits 4-11].

39. Baron objects to this Conclusion of Law as the Plan does not "meet the requirements of Section 1122, 1123 and 1129 of the Code." As a threshold matter, neither Baron, Quantec or Novo Point are "debtors" under the Code. 11 USC § 101 (13) ("The term 'debtor' means person or municipality concerning which a case under this title has been commenced.") Section 1129 of the Code allows "merger or consolidation" of assets, but only the assets of "debtors." The Fifth Circuit requires that any attempt to merge, consolidate or "pool" assets cannot be accomplished if the assets being consolidated are that of a non-debtor. *Ark-La-Tex Timber Co.*, 482 F.3d 319, 327 fn,.7 (5th Cir. 2007). The Plan is improper as it purports to (a) "settle" a "claim" for legal fees that is not legally enforceable and is contrary to the "American" rule that a party pays their

own fees; (b) the "settlement" of an unenforceable claim by paying 100% of the Trustee's claim is an unnecessary drain on the receivership estate and therefore not in its best interests; (c) release the Receiver, the Trustee, their agents, employees and their lawyers for any and all negligence and/or misconduct committed during the Receivership, which is unfair and inequitable to Baron; and (d) Sell assets to two offshore companies representing to the Court that they are separate, unrelated companies who purportedly "compete" with one another when, in fact, they are owned by Despen Trust of Nevis and the true owners, or the true purchasers of the Domain Names is still unknown. The primary source of fees is the Trustee's fees incurred in defending appeal of a receivership order that he requested. On at least one occasion, either the Receiver or the Trustee asked the Court of Appeals to redesignate the Receiver as appellee, which was denied. Obviously, on one of the appeals, the Fifth Circuit did not believe it to be unfair or inequitable for the Trustee to defend the appeal, or pay his own fees. Seizure and sale of a non-debtor's assets to "bail out" the Trustee and pay his attorney's fees on appeal undermines bankruptcy policy by encouraging seizure of non-debtor assets to pay fees that are improvidently incurred by a Trustee.

40. The Court's conclusions of law are incorrect for the reasons stated above. The Court's finding that "all transfers of property under the Joint Plan are made in accordance with any applicable provisions of nonbankrutpcy law that govern the transfer of property[.]"[sic] is incorrect. No transfers of property have been made and cannot be made until the Fifth Circuit Court of Appeals has rendered a decision in the receivership case.

41. The Court's conclusion of law is incorrect as the modifications purport to modify a Plan that is improper and cannot effectively address Mr. Baron's objections.

42. The Court's conclusion of law is incorrect. It is unclear whether Baron will be free of litigation where, as here, the Plan is nothing but a pretext to seize non-debtor assets and provide protection under § 363 to the Receiver, Trustee and others. Baron is at risk that such releases will not be enforced and will be forced to defend such claims with "residual cash" from an improper sale of assets that should have been valued for at least $60,000,000. Indeed, Baron will still have to respond to attempts by dissatisfied litigants who seek to sue Baron and challenge the § 363 protection the Court proposes to grant Baron. The fees from simply asserting a § 363 defense will likely be substantial. The Receiver's and Trustee's primary goal is to avoid potential litigation or claim by Mr. Baron for misconduct alleged in the district court, the Fifth Circuit and the district court proceedings. The Court finds that Mr. Baron will "receive residual cash of a few million dollars," Baron notes that, by operation of the Global Settlement Agreement in late 2010, Mr. Sherman was given $1.8 million to satisfy all claims of the receivership. Even though the debts of the estate did not exceed $767,000, Mr. Sherman nevertheless found reasons to continue the bankruptcy and bill the estate millions. There is no evidence that Sherman will not continue to waste the assets entrusted to him. The Court should not, as a matter of law or equity, provide protection to the Receiver, or approve this kind of plan under the facts and circumstances of this case.

43. The Court's conclusions of law on the releases are incorrect. "*Pacific Lumber* does not restrict the availability of settlements of claim under § 1123(b)(3)(A) thus provid[ing] an avenue for a Chapter 11 plan to provide for releases of liability for non-debtors. But, such releases must satisfy the requirements of a valid settlement of claims under the Code. It would require, *inter alia,* consent and consideration by each participant in the agreement to be valid." *In re Bigler LP*, 442 BR 537, 545-6 (Bankr. Court, SD Texas 2010)(holding exculpation clause not a valid

settlement of claims where Plan language "applies to parties...who have voted against the Plan, and may even extend to individuals who are not even parties to this case.") Like *In re Bigler LP*, The Plan's release of the Receiver, Trustee and other non-debtor parties applies to all parties, including those not in support of the plan and not parties to this case. Under Fifth Circuit authorities a plan cannot release third parties. To the extent exculpation goes beyond the debtor or its property, it must be limited. Under the facts of this case, the Plan cannot discharge the liability of third parties such as Jeff Baron or the Receiver, Peter Vogel or their officers, directors, managers or attorneys from the assertion of any potential claims against them in state or federal court arising out of , for example, conduct in connection with the Receivership and cannot enjoin or prohibit any post-confirmation pursuit of litigation relating to the same, See Bank of New York Trust co. v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.), 584 F.3d 229, 253 (5th Cir. 2009)("In a variety of contexts, this court has held that Section 524€ only releases the debtor, not co-liable third parties."); see also Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746, 760 (5th Cir. 1995); In re Wool Growers Cent. Storage Co., 371 B.R. 768, 776 (Bankr. N.D. Tex 2007)("The Fifth Circuit has held that a nondebtor release violates section 524(e) when the affected creditor timely objects to the provision."); In re B.W. Alpha, Inc., 89 B.R. 592, 595 (Bankr. N.D. Tex. 1988).

Respectfully Submitted,

/s/ Stephen R. Cochell
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CERTIFICATE OF SERVICE

This is to certify that, on December 5, 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

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

MOTION TO STRIKE BANKRUPTCY COURT REPORT AND RECOMMENDATION TO THE DISTRICT COURT [DOC 1304-1]

Novo Point LLC and Quantec LLC move this Honorable Court to strike the Bankruptcy Court report and recommendation [DOC 1304-1], and show the following cause:

I.
SUMMARY

A 'report and recommendation' from the bankruptcy court is not the authorized procedure to secure turnover of property not owned by a bankruptcy debtor. Rather, a lawsuit and trial are mandatory prerequisites. There is no legal authority permitting a bankruptcy court to make a "report and recommendation" seeking the disposition of property by a district court. Accordingly, as a matter of basic law, the Bankruptcy Court's 'report and recommendation' should be stricken.

II.
GROUNDS & AUTHORITY

1. Novo Point LLC ("Novo Point") and Quantec LLC ("Quantec") are former receivership parties with property still held by Peter Vogel.[1] The Bankruptcy Judge concedes that the property at issue, domain names and their income, *is not owned by Baron*. Doc 1304-1 at p. 27.[2]

2. **No rule of Civil or Bankruptcy procedure provides authority for a bankruptcy judge to file unsolicited 'reports' or 'recommendations' advocating for the district court to determine ownership rights in property.** Similarly, *no rule of Civil or Bankruptcy procedure provides*

[1] On December 17, 2010, his Honorable Court ordered that Novo Point and Quantec were included as receivership parties. DOC 176. On December 18, 2012, the Fifth Circuit handed down an opinion and ruled that "**The order appointing a receiver is vacated.**" *Netsphere, Inc. v. Baron*, 703 F.3d 296, 311 (5th Cir. 2012). On December 31, 2012, the Fifth Circuit entered a ruling clarifying its opinion and ordered that the district court should "**not in any way affect the ownership of assets that were brought into the receivership. Assets are to be returned as appropriate to Baron or other entities that were subject to the receivership.**" On March 24, 2013, the Fifth Circuit issued eight mandates of reversal giving full legal effect to the Fifth Circuit's December 18, 2012 opinion vacating the receivership. [DOC 1255, *et.seq*.] Thus, there is no longer a receivership order and, accordingly, no receivership parties.

Although the receivership order was vacated, "no assets brought under the control of the receiver" were to be released immediately from that control. Rather, while the receivership order has been vacated, the physical receivership of assets under the receiver's control was ordered to be "ended as quickly as possible". *See* pages 6-7 of Fifth Circuit Order entered Dec. 31, 2012. Thus, to the extent assets were "brought under the control of the receiver" there are receivership assets ordered to be returned to the "entities that were subject to the receivership" such as Novo Point and Quantec.

[2] The Bankruptcy Judge erroneously conflates an *alleged* equitable right to the stock in a company with the direct ownership of the assets owned by the company. However, the Bankruptcy Judge admits that she really doesn't know the facts: "**This court has never been presented with the paper trail for the Village Trust** … argument ***suggests*** that the Village Trust was a self-settled trust with Mr. Baron as the settler" (p. 38).

authority for a bankruptcy judge to interject herself as an advocate for the disposition of property in the district court. Accordingly, the Bankruptcy Court Report and Recommendation should be stricken.

3. The procedure for seeking turnover of trust property under the law is not a 'report' from a bankruptcy judge. The case relied upon by Bankruptcy Judge's 'report', *In re Bradley*, 501 F.3d 421 (5th Cir. 2007), sets out the procedures required by law, as follows:

a. First, ***suit*** "***must be brought*** **against its [the Trust's] legal representative, the trustee**". *Id*. at 433. That suit must set out an "action to trace and recover assets that a debtor 'self-settled' into a spendthrift trust of which he is the beneficiary." *Id*. at 426. Critically, there must be "**proper *pleadings and proof***" *Id*. at 431-2.[3]

b. Secondly, in the case of Texas[4] trusts not found to qualify as spendthrift trusts,[5] ***turnover must be strictly limited to those assets that have been proved to have been self-settled***

[3] *See also Bollore SA v. Import Warehouse, Inc.*, 448 F.3d 317 (5th Cir. 2006). *In Bollore*, the district court ordered the turnover of property without a trial. *Id.* at 321. The Fifth Circuit vacated the order and ruled that turnover orders may not be used as a vehicle to adjudicate the substantive rights of third parties. *Id.* at 323. ("such a remedy completely bypasses our system of affording due process.")

[4] The trust at issue is a Cook Islands trust, not a Texas trust, and, pursuant to Texas law, the law of the Cook Islands controls. *See Sommers Drug Stores Co. Emp. P. Sharing Trust v. Corrigan*, 883 F.2d 345, 353 (5th Cir. 1989); *Alberto v. Diversified Group, Inc.*, 55 F.3d 201, 203 (5th Cir. 1995); *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941).

[5] Turnover is not allowed in bankruptcy for spendthrift trusts recognized by state law. *In re Shurley*, 115 F.3d 333, 336-37 (5th Cir.1997).

by the bankrupt. *Id*. at 431.

4. In the case at bar, ***there has been no suit, pleadings, notice or trial*** with *respect to any asset at bar*. Similarly, there has been no showing, what-so-ever, of what, if any, assets were self-settled by Baron.

5. Contrary to the Bankruptcy Judge's attempt to do so via a 'report and recommendation' not authorized by the Bankruptcy Code, the underlying right to ownership of property, including specifically claims based on fraudulent conveyance, cannot be established by the bankruptcy court. Rather, in the seminal case of *Stern v. Marshall*, 131 S. Ct. 2594 (2011), the Supreme Court has recently laid down a clear doctrine limiting the authority of the Bankruptcy Courts, as follows:

> "*Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989), and *Stern v. Marshall*, which together point ineluctably to the conclusion that fraudulent conveyance claims, because they do not fall within the public rights exception, cannot be adjudicated by non-Article III judges."
>
> *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553, 561 (9th Cir. 2012)(emphasis added).

As the Supreme Court has clearly prohibited the bankruptcy court from exercising authority to determine claims to ownership, the Bankruptcy Court Report and Recommendation purporting to do so – *without trial* – should be stricken.

6. While well intentioned, the Bankruptcy Judge's report does not reflect conclusions reached by an unbiased fact finder upon a hearing a trial of the matters at issue. Rather, the bankruptcy judge's 'findings' are an expression of the bankruptcy judge's bias and reached preemptively– ***prior to the holding of any trial on the matter.***[6]

7. This Honorable Court did not submit any questions to a magistrate judge to determine how to comply with the Fifth Circuit's judgment in this case. Rather, as a matter of **the law of the case**, Judge Furgeson has already addressed this issues and has ruled as follows:

> "The fact that ***its only Mr. Baron who's sought to be put in involuntary bankruptcy*** and there is no effort to do anything with ***Novo Point or Quantec*** or any of that, then I know this would he hard to do for the new judge …. The reference should be withdraw, and ***those parties should be spun off and sent back to where they should be***. *Judge Jurnigan as far as I know is not going to have any authority over those companies at all*"
>
> May 10, 2013 hearing (Vol. 3 at 26:14-24).

Under the law of the case doctrine a new judge should leave intact the original judge's findings. *E.g.*, *Ellis v. US*, 313 F.3d 636, 639 (1st Cir. 2002). Further, the Constitution mandates that "the essential

[6] A non-evidentiary 'status conference' is no substitute for a trial. Moreover, as a matter of **basic constitutional law**, a party must "be given an **opportunity for a hearing before he is deprived of any significant property interest**". *E.g.*, *Fuentes v. Shevin*, 407 U.S. 67, 82, 92 S.Ct. 1983 (1972). However, Novo Point LLC and Quantec LLC were not invited to the bankruptcy court "status conference" and did not participate in it.

attributes of the judicial power" of the United States must be retained in the Article III court.[7] Accordingly, the Bankruptcy Court 'recommendation' in attempting to substitute the opinion of the Article II court for the prior finding of the Article III judge, should be stricken.

III.
PRAYER

WHEREFORE, based on the foregoing, Novo Point LLC and Quantec LLC move this Honorable Court to strike the Bankruptcy Court report and recommendation [DOC 1304-1] ("the report") and jointly and in the alternative, to accept the movants' objection to the report in its entirety and to hold an evidentiary hearing on the report.

Respectfully submitted,

/s/ Christopher A. Payne
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[7] *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 77 n9 (1982).

CERTIFICATE OF CONFERENCE

This is to certify that conference was attempted with counsel for the plaintiff and said counsel is OPPOSED / NOT OPPOSED to the relief requested in this motion.

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

United States District Court
Northern District of Texas
Office of the Clerk

Dallas Division

Jul 9, 2013

Clerk
U.S. Court of Appeals - Fifth Circuit
600 Maestri Place
New Orleans, LA 70130

SUBJECT: 13-10119 / 3:09-CV-988 Netsphere, Inc., et al v. Jeffrey Baron

Dear Clerk:

In connection with the appeal cited above, the following record is transmitted:

☒ Record on appeal or ☐ Supplemental record on appeal
consisting of 8 volumes of the record and/or any of the items indicated below:

5 Volume(s) of the transcript _____ Volume(s) of depositions
_____ Container(s) of exhibits _____ Folder(s) of State Court Papers
_____ Sealed documents _____ Audio Visual Tapes
_____ PSI and SOR page Sealed

☐ Other: _____

☐ **ATTENTION:** Some of the documents noted above are ORIGINAL DOCUMENTS and must be returned to the district court.

☐ UPS Tracking #: _____

Sincerely,
KAREN MITCHELL
Clerk of Court

By: s/ S VanCamp
Deputy Clerk

United States District Court
Northern District of Texas
Office of the Clerk

Dallas Division

Jul 18, 2013

Clerk
U.S. Court of Appeals - Fifth Circuit
600 Maestri Place
New Orleans, LA 70130

SUBJECT: 13-10119/3:09-CV-988 Netsphere, Inc., et al v. Jeffrey Baron

Dear Clerk:

In connection with the appeal cited above, the following record is transmitted:

☐ Record on appeal or ☒ Supplemental record on appeal
consisting of 4 volumes of the record and/or any of the items indicated below:

1 Volume(s) of the transcript	____ Volume(s) of depositions
____ Container(s) of exhibits	____ Folder(s) of State Court Papers
X Sealed documents	____ Audio Visual Tapes
____ PSI and SOR page Sealed	

☐ Other: _____

☐ **ATTENTION:** Some of the documents noted above are ORIGINAL DOCUMENTS and must be returned to the district court.

☐ UPS Tracking #: _____

Sincerely,
KAREN MITCHELL
Clerk of Court

By: s/ S VanCamp
Deputy Clerk

13-10696.28370

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

MOTION TO ORDER THE IMMEDIATE RETURN OF THE DOMAIN NAME ASSETS AND BANK ACCOUNTS OF NOVO POINT LLC AND QUANTEC LLC

Novo Point LLC and Quantec LLC respectfully move this Honorable Court to order the immediate return of their domain name assets and bank accounts upon the following cause:

I.
SUMMARY

As briefed in Novo Point LLC and Quantec LLC's Motion to Strike, Doc. 1307, the procedure for seeking turnover of trust property under the law is not a 'report' from a bankruptcy judge.[1] In an abundance of caution, this motion briefs the following four additional grounds in support of an order for the immediate return to Novo Point LLC and Quantec LLC of their domain name assets and bank accounts:

[1] This motion adopts the law and argument presented in Doc 1307, Novo Point LLC and Quantec LLC's Motion to Strike Bankruptcy Court Report and Recommendation.

(1) This Honorable Court has the duty to scrupulously and fully carry out the judgment of the Fifth Circuit that this Court lacked authority to resolve the Baron lawyer claims and that this Court must expeditiously return to the former receivership parties the property seized from those parties;

(2) Federal law prohibits turnover orders to seize property before a trial on the merits is held and requires a full trial in order for the bankruptcy estate to establish an interest in property not directly owned by the debtor;

(3) *As a matter of law* the domain name assets and bank accounts owned by Novo Point LLC and Quantec LLC are not the property of Jeff Baron or his bankruptcy estate; and

(4) If the required adversary hearing were held with respect to the Village Trust's ownership interest in Novo Point LLC and Quantec LLC, the result would be that *as a matter of law* any beneficial ownership interest in the entities is excluded from Baron's bankruptcy estate.

II.
PROCEDURAL BACKGROUND

On December 17, 2010, this Honorable Court ordered that Novo Point LLC and Quantec LLC were included as receivership parties.[2]

On December 18, 2012, the Fifth Circuit handed down an opinion and ruled that "***The order appointing a receiver is vacated.***"[3]

On December 31, 2012, the Fifth Circuit entered a ruling clarifying its opinion and ordered that the district court should "***not in any way affect the ownership of assets that were brought into the receivership. Assets are to be returned as appropriate to Baron or other entities that were subject to the receivership.***"[4]

On March 24, 2013, the Fifth Circuit issued eight mandates of reversal giving full legal effect to the Fifth Circuit's December 18, 2012 opinion vacating the receivership.[5] Thus, there is no longer a receivership order and, accordingly, no receivership parties.

Although the receivership order was vacated, "no assets brought under the control of the receiver" were to be released immediately from that control. Rather, while the receivership order has been vacated, the physical receivership of assets under the receiver's control was ordered

[2] Doc 176.
[3] *Netsphere, Inc. v. Baron*, 703 F.3d 296, 311 (5th Cir. 2012).
[4] Doc. 1169.
[5] Doc 1255, *et.seq*.

to be "ended as quickly as possible".[6] Thus, to the extent assets were "brought under the control of the receiver" there are receivership assets ordered to be returned to the "entities that were subject to the receivership" such as Novo Point and Quantec.[7]

III.
GROUNDS

THIS HONORABLE COURT HAS THE DUTY TO SCRUPULOUSLY AND FULLY CARRY OUT THE MANDATE AND RULING OF THE FIFTH CIRCUIT

The Fifth Circuit issued a judgment and mandate that:

(1) Ruled that this Honorable Court did not have authority to resolve the non-diverse state law claims of Baron's former counsel; [8]

(2) Directed that the former Baron lawyers could file suit to resolve their claims in a court of "appropriate jurisdiction";[9] and

(3) Ordered the property seized from Novo Point LLC and Quantec LLC, and all other receivership parties, be "expeditiously" returned to those parties.[10]

However, in a good-intentioned but erroneous assertion of authority, the Bankruptcy Judge is attempting to reject the decision of the Fifth Circuit and has ruled that the receivership proceedings to resolve

[6] *See* pages 6-7 of Fifth Circuit Order entered Dec. 31, 2012, Doc. 1169.
[7] *Id.*; *and see Netsphere, Inc. v. Baron*, 703 F.3d 296.
[8] *Netsphere, Inc. v. Baron*, 703 F.3d 296, 308-310.
[9] *Id.* at 308.
[10] Doc. 1169 at 6-7; *Netsphere, Inc.* at 313.

the former attorney claims were authorized, final and enforceable.[11] The Bankruptcy Judge has, accordingly, *requested that this Honorable Court disregard the mandate of the Fifth Circuit* and, instead, turn the receivership assets over to an involuntary bankruptcy that is predicated upon the ***validity*** of this court's receivership order to pay the former Baron lawyers.

To be clear, the Bankruptcy Judge ***acknowledges that she lacks authority to adjudicate the disputed claims of Baron's former counsel.***[12] The Bankruptcy Judge, rather, is asserting jurisdiction to substitute her opinion *affirming the authority of the district court to resolve the lawyer claims* for the opinion handed down by the Fifth Circuit to the contrary. Having controverted the Fifth Circuit's ruling as to the validity of the receivership proceedings, the Bankruptcy Judge has ruled that that the former lawyers do *not* need to file suit in a court of "appropriate jurisdiction" and can have the bankruptcy court enforce the district court receivership order. Thus, *as if the Fifth Circuit never issued its opinion*, the Bankruptcy Judge is now attempting to *enforce* the receivership order

[11] See the April 4, 2013 order on jurisdiction entered in the Baron involuntary bankruptcy case. Doc 112 filed in Dallas Bankruptcy Case 12-37921-sgj7.

[12] *See* 11 U.S.C. § 303(b)(1); *and e.g., Bartmann v. Maverick Tube Corp.*, 853 F.2d 1540, 1543 (10th Cir. 1988) ("a petitioning creditor does not have standing when its debt is subject to a bona fide dispute."). Thus, to impose involuntary bankruptcy upon Baron, the former Baron lawyers needed to first reduce their claims to final judgments. But, as found by the Fifth Circuit, the former Baron lawyers failed to do that. The bankruptcy judge, however, declared that the district court receivership proceedings were authorized and the district court order to pay the former lawyers is a final judgment enforceable by the bankruptcy court.

to pay the claimant attorneys, through an unauthorized involuntary bankruptcy. [13]

The district court has the duty to scrupulously and fully carry out the judgment and mandate of the Fifth Circuit.[14] Accordingly, this Honorable Court should not assist the Bankruptcy Judge's efforts to substitute her opinion (affirming the authority of the district court to resolve the former lawyer claims) for the ruling of the Fifth Circuit to the contrary. Rather, this Honorable Court should reject the Bankruptcy Judge's request to disregard the Fifth Circuit's mandate directing this Honorable Court to expeditiously return to the former receivership parties the property wrongfully seized from them.

To be clear, although well-intentioned, **the Bankruptcy Judge's actions are clearly and directly in defiance of the Fifth Circuit's ruling. The Fifth Circuit unambiguously ruled that the district court lacked authority to use receivership proceedings to resolve the claims of Baron's former lawyers.**[15] The Fifth Circuit further ruled that the former Baron lawyers had not obtained judgments against Baron and directed that the lawyers could file suit to resolve their claims in a court of "appropriate jurisdiction".[16] Judge Furgeson clearly understood the judgment of the

[13] Doc 112 filed April 4, 2013 in Case 12-37921-sgj7.
[14] *United States v. EI du Pont de Nemours & Co.*, 366 U.S. 316, 325 (1961)
[15] *Netsphere, Inc.,* 703 F.3d 296 at 308-310.
[16] *Id.* at 308.

Fifth Circuit and ruled that "***The Fifth Circuit has explicitly ruled that this Court lacks authority to resolve state law claims for the fees of Baron's former attorneys.***" [17]

Yet, the Bankruptcy Judge has stubbornly asserted authority to overrule the Fifth Circuit and is now soliciting the support and voluntary cooperation of this Honorable Court in those efforts.

The District Court is charged with the duty to *scrupulously and fully* carry out the mandate and ruling of the Fifth Circuit and should not give support to the Bankruptcy Judge's misguided efforts to controvert the judgment and mandate of the Fifth Circuit. Accordingly, this Honorable Court should immediately return the property of Novo Point LLC and Quantec LLC to the companies, as ordered and mandated by the Fifth Circuit. [18]

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[17] Doc. 1286, page 2.

[18] **The district court lacks jurisdiction over the receivership assets of Novo Point LLC and Quantec LLC, other than to return them to the companies**. This is because where a court lacks jurisdiction to place property into receivership, it does not acquire jurisdiction over the property by the imposition of the receivership. *Cochrane v. W.F. Potts Son & Co.*, 47 F.2d 1026, 1028-1029 (5th Cir. 1931). Citing *Cochrane*, the Fifth Circuit ruled that this Honorable Court "lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy". *See Netsphere, Inc.* at 310. Accordingly, the jurisdiction held by this Honorable Court over the property is limited to carrying out the Fifth Circuit's mandate.

IV.

TO ESTABLISH A BANKRUPTCY ESTATE'S ALLEGED INTEREST IN PROPERTY NOT DIRECTLY OWNED BY THE DEBTOR, FEDERAL BANKRUPTCY LAW REQUIRES A FULL BLOWN TRIAL

Turnover orders cannot precede or bypass a trial on the merits.[19] Where the bankruptcy estate alleges an interest in property not owned by the debtor, federal bankruptcy law **requires** the filing of a lawsuit seeking inclusion of the property into the estate through an "adversary proceeding".[20] Pursuant to federal law, proceedings to determine a bankruptcy estate's interest in property requires a *full lawsuit* including: (1) the filing of a complaint,[21] (2) summons and service,[22] (3) the application of the rules of pleading,[23] (4) the right to conduct full discovery under the Federal Rules of Procedure,[24] and (5) a full trial on the merits.[25]

The law is clear– a bankruptcy estate's interest in property cannot be established through 'reports' or motions. Rather, "**Federal Rule of Bankruptcy Procedure 7001(2) requires that an adversary proceeding be commenced to determine the 'validity, priority or extent of [an] interest**

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[19] *See generally Bollore SA v. Import Warehouse, Inc.*, 448 F.3d 317, 324 (5th Cir. 2006)(in context of similar turnover statute, must pursue a separate trial on the merits before turnover. To 'skip the trial on the merits' would violate due process).
[20] Fed.R.Bankr.P. 7001; *see e.g.*, *In re Simmons*, 765 F.2d 547, 552 n5 (5th Cir. 1985); *and see, e.g., In re Bradley*, 501 F.3d 421, 431 (5th Cir. 2007).
[21] Fed.R.Bankr.P. 7003; Fed.R.Civ.P. 3.
[22] Fed.R.Bankr.P. 7004.
[23] Fed.R.Bankr.P. 7008.
[24] Fed.R.Bankr.P. 7026, *et.seq.*
[25] Fed.R.Bankr.P. 7040.

in property.'"[26] Thus, as a matter of established federal law, a full trial to establish the bankruptcy estate's interest in the property is required *before* property not owned by the debtor may be taken over by the debtor's bankruptcy estate.[27]

Accordingly, while it is alleged that Baron was a beneficiary of the Village trust, we don't actually know who the beneficiaries of the Village trust are – no trial has been conducted on that question. This point is more than academic. Pursuant to the trust documents and prior court filings, the legal and sole *de facto* beneficiary of the Village Trust is the Diabetes Research Institute. If hearsay allegations are removed from consideration, based on the evidence of record from parties with knowledge, Baron has never received one penny from the Village Trust for his personal benefit. Rather, the sole intended beneficiary and *de facto* beneficiary pursuant to law and the trust documents is the Diabetes Research Institute.[28]

Since no trial has been held to divest Novo Point LLC and Quantec LLC of their lawful ownership of their domain name assets and

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[26] *E.g., In re Hearthside Baking Co., Inc.*, 397 BR 899, 902 (Bkrtcy. N.D. Ill. 2008).

[27] Fed.R.Bankr.P. 7001(2); *e.g., In re Simmons* at 552 *n5; and e.g., In re Whitehall Jewelers Holdings, Inc.*, 2008 WL 2951974 *6 (Bankr.D.Del. 2008)(Court cannot determine whether property is property of the estate even through a motion. Federal Rule of Bankruptcy Procedure 7001(2) requires an adversary proceeding, i.e., a lawsuit and trial).

[28] The Bankruptcy Judge's erroneous advocacy of a different position is a well-intentioned, but fundamental distortion of the role of the bankruptcy court and the principles of due process. Judges are not advocates. Moreover, the Bankruptcy Court fundamentally erred in adopting a biased and erroneous position as to the facts before any trial on the merits has been held.

bank accounts, this Honorable Court should immediately return the companies' property to the companies.

V.

AS A MATTER OF LAW THE DOMAIN NAME ASSETS AND BANK ACCOUNTS OF NOVO POINT LLC AND QUANTEC LLC ARE NOT THE PROPERTY OF JEFF BARON OR HIS BANKRUPTCY ESTATE

Pursuant to the law of trusts, the beneficiaries of a trust own a beneficial interest in the property *to which a trustee holds legal title*.[29] Thus, if Baron is a beneficiary of the Village Trust, Baron would hold a beneficial interest in the property to which to the trustee of the Village Trust holds legal title. However, the trustee of the Village Trust ***does not hold title to the domain name assets and bank accounts held by the receiver.*** This is because, as a basic principle of law, a "corporation is a separate legal entity, distinct and apart from its members or stockholders"[30] and therefore "**ownership of stock in a corporation having title to property is *not* the same as individual ownership [of that property] by such stockholders**".[31]

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[29] *E.g.*, *Shearrer v. Holley*, 952 S.W.2d 74, 78 (Tex.App.– San Antonio 1997, no writ); *Bank One Texas v. US*, 157 F.3d 397, 400 (5th Cir. 1998).
[30] *E.g. Macedonia Baptist Church v. Gibson*, 833 S.W.2d 557, 559 (Tex.App.– Texarkana 1992, writ denied); *Moore & Moore Drilling Company v. White*, 345 S.W.2d 550, 553 (Tex.Civ.App.– Dallas 1961, writ ref'd n.r.e.).
[31] *E.g.*, *Gossett v. State*, 417 S.W.2d 730, 735 (Tex.Civ.App.– Eastland 1967, writ ref'd. n.r.e.)(emphasis added); *Western Inn Corporation v. Heyl*, 452 S.W.2d 752, 760 (Tex.Civ.App.– Fort Worth 1970, writ ref'd. n.r.e.).

So, as a definitive matter of law, the assets of Novo Point LLC and Quantec LLC are owned by Novo Point LLC and Quantec LLC and not by the Village Trust.[32]

Baron's beneficial interest in any corporate entity, Novo Point LLC or Apple Computer, does not conflate *the property owned by those entities* into Baron's personal bankruptcy estate. If Baron was bequeathed stock in Apple Computer, Baron would clearly hold an equitable interest in Apple Computer. However, the bankruptcy court could not go to Apple Stores and start seizing equipment. Baron's equitable interest is the *limit* of his interest. The most Baron's creditors or bankruptcy estate can seize is Baron's equitable interest in the companies, if any, and *not the assets owned by the companies themselves*.[33]

As a matter of well-established law, a court may not treat the corporate form of Novo Point LLC and Quantec LLC as nullities and 'look through their legal identity to the party standing behind them'.[34] To do so would be an erroneous "unwarranted expansion" of the authority of the court.[35]

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[32] *Id.*
[33] *E.g., Western Inn,* at 760.
[34] *Futura Development v. Estado Libre Asociado,* 144 F.3d 7, 12 (1st Cir. 1998).
[35] *Id.*

The Bankruptcy Judge, however, has completely failed to recognize the separate legal identity of Quantec LLC and Novo Point LLC and has erroneously conflated an alleged beneficial *ownership of the LLCs* with ownership of the property owned *by the LLCs*.

As discussed above, Novo Point LLC and Quantec LLC are independent legal entities, "distinct and apart from their members".[36] Therefore, the Village Trust does not hold title to the property and assets held by the receiver since **those assets are owned by Novo Point LLC and Quantec LLC**.[37] Accordingly, even if he is a beneficiary of the Village Trust, Baron holds, *at most*, a beneficial interest in the ownership of Quantec and Novo Point entities, not in the assets owned by those entities.

Thus, while 11 U.S.C. § 543 provides that a custodian shall deliver "any property *of the debtor*", the domain names and bank accounts at issue are the property *of Novo Point LLC and Quantec LLC*.[38] **Novo Point LLC and Quantec LLC are not in bankruptcy**, and if they were, their assets would be part of their bankruptcy estates, not Baron's.

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[36] *E.g. Macedonia Baptist Church* at 559; *and see Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133, 144 (1930)(ownership of stock and power to control does not destroy the distinct corporate identity).
[37] *E.g., Gossett* at 735. Creditors of the stockholders of corporations cannot raid the corporate assets to the detriment of the corporations own creditors. The most a stockholder's creditors can seize is the debtor's ownership interest in the companies.
[38] Doc. 1237; *Western Inn* at 760; *Smith* at 144.

Accordingly, the property at issue is, as a matter of law, the property of Novo Point LLC and Quantec LLC and Baron's bankruptcy estate has no right to demand turnover of the assets from Novo Point LLC and Quantec LLC. Notably, if the estate had any such right, it must first bring a lawsuit setting forth a claim whereby the estate would be entitled to turnover of the assets.[39] The estate has filed no such lawsuit. Thus, this Honorable Court should immediately return the property of Novo Point LLC and Quantec LLC to the property's owners– Novo Point LLC and Quantec LLC.

VI.

IF AN ADVERSARY HEARING WERE HELD, THE RESULT WOULD BE THAT BY LAW, ANY BENEFICIAL INTEREST IN THE VILLAGE TRUST'S OWNERSHIP OF NOVO POINT LLC AND QUANTEC LLC IS EXCLUDED FROM BARON'S BANKRUPTCY ESTATE

As discussed above: (1) as a matter of law the domain name assets and corporate bank accounts of Novo Point LLC and Quantec LLC are the property of Novo Point LLC and Quantec LLC and not Baron's bankruptcy estate; and (2) federal law mandates a trial on the merits as a prerequisite to ordering the turnover of any property owned by Novo Point LLC and Quantec LLC. Beyond that, there is an additional dispositive issue of law relating to the exclusion from Baron's bankruptcy estate of the Village Trust's interest in the Cook Islands

[39] *See In re Bradley*, 501 F.3d 421, 431 (5th Cir. 2007).

entities, as follows: Even if Baron were the sole beneficiary (he is not) and self-settled all of the trust assets (he did not), as a matter of law Baron's beneficial interest in the Village Trust's ownership of Novo Point LLC and Quantec LLC is excluded from his personal bankruptcy estate.

As discussed above, while the Village Trust owns Novo Point LLC and Quantec LLC, the property owned by Novo Point LLC and Quantec LLC is owned by those entities and not by the Village Trust. The following issue addresses the separate question of whether even *a beneficial interest in the ownership* of the Novo Point LLC and Quantec LLC entities is included in Baron's bankruptcy estate. The answer, as discussed below is "no".

As a preliminary matter, the receiver's inventory of assets shows clearly that **the receiver holds no stock in Novo Point LLC or Quantec LLC and holds no beneficial interest in the Village Trust to turn over to the bankruptcy estate**.[40] Accordingly, the following discussion of the law is included in an abundance of caution to address the underlying issue of the substantive law which must be addressed before the bankruptcy court could be allowed to exercise authority over the ownership rights to Novo Point LLC and Quantec LLC.

[40] Doc. 1237.

This issue arises because the Village Trust is a registered Cook Islands trust and constitutes a *registered* conveyance of property occurring in the Cook Islands and effectuated under the sovereign authority of Cook Islands law.[41] Because the United States has a *treaty obligation* to recognize Cook Islands' sovereign authority, the Cook Islands' authority over a registered conveyance of property in the Cook Islands cannot be impaired by a U.S. Court.[42]

The Constitution provides that "all treaties made or which shall be made under authority of the United States, shall be the supreme law of the land." A treaty, then, "is a law of the land, as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And *when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute*."[43]

11 U.S.C. § 541(a)(1) expressly *excludes* from a debtor's estate interest of debtor in a trust where a restriction on the transfer of a interest in that trust is enforceable under applicable nonbankruptcy

[41] *See* Cook Islands International Trust Act, 1984.
[42] Paragraph Five of the *Treaty on Friendship and Delimitation of the Maritime Boundary Between the United States of America and the Cook Islands,* signed at Rarotonga on 11 June 1980, and ratified by the US Senate June 21, 1983.
[43] *United States v. Rauscher*, 119 U.S. 407, 419 (1886).

law.[44] The applicable nonbankruptcy law of the Cook Islands restricts the transfer of a beneficial interest in the Village Trust and accordingly, such interest is, by law, excluded from Baron's bankruptcy estate.[45]

To be clear, Cook Islands law restricts the transfer of a beneficial interest of the LLC entities held in trust both by virtue of the statutory framework authorizing Cook Islands registered trusts and also by virtue of the Cook Islands law of limited liability entities.[46] With respect to the applicable non-bankruptcy law governing the restriction on the transfer of a beneficial interest in a trust relating to shares in Cook Islands limited liability entities, Texas law looks to Cook Islands law as the applicable law.[47] Pursuant to Cook Islands law, any beneficial interest Baron holds in the Village Trust's ownership of Novo Point LLC and Quantec LLC is restricted from transfer and, therefore, by law, is not included in Baron's bankruptcy estate.[48]

Furthermore, the Supreme Court has ruled that the exception of **§ 541(c)(2) is not limited to restrictions on transfer that are enforceable only under state spendthrift trust law.**[49] Rather, the Supreme Court has

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[44] 11 U.S.C § 541(c)(2).
[45] *See* Cook Islands International Trust Act, 1984.
[46] *Id.;* Article 45, Cook Islands Limited Liability Companies Act, 2008.
[47] *See Sommers Drug Stores Co. Emp. P. Sharing Trust v. Corrigan*, 883 F.2d 345, 353 (5th Cir. 1989); *Alberto v. Diversified Group, Inc.*, 55 F.3d 201, 203 (5th Cir. 1995); *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941).
[48] Article 45, Cook Islands Limited Liability Companies Act, 2008; 11 U.S.C § 541(c)(2); 11 U.S.C § 541(1)(1).
[49] *Patterson v. Shumate*, 504 U.S. 753, 759-760 (1992).

ruled that "the provision encompasses ***any*** relevant nonbankruptcy law".[50] Accordingly, **irrespective of exclusions recognized under the application of state law for spendthrift trusts, pursuant to the *Patterson* doctrine, the applicable Cook Islands law clearly excludes Baron's beneficial interest in the Village Trust from his personal bankruptcy estate.** The Bankruptcy Judge's 'report', however, presents a completely erroneous picture of the law, *as if the Supreme Court had never decided Patterson*.

Moreover, if a proper state-law spendthrift trust analysis is performed, *starting with the question of conflicts of law* – a fundamental and primary step completely and erroneously ignored by the Bankruptcy Judges' "recommendation" – the same result is arrived at under a parallel state-law analysis, as follows: In resolving choice of law issues, Texas law applies the Restatement (Second) of Conflict of Laws.[51] Pursuant to Restatement (Second) Conflicts of Law, Section 273 ("Restraints on Alienation of Beneficiaries' Interests"), whether the interest of a beneficiary of a trust of movables can be reached by his creditors is determined **"in the case of an *inter vivos* trust, by the local law of the state, if any, in which the settlor has manifested an intention**

[50] *Id.* (emphasis added).
[51] *See e..g., Sommers Drug Stores Co. Emp. P. Sharing Trust v. Corrigan*, 883 F.2d 345, 353 (5th Cir. 1989).

that the trust is to be administered".[52] Accordingly, the law of the Cook Islands applies to the trust at bar as the applicable law on the question of the validity of the trust's spend-thrift provisions.

The case at bar involves a Cook Islands trust and the registered conveyance of property in and under the sovereign authority of the Cook Islands. The properties owned by the trust are corporate entities charted in the Cook Islands and created by virtue of the sovereign authority of the Cook Islands and existing pursuant to Cook Island laws. If the underlying facts and applicable nonbankruptcy law were different, such as in the case of a Texas trust owning Texas entities, a different analysis would apply.[53]

Notably the fact that any beneficial interest in the Village Trust's ownership of Novo Point LLC and Quantec LLC is excluded from Baron's bankruptcy estate does not mean the assets are beyond the reach of Baron's creditors. For example, if Baron transferred assets to the trust in a way that qualifies as a fraudulent conveyance, the bankruptcy estate can bring a lawsuit to recover the assets on those grounds. However, such an action requires full due process of law– a lawsuit and a jury trial.[54]

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[52] Restatement (Second) Conflicts of Law § 273.
[53] See e.g., *Matter of Latham*, 823 F.2d 108, 111 (5th Cir. 1987).
[54] *Granfinanciera, SA v. Nordberg*, 492 U.S. 33, 36, 42 (1989).

Similarly, if the assets placed into the trust were acquired by theft or fraud, an action could be brought for an accounting, as in the case of *FTC v. Affordable Media, LLC*, 179 F.3d 1228 (9th Cir. 1999). Ironically, the Bankruptcy Judge erroneously misunderstood *Affordable Media* to reject the "argument that Cook Islands trust law divested ownership interest". Quite the opposite, the Court in *Affordable Media* fully respected that the Andersons "had created an irrevocable trust under the law of the Cook Islands" and appointed themselves as co-trustees and protectors of the trust.[55] The Ninth Circuit found that, *in accordance with Cook Islands law*, ***because the Andersons were the protectors of their trust*** and their trust instrument gave the protector power (under Cook Islands law) to repatriate the trust assets to the United States, the Andersons were property held in contempt for failure to comply with a court order to do so.[56]

Thus, in *Affordable Media* the Ninth Circuit looked to the law of the Cook Islands and the provisions of the trust instrument to determine the legal status of the trust res. When that same analysis is used in the case at bar, the result is clear. The applicable Cook Islands law restricts the transfer of a beneficial interest in a registered Cook Islands trust

[55] *Affordable Media* at 1232, 1243 n11.
[56] *Id.* at 1242.

even if the trust is self-settled.[57] Pursuant to both a state law analysis and the *Patterson* doctrine, Baron's beneficial interest in the trust is therefore excluded from his bankruptcy estate as a matter of law.[58]

Thus, pursuant to 11 U.S.C. § 541(c)(2), any beneficial interest in the Village Trust's ownership of Novo Point LLC and Quantec LLC is, by law, excluded from Baron's bankruptcy estate. Further, as discussed above, even if the bankruptcy estate owned the LLC entities, it would not own the assets owned by the entities. Accordingly, this Honorable Court should immediately return to Novo Point LLC and Quantec LLC their property, *as has been ordered by the Fifth Circuit*.

VII.
PRAYER

WHEREFORE, based on the foregoing, Novo Point LLC and Quantec LLC move this Honorable Court to order the immediate return to Novo Point LLC and Quantec LLC of their domain name assets and bank accounts.

[57] Cook Islands International Trust Act, 1984.
[58] *Patterson,* 504 U.S. at 760.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

This is to certify that conference was attempted with counsel for the plaintiff and said counsel is OPPOSED / NOT OPPOSED to the relief requested in this motion.

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE, INC., et al.,	§	
***Plaintiffs*,**	§	
vs.	§	**Civil Action No. 3-09-CV-0988-L**
	§	
JEFFREY BARON, et al.,	§	
Defendants	§	

ORDER

Before the court is Novo Point LLC and Quantec LLC's Motion to Order the Immediate Return of the Domain Name Assets and Bank Accounts of Novo Point LLC and Quantec LLC, filed August 16, 2013, (Doc _____).

The Fifth Circuit has ordered that to the extent assets were brought under the control of the receiver, those assets should be expeditiously returned to the entities that were subject to the receivership. There being no countervailing order from a superior court, the receiver is ordered to immediately return to Novo Point LLC and Quantec LLC all documents, funds, domain name assets and all other property brought under the control of the receiver in relationship to the two entities.

It is so ordered this _____ day of August, 2013.

_____
Sam A. Lindsay
United States District Judge

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

SUPPLEMENTAL BRIEF IN SUPPORT OF THE IMMEDIATE RETURN OF CORPORATE PROPERTY TO NOVO POINT LLC AND QUANTEC LLC

In an abundance of caution, this supplemental briefing is filed to make clear that as a matter of established bankruptcy law, issuance of an order for the turnover of property to a chapter 7 trustee is not permitted until ***after*** an adjudication of the bankruptcy estate's alleged interest in disputed property.

I.
AUTHORITY

The Seventh Circuit has addressed the issue dispositively, as follows:

> **"[T]he bankruptcy estate does not own property solely because the estate has a claim of ownership. When the estate stakes a claim, the property of the estate is just that: a claim of ownership. The estate's**

property does not include the thing to which it lays claim until the matter is adjudicated". [1]

As explained by the Seventh Circuit, 'every conceivable interest of the debtor' is within the reach of § 541, "However, the scope of 'property' under § 541 is necessarily *limited to the property owned by the debtor at the commencement of the bankruptcy*."[2] Accordingly, the Appellate Court ruled that **a debtor's interest or claim to property does not mean that the property itself is subject to § 541, rather, only the debtor's claim is included in his estate**.[3]

Thus, the estate's property does *not* include the thing to which it lays claim "until the matter is adjudicated". The Appellate Court ruled that "***[t]o hold otherwise would necessarily lump into the bankruptcy estate assets owned by others, but only claimed by the debtor***".[4]

Since the bankruptcy estate's disputed claims in property are not part of the bankruptcy estate until the estate's interest in the disputed property is adjudicated, **the law does not permit issuance of an order for the turnover of assets to the bankruptcy court where there is a dispute as to the estate's right to the property**.[5] The D.C. Circuit has, thus, ruled

[1] *Matter of Carousel Intern. Corp.*, 89 F.3d 359, 362 (7th Cir. 1996).
[2] *Id.*, 89 F.3d at 362.
[3] *Id.*
[4] *Id.*
[5] *In re Charter Co.*, 913 F.2d 1575, 1579 (11th Cir. 1990).

that **the turnover provisions of 11 U.S.C. §§ 542 and 543 cannot be used to demand disputed assets**.[6]

This law is well-established,[7] and has been recognized in the Northern District for decades.[8] Further, this underlying principle of bankruptcy law has been recognized by the U.S. Supreme Court for more than a century.[9]

The Supreme Court has dispositively ruled that before a bankruptcy court can take a third party's property he has "the right to

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[6] *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1471-1472 (D.C. Cir. 1991) (It is "settled law" that **the turnover provisions of 11 U.S.C. §§ 542 and 543 cannot be used to demand disputed assets**);

[7] *Id.*; and *see e.g.*, *In re Palm Beach Heights Development & Sales Corp.*, 52 B.R. 181, 183 (Bankr. S.D. Fla. 1985) ("Any claim, contingency or chose in action against the trust fund is the property of the estate but the fund itself is not. The debtor may not have any part of said fund until such time as the debtor establishes that ... to which it is entitled."); *In re Student Finance Corp.*, 335 B.R. 539, 554 (Bankr. D. Del. 2005)("***Turnover actions cannot be used to demand assets whose title is in dispute.***"); *In re Strom*, No. 7-10-14024-TA (Bankr. D. N.M. Jan. 1, 2013)(turnover under the bankruptcy code is limited to *undisputed* property that is "acknowledged" by all parties to be property of the bankruptcy estate); *In re Lexington Healthcare Group, Inc.*, 363 B.R. 713, 716 (Bankr. D. Del. 2007) (***turnover to the bankruptcy court "is not appropriate" prior to adjudication of the estate's claim*** where there is a dispute as to the bankruptcy estate's ownership of the property); *In re American Business Financial Services, Inc.*, 384 B.R. 80, 93 (Bankr. D. Del. 2008)(turnover requires that property is "the *undisputed* property of the debtor"); *In re New Century TRS Holdings, Inc.*, No. 07-10416 (KJC) (Bankr. D. Del. September 1, 2010) at note 24 ("turnover must be based on a debtor's undisputed ownership interest and title to the property at issue"); *In re Amcast Indus. Corp.*, 365 B.R. 91, 122 (Bankr. S.D. Ohio 2007)(turnover under the Bankruptcy Code is "limited to assets that are undisputedly property of the estate").

[8] *In re Satelco, Inc.*, 58 B.R. 781, 785, 786 (Bankr. N.D. Tex. 1986 – Hon. Harold Abramson) (an order **to turn over property before a final judgment establishing the estate's rights** in the property "**would be without a doubt, a gross violation of the most basic concepts of due process**". "Property with respect to which a substantial adverse claim has been raised has never been considered within the actual or constructive possession of the bankruptcy court".)

[9] *See Louisville Trust Co. v. Comingor*, 184 U.S. 18, 25 (1902)("[I]t could not have been the intention of Congress thus to deprive parties claiming property, of which they were in possession, of the usual processes of the law in defence of their rights.")

have the merits of his claim passed on in a plenary suit".[10] As decreed by the Supreme Court:

> **"If the property is not in the court's possession and a third person asserts a bona fide claim adverse to the receiver or trustee in bankruptcy, he has the right to have the merits of his claim adjudicated 'in suits of the ordinary character, with the rights and remedies incident thereto.'"** [11]

Notably, a long line of Supreme Court precedent makes clear that a due process hearing is required ***prior*** to ordering the turnover of property, as follows: In *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 89 S.Ct. 1820 (1969), the Supreme Court ruled that a post-seizure determination vindicating a creditor's property rights was not sufficient to ameliorate the insufficient process attendant to a pre-vindication seizure of the property.

In *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972), the Supreme Court held that Florida and Pennsylvania replevin statutes were unconstitutional because they failed to meet the basic requirements of due process. The Supreme Court expressed skepticism as to relying on an applicant's opinion that it had a legal claim to justify its seizure, holding "they test no more than the strength of the applicant's own belief

[10] *Cline v. Kaplan,* 323 U.S. 97, 99 (1944).
[11] *Id.* at 98-99.

in his rights … the danger is all too great that his confidence in his cause will be misplaced."[12]

In *Connecticut v. Doehr*, 501 U.S. 1, 111 S.Ct. 2105, (1991), the Supreme Court stuck down a Connecticut statute that allowed plaintiffs to attach their potential judgments against the defendant's property. The attachment required only that the plaintiff aver that the facts in support of his civil claim were true. The Supreme Court noted the "risk of erroneous deprivation" and struck down the statute.[13]

The Supreme Court's hostility to the inherent dangers of unilateral seizures of arguable property is seen in other contexts as well. Federal Rule of Civil Procedure 65(c), for example, establishes a bond requirement by providing that "[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant."[14]

Similarly, Federal Rule of Bankruptcy Procedure 7001 ***requires*** an "*adversary proceeding*" (including pleadings, service of process, discovery, and a full blown trial)[15] as the mandated procedure (1) "to recover money or property" from any third person,[16] (2) "to determine"

[12] *Id.* at 83.
[13] *Id.* at 12.
[14] Fed.R.Civ.P. 65(c).
[15] *See* Fed.R.Bankr.P. 7003, 7004, 7008, 7026, et.seq, 7040.
[16] Fed.R.Bankr.P. 7001(2).

the validity or extent of an interest in property,[17] or even, (3) "to obtain a declaratory judgment relating to any of the foregoing".[18]

II.
CONCLUSION

The Bankruptcy Judge's "report" is a misguided attempt to use a procedure not authorized by Congress, (the 'report and recommendation'), to persuade this Honorable Court to take action clearly unauthorized by law. Notably, the 'recommendation' of the Bankruptcy Judge attempts to completely bypass the pre-turnover hearing required by due process and long-established bankruptcy law.

Hon. Judge Furgeson made the mistake of having faith in the previous 'report and recommendation' of the Bankruptcy Judge, which solicited the Court to impose the receivership and grab the assets of Novo Point LLC and Quantec LLC. While well-intentioned, the Bankruptcy Judge's self-generated 'report and recommendation' to push the district court to impose the receivership was well outside the law. After reversal by the Fifth Circuit, Judge Furgeson stated that he believed the receivership was his greatest failure as a federal judge.

[17] Fed.R.Bankr.P. 7001(1).
[18] Fed.R.Bankr.P. 7001(9).

Now, the Bankruptcy Judge once again seeks to persuade the district court to take action not authorized by law and order the transfer of the property of Novo Point LLC and Quantec LLC to Baron's personal bankruptcy and the chapter 7 trustee. However, as discussed above, Federal Rule of Bankruptcy Procedure 7001, *et. seq.* provide that "to recover money or property" or to determine the validity or extent of an interest in property, the chapter 7 bankruptcy trustee must first file and serve a complaint and obtain an adjudication at trial.[19]

The Law is clear: "***[T]he bankruptcy estate does not own property solely because the estate has a claim of ownership …. [t]he estate's property does not include the thing to which it lays claim until the matter is adjudicated***".[20] Accordingly, issuing an order to turn over property to the bankruptcy estate before a final judgment has established the estate's rights in the property "**would be without a doubt, a gross violation of the most basic concepts of due process**".[21]

The Fifth Circuit has ordered this Honorable Court to expeditiously return to Novo Point LLC and Quantec LLC their property. No contravening order has been issued by any court. The property is clearly owned by the LLC entities.

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[19] *See* Fed.R.Bankr.P. 7001, *et.seq.*; *Inslaw, Inc.,* 932 F.2d 1467 at 1471-1472.
[20] *In re Carousel Intern. Corp.*, 89 F.3d at 362.
[21] *In re Satelco, Inc.*, 58 B.R. at 785- 786.

Accordingly, *as the Fifth Circuit has ordered*, Novo Point LLC and Quantec LLC's property should be immediately returned to the corporate entities from which it was wrongfully taken.

Respectfully submitted,

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FOR NOVO PONT LLC and QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	**CIVIL ACTION NO. 3:09-CV-0988-F**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

RECEIVER'S RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE OBJECTIONS TO SUA SPONTE REPORT AND RECOMMENDATION FILED BY THE BANKRUTPCY COURT [DKT. 1304] OR, IN THE ALTERNATIVE, PROVISIONAL OBJECTIONS

Receiver Peter S. Vogel (the "Receiver") responds to Mr. Baron's *Motion For Extension of Time to File Objections to Sua Sponte Report and Recommendation filed by the Bankrutpcy Court [Dkt. 1304] or, in the Alternative, Provisional Objections* (the "Motion"), as follows:

RESPONSE

On July 26, 2013, the Bankruptcy Court filed its *Sua Sponte Report And Recommendation To The District Court Proposing Disposition Of Assets Held In The Overruled Receivership Of Jeffrey Baron, In Accordance With Sections 541-543 Of The Bankruptcy Code* [DE 1304] (the "Report"), which contains a thorough recitation of the history of these cases. In his Motion, Mr. Baron asks that the Report "should be stricken in its entirety as it was not requested by this Court and asserts numerous facts that are not supported and are unrelated to any issue that needs to be addressed by this Court at this time."

In response, the Receiver would note that every bankruptcy petition is, by necessity, filed in the original jurisdiction of the District Court. While many districts employ multiple district

judges there is but one District Court. 28 U.S.C. § 132(a)-(b). The decisions and orders of any single judge constitute the order of "the Court." *Id.* at (c). And, within any District Court Congress may create a Bankruptcy Court that may include bankruptcy judges. 28 U.S.C. § 151. The Bankruptcy Court exists as an "arm" or "unit" of the District Court. Because its judges serve without the lifetime tenure and salary protections of Article III of the Constitution, no case is filed in its original jurisdiction. *E.g., Diamond Mortg. Corp. of Ill. v. Sugar*, 913 F.3d 1233 (7th Cir. 1990) (discussing *Northern Pipeline Constr. Co. v. Marathon Pipeline*, 458 U.S. 50 (1982) and eventual congressional response). Rather, every bankruptcy filing is made in the original jurisdiction of the District Court and may be subject (as all in the Northern District are) to a local rule making a deemed referral to the Bankruptcy Court for disposition. This deemed referral is always and necessarily subject to withdrawal, sua sponte, by the District Court in order to avoid constitutional infirmity. *Id.;* 28 U.S.C. § 157 (referral and withdrawal) and § 1334(b) (vesting all original jurisdiction over all Title 11 proceedings or "proceedings relating to Title 11" in the District Court). Indeed, 28 U.S.C. § 157(c)(1), provides a procedure for the bankruptcy judge to hear bankruptcy related proceedings and mandates that the bankruptcy judge submit proposed findings of fact and conclusions of law to the district court. Just so here.

The bankruptcy judge has heard matters concerning the disposition of receivership assets and has made a recommendation, as it should, to this Court.

The Receiver takes no position whether the assets of the Novo Point and Quantec entities should be transferred to the Bankruptcy Court as suggested in the Report, or whether they should go elsewhere. However, the Receiver does note that if the Court concludes that the assets should not be transferred to the Bankruptcy Court, then the Fifth Circuit's mandate is to pay pending allowed receivership expenses and wind down the receivership estate. *Netsphere, Inc. v. Baron*,

703 F.3d 296 (5th Cir. 2012). This Court has already determined and allowed certain receivership expenses in its May 29, 2013, *Order on Receivership Professional Fees* [DE 1287]. The Court has already addressed what would occur if the order for relief in the Baron bankruptcy was denied. *Id.* Likewise, if certain of the receivership assets are not transferred to the Bankruptcy Court, the Receiver believes that such funds must then be paid first towards the expenses allowed in this Court's May 29, 2013, Order.

Respectfully submitted,

DYKEMA GOSSETT PLLC

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ATTORNEYS FOR THE RECEIVER, PETER S. VOGEL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on August 30, 2013.

By: */s/ David J. Schenck*
David J. Schenck

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

REPLY OF NOVO POINT LLC AND QUANTEC LLC TO RECEIVER'S AUGUST 30, 2013 RESPONSE [DOC 1312]

Novo Point LLC and Quantec LLC respectfully reply to the erroneous legal and factual briefing presented in the Response [Doc 1312] of Peter Vogel, "the Receiver".

I.
THESE ARE NOT PROCEEDINGS UNDER 11 USC §157 (c)

Peter Vogel's briefing erroneously suggests that the Bankruptcy Court held proceedings under 11 USC §157 (c) and that pursuant to such proceedings, proposed findings of fact and conclusions of law have been transmitted to this Honorable Court. The record does not support Vogel's briefing.

As a preliminary matter, DOC 1304 establishes that the Bankruptcy Court transmitted a "*sua Sponte* Report and Recommendation"

and not proposed findings of fact and conclusions of law.[1] There is a pre-printed option for including "Proposed Findings of Fact and Conclusions of Law" on the transmittal notice and that option was explicitly not selected by the Bankruptcy Court.[2] Rather, the Bankruptcy Court **expressly** transmitted a "*sua Sponte* Report and Recommendation".[3]

Further, as a matter of law 11 U.S.C. §157 (c) predicates a bankruptcy court's authority to submit proposed findings of fact and conclusions of law **upon the holding of *non-core* proceedings** in the bankruptcy court.[4] Here, no non-core proceedings were held in the bankruptcy court and no proposed findings were entered by the Bankruptcy Judge. Accordingly, there were no proceedings upon which proposed findings could have been submitted under 11 USC §157 (c).[5]

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[1] The report purports to be in accordance with Sections 541-543 of the Bankruptcy Code. However, as ***Vogel has implicitly conceded,*** Bankruptcy Code Sections 541-543 do not authorize a "Report and Recommendation" for seeking the turnover of assets to a bankruptcy estate.

[2] Doc. 1304.

[3] *Id.*

[4] *See* 11 U.S.C. §157 (c). Vogel's implicit position that the matter is "non-core" should be carefully noted.

[5] Pursuant to Fed.R.Bankr.P. 9033, to make proposed findings under 11 U.S.C. §157 (c) the following procedure is mandated: (1) after the conclusion of authorized proceedings, the bankruptcy judge files her proposed findings of fact and conclusions of law with the bankruptcy clerk; (2) the bankruptcy clerk mails copies to all parties; (3) within 14 days after being served with a copy of the proposed findings a party may serve and file with the clerk written objections; (4) after the expiration of the time for filing objections under Bankruptcy Rule 9033, the Bankruptcy Clerk submits the record of the proceedings ***to the District Clerk***. Fed.R.Bankr.P. 9033;L.B.R. 9078-1. Notably, ***none*** of the steps involved with a 11 USC §157 (c) submission were followed. Further, proposed findings are filed with the district *clerk* and the bankruptcy judge does not select which district judge is to rule on proposed findings made pursuant to 11 U.S.C. §157 (c). L.B.R. 9078-1.

Moreover, since the matter involves a question as to a bankruptcy estate's interest in property, full-blown "adversary proceedings" are required. As a matter of established law:

> **"Bankruptcy Rule 7001 (formerly Rule 701) requires a bankruptcy trustee to initiate *adversary proceedings* to 'determine the validity, priority, or extent of a lien or other interest in property.'"** [6]

Accordingly, filing of a Rule 7001 complaint and holding a Rule 7001 trial on the merits are required *prerequisites* to the issuance findings in support of an order authorizing the transfer of assets.[7] However, no adversary proceeding has been filed or heard relating to Novo Point LLC or Quantec LLC's assets. In fact, *no evidentiary hearing of any sort has been held* on the issue. Therefore, as a matter of established law, if the Bankruptcy Court had filed proposed findings of fact and conclusions of law (it did not), **those findings and conclusions would be required to be stricken as procedurally defective and in contravention of Bankruptcy Rule 7001** – just the same as the unauthorized filing of a 'report and recommendation'.[8]

---

[6] *In re Golden Plan of California, Inc.*, 829 F.2d 705, 711 (9th Cir. 1986); *and see, e.g., In re Hearthside Baking Co., Inc.*, 397 B.R. 899, 902 (Bankr. N.D. Ill. 2008).
[7] *See In re Golden Plan of California, Inc.*, 829 F.2d at 712. As discussed in previous briefing, an 'adversary proceeding' is a full blown lawsuit requiring a formal complaint, service of process, discovery and trial. Fed.R.Bankr.P. 7003, 7004, 7008, 7026, et. seq, 7040.
[8] *In re Golden Plan of California, Inc.* at 712.

Moreover, pursuant to the recent development in the law with respect to the constitutional issues involved, a proceeding to divest Novo Point LLC and Quantec LLC of possession of their property is a core proceeding (rather than non-core) and requires a jury trial conducted by an Article III court.[9] Accordingly, if proceedings had been held (they were not), they would have fallen well outside of the statutory authorization of 11 U.S.C. §157 (c) which is expressly limited in scope to *non-core* proceedings.[10]

II.
THE POST REVERSAL ISSUE OF WHAT FUNDS WOULD BE USED TO PAY THE RECEIVER'S "FEES" HAS NOT YET BEEN TAKEN UP

Pursuant to the Fifth Circuit's decision, any allowed disbursements of receivership expenses can be made *only* from cash held by the receiver *at the time the Court's opinion was handed down*.[11] Notably, the Fifth circuit did not authorize any amount of fees and did not address which estate was authorized bear the burden of any fees. Moreover, the Fifth Circuit was express in requiring, on December 18, 2012, the return

[9] *See Granfinanciera, SA v. Nordberg*, 492 U.S. 33, 36, 42 (1989); *In re Clay*, 35 F. 3d 190, 194 (5th Cir. 1994); *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553, 561-3 (9th Cir. 2012).

[10] 11 U.S.C. §157 (c); *and see Id.*

[11] *Netsphere, Inc. v. Baron*, 703 F.3d 296, 313 (5th Cir. 2012)(December 18, 2012 decision requiring return of "everything subject to the receivership other than cash *currently in the receivership*"). DOC 1169 at 7 clarifies that the "Assets are to be returned ... [to the] entities that were subject to the receivership".

of "everything subject to the receivership other than *cash* ***currently*** *in the receivership*".[12]

In determining what fees should be allowed, if any, controlling Fifth Circuit precedent requires that expenses charged against an estate be limited **"to the extent that they have inured to its benefit"**.[13] Further, an award of fees against any estate must separately consider "what time and services counsel and receiver gave to each fund, and what part of their expenses were in fact necessary for each."[14] Each separate fund held by the receiver must be treated as an independent and separate estate **'as if separate receivers had been appointed for each'**.[15]

Judge Furgeson expressly ruled that disbursement of funds to the receiver would be limited to availability of those funds. Judge Furgeson, however, did not address which cash funds would be made available or the limit on those funds.

Novo Point LLC and Quantec LLC did nothing to cause the imposition of the wrongful receivership and there is no basis to charge their cash accounts with any portion of the costs relating to Mr. Baron. Notably, the receiver has refused to defend the UDRP complaints

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[12] *Netsphere, Inc. v. Baron*, 703 F.3d at 313.
[13] *Speakman v. Bryan*, 61 F.2d 430, 431 (5th Cir. 1932).
[14] *See Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281,283-4 (5th Cir. 1933) (fees must be charged against each fund held by receiver as if separate receivers had been appointed for each).
[15] *Id.*

challenging the LLC's ownership rights to multiple assets and has caused the loss **by default** of *hundreds* of arbitration hearings.[16]

This Court should be aware that destruction of the companies and the immediate and irreparable loss of millions of dollars in assets will be suffered if sufficient funds are not immediately available to the companies to pay the mandatory renewal fees for the LLC's assets and cover the costs caused by the Receiver's failure to pre-pay domain name renewal charges and failure to pay taxes or to file *any* tax returns since 2009.

To be clear, failure to pay the renewal fees will cause the immediate loss of those assets. Because Vogel has not pre-paid renewals, if cash is not available to pay the renewal fees (approximately $100,000 to $200,000 monthly, depending on the month), the assets will be *immediately* and forever lost. There are no other assets or income source available to the companies beyond what this Court releases back to the companies. The only cash on hand to Novo Point LLC and Quantec LLC will be the cash released by this Honorable Court.

[16] Because ***after Judge Furgeson's consideration of equitable fees for the receiver,*** substantial losses have been suffered to the estate from Vogel's refusal to defend arbitration disputes and assets were thereby *forfeited* by Vogel, the equitable allowance of fees must be re-examined in light of new losses to the receivership estate caused by Vogel and his 'professionals.'

Thus, the equity of the circumstances involve not just the fees alleged due by the receiver, but, as a matter of equity, the immediate cash-flow needs of the LLCs caused by the receiver's "approach" to management of the assets under his control. Accordingly, a revised consideration of the equitable issues relating to the receiver's fees is necessary in light of the receiver's continued possession of the assets months after Judge Furgeson considered the previous equities and nearly a year after the Fifth Circuit handed down its opinion that the receiver's possession of the assets was wrongful.

Further, the attention of this Honorable Court is directed to the fact that although the receivership order has been vacated by the Fifth Circuit, the receiver has continued to gather more assets and has built a cash reserve, that it now seeks to use to pay itself fees, instead of pre-paying renewal fees for the domain name assets at issue.

Nothing in the Fifth Circuit's mandate authorized the receiver to hold or pay itself from income generated from receivership assets *after* the Fifth Circuit's mandate vacating the receivership order was issued. Rather, receivership 'expense' disbursements were expressly limited to disbursements from the cash held by the receiver *at the time the Fifth*

Circuit handed down its decision in December 2012.[17]

It appears that over half a million dollars of additional cash has been seized by the receiver ***after*** the receivership order was vacated by the Fifth Circuit. The Fifth Circuit clearly and expressly did not grant authority to use funds gathered after the receivership was vacated to pay the receiver's "expenses". Moreover, there is no authority in law for a court to exercise jurisdiction over an income stream from assets produced subsequent to the vacating of a receivership order on appeal.

III.
CONCLUSION

For over two years, Peter Vogel provided erroneous briefings to Hon. Judge Furgeson, falsely assuring the Court that the actions advocated by Peter Vogel were lawful and would be approved by the Court of Appeals. Vogel has clearly not been deterred by the Fifth Circuit's entry of eight separate judgments of reversal.

Vogel's briefing is not supported by the law or the record. Factually, the Bankruptcy Court did not hold proceedings under 11 U.S.C. §157 (c) and did not file proposed findings of fact and conclusions of law. Legally, since no *adversary proceedings* (including complaint, service,

[17] *Netsphere, Inc. v. Baron*, 703 F.3d at 313 ("cash ***currently*** *in the receivership*").

discovery and trial) were held, any filings under 11 U.S.C. §157 (c) would be procedurally defective as a matter of law.

With respect to Vogel's desire for receiver's fees and "expenses" for his private counsel, there is no authorization for seizure of the post-reversal funds from Novo Point LLC or Quantec LLC's bank accounts. Further, because funds have been taken from the bank accounts of Novo Point LLC and Quantec LLC and transferred to a "trust" account for Vogel's 'professionals', before any disbursement of funds held in the receiver's "trust account" is allowed, a hearing and careful consideration of the law and factual issues should be undertaken.[18]

[18] Notably, if the assets of Novo Point LLC and Quantec LLC's were included in Baron's receivership estate, the transfer of the approximately $800,000.00 in cash to the receiver's professional's "trust" account would be a transfer in violation of the automatic stay and subject to contempt proceedings. **The fact that Mr. Fine advised his client to transfer LLC funds to him *after* the filing of the bankruptcy petition and imposition of the automatic stay with respect to *the property of Baron's Bankruptcy Estate*** speaks to Mr. Fine's understanding that the LLC assets are clearly not part of Mr. Baron's bankruptcy estate.

Respectfully submitted,

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FOR NOVO POINT LLC and
QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE INC., et al., Plaintiffs,	§	
vs.	§	No. 3:09-CV-988-F
JEFFREY BARON, et al., Defendants.	§	

NOTICE OF AMENDED APPEARANCE

Carrington, Coleman, Sloman & Blumenthal, L.L.P. ("CCSB"), subject to any previous appearances, files this *Notice of Amended Appearance* to reflect the proper attorneys for notice as shown below:

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Thomas A. Allen, who had previously appeared, is no longer with CCSB and is no longer involved in this case. Accordingly, this request is made that his name be removed from the ECF e-mail service and any other service lists in this case.

Dated: September 5, 2013.

Respectfully submitted,

/s/ J. Michael Sutherland

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 5, 2013, the foregoing instrument was served via ECF-electronic notification on all parties and counsel receiving ECF-electronic notification in this case.

/s/ J. Michael Sutherland
J. Michael Sutherland

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

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	**CIVIL ACTION NO. 3:09-CV-0988-F**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

RECEIVER'S RESPONSE TO MOTION TO STRIKE [DE 1307] AND MOTION FOR RETURN OF RECEIVERSHIP ASSETS [DE 1310]

Receiver Peter S. Vogel (the "Receiver") responds to Novo Point, LLC and Quantec, LLC's Motion to Strike [DE 1307] and Motion For Return of Receivership Assets [DE 1310] (the "Motions"), as follows:

RESPONSE

On July 26, 2013, the Bankruptcy Court filed its *Sua Sponte Report And Recommendation To The District Court Proposing Disposition Of Assets Held In The Overruled Receivership Of Jeffrey Baron, In Accordance With Sections 541-543 Of The Bankruptcy Code* [DE 1304] (the "Report"), which contains a thorough recitation of the history of these cases. In their Motions, Novo Point and Quantec assert that the Report should be stricken, arguing that to do otherwise might deprive the movants of property rights without due process.

In response, the Receiver adopts its August 30, 2013, Response to Mr. Baron's motion [DE 1312]. In addition, the Receiver notes that the Report does not purport to adjudicate the rights of ownership in the Novo Point and Quantec assets, but rather advocates the mere transfer of those assets to the Baron Bankruptcy Trustee "without prejudice to anyone's right to bring a

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

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	**CIVIL ACTION NO. 3:09-CV-0988-F**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

RECEIVER'S RESPONSE TO MOTION TO STRIKE [DE 1307] AND MOTION FOR RETURN OF RECEIVERSHIP ASSETS [DE 1310]

Receiver Peter S. Vogel (the "Receiver") responds to Novo Point, LLC and Quantec, LLC's Motion to Strike [DE 1307] and Motion For Return of Receivership Assets [DE 1310] (the "Motions"), as follows:

RESPONSE

On July 26, 2013, the Bankruptcy Court filed its *Sua Sponte Report And Recommendation To The District Court Proposing Disposition Of Assets Held In The Overruled Receivership Of Jeffrey Baron, In Accordance With Sections 541-543 Of The Bankruptcy Code* [DE 1304] (the "Report"), which contains a thorough recitation of the history of these cases. In their Motions, Novo Point and Quantec assert that the Report should be stricken, arguing that to do otherwise might deprive the movants of property rights without due process.

In response, the Receiver adopts its August 30, 2013, Response to Mr. Baron's motion [DE 1312]. In addition, the Receiver notes that the Report does not purport to adjudicate the rights of ownership in the Novo Point and Quantec assets, but rather advocates the mere transfer of those assets to the Baron Bankruptcy Trustee "without prejudice to anyone's right to bring a

declaratory judgment action as to ownership of the Quantec/Novo Point Domain Names." Report, at 40-41.

The Receiver also notes, as did the Bankruptcy Court in the Report, that Novo Point and Quantec are represented by counsel and have *continued* to appear in this Court and the Fifth Circuit to address issues regarding Novo Point and Quantec, negating any objections to lack of due process. Therefore, their objections to transfer of the receivership assets to the Baron Bankruptcy Trustee, where ownership can be sorted out, and the rights of *all* parties, including the creditors, can be protected, should be overruled.

Respectfully submitted,

DYKEMA GOSSETT PLLC

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ATTORNEYS FOR THE RECEIVER, PETER S. VOGEL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on September 5, 2013.

By: */s/ David J. Schenck*
David J. Schenck

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ID\JRF - 108946\0001

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

REPLY OF NOVO POINT LLC AND QUANTEC LLC TO RECEIVER'S SEPTEMBER 5 & 6, 2013 RESPONSES [DOCS 1315 & 1316]

Novo Point LLC and Quantec LLC respectfully reply to the erroneous argument presented in Vogel's Responses filed September 5th and 6th [Docs 1315 & 1316].

I.
REPLY

It is settled law that the provisions of 11 U.S.C. §§ 541, 542 and 543 **cannot** be used to seek turnover of disputed assets to the bankruptcy court.[1] Vogel's erroneous suggestion that turnover be ordered first and a trial held later is wholly unauthorized by law. A long line of Supreme Court precedent makes clear that a due process hearing is required ***prior*** to ordering the turnover of property.[2]

[1] *Matter of Carousel Intern. Corp.*, 89 F.3d 359, 360-362 (7th Cir. 1996) (§ 541); *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1471-1472 (D.C. Cir. 1991) (§§ 542 and 543).
[2] *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 89 S.Ct. 1820 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972); *Connecticut v. Doehr*, 501 U.S. 1, 111 S.Ct. 2105

In the words of the late Hon. Judge Abramson (Bankr. N.D. Texas), an order to turnover assets to the bankruptcy court without first holding a trial on the bankruptcy estate's right to the assets "**would be without a doubt, a gross violation of the most basic concepts of due process**".[3]

Vogel, moreover, ignores the Fifth Circuit's mandate and **this Court's narrow and limited jurisdiction:** to carry out the order of the Fifth Circuit to return to Novo Point LLC and Quantec LLC their wrongfully seized assets. The Fifth Circuit ordered this Honorable Court to expeditiously return to Novo Point LLC and Quantec LLC their assets.[4] Vogel offers no authority to support his desire that the Fifth Circuit's mandate be disobeyed.

As noted by the late Judge Abramson:

> **"Property with respect to which a substantial adverse claim has been raised has never been considered within the actual or constructive possession of the bankruptcy court".[5]**

Notably, if the Fifth Circuit's order is not obeyed and the assets are transferred to the bankruptcy court, the assets appear substantially less safe than Vogel makes out. Like hungry hatchlings, there is already a

(1991). See discussion in DOC 1311 (Supplemental Brief) at page 4, *et.seq*.
[3] *In re Satelco, Inc.*, 58 B.R. 781, 786 (Bankr. N.D. Tex. 1986).
[4] Netsphere, Inc. v. Baron, 703 F.3d 296, 313 (5th Cir. 2012).
[5] *In re Satelco, Inc.* at 785.

line of bankruptcy lawyers with their beaks stretched wide seeking around half a million dollars in immediate disbursements from the property sought from this Court.

The motions now pending in the bankruptcy court have been post-poned by the Bankruptcy Judge expressly ***pending this Court's ruling on transfer of the assets to the bankruptcy estate of Jeff Baron.*** In other words, it appears that the Bankruptcy Judge intends to liquidate and use the LLCs' assets to pay the lawyers and has therefore postponed hearing their motions for payment, pending this Court's ruling. Thus, if transferred, the assets in question will not be held safely in trust, but rather, are already specifically targeted for immediate liquidation and distribution.

Moreover, disobedience of the Fifth Circuit's mandate will keep the company's assets and income out of the company's hands and will clearly impact their ability to defend themselves in court. By contrast, if the Fifth Circuit's mandate is scrupulously carried out and the assets are returned to the LLCs, as has been ordered by the Fifth Circuit, the companies will have funding to hire all necessary experts, gather all necessary evidence, and hire all necessary legal counsel. By contrast, without return of the assets, the companies have no income or any asset

base from which to fund defending themselves in protracted litigation. The difference is substantial and fundamental.

II.
CONCLUSION

The district court has a limited constitutional and statutory role. That role does not include seizing property and transferring it away from its owner without *first* providing the due process of trial.

Nearly, three years ago, Peter Vogel moved for and vigorously encouraged Hon. Judge Furgeson to seize the assets of Novo Point LLC and Quantec LLC without a trial. The Fifth Circuit found the seizure was unauthorized by law and exceeded the jurisdiction of the district court. The Fifth Circuit vacated the receivership order and ordered the assets expeditiously returned. Vogel then dug in his heels and for nearly a year has vigorously opposed the carrying out of the Fifth Circuit's mandate. Now, Vogel seeks to encourage this Honorable Court to defy the order of the Fifth Circuit and, instead of obeying the order, to transfer the assets away from the LLCs and to the bankruptcy estate of Jeffrey Baron.

Vogel's erroneous argument is without authority in law and should be rejected in its entirety. This Honorable Court should carry out the order of the Fifth Circuit to expeditiously return to Novo Point LLC and Quantec LLC their wrongfully seized property.

Respectfully submitted,

/s/ Christopher A. Payne
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FOR NOVO POINT LLC and
QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE, INC., ET AL.,	§	
	§	
Plaintiffs,	§	
	§	**Civil Action No. 3:09-cv-0988-L**
v.	§	
	§	
JEFFREY BARON, ET AL.,	§	
	§	
Defendants.	§	
	§	

BANKRUPTCY TRUSTEE'S MOTION FOR LEAVE TO INTERVENE TO RESPOND TO THE MOTION TO ORDER THE IMMEDIATE RETURN OF THE DOMAIN NAME ASSETS AND BANK ACCOUNTS OF NOVO POINT LLC AND QUANTEC LLC AND BRIEF IN SUPPORT

NOW COMES, John H. Litzler, the Chapter 7 Trustee appointed in the bankruptcy case of Jeffrey Baron, Case No. 12-37921-SGJ, pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Case"), and, pursuant to Rule 24 of the Federal Rules of Civil Procedure, files his Motion for Leave to Intervene and Brief in Support (the "Motion"), and in support thereof would respectfully show the Court as follows:

I. BACKGROUND OF JEFFREY BARON BANKRUPTCY CASE

1. On December 18, 2012, an involuntary petition for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code was filed against Jeffrey Baron ("Mr. Baron"), thereby initiating the Bankruptcy Case. The involuntary petition was filed by petitioning creditors who are various lawyers and law firms that have performed legal services for Mr. Baron and, in some cases, also for entities that Mr. Baron controlled (the "Petitioning Creditors").

2. The Bankruptcy Court conducted a lengthy bifurcated trial on the involuntary Chapter 7 bankruptcy petition. After considering the testimony and other evidence presented by opposing parties, each strenuously arguing their positions, the Court concluded that an order for relief should be entered against Mr. Baron pursuant to the standards set forth in Section 303(h) of the Bankruptcy Code.[1]

3. On June 26, 2013, the court entered the order for relief in the Bankruptcy Case (the "Order for Relief").

4. Upon entry of the Order for Relief, John H. Litzler, who had earlier been appointed "standby" interim trustee, for the "Gap Period," i.e. the time period between the December 18, 2012 involuntary filing and the entry of the Order for Relief, immediately transitioned to Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701.

5. On July 8, 2013 Mr. Baron filed his Notice of Appeal, appealing the Order for Relief.[2]

6. On July 15, 2013, the Petitioning Creditors filed the Schedules and Statement of Financial Affairs in the Bankruptcy Case.[3] The Schedules identify the sole membership interests in Novo Point, LLC ("Novo Point") and Quantec, LLC ("Quantec") and the domain name portfolios of Novo Point and Quantec as Mr. Baron's personal property.

[1] The Bankruptcy Court earlier ruled that the Petitioning Creditors had proper standing to file the involuntary petition, pursuant to the standards set forth in Section 303(b) of the Bankruptcy Code (this was in connection with a motion for partial summary judgment that had addressed that sole issue).

[2] The appeal of the Order for Relief has since been docketed at civil action no 3:13−CV−03461−O in the District Court for the Northern District of Texas, Dallas Division, the Honorable Judge Reed C. O'Connor presiding.

[3] The Petitioning Creditors filed the Schedules and Statement of Financial Affairs pursuant to Rule 1007(k) of the Federal Rules of Bankruptcy Procedure because Mr. Baron failed to do so himself within 14 days of the entry of the Order for Relief, as required by Rule 1007(c).

II. RELIEF REQUESTED

7. The Trustee seeks to intervene as an interested party for the limited purpose of responding to the *Motion to Order the Immediate Return of Domain Name Assets and Bank Accounts of Novo Point LLC and Quantec LLC*, appearing at docket number 1310 (the "Turnover Motion"). According to the Schedules filed in the Bankruptcy Case, as well as the *Sua Sponte Report and Recommendation to the District Court Proposing Disposition Of Assets Held In The Overruled Receivership Of Jeffrey Baron, In Accordance With Sections 541-543 of the Bankruptcy Code*, appearing at docket number 1304-1, the assets at issue in the Turnover Motion are property of the bankruptcy estate. Therefore, the Trustee respectfully requests the right to respond and be heard on the Turnover Motion.

8. Third parties may intervene in a pending lawsuit. *See* FED. R. CIV. P. 24. That intervention may be had as of right or may be made on a permissive basis, depending on the circumstances. *Id.* A court "must" allow a non-party to intervene in an action when the non-party intervenor timely:

> Claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties represent that interest.

FED. R. CIV. P. 24(a)(2).

9. A party seeking to intervene may do so as a matter of right provided they satisfy the following four part test:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Haspel & Davis Milling & Planting Co. v. Bd. of Levee Comm'rs of the Orleans Levee Dist., 493 F.3d 570, 578 (5th Cir. 2007) (citing FED. R. CIV. P. 24(a)(2)). All of these "requirements must be met, or a party may not intervene as of right." *Bibles v. City of Irving*, 2009 U.S. Dist. LEXIS 67462, at *4 (N.D. Tex. Jul. 28, 2009). But if they are met, then a "court *must* grant a motion for leave to intervene." *Id.* (emphasis in original).

A. <u>The Trustee's Proposed Intervention is Timely.</u>

10. To determine whether an application for intervention is timely, as required by the first element of the test set forth above, a court must examine these four subsidiary factors: (1) The length of time during which the would-be intervenor actually knew of, or should have known of, his interest in the case; (2) the prejudice that the existing parties may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he knew of, or as soon as he should have known of, his interest in the case; (3) the prejudice that the would-be intervenor may suffer if he is not permitted to join; and (4) the existence of unusual circumstances. *See Stallworth v. Monsanto Co.*, 558 F.2d 257, 264-66 (5th Cir. 1977).

11. The Trustee's request to intervene is being made within the 21-day timeframe under L.R. 7.1(e) to respond to the Turnover Motion, and causes none of the prejudice that permitting a late intervention might cause to the other parties. In contrast, the prospect of prejudice to the Trustee, and all the various interests he represents, is high if intervention is not permitted. The Trustee is not seeking to intervene on his own behalf; as a bankruptcy trustee he serves to represent the interests of a potentially large number of general creditors and other interested parties in the estate he oversees. Thus, while he is only one party, he should be seen as representing numerous interests, which adds some extra weight to concerns regarding prejudice to him. If the Motion is denied, it would leave nobody in court to advocate for the rights of the

bankruptcy estate and the protection of the general creditors of the estate. Under these circumstances, the Motion is timely.

B. The Trustee Has an Interest in the Property of the Bankruptcy Estate, Which is at Issue in the Turnover Motion.

12. According to the Supreme Court, an intervenor's interest must be one that is "significantly protectable." *Donaldson v. United States*, 400 U.S. 517, 531 (1971). The Fifth Circuit interprets that to mean "a direct, substantial, legally protectable interest in the proceedings." *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (internal citations omitted).

13. The Trustee has a direct, substantial, and legally protectable interest in the disposition of the property of the bankruptcy estate, which could be adversely affected depending on the ruling made on the Turnover Motion. "The filing of a bankruptcy petition creates an estate that is comprised of, among other things, 'all legal or equitable interests of the debtor in property as of the commencement of the case.'" *Highland Capital Mgmt. LP v. Chesapeake Energy Corp. (In re Seven Seas Petroleum, Inc.)*, 522 F.3d 575, 584 (5th Cir. 2008) (quoting 11 U.S.C. § 541(a)(1)). It is the Trustee that is charged by statute with administering this estate, including collecting and liquidating property, investigating the debtor's financial affairs, analyzing and sometimes objecting to creditor claims, accounting, distributing to creditors, and reporting to the bankruptcy court. *See* 11 U.S.C. § 704(a).

14. Because the Trustee is ultimately responsible for administering the estate for the benefit of creditors, he has a legally protectable interest in preserving the estate and upholding the integrity of the bankruptcy system. *See, e.g., Gaines v. Dixie Carriers, Inc.*, 434 F.2d 52, 54 (5th Cir. 1970) (interest in a specific fund is sufficient to intervene in a case affecting that fund). These interests are sufficient to support the Trustee's intervention.

C. The Ruling on the Turnover Motion Could Impede the Trustee's Interests.

15. If there is no one to advocate on behalf of the bankruptcy estate and all creditors in response to the Turnover Motion, then the chances that the Trustee's interests as the representative of the estate will be impaired are high. If Novo Point and Quantec prevail on the Turnover Motion, property of the bankruptcy estate could dissipate and be placed beyond the reach of creditors. If the Trustee has to chase down estate assets in a subsequent proceeding, the administrative costs to the estate would likely be significant.

D. The Trustee's Interests are Inadequately Represented by the Existing Parties.

16. It is a party's "ultimate objective" which is the test of whether one party's interests coincide sufficiently with another's to ensure adequately representation – not the party's history of past efforts. *See Haspel & Davis*, 493 F.3d at 579. The Fifth Circuit has observed that, while "the burden for establishing inadequate representation is on the applicant for intervention," this burden is "minimal, and is satisfied if the applicant shows that representation of his interest may be inadequate." *Haspel & Davis*, 493 F.3d at 579 (internal citations and quotation marks omitted).

17. The Receiver has filed a response to the Turnover Motion[4], but his position is inadequate to represent the interests of the bankruptcy estate: "The Receiver takes no position whether the assets of the Novo Point and Quantec entities should be transferred to the Bankruptcy Court as suggested in the Report, or whether they should go elsewhere." The Trustee's ultimate objective, by contrast, is to ensure the preservation of estate assets on behalf

[4] The Receiver's response to the Turnover Motion, appearing at docket number 1316, adopts its August 30, 2013 response, appearing at docket number 1312, to Mr. Baron's motion for extension of time to file objections to the Bankruptcy Court's Sua Sponte Report and Recommendation.

of all creditors of the estate. Accordingly, there is no presumption that any party adequately represents the Trustee with respect to the Turnover Motion.

E. Permissive Intervention.

18. If the Court determines that the Trustee may not intervene as a matter of right, he requests that the Court allow him to intervene under Rule 24's "permissive" intervention standard. This rule allows intervention when the intervenor's claim shares a "common question of law or fact" with the pending suit. FED. R. CIV. P. 24(b)(1)(B). Because common questions of law and fact exist between the relief requested in the Turnover Motion and the Trustee's statutory duties to administer the bankruptcy estate, the Trustee should be granted leave to permissively intervene. Intervention in this appeal will not unduly delay or prejudice the adjudication of the rights of the original parties.

F. Proposed Form of Intervention.

19. Rule 24(c) requires that a motion to intervene be accompanied by a "pleading that sets out the claim or defense for which intervention is sought." FED. R. CIV. P. 24(c). Courts have adopted a lenient approach to this requirement if the present record provides sufficient context for the would-be intervenor's position, and have allowed the Rule 24(c) pleadings to be filed at a later time. *See, e.g., Liberty Surplus Ins. Cos. v. Slick Willies of Am., Inc.*, 2007 U.S. Dist. LEXIS 59723, at *5-*6 (S.D. Tex. Aug. 15, 2007) (endorsing and adopting such an approach). Attached hereto as Exhibit A is the Trustee's proposed response to the Turnover Motion. If the Court should grant the Trustee leave to intervene, the Trustee respectfully requests permission to file and enter the response on the docket at that time.

III. CONCLUSION

WHEREFORE, the Trustee respectfully requests that this court enter an order authorizing the Trustee to intervene as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, permissively pursuant to Rule 24(b) for the limited purpose of responding to the *Motion to Order the Immediate Return of Domain Name Assets and Bank Accounts of Novo Point LLC and Quantec LLC*; and grant such other and further relief to which the Trustee may show himself justly entitled.

Dated: September 6, 2013.

Respectfully submitted,

ROCHELLE MCCULLOUGH, LLP

By: */s/ Kathryn G. Reid*

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GENERAL BANKRUPTCY COUNSEL
FOR JOHN H. LITZLER, TRUSTEE

CERTIFICATE OF CONFERENCE

Prior to filing the Motion, I conferred with the following parties on September 6, 2013 via email regarding the relief requested herein, who indicated their client's position as noted:

Attorney	Client(s)	Unopposed	Opposed	No response
John W. MacPete	Plaintiffs			X
Stephen R. Cochell	Jeffrey Baron		X	
Christopher Payne	Novo Point LLC and Quantec LLC		X	
Raymond J. Urbanik	Daniel J. Sherman, Chapter 7 Trustee of Ondova Limited Company	X		
David J. Schenck	Peter S. Vogel, Receiver	X		

/s/ Kathryn G. Reid
Kathryn G. Reid

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 6, 2013, a true and correct copy of the foregoing was served upon all parties and/or counsel of record via electronic filing notice, facsimile, or U.S. First Class mail in accordance with the Federal Rules of Civil Procedure.

/s/ Kathryn G. Reid
Kathryn G. Reid

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

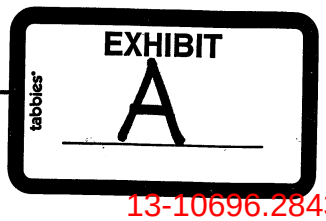
NETSPHERE, INC., ET AL.,	§	
	§	
Plaintiffs,	§	
	§	**Civil Action No. 3:09-cv-0988-L**
v.	§	
	§	
JEFFREY BARON, ET AL.,	§	
	§	
Defendants.	§	
	§	

BANKRUPTCY TRUSTEE'S RESPONSE TO MOTION TO ORDER THE IMMEDIATE RETURN OF THE DOMAIN NAME ASSETS AND BANK ACCOUNTS OF NOVO POINT LLC AND QUANTEC LLC

NOW COMES, John H. Litzler, the Chapter 7 Trustee appointed in the bankruptcy case of Jeffrey Baron, Case No. 12-37921-SGJ, pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Case"), and for his Response to the *Motion to Order the Immediate Return of the Domain Name Assets and Bank Accounts of Novo Point LLC and Quantec LLC* [Dkt. No. 1310] (the "Turnover Motion") would respectfully show the Court as follows:

I. BACKGROUND OF JEFFREY BARON BANKRUPTCY CASE

1. On December 18, 2012, an involuntary petition for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code was filed against Jeffrey Baron ("Mr. Baron"), thereby initiating the Bankruptcy Case. The involuntary petition was filed by petitioning creditors who are various lawyers and law firms that have performed legal services for Mr. Baron and, in some cases, also for entities that Mr. Baron controlled (the "Petitioning Creditors").



2. The Bankruptcy Court conducted a lengthy bifurcated trial on the involuntary Chapter 7 bankruptcy petition. After considering the testimony and other evidence presented by opposing parties, each strenuously arguing their positions, the Court concluded that an order for relief should be entered against the Mr. Baron pursuant to the standards set forth in Section 303(h) of the Bankruptcy Code.[1]

3. On June 26, 2013, the court entered the order for relief in the Bankruptcy Case (the "Order for Relief"). *See* Order for Relief attached hereto as Exhibit A, and incorporated herein by reference.

4. Upon entry of the Order for Relief, John H. Litzler, who had earlier been appointed "standby" interim trustee, for the "Gap Period," i.e. the time period between the December 18, 2012 involuntary filing and the entry of the Order for Relief, immediately transitioned to Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701.

5. On July 8, 2013, Mr. Baron filed his Notice of Appeal, appealing the Order for Relief.[2]

6. On July 15, 2013, the Petitioning Creditors filed the Schedules and Statement of Financial Affairs in the Bankruptcy Case.[3] The Schedules identify the sole membership interests in Novo Point, LLC ("Novo Point") and Quantec, LLC ("Quantec") and the domain name

[1] The Bankruptcy Court earlier ruled that the Petitioning Creditors had proper standing to file the involuntary petition, pursuant to the standards set forth in Section 303(b) of the Bankruptcy Code (this was in connection with a motion for partial summary judgment that had addressed that sole issue).

[2] The appeal of the Order for Relief has since been docketed at civil action no 3:13–CV–03461–O in the District Court for the Northern District of Texas, Dallas Division, the Honorable Judge Reed C. O'Connor presiding (hereinafter, the "Bankruptcy Appeal").

[3] The Petitioning Creditors filed the Schedules and Statement of Financial Affairs pursuant to Rule 1007(k) of the Federal Rules of Bankruptcy Procedure because Mr. Baron failed to do so himself within 14 days of the entry of the Order for Relief, as required by Rule 1007(c).

portfolios of Novo Point and Quantec as Mr. Baron's personal property. *See* Schedules attached hereto as Exhibit B, and incorporated herein by reference.

II. RESPONSE

7. The issues presented in the Turnover Motion by Novo Point and Quantec (collectively, the "Movants") are the same as those raised by Mr. Baron in the Bankruptcy Appeal. Mr. Baron's Statement of Issues on Appeal and Designation of the Record is attached hereto as Exhibit C and incorporated herein by reference. Did the bankruptcy court err in failing to give effect to the Fifth Circuit's mandate? Did the bankruptcy court err in ruling that the petitioning creditors had standing to bring the involuntary petition? Did the bankruptcy court err in ruling that the petitioning creditors' claims were not contingent as to liability or subject to a bona fide dispute? These are all issues to be addressed in the Bankruptcy Appeal. Movants' effort to collaterally attack the validity of the Order for Relief and have these issues decided outside of the Bankruptcy Appeal is not only premature, but procedurally incorrect. If Movants wish to have a say on these matters, they should seek leave to appear in the Bankruptcy Appeal.

8. The Order for Relief is a final order for purposes of appeal, so it is in the Bankruptcy Appeal that Movants should take up their argument. The Ninth Circuit concluded that an order for relief is final and appealable because, as an "adjudication" that is a "conclusive determination of the debtor's status in bankruptcy," it is "*res judicata* between the actual parties to the proceeding to all the facts and subsidiary questions of law on which it is based." *Mason v. Integrity Ins. Co. (In re Mason)*, 709 F.2d 1313, 1315-16 (9th Cir. 1983).[4] The court also noted the similarities between (a) the procedures leading to an order for relief and (b) the procedures in

[4] Although *In re Mason* concerned circuit court jurisdiction under a substantially identical predecessor statute, "28 U.S.C. § 1293(b), which was eliminated by the Bankruptcy Amendments and Federal Judgeship Act of 1984," its discussion of "finality" is "applicable to cases arising under section 158." *Allen v. Old Nat'l Bank of Wash. (In re Allen)*, 896 F.2d 416, 418 n.3 (9th Cir. 1990).

bankruptcy adversary proceedings and other civil and criminal litigation ending in final, appealable judgments, including motions practice, discovery, hearings, the taking of evidence, and judicial findings of fact and conclusions of law. *Id.* at 1317. The Order for Relief is, therefore, controlling as a final order adjudicating Mr. Baron's bankruptcy status and establishing his bankruptcy estate, including property identified in the Schedules. *See* Ex. B.

9. Movants cannot collaterally attack the Order for Relief in this case in order to dispute the characterization and disposition of certain assets scheduled in the Bankruptcy Case. "Even though an action has an independent purpose and contemplates some other relief, it is a collateral attack if it must in some fashion overrule a previous judgment." *Miller v. Meinhard-Commercial Corporation*, 462 F.2d 358 (5th Cir. 1972). "Unlike a direct appeal, a collateral attack questions the validity of a judgment or order in a separate proceeding that is not intended to obtain relief from the judgment. It seeks, through the second suit, to avoid or evade the earlier judgment, or to deny its force and effect." *Uecker & Assocs. v. L.G. Hunt & Assocs. (In re Am. Basketball League, Inc.)*, 317 B.R. 121, 128 (Bankr. N.D. Cal. 2004) (internal citation omitted). *See also Factory Mut. Ins. v. Panda Energy Int'l, Inc. (In re Hereford Biofuels, L.P.)*, 466 B.R. 841, 853, 859-60 (Bankr. N.D. Tex. 2012) (A lawsuit brought in state court by a non-debtor against the debtor's insurer was dismissed as an improper collateral attack against a bankruptcy sale order that had released the claims against the insurer and had become final in the bankruptcy case); *Gekas v. Pipin (In re Met-L-Wood Corp.)*, 861 F.2d 1012, 1018 (7th Cir. 1988) (A lawsuit that did not seek to rescind a sale pursuant to Section 363 of the Bankruptcy Code but instead sought damages from those who benefitted from the sale was a "thinly disguised collateral attack on the judgment confirming the sale[,]" so it was properly dismissed.).

10. The issues raised in the Turnover Motion are the same as those raised by Mr. Baron in the Bankruptcy Appeal, and the scope of the relief requested by Movants infringes on the Order for Relief. This tactical maneuver is clearly an attempt to evade the Order for Relief, and Movants' improper collateral attack should be denied.

11. Furthermore, Movants are mistaken as to the effect of the Fifth Circuit's mandate on the Bankruptcy Case. Movants are overlooking the fact that the Fifth Circuit rendered its decision *before* the Bankruptcy Case was even filed, so its opinion did not decide any issues governed by the Bankruptcy Code, including what is or is not property of the Mr. Baron's bankruptcy estate under 11 U.S.C. § 541, or what assets should or should not be turned over by the custodian pursuant to 11 U.S.C. §§ 542 and 543. To say that the Judge in the Bankruptcy Case has ignored the higher court's directive is incorrect.

III. CONCLUSION

WHEREFORE, the Trustee respectfully requests that this court deny the *Motion to Order the Immediate Return of the Domain Name Assets and Bank Accounts of Novo Point LLC and Quantec LLC*; and grant such other and further relief to which the Trustee may show himself justly entitled.

Dated: September 6, 2013.

Respectfully submitted,

ROCHELLE McCULLOUGH, LLP

By: */s/ Kathryn G. Reid*

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GENERAL BANKRUPTCY COUNSEL
FOR JOHN H. LITZLER, TRUSTEE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 6, 2013, a true and correct copy of the foregoing was served upon all parties and/or counsel of record via electronic filing notice, facsimile, or U.S. First Class mail in accordance with the Federal Rules of Civil Procedure.

/s/ Kathryn G. Reid
Kathryn G. Reid

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 26, 2013

United States Bankruptcy Judge

B 253 (rev. 05/12)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Jeffrey Baron	§	Case No.: 12−37921−sgj7
	§	Chapter No.: 7
Debtor(s)	§	

ORDER FOR RELIEF IN AN INVOLUNTARY CASE

On consideration of the petition filed on December 18, 2012, against the above−named debtor, an order for relief under Chapter 7 of the Bankruptcy Code (Title 11 of the United States Code) is **GRANTED**.

The debtor must file the list of creditors, bankruptcy schedules and statement of financial affairs required by 11 U.S.C. § 521. Consequently,

IT IS FURTHER ORDERED that, pursuant to Bankruptcy Rule 1007(a)(2), the debtor shall file within 7 days from the date of entry of this order a list containing the name and address of each of its creditors.

IT IS FURTHER ORDERED that, pursuant to Bankruptcy Rule 1007(c), the debtor shall file within 14 days from the date of entry of this order the bankruptcy schedules and statement of financial affairs required by 11 U.S.C. § 521.

IT IS FURTHER ORDERED that, pursuant to Bankruptcy Rule 1007(k), if the debtor does not prepare and file the list of creditors, schedules and statement of financial affairs as directed by this order, the petitioning creditors shall prepare and file the papers within 30 days from the date of entry of this order. The petitioning creditors may move this court for relief to enforce this order and may apply for the reimbursement of the costs incurred in complying with this order. The petitioning creditors and the bankruptcy trustee may seek the imposition of sanctions against the debtor and any responsible person for the debtor in the event the petitioning creditors must prepare and file the papers as directed by this order.

End of Order # #

EXHIBIT
tabbies
A

B6A (Official Form 6A) (12/07)

In re **Jeffrey Baron**

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE A - REAL PROPERTY

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting Any Secured Claim or Exemption	Amount Of Secured Claim
2200 E. Trinity Mills Rd., Suite 106, Carrollton, TX (value from Dallas County Appraisal District Website)	Homestead	-	$50,060.00	$0.00
		Total:	**$50,060.00**	

(Report also on Summary of Schedules)

EXHIBIT
B
13-10696.28441

B6B (Official Form 6B) (12/07)

In re **Jeffrey Baron** Case No. **12-37921-SGJ-7** (if known)

SCHEDULE B - PERSONAL PROPERTY

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting any Secured Claim or Exemption
1. Cash on hand.		Unknown	-	Unknown
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Dreyfus Investments Roth Coversion IRA XXXXXXXXXXX491	-	$4,915.26
		Sterling Trust Co. Roth IRA XX855	-	$48,570.75
		Mid-Ohio Securities Corp. Roth IRA XXX-XXX396	-	$126,856.50
		Delaware Charter Guarantee & Trust d/b/a Principal Trust Co. (dealt with Interactive Brokers, LLC) Non-Roth IRA XXXX003	-	$307,779.70
		Equity Trust Co. Roth IRA XXX471	-	$839,818.05
		Comerica Checking Account XXXXXX6589	-	$64,854.82
		BBVA fka Compass Bank - Quantec, LLC account Operating XXXXXXX323	-	$400,614.46
		BBVA fka Compass Bank - Novo Point, LLC Operating Account XXXXXXX315	-	$362,984.33
		Comerica	-	$4,026.43

B6B (Official Form 6B) (12/07) – Cont.

In re **Jeffrey Baron**

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE B - PERSONAL PROPERTY

Continuation Sheet No. 1

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting any Secured Claim or Exemption
		Savings XXXXXX9426		
		Comerica Checking Account XXXXXX4455	-	$141.84
		Comerica Checking Account XXXXXX6373	-	$573.49
		Comerica Prime Money Market XXXXXX4943	-	$3,116.23
		Comerica Checking XXXXXX4463	-	$7,703.72
		Comerica Money Market XXXXXX5361	-	$3,035.44
		Comerica - Manassas XXXXXX5064	-	$100.03
		Account of Daniel Sherman, Trustee for Ondova Ltd. (as of April 30, 2013)	-	$329,597.55
		The Vanguard Group Non-Roth IRA XXXX-XXXXXXXX792	-	$45,006.34
		Bank of America - Manassas XXXXXX8930	-	$5,036.11
		Stock-TD Ameritrade XXXX581	-	$372,401.56

B6B (Official Form 6B) (12/07) – Cont.

In re Jeffrey Baron

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE B - PERSONAL PROPERTY

Continuation Sheet No. 2

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting any Secured Claim or Exemption
		IOLTA Trust Account - Dykema Gossett	-	$737,276.72
		Other Bank Accounts may exist	-	Unknown
3. Security deposits with public utilities, telephone companies, landlords, and others.		Unknown	-	Unknown
4. Household goods and furnishings, including audio, video and computer equipment.		Unknown	-	Unknown
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.		Unknown	-	Unknown
6. Wearing apparel.		Unknown	-	Unknown
7. Furs and jewelry.		Unknown	-	Unknown
8. Firearms and sports, photographic, and other hobby equipment.		Unknown	-	Unknown
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Unknown	-	Unknown
10. Annuities. Itemize and name each issuer.		Unknown	-	Unknown

B6B (Official Form 6B) (12/07) – Cont.

In re **Jeffrey Baron**

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE B - PERSONAL PROPERTY

Continuation Sheet No. 3

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)		Unknown	-	Unknown
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Unknown	-	Unknown
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Sole Member interest in NovoPoint, LLC (This member interest is purportedly owned by Village Trust, a self-settled trust prohibited by Tex. Prop. Code Section 112.035)	-	Unknown
		Sole Member interest in Quantec, LLC (This member interest is purportedly owned by Village Trust, a self-settled trust prohibited by Tex. Prop. Code Section 112.035)	-	Unknown
		Ownership in all assets purpotedly owned by Village Trust (Tex. Prop. Code Section 112.035)	-	Unknown
14. Interests in partnerships or joint ventures. Itemize.		Unknown	-	Unknown
15. Government and corporate bonds and other negotiable and non-negotiable instruments.		Unknown	-	Unknown
16. Accounts receivable.		Netsphere Inc - Settlement Payments (in excess of $645,000 Plus Variable Monthly Payments, attorneys fees, punitive damages, interest and other claims)	-	$645,000.00

B6B (Official Form 6B) (12/07) -- Cont.

In re Jeffrey Baron

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE B - PERSONAL PROPERTY

Continuation Sheet No. 4

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting any Secured Claim or Exemption
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.		Unknown	-	Unknown
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.		Unknown	-	Unknown
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.		Unknown (other real estate assets believed to exist)	-	Unknown
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.		Unknown (see answer to #13)	-	Unknown
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.		Unknown	-	Unknown
22. Patents, copyrights, and other intellectual property. Give particulars.		Unknown	-	Unknown
23. Licenses, franchises, and other general intangibles. Give particulars.		Unknown	-	Unknown

B6B (Official Form 6B) (12/07) -- Cont.

In re Jeffrey Baron

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE B - PERSONAL PROPERTY

Continuation Sheet No. 5

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting any Secured Claim or Exemption
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.		Unknown	-	Unknown
25. Automobiles, trucks, trailers, and other vehicles and accessories.		Unknown (one automobile - make and model unknown)	-	Unknown
26. Boats, motors, and accessories.		Unknown	-	Unknown
27. Aircraft and accessories.		Unknown	-	Unknown
28. Office equipment, furnishings, and supplies.		Unknown	-	Unknown
29. Machinery, fixtures, equipment, and supplies used in business.		Unknown	-	Unknown
30. Inventory.		Unknown	-	Unknown
31. Animals.		Unknown	-	Unknown
32. Crops - growing or harvested. Give particulars.		Unknown	-	Unknown
33. Farming equipment and implements.		Unknown	-	Unknown

B6B (Official Form 6B) (12/07) -- Cont.

In re **Jeffrey Baron** Case No. **12-37921-SGJ-7** (if known)

SCHEDULE B - PERSONAL PROPERTY

Continuation Sheet No. 6

Type of Property	None	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, Without Deducting any Secured Claim or Exemption
34. Farm supplies, chemicals, and feed.		Unknown	-	Unknown
35. Other personal property of any kind not already listed. Itemize.		Novo Point LLC domain name portfolio: approximately 3,324 domain names (see answer to questions 13)	-	Unknown
		Quantec LLC domain name portfolio: approximately 150,944 domain names (see answer to question 13)	-	Unknown

6 continuation sheets attached

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

Total > **$4,299,409.33**

B6C (Official Form 6C) (4/13)

In re Jeffrey Baron

Case No. 12-37921-SGJ-7
(If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

☐ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds $155,675.*

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
		$0.00	$0.00

*Amount subject to adjustment on 4/01/16 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

13-10696.28449

B6D (Official Form 6D) (12/07)

In re **Jeffrey Baron**

Case No. 12-37921-SGJ-7 (if known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

☑ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions Above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
			Subtotal (Total of this Page) >				**$0.00**	**$0.00**
			Total (Use only on last page) >				**$0.00** (Report also on Summary of Schedules.)	**$0.00** (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

No continuation sheets attached

13-10696.28450

B6E (Official Form 6E) (04/13)

In re **Jeffrey Baron**

Case No. **12-37921-SGJ-7**
(If Known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Domestic Support Obligations**
Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**
Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**
Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $12,475* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**
Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**
Claims of certain farmers and fishermen, up to $6,150* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**
Claims of individuals up to $2,775* for deposits for the purchase, lease or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**
Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**
Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**
Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

☑ **Administrative allowances under 11 U.S.C. Sec. 330**
Claims based on services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by such person as approved by the court and/or in accordance with 11 U.S.C. §§ 326, 328, 329 and 330.

** Amounts are subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

1 continuation sheets attached

B6E (Official Form 6E) (04/13) - Cont.

In re Jeffrey Baron

Case No. 12-37921-SGJ-7 (If Known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

TYPE OF PRIORITY: Administrative allowances

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
ACCT #: Dykema Gossett LLC Attn: Jeffrey R. Fine 1717 Main St., Suite 400 Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS: (11 U.S.C. Section 543(c)(2)				$1,130,000.00	$1,130,000.00	$0.00
ACCT #: Gardere Wynne Sewell, LLP Attn: Richard Roberson 1601 Elm St. 3000 Thanksgiving Tower Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS: (11 U.S.C. Section 543(c)(2)				Unknown	Unknown	Unknown
ACCT #: Munsch Hardt Kopf & Harr, P.C. Attn: Raymond J. Urbanik 500 N. Akard St., Suite 3800 Dallas, TX 75201-6659		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS: (11 U.S.C. Section 543(c)(2)				Unknown	Unknown	Unknown
ACCT #: Peter S. Vogel, Receiver 1601 Elm St., Suite 3000 Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS: (11 U.S.C. Section 543(c)(2)				$166,500.00	$166,500.00	$0.00
ACCT #: Pronske & Patel, P.C. c/o Gerrit Pronske 2200 Ross Avenue, Suite 5350 Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS: ($180,000 approximate) (11 U.S.C. Section 503(b)(3)(A)				$180,000.00	$180,000.00	$0.00
ACCT #: Stromberg Stock, PLLC Attn: Mark Stromberg Two Lincoln Center 5420 LBJ Freeway, Suite 300 Dallas, TX 75240		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS: ($154,000 - approximate) (11 U.S.C. Section 507(a)(3))				$154,000.00	$154,000.00	$0.00
Sheet no. 1 of 1 continuation sheets attached to Schedule of Creditors Holding Priority Claims			Subtotals (Totals of this page) >				$1,630,500.00	$1,630,500.00	$0.00
			Total > (Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)				$1,630,500.00		
			Totals > (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)					$1,630,500.00	$0.00

B6F (Official Form 6F) (12/07)

In re Jeffrey Baron

Case No. 12-37921-SGJ-7 (if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCT #: Bickel & Brewer Attn: Greggory A. Teeter 1717 Main St., Suite 4800 Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$47,631.63
ACCT #: Broome Law Firm Attn: Stan Broome 105 Decker Ct., Suite 850 Irving, TX 75062		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$28,373.46
ACCT #: Busch, Ruotolo & Simpson, L.L.P. Attn: Alan L. Busch 100 Crescent Court, Suite 250 Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				Unknown
ACCT #: Carrington, Coleman, Sloman & Blumenthal, L.L.P. Attn: Michael Sutherland 901 Main St., Suite 5500 Dallas, TX 75202		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$224,233.27
ACCT #: David L. Pacione, Esq. 6602 Warm Breeze Lane Dallas, TX 75248		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$10,018.30
ACCT #: Edwin J. Wright III Abrams Centre 9330 LBJ Freeway, Suite 1400 Dallas, TX 75243-4355		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				Unknown
						Subtotal >	$310,256.66
						Total > (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	

4 continuation sheets attached

B6F (Official Form 6F) (12/07) - Cont.

In re Jeffrey Baron

Case No. 12-37921-SGJ-7 (if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCT #: Fee, Smith, Sharp & Vitullo, LLP Attn: Anthony Vitullo Three Galleria Tower 13155 Noel Rd., Suite 1000 Dallas, TX 75240		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$22,988.60
ACCT #: Friedman & Feiger, L.L.P. Attn: Ryan K. Lurich 5301 Spring Valley Rd., Suite 200 Dallas, TX 75254		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$49,919.00
ACCT #: Gary Lyon Attorney at Law P.O. Box 1227 Anna, TX 75409-1227		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$75,992.22
ACCT #: Hitchcock Evert LLP Attn: John M. Cone 750 North St. Paul St., Suite 1110 Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$10,201.69
ACCT #: Hohmann, Taube & Summers, L.L.P. Attn: Eric J. Taube 100 Congress Ave., 18th Floor Austin, TX 78701		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$39,649.37
ACCT #: Jeffrey T. Hall, Esq. 7242 Main Street Frisco, TX 75034		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$5,000.00

Sheet no. 1 of 4 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal > $203,750.88

Total >

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)

B6F (Official Form 6F) (12/07) - Cont.

In re Jeffrey Baron

Case No. 12-37921-SGJ-7 (if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCT #: Jones, Otjen & Davis Attn: Stephen Jones P.O. Box 472 Enid, OK 73702		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$11,638.52
ACCT #: Joshua Cox, Esq. P.O. Box 2072 Keller, TX 76244		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$625.00
ACCT #: Law Office of Dean W. Ferguson 4715 Breezy Point Dr. Kingwood, TX 77345		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$66,975.00
ACCT #: Law Office of Sidney B. Chesnin 4841 Tremont, Suite 9 Dallas, TX 75246		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$4,952.60
ACCT #: Law Offices of James M. Eckels 7505 John Carpenter Freeway Dallas, TX 75247		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$4,112.50
ACCT #: Michael B. Nelson, Inc. 2500 Old Crow Canyon Rd., Building 200 Suite 225 San Ramon, CA 94583		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$31,085.81
Sheet no. 2 of 4 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal >	$119,389.43
						Total > (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	

B6F (Official Form 6F) (12/07) - Cont.

In re Jeffrey Baron

Case No. 12-37921-SGJ-7 (if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCT #: Ondova Limited Company P.O. Box 11501 Carrollton, TX 75011-1501		-	DATE INCURRED: CONSIDERATION: Unknown REMARKS:				Unknown
ACCT #: Powers Taylor LLP Attn: Mark L. Taylor 8150 North Central Expressway Suite 1575 Dallas, TX 75206		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$78,058.50
ACCT #: Pronske & Patel, P.C. Attn: Gerrit Pronske 2200 Ross Avenue, Suite 5350 Dallas, TX 75201		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$294,033.87
ACCT #: Reyna Hinds & Crandall c/o Jeanne Crandall 35 Sea Winds Lane South Ponte Vedra Beach, FL 32082		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$11,681.84
ACCT #: Robert J. Garrey, P.C. 1201 Elm St., Suite 5200 Dallas, TX 75270		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				$37,500.00
ACCT #: Schepps Law Offices Attn: Gary N. Schepps 5400 LBJ Freeway, Suite 1200 Dallas, TX 75240		-	DATE INCURRED: CONSIDERATION: Attorney Fees REMARKS:				Unknown
Sheet no. 3 of 4 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal >	$421,274.21
						Total > (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	

B6F (Official Form 6F) (12/07) - Cont.

In re **Jeffrey Baron** Case No. **12-37921-SGJ-7** (if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCT #: **Schurig Jetel Beckett Tackett** **Attn: Elizabeth Schurig** **100 Congress Ave., 22nd Floor** **Austin, TX 78701**		-	DATE INCURRED: CONSIDERATION: **Attorney Fees** REMARKS:				**$117,377.81**
ACCT #: **Shaver Law Firm** **Attn: Steven R. Shaver** **301 Town East Tower** **18601 LBJ Freeway** **Mesquite, TX 75150**		-	DATE INCURRED: CONSIDERATION: **Attorney Fees** REMARKS:				**$6,500.00**
ACCT #: **Stromberg Stock, PLLC** **Attn: Mark Stromberg** **Two Lincoln Center** **5420 LBJ Freeway, Suite 300** **Dallas, TX 75240**		-	DATE INCURRED: CONSIDERATION: **Attorney Fees** REMARKS:				**Unknown**
ACCT #: **The Cochell Law Firm** **Attn: Stephen Rudolph Cochell** **7026 Old Katy Rd., Suite 259** **Houston, TX 77024-2125**		-	DATE INCURRED: CONSIDERATION: **Attorney Fees** REMARKS:				**Unknown**
ACCT #: **West & Associates, L.P.** **Attn: Craig A. Capua** **320 South R.L. Thornton Freeway** **Suite 300** **Dallas, TX 75203**		-	DATE INCURRED: CONSIDERATION: **Attorney Fees** REMARKS:				**$41,143.50**

Sheet no. 4 of 4 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal > **$165,021.31**

Total > **$1,219,692.49**

(Use only on last page of the completed Schedule F.)
(Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)

B6G (Official Form 6G) (12/07)

In re **Jeffrey Baron**

Case No. **12-37921-SGJ-7**
(if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases of contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☑ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

B6H (Official Form 6H) (12/07)

In re Jeffrey Baron

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☑ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

B6I (Official Form 6I) (12/07)

In re **Jeffrey Baron** Case No. **12-37921-SGJ-7** (if known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	Dependents of Debtor and Spouse			
	Relationship(s):	Age(s):	Relationship(s):	Age(s):
Single				

Employment:	Debtor	Spouse
Occupation		
Name of Employer		
How Long Employed		
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	$0.00	
2. Estimate monthly overtime	$0.00	
3. SUBTOTAL	**$0.00**	
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes (includes social security tax if b. is zero)	$0.00	
b. Social Security Tax	$0.00	
c. Medicare	$0.00	
d. Insurance	$0.00	
e. Union dues	$0.00	
f. Retirement	$0.00	
g. Other (Specify) _____	$0.00	
h. Other (Specify) _____	$0.00	
i. Other (Specify) _____	$0.00	
j. Other (Specify) _____	$0.00	
k. Other (Specify) _____	$0.00	
5. SUBTOTAL OF PAYROLL DEDUCTIONS	**$0.00**	
6. TOTAL NET MONTHLY TAKE HOME PAY	**$0.00**	
7. Regular income from operation of business or profession or farm (Attach detailed stmt)	$0.00	
8. Income from real property	$0.00	
9. Interest and dividends	$0.00	
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	$0.00	
11. Social security or government assistance (Specify): _____	$0.00	
12. Pension or retirement income	$0.00	
13. Other monthly income (Specify):		
a. _____	$0.00	
b. _____	$0.00	
c. _____	$0.00	
14. SUBTOTAL OF LINES 7 THROUGH 13	**$0.00**	
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	**$0.00**	
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)	**$0.00**	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

B6J (Official Form 6J) (12/07)

IN RE: Jeffrey Baron

Case No. 12-37921-SGJ-7
(if known)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home) a. Are real estate taxes included? ☑ Yes ☐ No b. Is property insurance included? ☑ Yes ☐ No	
2. Utilities: a. Electricity and heating fuel b. Water and sewer c. Telephone d. Other:	
3. Home maintenance (repairs and upkeep) 4. Food 5. Clothing 6. Laundry and dry cleaning 7. Medical and dental expenses 8. Transportation (not including car payments) 9. Recreation, clubs and entertainment, newspapers, magazines, etc. 10. Charitable contributions	
11. Insurance (not deducted from wages or included in home mortgage payments) a. Homeowner's or renter's b. Life c. Health d. Auto e. Other:	
12. Taxes (not deducted from wages or included in home mortgage payments) Specify:	
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan) a. Auto: b. Other: c. Other: d. Other:	
14. Alimony, maintenance, and support paid to others: 15. Payments for support of add'l dependents not living at your home: 16. Regular expenses from operation of business, profession, or farm (attach detailed statement) 17.a. Other: 17.b. Other:	
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	$0.00
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:	
20. STATEMENT OF MONTHLY NET INCOME a. Average monthly income from Line 15 of Schedule I b. Average monthly expenses from Line 18 above c. Monthly net income (a. minus b.)	 $0.00 $0.00 $0.00

B6 Summary (Official Form 6 - Summary) (12/07)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re **Jeffrey Baron**

Case No. **12-37921-SGJ-7**

Chapter **7**

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	$50,060.00		
B - Personal Property	Yes	7	$4,299,409.33		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		$0.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	3		$1,630,500.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	5		$1,219,692.49	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			$0.00
J - Current Expenditures of Individual Debtor(s)	Yes	1			$0.00
	TOTAL	22	$4,349,469.33	$2,850,192.49	

Form 6 - Statistical Summary (12/07)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re **Jeffrey Baron**

Case No. **12-37921-SGJ-7**

Chapter **7**

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11, or 13, you must report all information requested below.

☑ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	**Amount**
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		

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srcochell@cochellfirm.com

ATTORNEY FOR APPELLANT

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

IN RE:	§	
	§	
JEFFREY BARON,	§	**Bankruptcy Case No. 12-37921**
DEBTOR.	§	
	§	

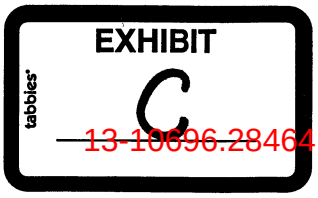
STATEMENT OF ISSUES ON APPEAL AND DESIGNATION OF RECORD

In accordance with Rule 8006 of the Federal Rules of Bankruptcy Procedure, involuntary debtor Jeffrey Baron ("Baron") in the above-captioned matter hereby submits the following Statement of Issues and Designation of Record items to be included on appeal of the bankruptcy court's ***Order for Relief in an Involuntary Case*** (Bankr. Dkt. 240) entered on June 26, 2013 by the Honorable Stacey G. Jernigan, United States Bankruptcy Judge for the Northern District of Texas, Dallas Division.

I.
STATEMENT OF ISSUES

1. Did the bankruptcy court err when it entered an order for relief against Baron in the above-captioned involuntary bankruptcy proceeding?

2. Did the bankruptcy court err in limiting the funds Baron could use from his assets to defend against the involuntary bankruptcy petition?



3. Did the bankruptcy court err in failing to give effect to the Fifth Circuit's mandate in *Netsphere v. Baron* by appointing an interim trustee and issuing its Order for Relief to prevent Baron from having access to his assets?

4. Did the bankruptcy court err in determining that a May 18, 2011 Compromise Order had not been stayed or vacated by the District Court, despite the District Court's rulings on June 18, 2011 and May 29, 2013 staying the payment of claims made by the petitioning creditors?

5. Did the bankruptcy court abuse its discretion in disallowing the two-week statutory stay of its Order for Relief pending an appeal by Baron?

6. Did the bankruptcy court err in failing to require petitioning creditors to file a bond before the appointment of an interim trustee?

7. Did the bankruptcy court err in ruling that the petitioning creditors had standing to bring the involuntary petition, pursuant to section 303(b) of the bankruptcy code?

8. Did the bankruptcy court err in holding that the petitioning creditors did not have claims contingent as to liability or subject to a bona fide dispute as to liability or amount?

9. Did the bankruptcy court err in determining that the petitioning creditors held a judgment against Baron for their claims, in direct contravention of the Fifth Circuit's prior ruling that the petitioning creditors were merely non-judgment creditors?

10. Did the bankruptcy court err when it issued an Order for Relief while a district court receivership was still pending, and where the terms of the receivership prohibited such relief?

11. Did the bankruptcy court err in finding that collateral estoppel barred Baron from establishing a bona fide dispute as to the claims of the Petitioning Creditors when the Fifth

Circuit in *Netsphere v. Baron* determined otherwise, and where those claims and Baron's counterclaims have never been fully litigated?

12. Did the bankruptcy court abuse its discretion when it refused to grant Baron leave to obtain discovery from Petitioning Creditors prior to ruling on its Motion for Summary Judgment?

13. Did the bankruptcy court err when it issued an order for involuntary bankruptcy relief to Petitioning Creditors whom failed to establish the insolvency requirement under section 303(h) of the bankruptcy code?

14. Did the bankruptcy court err in determining Baron failed to pay his debts as they became due in light of the fact that a federal receiver held all of his assets since November 2010?

15. Did the bankruptcy court err or abuse its discretion when it ordered that receivership assets, including those not belonging to Baron, be directly transferred from a Receiver to the bankruptcy trustee in circumvention of a Fifth Circuit order requiring such assets be expeditiously returned to Baron?

16. Whether Baron's due process rights were violated when the bankruptcy court, for example, severely restricted his ability to hire counsel to defend against the involuntary petition for bankruptcy relief?

17. Did the bankruptcy court deny Baron equal protection under the law when, among other things, it applied an attorney fee limitation to Baron during the involuntary petition litigation, where such fees were a fraction of those fees incurred by Petitioning Creditors and where opposing attorneys had no such limitation?

18. Did the bankruptcy court err in failing to individually consider the Petitioning Creditor claims in determining whether there existed a bona fide dispute, as required by 11 U.S.C. 303(b) and *Whitmore v. Arkansas*, 495 US 149, 154 (1990)?

19. Is the bankruptcy court Order for Relief in violation of *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1990), which held that federal courts could not interfere with a debtor claims in determining whether there existed a nonjudgment creditor?

20. Whether an alleged debtor's constitutional rights are violated when a bankruptcy court restricts his access to his property prior to being adjudicated bankrupt?

21. Whether the bankruptcy court prohibited Baron's demand for a jury to determine the merits of the involuntary bankruptcy petition was a violation of the Seventh Amendment?

II.
DESIGNATION OF RECORD

Designation Number	Docket Number - Date	Description of Record
1	Doc 1 - 12/18/2012	Chapter 7 involuntary petition. Fee Amount $306 Re: Jeffrey Baron Filed by Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Dean Ferguson, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall (Pronske, Gerrit)
2	Doc 3 – 12/19/2012	Emergency Motion to appoint trustee Filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (Pronske, Gerrit)
3	Doc 4 – 12/19/2012	Motion for expedited hearing(related documents 3 Motion to appoint trustee) Filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (Pronske, Gerrit)
4	Doc 5 - 12/19/2012	Involuntary summons issued on Jeffrey Baron . (RE: related document(s)1 Chapter 7 involuntary petition. Fee Amount $306 Re: Jeffrey Baron Filed by Pronske & Patel, P.C., Shurig Jetel

		Beckett Tackett, Dean Ferguson, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall) Answer due by 1/9/2013.
5	Doc 8 – 12/20/2012	Order granting motion for expedited hearing (Related Doc# 4)(document set for hearing: 3 Motion to appoint trustee) Entered on 12/20/2012. Hearing to be held on 12/21/2012 at 10:30 AM Dallas Judge Jernigan Ctrm for 3, (Blanco, J.)
6	Doc 10 - 12/20/2012	Witness and Exhibit List filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)3 Emergency Motion to appoint trustee). (Goolsby, Melanie)
7	Doc 12 - 12/21/2013	Standing scheduling order regarding involuntary cases Entered on 12/21/2012. Status Conference to be held on 1/16/2013 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Davis, T.)
8	Doc 16 - 01/07/2013	Emergency Motion for Status Conference Pursuant to Section 105(d) Filed by Creditor Gardere Wynne Sewell LLP Objections due by 1/31/2013. (Attachments: # 1 Proposed Order) (Baker, Evan) Modified docket text on 1/8/2013 (Tello, Chris).
9	Doc 18 - 01/09/2013	(68 pages) Motion for relief from stay Fee amount $176, Filed by Creditor Gardere Wynne Sewell LLP Objections due by 1/23/2013. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D) (Baker, Evan).
10	Doc 19 - 01/09/2013	Motion for expedited hearing(related documents 18 Motion for relief from stay) Filed by Creditor Gardere Wynne Sewell LLP (Baker, Evan)
11	Doc 20 - 01/09/2013	Motion to dismiss case for failure to state a claim upon which relief can be granted and lack of jurisdiction Filed by Alleged Debtor Jeffrey Baron (Rielly, Bill)

12	Doc 21 - 01/09/2013	Motion for a more definite statement filed by Jeffrey Baron. (Rielly, Bill).
13	Doc 22 - 01/09/2013	(11 pgs) Provisional Answer and Counter-Claim to involuntary petition filed by Alleged Debtor Jeffrey Baron . (Rielly, Bill)
14	Doc 23 - 01/09/2013	(13 pgs) Report to the district court in response to the request to the bankruptcy court dated January 4, 2013. (Blanco, J.)
15	Doc 25 - 01/09/2013	Sua Sponte Order Interimly Addressing: (A) Automatic Stay (Section 362) Issues; and (B) Possible Duties of Receiver to Turnover, Account for, and Refrain from Making Distributions of Receivership Property (Section 543) Ordered that the automatic stay is lifted partially and retroactively (to the extent applicable) with further conditions per order. Entered on 1/9/2013. (Moroles, D.)
16	Doc 26 - 01/10/2013	(2 pgs) Withdrawal *of Emergency Motion for Relief from Stay* filed by Creditor Gardere Wynne Sewell LLP (RE: related document(s)18 Motion for relief from stay Fee amount $176,, 19 Motion for expedited hearing(related documents 18 Motion for relief from stay)). (Baker, Evan)
17	Doc 28 - 01/10/2013	Support/supplemental document filed by Creditor Gardere Wynne Sewell LLP (RE: related document(s)16 Motion for leave *Emergency Motion for Status Conference Pursuant to Section 105(d)*). (Baker, Evan)
18	Doc 38 - 01/10/2013	38 (2 pgs) DISTRICT COURT Order ADOPTING BANKRUPTCY COURT'S REPORT. (Ordered by Judge Royal Furgeson on 1/10/2013)Entered on 1/10/2013 (RE: related document(s)23 Report and recommendation). (Whitaker, Sheniqua) (Entered: 01/17/2013)
19	Doc 31 – 1/15/2013	31 (9 pgs) Notice *of Proposed Joint Pre-Conference Statement* filed by Petitioning

		Creditors Dean Ferguson, Jeffrey Hall, Gary G. Lyon, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Robert Garrey (RE: related document(s)12 Standing scheduling order regarding involuntary cases Entered on 12/21/2012. Status Conference to be held on 1/16/2013 at 01:30 PM at Dallas Judge Jernigan Ctrm.). (Goolsby, Melanie) Modified filer on 1/16/2013 (Kerr, S.).
20	Doc 32 – 1/15/2013	32 (2 pgs) Support/supplemental document *Receiver's Report* filed by Interested Party Peter S. Vogel, Receiver (RE: related document(s)13 Notice of hearing). (Fine, Jeffrey)
21	Doc 33 – 1/16/2013	33 (7 pgs) Objection to (related document(s): 3 Emergency Motion to appoint trustee filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall) filed by Alleged Debtor Jeffrey Baron . (Dugan, S.)
22	Doc 34 - 01/16/2013	34 (7 pgs) Motion to continue hearing on (related documents 3 Motion to appoint trustee) Filed by Alleged Debtor Jeffrey Baron (Dugan, S.)
23	Doc 35 - 01/16/2013	35 (7 pgs) Objection to (related document(s): 3 Emergency Motion to appoint trustee filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall) filed by Alleged Debtor Jeffrey Baron . (NOTE: NO ORIGINAL SIGNATURE ON PLEADING) (Dugan, S.)

24	Doc 36 - 01/16/2013	36 (7 pgs) Motion to continue hearing on (related documents 3 Motion to appoint trustee) Filed by Alleged Debtor Jeffrey Baron. (NOTE: NO ORIGINAL SIGNATURE ON PLEADING) (Dugan, S.)
25	Doc 37 - 01/16/2013	37 Trial date set (in the nature of a summary judgment hearing) involuntary petition for 2/13/2013 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Davis, T.) (Entered: 01/17/2013)
26	Doc 39 - 01/17/2013	39 (4 pgs) Order (A) setting involuntary petition for trial hearing and (B) granting interim GAP period relief, along with report and recommendation to the District Court. Entered on 1/17/2013 (RE: related documents 1). Trial Hearing to be held on 2/13/2013 at 01:30 PM Dallas Judge Jernigan Ctrm for 1, (Blanco, J.) Modified Linkage and text on 1/17/2013 (Blanco, J.).
27	Doc 40 - 01/17/2013	40 (4 pgs) Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (Blanco, J.)
28	Doc 43 - 01/17/2013	43 (1 pg) DISTRICT COURT ORDER ADOPTING BANKRUPTCY COURT RECOMMENDATIONS 1175. The Receiver is hereby ORDERED to release $25,000 in cash funds to be used as a retainer by Mr. Jeffrey Baron's bankruptcy attorney of his choosing. (Ordered by Judge Royal Furgeson on 1/17/2013) Entered on 1/17/2013 (RE: related document(s)40 Report and recommendation). Civil Case No. 3:09-CV-988-F (Whitaker, Sheniqua) (Entered: 01/18/2013)
29	Doc 45 - 01/22/2013	45 (4 pgs) Joinder by *David L. Pacione, Petitioning Creditor* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)1 Involuntary petition (chapter 7)). (Pronske, Gerrit)

30	Doc 47 - 01/29/2013	47 (2 pgs) Notice of Appearance and Request for Notice by Mark Stromberg filed by Alleged Debtor Jeffrey Baron. (Stromberg, Mark)
31	Doc 49 - 01/30/2013	49 (12 pgs) Objection to (related document(s): 20 Motion to dismiss case filed by Alleged Debtor Jeffrey Baron, 21 Motion by Jeffrey Baron. filed by Alleged Debtor Jeffrey Baron) filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett. (Goolsby, Melanie)
32	Doc 51 - 02/01/2013	51 (135 pgs) Transcript regarding Hearing Held 01/16/13 RE: MOTION TO CONTINUE HEARING (RE: MOTION TO APPOINT TRUSTEE. TRANSCRIPT RELEASE DATE IS 05/2/2013.
33	Doc 52 - 02/01/2013	52 (1022 pgs; 17 docs) Motion for summary judgment *and Brief in Support* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit J-1 # 12 Exhibit J-2 # 13 Exhibit J-3 # 14 Exhibit J-4 # 15 Exhibit J-5 # 16 Exhibit J-6) (Goolsby, Melanie)
34	Doc 53 - 02/04/2013	53 (4 pgs) Joinder by *Amended Involuntary Petition to change address of Debtor* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)1 Involuntary petition (chapter 7), 45 Joinder). (Pronske, Gerrit)
35	Doc 56 - 02/08/2013	56 (77 pgs; 10 docs) Response opposed to (related document(s): 52 Motion for summary judgment

		and Brief in Support filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione) filed by Alleged Debtor Jeffrey Baron. (Attachments: # 1 02/08/2013 Appendix # 2 Exhibit D1 # 3 Exhibit D2 # 4 Exhibit D3 # 5 Exhibit D4 # 6 Exhibit D5 # 7 Exhibit D6 # 8 Exhibit D7 # 9 Exhibit D9) (Stromberg, Mark)
36	Doc 57 - 02/08/2013	57 (4 pgs) Objection to (related document(s): 52 Motion for summary judgment *and Brief in Support* filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione) filed by Alleged Debtor Jeffrey Baron. (Stromberg, Mark)
37	Doc 58 - 02/08/2013	58 (12 pgs; 2 docs) Motion to continue hearing on (related documents 52 Motion for summary judgment, 54 Hearing set/continued) Filed by Alleged Debtor Jeffrey Baron (Attachments: # 1 Declaration of Mark Stromberg) (Stromberg, Mark)
38	Doc 59 - 02/08/2013	59 (3 pgs) Stipulation by Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett and Alleged Debtor Jeffrey Baron. filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)52 Motion for summary judgment *and Brief in Support*, 55 Response, 56 Response, 57 Objection).

		(Goolsby, Melanie)
39	Doc 60 - 02/12/2013	60 (17 pgs) Notice *of Fifth Circuit Directive and Request to Preserve Status Quo of Receivership Pending Fifth Circuit Action* filed by Interested Party Peter S. Vogel, Receiver. (Fine, Jeffrey)
40	Doc 61 - 02/12/2013	61 (26 pgs) Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses Pursuant to the Interim Order [D.E. 39]* Filed by Interested Party Peter S. Vogel, Receiver (Fine, Jeffrey)
41	Doc 62 - 02/12/2013	62 (26 pgs) Support/supplemental document *Receiver's Status Report and Wind Down Recommendations* filed by Interested Party Peter S. Vogel, Receiver (RE: related document(s)32 Support/supplemental document). (Fine, Jeffrey)
42	Doc 63 - 02/12/2013	63 (8 pgs) Motion to pay *Request to Clarify Receiver's Authority to Pay Counsel* Filed by Interested Party Peter S. Vogel, Receiver (Fine, Jeffrey)
43	Doc 64 - 02/12/2013	64 (6 pgs) Response opposed to (related document(s): 57 Objection filed by Alleged Debtor Jeffrey Baron) filed by Petitioning Creditors Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett. (Goolsby, Melanie)
44	Doc 67 - 02/14/2013	67 (3 pgs; 2 docs) Disclosure of compensation of attorney for debtor . Filed by Alleged Debtor Jeffrey Baron. (Attachments: # 1 Exhibit) (Stromberg, Mark) 02/15/2013
45	Doc 68 - 05/15/2013	68 (3 pgs) Support/supplemental document*Receiver's Request for Joint Status Conference in the District Court and the Bankruptcy Court or, Alternatively, For Status Conference in the District Court* filed by Interested Party Peter S. Vogel,

		Receiver (RE: related document(s)62 Support/supplemental document). (Fine, Jeffrey)
46	Doc 70 - 02/20/2013	70 (7 pgs) Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses (Court Reporters) Pursuant to the Interim Order [D.E. 39]* Filed by Interested Party Peter S. Vogel, Receiver (Fine, Jeffrey) Modified to include termination date on 3/20/2013 (Blanco, J.).
47	Doc 71 - 02/21/2013	71 (14 pgs; 4 docs) Application to employ Rochelle McCullough, LLP as Attorney Filed by Interim Trustee John H. Litzler (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (McCullough, Kevin)
48	Doc 72 - 02/21/2013	72 (104 pgs) Transcript regarding Hearing Held 02/13/13 RE: TRIAL HEARING (RE: related documents 52). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/22/2013. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber eScribers, Telephone number 973-406-2250. (RE: related document(s) Trial held on 2/13/2013. (RE: related document(s)52 Motion for summary judgment *and Brief in Support* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett) Appearances: G. Pronske and M. Goolsby for Petitioning Creditors; D. Ferguson, Petitioning Creditor; M. Stromberg and A. Busch for Alleged Debtor; R. Urbanik for Ondova Chapter 11 Trustee; J. Fine for Receiver P. Vogel (with P. Vogel); M. Sutherland for Carrington Coleman; S. Cochell (telephonically) as counsel to J. Baron in connection with Ondova. Nonevidentiary hearing

		(summary judgment evidence only). Court recessed and will reconvene on 2/20/13 at 1:30 pm to give a bench ruling on sole issue of whether Petitioning Creditors have claims not the subject of a bona fide dispute as a matter of law. (Harden, D.)). Transcript to be made available to the public on 05/22/2013. (Kurtzer, Benjamin)
49	Doc 73 - 02/21/2013	73 (3 pgs) Order (1) abating section 303 trial in involuntary case of Jeffery Baron: (2) granting request for joint status conference: and (3) scheduloing (A) joint status conference and (B) heasring on various motions filed by the receiver Entered on 2/21/2013 (RE: related document(s)61 Motion to pay filed by Interested Party Peter S. Vogel, Receiver, 63 Motion to pay filed by Interested Party Peter S. Vogel, Receiver, 70 Motion to pay filed by Interested Party Peter S. Vogel, Receiver 1 Involuntary petition). Status Conference to be held on 3/19/2013 at 10:30 AM at Dallas Judge Jernigan Ctrm. (Blanco, J.)
50	Doc 76 - 02/25/2013	76 (8 pgs; 3 docs) Application to employ Litzler Segner Shaw & McKenney, LLP as Accountant Filed by Interim Trustee John H. Litzler (Attachments: # 1 Exhibit A # 2 Service List) (Litzler, John)
51	Doc 77 - 03/01/2013	77 (1 pg) Proposed exhibit to order *Clarifying Application of Automatic Stay to Certain Appeals* filed by Interested Party Daniel J. Sherman (RE: related document(s) Proposed Order (No Document Attached to Email)). (Urbanik, Raymond)
52	Doc 78 - 03/04/2013	78 (16 pgs; 3 docs) Motion to draw down retainer in the amount of $28592.51 Filed by Alleged Debtor Jeffrey Baron Objections due by 3/25/2013. (Attachments: # 1 Cover Sheet # 2 Exhibit A) (Stromberg, Mark)
53	Doc 79 - 03/05/2013	79 (10 pgs; 3 docs) Motion to draw down retainer in the amount of $9435.25 Filed by Alleged Debtor Jeffrey Baron Objections due by

		3/19/2013. (Attachments: # 1 Cover Sheet # 2 Exhibit A) (Albert, Christopher)
54	Doc 81 - 03/08/2013	81 (4 pgs) Order clarifying application of automatic stay to certain appeals Entered on 3/8/2013. (Whitaker, Sheniqua)
55	Doc 82 - 03/08/2013	82 (10 pgs) Response opposed to (related document(s): 61 Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses Pursuant to the Interim Order [D.E. 39]* filed by Interested Party Peter S. Vogel, Receiver, 63 Motion to pay *Request to Clarify Receiver's Authority to Pay Counsel* filed by Interested Party Peter S. Vogel, Receiver) filed by Alleged Debtor Jeffrey Baron. (Stromberg, Mark)
56	Doc 83 - 03/08/2013	83 (12 pgs) Response opposed to (related document(s): 60 Notice (generic) filed by Interested Party Peter S. Vogel, Receiver) filed by Creditor Gardere Wynne Sewell LLP. (Roberson, Richard)
57	Doc 84 - 03/08/2013	84 (12 pgs) Response opposed to (related document(s): 61 Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses Pursuant to the Interim Order [D.E. 39]* filed by Interested Party Peter S. Vogel, Receiver, 63 Motion to pay *Request to Clarify Receiver's Authority to Pay Counsel* filed by Interested Party Peter S. Vogel, Receiver) filed by Creditor Gardere Wynne Sewell LLP. (Roberson, Richard)
58	Doc 85 - 03/08/2013	85 (9 pgs) Objection to (related document(s): 61 Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses Pursuant to the Interim Order [D.E. 39]* filed by Interested Party Peter S. Vogel, Receiver, 63 Motion to pay *Request to Clarify Receiver's Authority to Pay Counsel* filed by Interested Party Peter S. Vogel, Receiver) filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP,

		Pronske & Patel, P.C., Shurig Jetel Beckett Tackett. (Goolsby, Melanie)
59	Doc 86 - 03/08/2013	86 (20 pgs) Response opposed to (related document(s): 61 Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses Pursuant to the Interim Order [D.E. 39]* filed by Interested Party Peter S. Vogel, Receiver) filed by Interested Party Daniel J. Sherman. (Urbanik, Raymond)
60	Doc 87 - 03/08/2013	87 (6 pgs) Response opposed to (related document(s): 63 Motion to pay *Request to Clarify Receiver's Authority to Pay Counsel* filed by Interested Party Peter S. Vogel, Receiver) filed by Interested Party Daniel J. Sherman. (Urbanik, Raymond)
61	Doc 88 -03/08/2013	88 (8 pgs) Response opposed to (related document(s): 60 Notice (generic) filed by Interested Party Peter S. Vogel, Receiver) filed by Interested Party Daniel J. Sherman. (Urbanik, Raymond)
62	Doc 89 - 03/08/2013	89 (9 pgs) Response to Receiver's Status Report and Wind Down Recommendations, 62 filed by Interested Party Daniel J. Sherman. (Urbanik, Raymond) Modified to create linkage on 3/11/2013 (Bibbs, P.). Related document(s) 62 Support/supplemental document filed by Interested Party Peter S. Vogel, Receiver. Modified on 3/11/2013 (Bibbs, P.).
63	Doc 90 - 03/13/2013	90 (2 pgs) Notice of hearing filed by Alleged Debtor Jeffrey Baron (RE: related document(s)78 Motion to draw down retainer in the amount of $28592.51 Filed by Alleged Debtor Jeffrey Baron Objections due by 3/25/2013. (Attachments: # 1 Cover Sheet # 2 Exhibit A)). Hearing to be held on 4/3/2013 at 09:30 AM Dallas Judge Jernigan Ctrm for 78, (Stromberg, Mark)
64	Doc 92 - 03/14/2013	92 (4 pgs) Objection to (related document(s): 71 Application to employ Rochelle McCullough, LLP as Attorney filed by Interim Trustee John H.

		Litzler, 76 Application to employ Litzler Segner Shaw & McKenney, LLP as Accountant filed by Interim Trustee John H. Litzler) filed by Petitioning Creditors Dean Ferguson, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett. (Goolsby, Melanie)
65	Doc 94 - 03/15/2013	94 (24 pgs) Witness and Exhibit List *re March 19, 2013 hearings* filed by Interested Party Peter S. Vogel, Receiver (RE: related document(s) 61 Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses Pursuant to the Interim Order [D.E. 39]*, 63 Motion to pay *Request to Clarify Receiver's Authority to Pay Counsel*, 70 Motion to pay *Receiver's Expedited Application for Payment of Receivership Expenses (Court Reporters) Pursuant to the Interim Order [D.E. 39]*). (Fine, Jeffrey)
66	Doc 95 - 03/18/2013	95 (51 pgs) Omnibus Response opposed to (related document(s): 85 Objection filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione, 89 Objection filed by Interested Party Daniel J. Sherman) filed by Interested Party Peter S. Vogel, Receiver. (Fine, Jeffrey)
67	Doc 96 -03/18/2013	96 (4 pgs) Order: (A) CONTINUING TO 4/4/13 AT 2:30 PM THE JOINT STATUSCONFERENCE AND HEARINGS SET FOR 3/19/13 AT 10:30 AM ON VARIOUSMOTIONS FILED BY THE RECEIVER; (B) REQUIRING MANDATORY, GOODFAITH, IN-PERSON GLOBAL SETTLEMENT CONFERENCES AMONG PARTIES ANDLAWYERS DURING NEXT TWO WEEKS; (C) AUTHORIZING

		PAYMENT OF COURTREPORTER FEES; AND (D) ADDRESSING CERTAIN MISCELLANEOUS ISSUES. Granting Second application for payment of receivership expenses (related document: 70 Motion) Entered on 3/18/2013 (RE: related document(s)61 Motion to pay filed by Interested Party Peter S. Vogel, Receiver, 62 Support/supplemental document filed by Interested Party Peter S. Vogel, Receiver, 63 Motion to pay filed by Interested Party Peter S. Vogel, Receiver, 68 Support/supplemental document filed by Interested Party Peter S. Vogel, Receiver, 70 Motion to pay filed by Interested Party Peter S. Vogel, Receiver). Hearing to be held on 4/4/2013 at 02:30 PM Dallas Judge Jernigan Ctrm for 61 and for 68 and for 62 and for 70 and for 63, (Blanco, J.) Modified on 3/20/2013 (Blanco, J.).
68	Doc 97 - 03/18/2013	97 (38 pgs; 3 docs) Response opposed to (related document(s): 85 Objection filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione) filed by Interested Party Peter S. Vogel, Receiver. (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B) (Fine, Jeffrey)
69	Doc 99 - 03/29/2013	99 (2 pgs) Notice *Report Regarding Court-Ordered Settlement Conferences* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)96 Order: (A) CONTINUING TO 4/4/13 AT 2:30 PM THE JOINT STATUS CONFERENCE AND HEARINGS SET FOR 3/19/13 AT 10:30 AM ON VARIOUS MOTIONS FILED BY THE RECEIVER; (B) REQUIRING MANDATORY, GOOD FAITH, IN-PERSON GLOBAL SETTLEMENT CONFERENCES AMONG PARTIES AND LAWYERS DURING NEXT TWO WEEKS; (C)

		AUTHORIZING PAYMENT OF COURT REPORTER FEES; AND (D) ADDRESSING CERTAIN MISCELLANEOUS ISSUES. Granting Second application for payment of receivership expenses (related document: 70 Motion) Entered on 3/18/2013 (RE: related document(s)61 Motion to pay filed by Interested Party Peter S. Vogel, Receiver, 62 Support/supplemental document filed by Interested Party Peter S. Vogel, Receiver, 63 Motion to pay filed by Interested Party Peter S. Vogel, Receiver, 68 Support/supplemental document filed by Interested Party Peter S. Vogel, Receiver, 70 Motion to pay filed by Interested Party Peter S. Vogel, Receiver). Hearing to be held on 4/4/2013 at 02:30 PM Dallas Judge Jernigan Ctrm for 61 and for 68 and for 62 and for 70 and for 63, (Blanco, J.) Modified on 3/20/2013 (Blanco, J.).). (Stromberg, Mark)
70	Doc 100 - 03/29/2013	100 (2 pgs) Notice *Joinder in District Court Filing, Docket No. 1214* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)78 Motion to draw down retainer in the amount of $28592.51 Filed by Alleged Debtor Jeffrey Baron Objections due by 3/25/2013. (Attachments: # 1 Cover Sheet # 2 Exhibit A)). (Stromberg, Mark)
71	Doc 101 - 04/01/2013	101 (9 pgs; 2 docs) Motion for leave *to Seek Limited Relief from Order Clarifying Application of Stay to Certain Appeals* Filed by Alleged Debtor Jeffrey Baron Objections due by 4/25/2013. (Attachments: # 1 Exhibit A) (Stromberg, Mark)
72	Doc 102 - 04/01/2013	102 (2 pgs) Notice of appeal *APPEAL OF ORDER:*. Fee Amount $298 filed by Alleged Debtor Jeffrey Baron (RE: related document(s)96 Order to set hearing). Appellant Designation due by 04/15/2013. (Stromberg, Mark)

73	Doc 107 - 04/02/2013	107 (3 pgs) ORDER NOTIFYING PARTIES AND COUNSEL OF AGENDA FOR STATUS CONFERENCE AND HEARING SCHEDULED APRIL 4, 2013 AT 2:30 P.M. BEFORE DISTRICT JUDGE FURGESON AND BANKRUPTCY JUDGE JERNIGAN. Entered on 4/2/2013. (Moroles, D.)
74	Doc 109 - 04/03/2013	109 (5 pgs) Motion for Order directing Receiver to issue retainer for fees and expenses to Edwin E. Wright, III by Alleged Debtor Jeffrey Baron . (Mathews, M.) Modified text on 4/4/2013 (Mathews, M.). (Entered: 04/04/2013)
75	Doc 111 - 04/05/2013	111 (2 pgs) Partial Summary Judgment order. (related document # 52) Entered on 4/5/2013. (Blanco, J.)
76	Doc 112 - 04/05/2013	112 (2 pgs) Order denying motion to dismiss for lack of jurisdiction . (related document # 20) Entered on 4/5/2013. (Blanco, J.)
77	Doc 113 - 04/05/2013	113 (3 pgs) Order: (A) Granting in part, receiver's expedited application for payment of receivership expenses pursuant to the interim order and (B) Recommending to District Court that it adopt and accept this order (related document # 61) Entered on 4/5/2013. (Rielly, Bill)
78	Doc 114 - 04/05/2013	114 (3 pgs) Scheduling Order regarding discovery and trial on remaining section 303 issues. Entered on 4/5/2013 (RE: related document(s)2 Notice of appearance filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Robert Garrey, Creditor Michael B. Nelson). Trial date set for 5/22/2013 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Blanco, J.)
79	Doc 115 - 04/05/2013	115 (4 pgs) SUA SPONTE ORDER MODIFYING AUTOMATIC STAY (SECTION 362)TO PERMIT ADJUDICATION OF ALLOWABLE RECEIVERSHIP FEES AND EXPENSES IN DISTRICT COURT Entered on 4/5/2013. (Blanco, J.)

80	Doc 116 - 04/05/2013	116 (2 pgs) Application to employ Leif M. Clark as Mediator Filed by Interested Party Daniel J. Sherman (Urbanik, Raymond)
81	Doc 119 - 04/08/2013	119 (1 pg) Notice *of Vacation Letter* filed by Alleged Debtor Jeffrey Baron. (Stromberg, Mark)
82	Doc 120 - 04/08/2013	120 (1 pg) DISTRICT COURT ORDER ADOPTING AND ACCEPTING BANKRUPTCY COURT ORDER: Concurring in all matters, this Court hereby ADOPTS and ACCEPTS the Bankruptcy Court's Order in its entirety (Ordered by Judge Royal Furgeson on 4/8/2013). Entered on 4/8/2013 (RE: related document(s)113 Order on motion to pay). Civil Case No. 3:09-CV-0988-F (Whitaker, Sheniqua) (Entered: 04/09/2013)
83	Doc 121 - 04/09/2013	121 (3 pgs) Order directing mediation. Entered on 4/9/2013 (RE: related document(s)116 Application to employ filed by Interested Party Daniel J. Sherman). (Blanco, J.)
84	Doc 122 - 04/12/2013	122 (5 pgs) Motion for order to show cause *Why WIPO and ICANN Should not Be Held in Contempt* Filed by Interested Party Peter S. Vogel, Receiver (Fine, Jeffrey)
85	Doc 123 - 04/15/2013	123 (2 pgs) Statement of issues on appeal, filed by Alleged Debtor Jeffrey Baron (RE: related document(s)102 Notice of appeal). (Cochell, Stephen)
86	Doc 124 - 04/15/2013	124 (17 pgs) Appellant designation of contents for inclusion in record on appeal filed by Alleged Debtor Jeffrey Baron (RE: related document(s)102 Notice of appeal, 123 Statement of issues on appeal). Appellee designation due by 04/29/2013. (Cochell, Stephen)

87	Doc 125 - 04/16/2013	125 Request for transcript (ruling only) regarding a hearing held on 2/20/2013. The requested turn-around time is 7-day expedited (Harden, D.)
88	Doc 127 - 04/17/2013	127 (34 pgs; 2 docs) Notice *of Gardere's Final Fee Application for Allowance of Fees and Expenses* filed by Creditor Gardere Wynne Sewell LLP (RE: related document(s)115 SUA SPONTE ORDER MODIFYING AUTOMATIC STAY (SECTION 362)TO PERMIT ADJUDICATION OF ALLOWABLE RECEIVERSHIP FEES AND EXPENSES IN DISTRICT COURT Entered on 4/5/2013. (Blanco, J.)). (Attachments: # 1 Exhibit A) (Baker, Evan)
89	Doc 128 - 04/17/2013	128 (104 pgs; 10 docs) Application for compensation *for Dykema Gossett PLLC/* for Jeffrey R Fine, Other Professional, Period: 12/28/2012 to 3/31/2013, Fee: $351447.50, Expenses: $3300.19. Filed by Attorney Jeffrey R Fine (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I) (Fine, Jeffrey)
90	Doc 136 - 04/18/2013	136 (16 pgs) Amended appellant designation of contents for inclusion in record on appeal filed by Alleged Debtor Jeffrey Baron (RE: related document(s)124 Appellant designation). (Blanco, J.) (Entered: 04/22/2013)
91	Doc 130 - 04/19/2013	130 (4 pgs) Motion for recommendation to District Court to disburse funds on prior order authorizing Jeffrey Baron's purchase of car filed by Jeffrey Baron (RE: Related document(s) 39 Order to set hearing) (Rielly, Bill).
92	Doc 132 - 04/19/2013	132 (1 pg) Letter from the court regarding mediation before Retired Judge Leif Clark (RE: related document(s)121 Order directing mediation. Entered on 4/9/2013 (RE: related document(s)116 Application to employ filed by

		Interested Party Daniel J. Sherman). (Blanco, J.)) (Davis, T.)
93	Doc 133 - 04/19/2013	133 (14 pgs) Notice of appeal *by Jeffrey Baron*. Fee Amount $298 filed by Alleged Debtor Jeffrey Baron (RE: related document(s)111 Order on motion for summary judgment). Appellant Designation due within 14 days of the entry of an order ruling on the motion for leave to appeal. (Cochell, Stephen) MODIFIED linkage on 4/22/2013 (Whitaker, Sheniqua). MODIFIED text on 4/25/2013 (Whitaker, Sheniqua). 04/19/2013 141 (14 pgs) Notice of appeal . Fee Amount $298 filed by Alleged Debtor Jeffrey Baron (RE: related document(s)112 Order on motion to dismiss case). Appellant Designation due within 14 days of the entry of an order ruling on the motion for leave to appeal. (Whitaker, Sheniqua) MODIFIED text on 4/25/2013 (Whitaker, Sheniqua). (Entered: 04/22/2013)
94	Doc 143 - 04/22/2013	143 (6 pgs) Motion for leave to appeal *Order Denying Jeffrey Baron's Motion to Dismiss and Order Granting Partial Summary Judgment* (related document(s): 133 Notice of appeal filed by Alleged Debtor Jeffrey Baron, 141 Notice of appeal filed by Alleged Debtor Jeffrey Baron) Filed by Alleged Debtor Jeffrey Baron Objections due by 5/6/2013. (Cochell, Stephen)
95	Doc 145 - 04/23/2013	145 Transcript regarding Hearing Held 02/20/13 RE: BENCH RULING MOTION FOR SUMMARY JUDGMENT (Doc. 52). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/22/2013. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber eScribers, Telephone number 973- 406-2250.

		(RE: related document(s) Bench ruling held on 2/20/2013. (RE: related document(s)52 Motion for summary judgment *and Brief in Support* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett) Appearances: M. Stromberg and A. Busch for J. Baron; G. Pronske and M. Goolsby for Petitioning Creditors; R. Urbanik and R. Hunt for D. Sherman (Ondova Chapter 11 Trustee); J. Fine for Receiver P. Vogel; S. Obenhaus for Gardere firm; M. Sutherland for Carrington firm (appearing in connection with Ondova case); L. Lambert for U.S. Trustee; S. Cochell (telephonically) for J. Baron in connection with Ondova case; D. Ferguson (telephonically) for himself. Nonevidentiary hearing. Court announced bench ruling, determining, as a matter of law, that Petitioning Creditors claims are not the subject of a bona fide dispute in light of the unstayed District Court Order of 5/18/11. Mr. Pronske to upload form of order/partial summary judgment on this sole issue. All other Section 303 issues are stayed/abated through at least 3/19/13 at 10:30 am, at which time this court will hold a hearing on various motions filed by Peter Vogel and a status/scheduling conference to determine further scheduling of argument/evidence on Involuntary Petition. Court to hold joint status conference with District Judge Furgeson. (Harden, D.)). Transcript to be made available to the public on 07/22/2013. (Kurtzer, Benjamin)
96	04/23/2013	147 (6 pgs) Amended notice of appeal filed by Alleged Debtor Jeffrey Baron (RE: related document(s)133 Notice of appeal, 141 Notice of appeal). (Cochell, Stephen) Modified text only on 4/23/2013 (Whitaker, Sheniqua).
97	Doc 153 - 04/24/2013	153 (31 pgs) DISTRICT COURT Opinion of USCA (certified copy) in accordance with USCA judgment re 227 Notice of Appeal, filed by

		Novo Point LLC, Quantec LLC, 814 Notice of Appeal, filed by Novo Point LLC, Jeffrey Baron, Gary Schepps, Quantec LLC, 759 Notice of Appeal,, filed by Novo Point LLC, Jeffrey Baron, Gary Schepps, Quantec LLC, 136 Notice of Appeal, filed by Jeffrey Baron, 449 Notice of Appeal filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, 1034 Notice of Appeal filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, 982 Notice of Appeal filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, 908 Notice of Appeal filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, 340 Notice of Appeal filed by Jeffrey Baron, 1181 Notice of Appeal filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, 614 Notice of Appeal filed by Carrington Coleman Sloman & Blumenthal, LLP, 1080 Notice of Appeal filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, 576 Notice of Appeal filed by Novo Point LLC, Jeffrey Baron, Quantec LLC, 341 Notice of Appeal filed by Novo Point LLC, Quantec LLC. (RE: related document(s)23 Report and recommendation). Civl Case No. 3:09-CV-0988-F. Circuit Court Case No. 10-11202 (Whitaker, Sheniqua) (Entered: 05/02/2013) 04/25/2013
98	Doc 154 - 05/03/2013	154 (12 pgs) Appellant designation of contents for inclusion in record on appeal filed by Alleged Debtor Jeffrey Baron (RE: related document(s)133 Notice of appeal). Appellee designation due by 05/17/2013. (Cochell, Stephen)
99	Doc 155 - 05/03/2013	155 (12 pgs) Appellant designation of contents for inclusion in record on appeal filed by Alleged Debtor Jeffrey Baron (RE: related document(s)141 Notice of appeal). Appellee designation due by 05/17/2013. (Cochell, Stephen)
100	Doc 156 - 05/03/2013	156 (4 pgs) Statement of issues on appeal, filed by Alleged Debtor Jeffrey Baron (RE:

		related document(s)133 Notice of appeal). (Cochell, Stephen)
101	Doc 157 - 05/03/2013	157 (4 pgs) Statement of issues on appeal, filed by Alleged Debtor Jeffrey Baron (RE: related document(s)141 Notice of appeal). (Cochell, Stephen)
102	Doc 158 - 05/03/2013	158 (4 pgs) Statement of issues on appeal, filed by Alleged Debtor Jeffrey Baron (RE: related document(s)156 Statement of issues on appeal, 157 Statement of issues on appeal). (Cochell, Stephen)
103	Doc 159 - 05/03/2013	159 (12 pgs) Amended appellant designation of contents for inclusion in record on appeal filed by Alleged Debtor Jeffrey Baron (RE: related document(s)154 Appellant designation, 155 Appellant designation). (Cochell, Stephen)
104	Doc 161 - 05/06/2013	161 (8 pgs) Objection to (related document(s): 143 Motion for leave to appeal *Order Denying Jeffrey Baron's Motion to Dismiss and Order Granting Partial Summary Judgment* (related document(s): 133 Notice of appeal filed by Alleged Debtor Jeffrey Baron, 141 Notice of appeal filed by Alleg filed by Alleged Debtor Jeffrey Baron) filed by Petitioning Creditors Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett. (Goolsby, Melanie) 05/07/2013
105	Doc 209 - 05/07/2013	206 (9 pgs) Notice of transmittal: 3:13-CV-1746-L (RE: related document(s)133 Notice of appeal (RE: related document(s)111 Order on motion for summary judgment). 143 Motion for leave to appeal) (Blanco, J.) (Entered: 05/15/2013)
106	Doc 207 - 05/07/2013	207 (9 pgs) Notice of transmittal: 3:13-CV-1745-N (RE: related document(s)141 Notice of appeal . (RE: related document(s)112 Order on motion to dismiss case). 143 Motion for

		leave to appeal*Order Denying Jeffrey Baron's Motion to Dismiss and Order Granting Partial Summary Judgment). (Blanco, J.) (Entered: 05/15/2013)*
107	Doc 164 - 05/10/2013	164 (2 pgs) Declaration re: *Shrull Altman LLP* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Stromberg, Mark)
108	Doc 165 - 05/10/2013	165 (3 pgs; 2 docs) Declaration re: *Advanced Foot and Ankle Care* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
109	Doc 166 - 05/10/2013	166 (3 pgs; 2 docs) Declaration re: *Farmers Insurance Company* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
110	Doc 167 - 05/10/2013	167 (8 pgs; 2 docs) Declaration re: *J Kent Herndon DDS* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
111	Doc 169 - 05/10/2013	169 (4 pgs; 2 docs) Declaration re: *Lee Eye Surgery Center* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
112	Doc 170 - 05/10/2013	170 (4 pgs; 2 docs) Declaration re: *North Dallas Otolaryngology Consultants* filed by 05/10/2013 Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
113	Doc 171 - 05/10/2013	171 (3 pgs; 2 docs) Declaration re: *OrthoTexas Physicians and Surgeons, PLLC* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)

114	Doc 172 - 05/10/2013	172 (3 pgs; 2 docs) Declaration re: *Parkhaven Dental* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
115	Doc 173 - 05/10/2013	173 (3 pgs; 2 docs) Declaration re: *Texas Orthopaedic Assoc* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
116	Doc 174 - 05/10/2013	174 (9 pgs; 2 docs) Declaration re: *Texas Health Physician Group* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
117	Doc 175 - 05/10/2013	175 (7 pgs; 3 docs) Declaration re: *TXU Energy* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit # 2 Exhibit) (Stromberg, Mark)
118	Doc 176 - 05/10/2013	176 (3 pgs; 2 docs) Declaration re: *Trinity Meadows Association* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
119	Doc 177 - 05/10/2013	177 (3 pgs; 2 docs) Declaration re: *Trinity Meadows Association* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark).
120	Doc 178 - 05/10/2013	178 (58 pgs) Declaration re: *Gerrit M. Pronske* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing. MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).

121	Doc 179 - 5/10/2013	179 (580 pgs) Declaration re: *Elizabeth M. Schurig* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
122	Doc 180 - 05/10/2013	180 (44 pgs) Declaration re: *Greggory A. Teeter* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 05/10/2013 Order to set hearing). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
123	Doc 181 - 05/10/2013	181 (38 pgs) Declaration re: *Stan Broome* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
124	Doc 182 - 05/10/2013	182 (12 pgs) Declaration re: *Dean W. Ferguson* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
125	Doc 183 - 05/10/2013	183 (3 pgs) Declaration re: *J. Michael Sutherland* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing). (Goolsby, Melanie).

		MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
126	Doc 184 - 05/10/2013	184 (19 pgs) Declaration re: *Gary G. Lyon* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
127	Doc 185 - 05/10/2013	185 (15 pgs) Declaration re: *Robert J. Garrey* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett. (Related document(s) 114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
128	Doc 186 - 05/10/2013	186 (50 pgs) Declaration re: *Mark L. Taylor* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
129	Doc 187 - 05/10/2013	187 (36 pgs) Declaration re: *Anthony Vitullo* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
130	Doc 188 - 05/10/2013	188 (84 pgs) Declaration re: *Ryan K. Lurich* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G.

		Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: Related document(s) 114 Order to set hearing)(Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
131	Doc 189 - 05/10/2013	189 (5 pgs) Declaration re: *Jeffrey T. Hall* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
132	Doc 190 - 05/10/2013	190 (32 pgs) Declaration re: *David L. Pacione* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
133	Doc 191 - 05/10/2013	191 (51 pgs) Declaration re: *John M. Cone* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
134	Doc 193 - 05/10/2013	193 (25 pgs) Declaration re: *James M. Eckels* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).

135	Doc 194 - 05/10/2013	194 (23 pgs) Declaration re: *Stephen Jones* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
136	Doc 195 - 05/10/2013	195 (6 pgs) Declaration re: *Joshua Cox* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
137	Doc 196 - 05/10/2013	196 (34 pgs) Declaration re: *Michael B. Nelson* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
138	Doc 197 - 05/10/2013	197 (9 pgs) Declaration re: *Jeanne Crandall* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.)
139	Doc 198 - 05/10/2013	198 (15 pgs) Declaration re: *Steven R. Shaver* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114

		Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
140	Doc 199 - 05/10/2013	199 (11 pgs) Declaration re: *Sidney B. Chesnin* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
141	Doc 200 - 05/10/2013	200 (57 pgs) Declaration re: *Craig A. Capua* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)114 Order to set hearing). (Goolsby, Melanie). MODIFIED to Correct Linkage on 5/13/2013 (Dugan, S.).
142	Doc 201 - 05/13/2013	201 (7 pgs; 2 docs) Declaration re: *Las Colinas Federal Credit Union* filed by Alleged Debtor Jeffrey Baron (RE: related document(s)114 Order to set hearing). (Attachments: # 1 Exhibit) (Stromberg, Mark)
143	Doc 203 - 05/14/2013	203 (3 pgs) Response opposed to (related document(s): 161 Objection filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David 05/14/2013 L. Pacione) filed by Alleged Debtor Jeffrey Baron. (Cochell, Stephen)
144	Doc 204 - 05/15/2013	204 (2 pgs) Amended Response opposed to (related document(s): 161 Objection filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett,

		Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione) filed by Alleged Debtor Jeffrey Baron. (Cochell, Stephen) 05/15/2013
145	Doc 205 - 05/15/2013	205 (7 pgs; 3 docs) Amended Response opposed to (related document(s): 161 Objection filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione) filed by Alleged Debtor Jeffrey Baron. (Attachments: # 1 Affidavit of Counsel Regarding Response to Petitioning Creditors Objection to Jeffrey Baron's Request for Leave to Appeal # 2 Affidavit of Counsel Regarding Response to Petitioning Creditors' Objection to Jeffrey Baron's Request for Leave to Appeal) (Cochell, Stephen)
146	Doc 208 - 05/17/2013	208 (3 pgs) Appellee designation of contents for inclusion in record of appeal filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)123 Statement of issues on appeal, 133 Notice of appeal, 141 Notice of appeal). (Goolsby, Melanie). Modified LINKAGE on 6/17/2013 (Blanco, J.). 05/20/2013
147	Doc 210 - 05/20/2013	210 (3 pgs) Motion for expedited hearing (related documents Related document(s) 212 Motion to Clarify order filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett. (Pronske, Gerrit) Modified to correct link on 5/22/2013 (Abell, S).

148	Doc 211 - 05/20/2013	211 (35 pgs; 2 docs) Motion for Payment of Attorney's Fees of Edwin E. Wright, III, and Motion to Lift Stay, filed by Jeffrey Baron . (Attachments: # 1 Proposed Order) (Zisk, B) MODIFIED To Correct File Date on 5/21/2013 (Zisk, B). (Entered: 05/21/2013)
149	Doc 212 - 05/20/2013	212 (4 pgs) WITHDRAWN BY 215; Motion to Clarify order filed by Petitioning Creditors Dean Ferguson , Robert Garrey , Jeffrey Hall , Gary G. Lyon , David L. Pacione, Powers Taylor, LLP , Pronske & Patel, P.C. , Shurig Jetel Beckett Tackett . (RE: related document(s)115 SUA SPONTE ORDER MODIFYING AUTOMATIC STAY (SECTION 362)TO PERMIT ADJUDICATION OF ALLOWABLE RECEIVERSHIP FEES AND EXPENSES IN DISTRICT COURT Entered on 4/5/2013. (Blanco, J.)) (Abell, S) Modified on 5/31/2013 (Holland, K.). (Entered: 05/22/2013)
150	Doc 218 - 06/03/2013	218 (1 pg) DISTRICT COURT Court Request for Recusal: Chief Judge Sidney A Fitzwater recused. Pursuant to instruction in Special Order 3-249, the Clerk has reassigned the case to Judge Sam A Lindsay for all further proceedings. Future filings should indicate the case number as: 3:09-cv-0988-L.(RE: related document(s)23 Report to the district court in response to the request to the bankruptcy court dated January 4, 2013. (Blanco, J.)) (Whitaker, Sheniqua) (Entered: 06/10/2013)
151	Doc 219 - 06/12/2013	219 (4 pgs) Witness and Exhibit List *for Involuntary Trial on June 17, 2013* filed by Alleged Debtor Jeffrey Baron (RE: related document(s) 1 Involuntary petition (chapter 7) filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Alleged Debtor Jeffrey Baron, Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall).

		Modified linkage on 6/13/2013 (Rielly, Bill).
152	Doc 220 - 06/12/2013	220 (5 pgs) Witness and Exhibit List *for Involuntary Trial* filed by Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)56 Response). (Goolsby, Melanie)
153	Doc 221 - 06/14/2013	221 (2 pgs) Subpoena on The Beckham Group, P.C. filed by Alleged Debtor Jeffrey Baron. (Stromberg, Mark)
154	Doc 222 - 06/15/2013	222 (16 pgs) Brief in support filed by Petitioning Creditors Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (RE: related document(s)5 Involuntary summons issued). (Goolsby, Melanie)
155	Doc 225 - 06/17/2013	225 (3 pgs) Notice of docketing record on appeal. Civil Action Number: 3:13-CV-2274-D (RE: related document(s)102 Notice of appeal.) (Blanco, J.)
156	Doc 226 - 06/17/2013	226 (4 pgs) Letter from the court dated 6/17/2013 to Mr. Blake L. Beckham in re: Subpoena issued in connection with Jeffrey Baron. (Blanco, J.)
157	Doc 228 - 06/21/2013	228 (7 pgs) Motion to compromise controversy with Between Petitioning Creditors and Alleged Debtor. Filed by Alleged Debtor Jeffrey Baron, Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett Objections due by 7/15/2013. (Goolsby, Melanie)
158	Doc 229 - 06/21/2013	229 (7 pgs) Motion to pay *Request for Recommendation to District Court for Limited Disbursement of Receivership Funds to Effectuate Settlement* Filed by Alleged Debtor

		Jeffrey Baron, Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (Goolsby, Melanie)
159	Doc 231 - 06/21/2013	231 (4 pgs) Motion for expedited hearing(related documents 229 Motion to pay, 230 Motion to Seal) Filed by Alleged Debtor Jeffrey Baron, Petitioning Creditors Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske & Patel, P.C., Shurig Jetel Beckett Tackett (Goolsby, Melanie)
160	Doc 234 - 06/24/2013	234 (2 pgs) Order granting motion for expedited hearing (Related Doc# 231)(document set for hearing: 228 Motion to compromise controversy, 229 Motion to pay, 230 Motion to Seal) Entered on 6/24/2013. Hearing and status conference to be held on 6/24/2013 at 01:30 PM Dallas Judge Jernigan Ctrm for 228 and for 229 and for 230, (Rielly, Bill) 06/24/2013
161	Doc 236, 228 - 06/24/2013	236 (9 pgs) Objection to (related document(s): 228 Motion to compromise controversy with Between Petitioning Creditors and Alleged Debtor. filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Alleged Debtor Jeffrey Baron, Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione, 229 Motion to pay *Request for Recommendation to District Court for Limited Disbursement of Receivership Funds to Effectuate Settlement* filed by Petitioning Creditor Gary G. Lyon, Petitioning Creditor Pronske & Patel, P.C., Alleged Debtor Jeffrey Baron, Petitioning Creditor Shurig Jetel Beckett Tackett, Petitioning Creditor Dean Ferguson, Petitioning Creditor Robert

		Garrey, Petitioning Creditor Powers Taylor, LLP, Petitioning Creditor Jeffrey Hall, Petitioning Creditor David L. Pacione) filed by Interested Party Peter S. Vogel, Receiver. (Fine, Jeffrey)
162	Doc 238 - 06/26/2013	238 (6 pgs; 2 docs) Brief in opposition filed by Alleged Debtor Jeffrey Baron (RE: related document(s) 227 Hearing set/continued). (Attachments: # 1 Exhibit) (Stromberg, Mark)
163	Doc 239 - 06/26/2013	239 (38 pgs) Findings of Fact and Conclusions of Law (RE: related document(s)1 Chapter 7 involuntary petition Re: Jeffrey Baron Filed by Pronske & Patel, P.C., Shurig Jetel Beckett Tackett, Dean Ferguson, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Jeffrey Hall) (Moroles, D.)
164	Doc 240 - 06/26/2013	240 (3 pgs; 3 docs) Order for relief in an involuntary case with Notice of Deficiency. Entered on 6/26/2013. Incomplete Filings Due by 7/10/2013. (Moroles, D.)
165	06/17/2013 and 06/18/2013	Transcript of involuntary trial proceedings.

Dated: July 22, 2013

Very respectfully,
The Cochell Law Firm, P.C.

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CERTIFICATE OF SERVICE

On this date, I electronically submitted the foregoing document with the Bankruptcy Clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties who receive notification through the electronic filing system.

/s/ Stephen R. Cochell
Stephen R. Cochell

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

RESPONSE OF NOVO POINT LLC AND QUANTEC LLC TO JOHN LITZLER'S MOTION TO INTERVENE [DOC 1318]

Novo Point LLC and Quantec LLC respectfully respond to the Motion to Intervene [Doc 1318] filed by John Litzler, "the Baron bankruptcy estate chapter 7 Trustee".

I.
ARGUMENT AND AUTHORITY

There are two fundamental errors with the Trustee's argument for intervention, as follows:

1. Federal law does not authorize 'partial' or limited intervention. As a matter of established law, "[w]hen a party intervenes, it becomes **a full participant in the lawsuit** and is treated **just as if it were an original party**."[1] Thus, intervention must be 'all in' so that the intervenor "renders himself 'vulnerable to complete adjudication ... of the issues in

[1] *Alvarado v. JC Penney Co., Inc.*, 997 F.2d 803, 805 (10th Cir. 1993); *and see e.g., Schneider v. Dumbarton Developers, Inc.*, 767 F.2d 1007, 1017 (D.C. Cir. 1985).

litigation between the intervener [sic] and the adverse party.'"[2] There is no authority permitting the granting of the relief requested by the Trustee, for a partial or 'limited' intervention.

2. Intervention in federal court is authorized only for parties asserting or defending ***claims*** *asserted in a lawsuit*. Federal Rule of Procedure 24(c) is explicit in requiring that the intervenor will have a pleading setting out a claim or defense in the lawsuit and a pleading includes only a complaint or an answer.[3]

Thus, the Supreme Court has ruled that a mandatory element for intervention is an interest 'that is subject of the action' as required by Rule 24.[4] Moreover, the Supreme Court has ruled that intervention is authorized only for parties holding:

> "the kinds of **claims or defenses that can be raised** in courts of law **as part of an actual or impending law suit**, as is confirmed by Rule 24(c)'s requirement that a person desiring to intervene serve a motion stating 'the grounds therefor' **and** '**accompanied by a pleading setting forth the claim or de-**

[2] *Id.*
[3] Fed.R.Civ.P. 7(a); Fed.R.Civ.P. 24(c). The Trustee erroneously relies upon *Liberty Surplus Ins. Cos. v. Slick Willies of Am., Inc.*, 2007 U.S. Dist. LEXIS 59723, (S.D. Tex. Aug. 15, 2007, case 4:07-cv-00706) as authority that the requirement of Rule 24(c) may be waived. *Liberty Surplus* does not support the Trustee's erroneous argument. Rather, in *Liberty Surplus*, Judge Rosenthal expressly ordered that the intervenor **must file a complaint** within three weeks.
[4] *Diamond v. Charles*, 476 U.S. 54, 76-77 (1986).

fense for which intervention is sought.'"[5]

Critically, the property under Vogel's control is not subject to any claim or defense pled in the district court. For that reason, the Fifth Circuit found this Court lacked subject matter jurisdiction over the property.[6] Since ***there is no claim or controversy pled before this Honorable Court concerning the property***, there is no claim or defense that can be raised with respect to the property by the Trustee.

Asserting jurisdiction over Novo Point LLC and Quantec LLC's assets is precisely what the Fifth Circuit has prohibited. The Fifth Circuit ruled that this Honorable Court "lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy"[7] and where a court lacks jurisdiction to impose a receivership, ***it does not acquire jurisdiction over the property*** by the imposition of the receivership.[8] Thus, this Honorable Court has not acquired jurisdiction over the assets of Novo Point LLC and Quantec LLC to take any action as to those assets other than to return the property to the parties it was taken from – as mandated by the Fifth Circuit.

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[5] *Id.*
[6] *Netsphere, Inc. v. Baron*, 703 F.3d 296, 310-311 (5th Cir. 2012).
[7] *Netsphere, Inc.* at 310 citing *Cochrane v. W.F. Potts Son & Co.*, 47 F.2d 1026, 1028-1029 (5th Cir. 1931).
[8] *Cochrane*, 47 F.2d at 1028 ("courts may not seize property without jurisdiction, and then claim jurisdiction over the property because it is in the possession of the court.")

To be clear, because this lawsuit does not involve the property seized by the receiver, the Trustee lacks a claim or defense to set out in this lawsuit with respect to the property.[10] Moreover, the Trustee has expressly stated that he does not intend to file any complaint against any party in this lawsuit (or answer any complaint that has been filed). Accordingly, as a matter of well-established federal law, the Trustee lacks standing to intervene.[11]

II.
CONCLUSION

As a matter of established law, intervention is limited to parties asserting or defending claims asserted in a lawsuit. The claims in this lawsuit do not involve the property of Novo Point LLC or Quantec LLC. The Trustee has neither a claim to assert in this lawsuit nor a defense to any claim asserted. Accordingly, there is no authority to allow the Trustee to intervene in the lawsuit.

[9] *Cochrane* at1028; *Reynolds v. Stockton,* 140 U.S. 254, 265-269 (1891) ("jurisdiction was confined to the subject-matter set forth and described in the petition.").
[10] *See Netsphere, Inc.* at 310-311.
[11] Fed.R.Civ.P. 24(c); *Diamond,* 476 U.S. at 76-77.

Respectfully submitted,

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FOR NOVO POINT LLC and
QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

REPLY OF NOVO POINT LLC AND QUANTEC LLC TO JOHN LITZLER'S PROPOSED RESPONSE [DOC 1318-1] AND BRIEF

Novo Point LLC and Quantec LLC respectfully file the following brief and reply to the erroneous argument presented in the proposed Response [Doc 1319-1] of John Litzler, the Baron bankruptcy estate chapter 7 Trustee. Neither the record nor the law support the Trustee's legally and factually erroneous briefing, as follows:

I.
SUMMARY

II.
ARGUMENT & AUTHORITY

1. The Fifth Circuit decided the issue of "who is to take custody of the receivership assets upon the dissolution of the receivership" when it ruled on Peter Vogel's motion that briefed the Fifth Circuit as to the Baron bankruptcy case. With full awareness of the bankruptcy case, the Fifth Circuit ruled that the receivership assets be returned to the "entities that were subject to the receivership".

Contrary to the erroneous argument of the Trustee, the Fifth Circuit's order clarifying "who is to take custody of the receivership assets upon the dissolution of the receivership" was handed down ***after and in light of*** the Baron bankruptcy case (and not before the bankruptcy case was

filed as the Trustee erroneously argues).[1] The timeline is as follows:

(1) The Baron involuntary bankruptcy petition was filed on December 18, 2012.

(2) Over a week later, on December 27, 2012, Peter Vogel filed a motion that briefed the Fifth Circuit as to the Baron bankruptcy.[2]

(3) Thereafter, on December 30, 2012, the Fifth Circuit issued its Order in response to Peter Vogel's December 27 motion.

(4) In the Fifth Circuit's December 30 order – *after* the Baron bankruptcy was filed and Vogel briefed the Court as to the bankruptcy – the Fifth Circuit decided the issue of "***who is to take custody of the receivership assets upon the dissolution of the receivership***".[3]

(5) With full awareness of the bankruptcy case, the Fifth Circuit ordered that the receivership assets be returned to the "**entities that were subject to the receivership**".[4]

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[1] John Litzler's 'Proposed Response' (Doc 1318-1) at page 5.
[2] See Doc 512095875 filed in Case 12-10489 at page 6.
[3] Doc 1130-1 at page 7.
[4] *Id.* Judge Furgeson was aware of the Fifth Circuit's order and *has already ruled* that "with Novo Point or Quantec .... **Judge Jernigan as far as I know is not going to have any authority over those companies <u>at all</u>**". May 10, 2013 hearing (Vol. 3 at 26:14-24).

2. The LLCs' argument is not predicated on collateral attack of Baron's personal bankruptcy. As a matter of established law, 11 U.S.C. §§ 541-543 do not authorize the issuance of an order to turn over assets to the bankruptcy court where the bankruptcy estate's right to those assets is disputed.

Contrary to the Trustee's argument, the issues relating to turnover of the property of Novo Point LLC and Quantec LLC's to Baron's personal bankruptcy estate are not involved in Baron's appeal of his bankruptcy. Nor is Novo Point LLC and Quantec LLC's motion for return of their property – as ordered by the Fifth Circuit – predicated on collateral attack of Baron's personal bankruptcy. Rather, the LLCs' argument and briefing assumes the bankruptcy case has the same legal effect of any other bankruptcy case.

As a matter of established law, **11 U.S.C. §§ 541-543 do not authorize the issuance of an order to turn over assets to the bankruptcy court** where the bankruptcy estate's right to those assets is disputed.[5] As Hon. Judge Abramson explained decades ago, "if there is a real and substantial controversy of law or fact as to property held adversely to a bankrupt — 'a contested matter of right, involving some fair doubt and reasonable room for controversy' — the bankruptcy court is without jurisdiction ... [and] the

[5] *E.g., United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991)(It is settled law that the debtor cannot use the turnover provisions to demand disputed assets.); *In re Charter Co.*, 913 F.2d 1575, 1579 (11th Cir. 1990)(The bankruptcy turnover provision applies only to tangible property and money due to the debtor without dispute); *In re Student Finance Corp.*, 335 B.R. 539 (Bankr. D. Del. 2005) (Turnover actions cannot be used to demand assets which are in dispute).

trustee must have resort to a plenary suit."[6] Notably, Judge Abramson's ruling rejected the entry of an order to turn over to the bankruptcy court assets claimed *by the Debtor*. The fact the Debtor claimed title is irrelevant where there is a conflicting claim to title by another party– in this case Novo Point LLC and Quantec LLC.[7]

3. The schedule of the debtor's property does not determine what property is included in the bankruptcy estate.

Contrary to the erroneous argument of the Trustee, the schedule of a debtor's property does not determine what property is included in the bankruptcy estate. It is unclear why the Trustee feels comfortable making such legally frivolous arguments to this Honorable Court. The Trustee's argument has no support in law. As a matter of well established law, the bankruptcy estate's interest in property is not established by the schedules of the debtor.

Rather, an 'adversary proceeding' is required to establish the bankruptcy estate's interest in property.[8] Moreover, it is settled law that the Bankruptcy Code turnover provisions cannot be used, even by a debtor, to

[6] *In re Satelco, Inc.*, 58 B.R. 781, 785 (Bankr. N.D. Tex. 1986).
[7] *Id.*
[8] Fed.R.Bankr.P. 7001; *In re Simmons*, 765 F.2d 547, 552 n5 (5th Cir. 1985); *In re Golden Plan of California, Inc.*, 829 F.2d 705, 711, 712 (9th Cir. 1986)("Bankruptcy Rule 7001 (formerly Rule 701) requires a bankruptcy trustee to initiate adversary proceedings to "determine the validity, priority, or extent of a lien or other interest in property."); *In re Hearthside Baking Co., Inc.*, 397 B.R. 899, 902 (Bankr. N.D. Ill. 2008)(The Court cannot determine whether property is property of the estate without an adversary proceeding because Rule 7001(2) "requires that an adversary proceeding be commenced to determine the `validity, priority or extent of [an] interest in property.'").

demand assets subject to a dispute as to the estate's right to those assets.[9]

Crucially, the burden is on the Trustee to initiate and prevail in adversary proceedings to establish the bankruptcy estate's interest in disputed property before a turnover order is issued.[10] As a matter of established law, **imposing upon third parties the burden of challenging the bankruptcy estate's right to the property contravenes Bankruptcy Rule 7001**.[11]

The Baron creditors could file a schedule listing 100% ownership of Apple Computer, TU Electric Company, and King Tut's golden tomb. However, the schedule has no impact what-so-ever in determining the bankruptcy estate's interest in any asset. Moreover, by listing the assets on the schedule, no presumption is created which Apple Computer needs to come to court to rebut. Rather, as has been extensively briefed, **prior to the entry of any turnover order to the bankruptcy court, the Trustee bears the burden to initiate an adversary proceeding and the burden of proof rests on the Trustee to prove his claim of ownership by the estate**.[12] Peter Vogel, "the Receiver", and John Litzler, "the Chapter 7 Trustee", have

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[9] *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991).

[10] *In re Golden Plan of California, Inc.*, 829 F.2d 705, 711, 712 (9th Cir. 1986)("Like the Commercial Western trustee, **the trustee here initiated no adversary proceedings** against the investors, but instead filed a request for special instructions. **The trustee's failure to initiate adversary proceedings imposed on the investors the burden of challenging his actions *and thus contravened Rule 7001***.")

[11] *Id.*

[12] *In re Golden Plan of California, Inc.*, 829 F.2d 705, 711, 712 (9th Cir. 1986); *Matter of Kemp*, 52 F.3d 546, 549-50 (5th Cir. 1995)(Trustee has the burden of proving an alleged asset is property of the bankruptcy estate).

offered no authority to the contrary.

4. Baron's personal bankruptcy does not authorize disobedience of the Fifth Circuit's order mandating this Honorable Court to return to Novo Point LLC and Quantec LLC their corporate assets.

The law is dispositively contrary to the Trustee's erroneous argument seeking disobedience of the Fifth Circuit's mandate to return to Novo Point LLC and Quantec LLC their property, as follows:

1. *Dispute as to ownership of a corporation has nothing to do with a corporation's ownership of its own assets.* A corporation is a separate legal entity apart from its stockholders and **ownership of stock in a corporation is not the same as ownership of the property owned by the corporation.**[13] The idea that shareholders can seize corporate assets to pay their personal debts violates the most basic principles of corporate law. To be clear, shareholders do not own corporate assets– they own only the equity of what is left over after corporate assets are applied to corporate debts.[14]

2. *As a matter of law, Baron's estate does not include even the Village Trust's membership interests in Novo Point LLC and Quantec LLC.* This is because 11 U.S.C. § 541(a)(1) expressly excludes from a debtor's estate all interest of the debtor in a trust where a restriction on the transfer of an interest in that trust is enforceable under ***any*** applicable nonbank-

[13] *Gossett v. State,* 417 S.W.2d 730, 735 (Tex.Civ.App.– Eastland 1967, writ ref'd).
[14] *See Pepper v. Litton,* 308 U.S. 295, 312, 313 n28 (1939)(clear prohibition against a corporate owner's attempt "to gather to himself all of its assets to the exclusion of its creditors").

ruptcy law.[15] With respect to § 541(a)(1), the Bankruptcy Judge's 'report' makes two fundamental errors of law, as follows:

(i). The Bankruptcy Judge's report erred in erroneously misunderstanding that 11 U.S.C. § 541(a)(1) was limited in scope to state law.[16] The Supreme Court has definitively ruled that § 541(a)(1) is not limited to state law, but rather, "encompasses ***any*** relevant nonbankruptcy law".[17] Thus, pursuant to a 'Patterson' analysis of *any* applicable nonbankruptcy law outside of state trust law, restriction on the transfer of an interest in the Village Trust is clearly enforceable pursuant to applicable Cook Islands law. Accordingly, pursuant to § 541(a)(1), the Village Trust's interest in the ownership of Novo Point LLC and Quantec LLC falls outside of Baron's bankruptcy estate – as a matter of law.

(ii). The Bankruptcy Judge's report fundamentally erred in misunderstanding how to apply state law. In applying state law, the first step is resolving the choice of law or "conflicts of law" issue.[18] The Bankruptcy Judge erroneously skipped this fundamental step.

As a matter of established Texas law, Texas applies the Restatement (Second) of Conflicts of Laws "to resolve choice of law issues and select the

[15] *Patterson v. Shumate*, 504 U.S. 753, 759-760 (1992).
[16] Doc 1304-1 at 37.
[17] *Id.*
[18] *See Charles L. Bowman & Company v. Erwin*, 468 F.2d 1293, 1295 (5th Cir. 1972).

particular substantive issue that governs a case."[19] Pursuant to the Restatement, whether the interest of a beneficiary of a trust can be reached by his creditors is determined by the law which the settlor has manifested an intention that the trust is to be administered.[20] Accordingly, in the case at bar, Cook Islands law applies. Pursuant to Cook Islands law, even if Baron fully self-settled a trust as the sole beneficiary, restriction on the transfer of an interest in that trust is enforceable. Accordingly, pursuant to § 541(a)(1), **as a matter of law** the trust assets fall outside of Baron's bankruptcy estate.

5. This Court has direct jurisdiction to control the execution of its own orders.

The authority of this Honorable Court over its orders extends to enforcing the proper administration of justice with respect to the Court's orders.[21] Because the Baron bankruptcy is an enforcement action of this Court's receivership order to pay the former Baron attorneys,[22] the issues presented fall directly within this Court's jurisdiction over its own orders. Thus, one of the issues at bar is no different than in a case where a marshal attempts to erroneously enforce an order of the Court that had been stayed

[19] *Citizens Ins. Co. of America v. Daccach*, 217 S.W.3d 430, 442 (Tex. 2007).
[20] Restatement (Second) of Conflicts of Laws §273(b).
[21] *United States v. New York Telephone Co.*, 434 U.S. 159, 174 (1977).
[22] Baron Bankruptcy Doc 239 at page 21 ("case ought to be allowed to be pursued as an enforcement remedy, same as any other collection remedy a judgment creditor may take on an unstayed judgment.").

and reversed. Notably, in attempting to enforce an order stayed by this Court and nullified by the Fifth Circuit, the Bankruptcy Court is attempting to collaterally attack both the orders of this Honorable Court and the Fifth Circuit.[23]

III.
CONCLUSION

The Fifth Circuit decided the issue of "who is to take custody of the receivership assets upon the dissolution of the receivership" in response to a motion filed by Peter Vogel *which briefed the Fifth Circuit as to the Baron bankruptcy case*. The Fifth Circuit handed down its decision and ordered that the assets were to be expeditiously returned to the "entities that were subject to the receivership".

The district court has a limited constitutional and statutory role. That role does not include seizing property and transferring it away from its owner because a debtor listed the property on his bankruptcy schedules.

Rather, the law is well-established: 11 U.S.C. §§ 541-543 do not authorize the turnover of assets to the bankruptcy court where the bankruptcy estate's right to those assets is disputed. Instead, Bankruptcy Rule 7001 mandates that the bankruptcy trustee must first prevail in an adversary proceeding in which the Trustee carries the burden to establish

[23] The receivership order to pay the former Baron attorneys [Doc 575], and the order of this Court staying that payment order [Doc 987] are both orders of this Honorable Court.

the bankruptcy estate's interest in the property which he seeks to have ordered turned over to the bankruptcy estate.

Here, the Trustee has not filed nor prevailed in any adversary proceeding to establish the Baron bankruptcy estate's right to possession of the LLCs' property. **Until a court of competent jurisdiction orders otherwise, the LLCs' property belongs to the LLCs.** Moreover, if an adversary hearing were held, the Trustee would not prevail because, *as a matter of law*, pursuant to 11 U.S.C. § 541(a)(1) the Village Trust falls outside of Jeff Baron's chapter 7 bankruptcy estate.

In the case at bar, there is no basis in law to disobey the Fifth Circuit's order to return to Novo Point LLC and Quantec LLC their wrongfully seized property. The Fifth Circuit ordered the LLCs' property be *expeditiously* returned to them and this Honorable Court should obey the order of the Fifth Circuit without further delay.

Respectfully submitted,

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FOR NOVO POINT LLC and
QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

AMENDED REPLY OF NOVO POINT LLC AND QUANTEC LLC TO JOHN LITZLER'S PROPOSED RESPONSE [DOC 1318-1] AND BRIEF

Novo Point LLC and Quantec LLC respectfully file the following brief and reply to the erroneous argument presented in the proposed Response [Doc 1319-1] of John Litzler, the Baron bankruptcy estate chapter 7 Trustee. Neither the record nor the law support the Trustee's legally and factually erroneous briefing, as follows:

I.
SUMMARY

II.
ARGUMENT & AUTHORITY

1. The Fifth Circuit decided the issue of "who is to take custody of the receivership assets upon the dissolution of the receivership" when it ruled on Peter Vogel's motion that briefed the Fifth Circuit as to the Baron bankruptcy case. With full awareness of the bankruptcy case, the Fifth Circuit ruled that the receivership assets be returned to the "entities that were subject to the receivership".

Contrary to the erroneous argument of the Trustee, the Fifth Circuit's order clarifying "who is to take custody of the receivership assets upon the dissolution of the receivership" was handed down ***after and in light of*** the Baron bankruptcy case (and not before the bankruptcy case was

filed as the Trustee erroneously argues).[1] The timeline is as follows:

(1) The Baron involuntary bankruptcy petition was filed on December 18, 2012.

(2) Over a week later, on December 27, 2012, Peter Vogel filed a motion that briefed the Fifth Circuit as to the Baron bankruptcy.[2]

(3) Thereafter, on December 30, 2012, the Fifth Circuit issued its Order in response to Peter Vogel's December 27 motion.

(4) In the Fifth Circuit's December 30 order – *after* the Baron bankruptcy was filed and Vogel briefed the Court as to the bankruptcy – the Fifth Circuit decided the issue of "***who is to take custody of the receivership assets upon the dissolution of the receivership***".[3]

(5) With full awareness of the bankruptcy case, the Fifth Circuit ordered that the receivership assets be returned to the "**entities that were subject to the receivership**".[4]

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[1] John Litzler's 'Proposed Response' (Doc 1318-1) at page 5.
[2] See Doc 512095875 filed in Case 12-10489 at page 6.
[3] Doc 1130-1 at page 7.
[4] *Id.* Judge Furgeson was aware of the Fifth Circuit's order and *has already ruled* that "with Novo Point or Quantec .... **Judge Jernigan as far as I know is not going to have any authority over those companies <u>at all</u>**". May 10, 2013 hearing (Vol. 3 at 26:14-24).

2. The LLCs' argument is not predicated on collateral attack of Baron's personal bankruptcy. As a matter of established law, 11 U.S.C. §§ 541-543 do not authorize the issuance of an order to turn over assets to the bankruptcy court where the bankruptcy estate's right to those assets is disputed.

Contrary to the Trustee's argument, the issues relating to turnover of the property of Novo Point LLC and Quantec LLC's to Baron's personal bankruptcy estate are not involved in Baron's appeal of his bankruptcy. Nor is Novo Point LLC and Quantec LLC's motion for return of their property – as ordered by the Fifth Circuit – predicated on collateral attack of Baron's personal bankruptcy. Rather, the LLCs' argument and briefing assumes the bankruptcy case has the same legal effect of any other bankruptcy case.

As a matter of established law, **11 U.S.C. §§ 541-543 do not authorize the issuance of an order to turn over assets to the bankruptcy court** where the bankruptcy estate's right to those assets is disputed.[5] As Hon. Judge Abramson explained decades ago, "if there is a real and substantial controversy of law or fact as to property held adversely to a bankrupt — 'a contested matter of right, involving some fair doubt and reasonable room for controversy' — the bankruptcy court is without jurisdiction ... [and] the

[5] *E.g., United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991)(It is settled law that the debtor cannot use the turnover provisions to demand disputed assets.); *In re Charter Co.*, 913 F.2d 1575, 1579 (11th Cir. 1990)(The bankruptcy turnover provision applies only to tangible property and money due to the debtor without dispute); *In re Student Finance Corp.*, 335 B.R. 539 (Bankr. D. Del. 2005) (Turnover actions cannot be used to demand assets which are in dispute).

trustee must have resort to a plenary suit."[6] Notably, Judge Abramson's ruling rejected the entry of an order to turn over to the bankruptcy court assets claimed *by the Debtor*. The fact the Debtor claimed title is irrelevant where there is a conflicting claim to title by another party– in this case Novo Point LLC and Quantec LLC.[7]

3. The schedule of the debtor's property does not determine what property is included in the bankruptcy estate.

Contrary to the erroneous argument of the Trustee, the schedule of a debtor's property does not determine what property is included in the bankruptcy estate. It is unclear why the Trustee feels comfortable making such legally frivolous arguments to this Honorable Court. The Trustee's argument has no support in law. As a matter of well established law, the bankruptcy estate's interest in property is not established by the schedules of the debtor.

Rather, an 'adversary proceeding' is required to establish the bankruptcy estate's interest in property.[8] Moreover, it is settled law that the Bankruptcy Code turnover provisions cannot be used, even by a debtor, to

[6] *In re Satelco, Inc.*, 58 B.R. 781, 785 (Bankr. N.D. Tex. 1986).
[7] *Id.* Here, *Baron doesn't even claim the assets*–the schedule was a 'wish list' filed by the creditors.
[8] Fed.R.Bankr.P. 7001; *In re Simmons*, 765 F.2d 547, 552 n5 (5th Cir. 1985); *In re Golden Plan of California, Inc.*, 829 F.2d 705, 711, 712 (9th Cir. 1986)("Bankruptcy Rule 7001 (formerly Rule 701) requires a bankruptcy trustee to initiate adversary proceedings to 'determine the validity, priority, or extent of a lien or other interest in property.'"); *In re Hearthside Baking Co., Inc.*, 397 B.R. 899, 902 (Bankr. N.D. Ill. 2008)(The Court cannot determine whether property is property of the estate without an adversary proceeding because Rule 7001(2) "requires that an adversary proceeding be commenced to determine the `validity, priority or extent of [an] interest in property.'").

demand assets subject to a dispute as to the estate's right to those assets.[9]

Crucially, the burden is on the Trustee to initiate and prevail in adversary proceedings to establish the bankruptcy estate's interest in disputed property before a turnover order is issued.[10] As a matter of established law, **imposing upon third parties the burden of challenging the bankruptcy estate's right to the property contravenes Bankruptcy Rule 7001**.[11]

The Baron creditors could file a schedule listing 100% ownership of Apple Computer, TU Electric Company, and King Tut's golden tomb. However, the schedule has no impact what-so-ever in determining the bankruptcy estate's interest in any asset. Moreover, by listing the assets on the schedule, no presumption is created which Apple Computer needs to come to court to rebut. Rather, as has been extensively briefed, **prior to the entry of any turnover order to the bankruptcy court, the Trustee bears the burden to initiate an adversary proceeding and the burden of proof rests on the Trustee to prove his claim of ownership by the estate**.[12] Peter Vogel, "the Receiver", and John Litzler, "the Chapter 7 Trustee", have

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offered no authority to the contrary.

4. Baron's personal bankruptcy does not authorize disobedience of the Fifth Circuit's order mandating this Honorable Court to return to Novo Point LLC and Quantec LLC their corporate assets.

The law is dispositively contrary to the Trustee's erroneous argument seeking disobedience of the Fifth Circuit's mandate to return to Novo Point LLC and Quantec LLC their property, as follows:

1. *Dispute as to ownership of a corporation has nothing to do with a corporation's ownership of its own assets.* A corporation is a separate legal entity apart from its stockholders and **ownership of stock in a corporation is not the same as ownership of the property owned by the corporation.**[13] The idea that shareholders can seize corporate assets to pay their personal debts violates the most basic principles of corporate law. To be clear, shareholders do not own corporate assets– they own only the equity of what is left over after corporate assets are applied to corporate debts.[14]

2. *As a matter of law, Baron's estate does not include even the Village Trust's membership interests in Novo Point LLC and Quantec LLC.* This is because 11 U.S.C. § 541(a)(1) expressly excludes from a debtor's estate all interest of the debtor in a trust where a restriction on the transfer of an interest in that trust is enforceable under ***any*** applicable nonbank-

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ruptcy law.[15] With respect to § 541(a)(1), the Bankruptcy Judge's 'report' makes two fundamental errors of law, as follows:

(i). The Bankruptcy Judge's report erred in erroneously misunderstanding that 11 U.S.C. § 541(a)(1) was limited in scope to state law.[16] The Supreme Court has definitively ruled that § 541(a)(1) is not limited to state law, but rather, "encompasses ***any*** relevant nonbankruptcy law".[17] Thus, pursuant to a 'Patterson' analysis of *any* applicable nonbankruptcy law outside of state trust law, restriction on the transfer of an interest in the Village Trust is clearly enforceable pursuant to applicable Cook Islands law. Accordingly, pursuant to § 541(a)(1), the Village Trust's interest in the ownership of Novo Point LLC and Quantec LLC falls outside of Baron's bankruptcy estate – as a matter of law.

(ii). The Bankruptcy Judge's report fundamentally erred in misunderstanding how to apply state law. In applying state law, the first step is resolving the choice of law or "conflicts of law" issue.[18] The Bankruptcy Judge erroneously skipped this fundamental step.

As a matter of established Texas law, Texas applies the Restatement (Second) of Conflicts of Laws "to resolve choice of law issues and select the

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particular substantive issue that governs a case."[19] Pursuant to the Restatement, whether the interest of a beneficiary of a trust can be reached by his creditors is determined by the law which the settlor has manifested an intention that the trust is to be administered.[20] Accordingly, in the case at bar, Cook Islands law applies. Pursuant to Cook Islands law, even if Baron fully self-settled a trust as the sole beneficiary, restriction on the transfer of an interest in that trust is enforceable. Accordingly, pursuant to § 541(a)(1), **as a matter of law** the trust assets fall outside of Baron's bankruptcy estate.

5. This Court has direct jurisdiction to control the execution of its own orders.

The authority of this Honorable Court over its orders extends to enforcing the proper administration of justice with respect to the Court's orders.[21] Because the Baron bankruptcy is an enforcement action of this Court's receivership order to pay the former Baron attorneys,[22] the issues presented fall directly within this Court's jurisdiction over its own orders. Thus, one of the issues at bar is no different than in a case where a marshal attempts to erroneously enforce an order of the Court that had been stayed

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[22] Baron Bankruptcy Doc 239 at page 21 ("case ought to be allowed to be pursued as an enforcement remedy, same as any other collection remedy a judgment creditor may take on an unstayed judgment.").

and reversed. Notably, in attempting to enforce an order stayed by this Court and nullified by the Fifth Circuit, the Bankruptcy Court is attempting to collaterally attack both the orders of this Honorable Court and the Fifth Circuit.[23]

III.
CONCLUSION

The Fifth Circuit decided the issue of "who is to take custody of the receivership assets upon the dissolution of the receivership" in response to a motion filed by Peter Vogel *which briefed the Fifth Circuit as to the Baron bankruptcy case*. The Fifth Circuit handed down its decision and ordered that the assets were to be expeditiously returned to the "entities that were subject to the receivership".

The district court has a limited constitutional and statutory role. That role does not include seizing property and transferring it away from its owner because a debtor listed the property on his bankruptcy schedules.

Rather, the law is well-established: 11 U.S.C. §§ 541-543 do not authorize the turnover of assets to the bankruptcy court where the bankruptcy estate's right to those assets is disputed. Instead, Bankruptcy Rule 7001 mandates that the bankruptcy trustee must first prevail in an adversary proceeding in which the Trustee carries the burden to establish

[23] The receivership order to pay the former Baron attorneys [Doc 575], and the order of this Court staying that payment order [Doc 987] are both orders of this Honorable Court.

the bankruptcy estate's interest in the property which he seeks to have ordered turned over to the bankruptcy estate.

Here, the Trustee has not filed nor prevailed in any adversary proceeding to establish the Baron bankruptcy estate's right to possession of the LLCs' property. **Until a court of competent jurisdiction orders otherwise, the LLCs' property belongs to the LLCs.** Moreover, if an adversary hearing were held, the Trustee would not prevail because, *as a matter of law*, pursuant to 11 U.S.C. § 541(a)(1) the Village Trust falls outside of Jeff Baron's chapter 7 bankruptcy estate.

In the case at bar, there is no basis in law to disobey the Fifth Circuit's order to return to Novo Point LLC and Quantec LLC their wrongfully seized property. The Fifth Circuit ordered the LLCs' property expeditiously returned to them and, as a matter of law, **this Honorable Court should scrupulously and fully carry out the order of the Fifth Circuit**.[24]

[24] *United States v. EI du Pont de Nemours & Co.*, 366 U.S. 316, 325 (1961).

Respectfully submitted,

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FOR NOVO POINT LLC and
QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	**CIVIL ACTION NO. 3:09-CV-0988-F**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

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

IN RE:	§	
JEFFREY BARON,	§	**CASE NO. 12-37921-SGJ-7**
	§	**(INVOLUNTARY CHAPTER 7)**
DEBTOR.	§	

RECEIVER'S APPLICATION FOR PAYMENT OF RECEIVERSHIP EXPENSES (LAIN, FAULKNER & CO., P.C.) PURSUANT TO THE INTERIM ORDER [D.E. 39] AND 11 U.S.C. §543

NO HEARING WILL BE CONDUCTED ON THIS APPLICATION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, DALLAS, TEXAS BEFORE CLOSE OF BUSINESS ON OCTOBER 21, 2013, WHICH IS AT LEAST 24 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE, APPLICATION, OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

Court-appointed Receiver Peter S. Vogel (the "Receiver") files this Application For Payment Pursuant to the Interim Order [D.E. 39] and 11 U.S.C. §543 (the "Application") seeking authorization to immediately pay the following invoice: (1) Lain, Faulkner & Co., P.C. Statement for a total of $18,917.53[1]. The Receiver respectfully asks the District Court and the Bankruptcy Court to consider the following:

1. Pursuant to the District Court's January 17, 2013 *Order Adopting Bankruptcy Court Recommendations* [District Court D.E. 1176] and the Bankruptcy Court's January 17, 2013 *Order: (A) Setting Involuntary Petition For Trial, And (B) Granting Interim Gap Period Relief, Along With Report And Recommendations To The District Court* [Bankruptcy Court, D.E. 39] (the "Interim Order"), the Receiver was directed to file with the Bankruptcy Court "all applications for payment of Receivership expenses" without limitation as to type, so that the Bankruptcy Court could promptly consider same and make appropriate recommendations to the District Court regarding such applications. In its Order, the District Court added: "Should an order for relief be entered, this Court may withdraw the reference, if necessary and at the appropriate time, to resolve questions of Receivership fees and expenses in accordance with the directives of the Fifth Circuit." [District Court D.E. 1176]. An order for relief was entered in Mr. Baron's bankruptcy case on June 26, 2013.

2. By Order dated July 1, 2013, [Bankruptcy Court, D.E. 251], the Bankruptcy Court required the Receiver, pursuant to the provisions of 11 U.S.C. §543(b)(2), to file prior to July 15,

[1] A true and correct copy of the Lain, Faulkner & Co., P.C. Statement is attached hereto as Exhibit A.

2013, "an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control…" of the Receiver (the "Receiver's Accounting"). The Receiver, in consultation with the Trustee, immediately retained the Lain, Faulkner & Co., P.C. firm to collect, review, and collate a very large amount of data to timely prepare the Receiver's Accounting. On July 12, 2013, the Receiver timely filed his *Receiver's Accounting Report of July 12, 2013*, [Bankruptcy Court, D.E. 283], containing 84 exhibits and more than 1,140 pages of data.

3. The Receiver retained the Lain, Faulkner & Co., P.C. firm because of its bankruptcy and trustee accounting experience, and the lower comparable hourly costs charged by Lain, Faulkner personnel available on short notice to timely complete the Receiver's Accounting. Both the retention of Lain, Faulkner and the commencement of the Lain, Faulkner engagement occurred just prior to and during the July 4th holiday period when alternative personnel to complete the assignment were not readily available.

4. Pursuant to the provisions of 11 U.S.C. §543(c)(2), the Court, after notice and a hearing, "shall…provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian [Receiver]…" The Receiver has reviewed the invoice submitted by Lain, Faulkner, and is fully advised of the timely and efficient work product provided by Lain, Faulkner. The Receiver believes that the Lain, Faulkner charges are reasonable and that the services rendered by Lain, Faulkner were valuable and essential to providing a timely and complete Receiver's Accounting to the Court.

5. The Receiver requests that the Bankruptcy Court approve and recommend to the District Court the immediate payment of the Lain, Faulkner invoice in the amount of $18,917.53, as

shown in attached Exhibit "A." Alternatively, the District Court may withdraw the reference to consider payment of this Receivership expense.

CONCLUSION

Based on the foregoing Application, the Receiver respectfully requests authority to immediately pay the following invoice: (1) Lain, Faulkner & Co., P.C. Statement for a total of $18,917.53.[2] The Receiver also requests all other relief at law or in equity to which he may be entitled.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: */s/ David J. Schenck*
David J. Schenck
State Bar No. 17736870
Jeffrey R. Fine
State Bar No. 07008410
Christopher D. Kratovil
State Bar No. 24027427
1717 Main Street, Suite 4000
Dallas, Texas 75201
(214) 462-6455
(214) 462-6401 (Telecopier)

ATTORNEYS FOR THE RECEIVER, PETER S. VOGEL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on September 25, 2013.

By: */s/ David J. Schenck*
David J. Schenck

[2] *Id.*

EXHIBIT A

LainFaulkner

Lain, Faulkner & Co., P.C.
400 N. St. Paul, Suite 600
Dallas, Texas 75201
214.720.1929 Main
214.720.1450 Fax
www.lainfaulkner.com

Peter Vogel, Receiver
Gardere Wynne Sewell LLP
Thanksgiving Tower, Ste. 3000
1601 Elm Street
Dallas TX 75201

For Services Rendered in July 2013

PROFESSIONAL SERVICES 7/1/2013 THRU 7/31/2013

Marla Reynolds	19.30	Hrs. @	$425.00	$8,202.50	
Aniza Rowe	35.40	Hrs. @	$240.00	$8,496.00	
Brandi Chambers	2.80	Hrs. @	$240.00	$672.00	
Juwanda Henderson	11.10	Hrs. @	$95.00	$1,054.50	
TOTAL PROFESSIONAL SERVICES					$18,425.00

EXPENSES 7/1/2013 THRU 7/31/2013

Copies (in-house)	$303.40	
Postage/Overnight Delivery	$0.46	
Courier Service	$20.67	
Outside Copy Services	$168.00	
TOTAL EXPENSES		$492.53

TOTAL SERVICES AND EXPENSES $18,917.53

13-10696.28536

Lain, Faulkner & Co., P.C.

For Services Rendered in July 2013

7/1/2013 THRU 7/31/2013

Peter Vogel, Receiver

Litigation Services

Emp	Date	Description	Hours	Amount
ARR	7/2/2013	Met with Marla Reynolds regarding work plan for the accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	0.30	72.00
MCR	7/2/2013	Coordinated workplan with staff.	0.20	85.00
ARR	7/3/2013	Assisted in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron; met with Marla Reynolds regarding same.	2.20	528.00
MCR	7/3/2013	Met with staff to review documents and refine workplan.	0.80	340.00
ARR	7/5/2013	Assisted in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	3.40	816.00
ARR	7/5/2013	Continued assisting in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	3.70	888.00
ARR	7/8/2013	Assisted in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	4.50	1,080.00
MCR	7/8/2013	Met with staff regrding status of analysis; read May 2012 report.	1.30	552.50
MCR	7/8/2013	Reviewed January 2011 report for additional information.	0.60	255.00
ARR	7/9/2013	Assisted in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	3.80	912.00
ARR	7/9/2013	Continued assisting in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	2.40	576.00
JLS	7/9/2013	Redacted bank statements.	0.50	47.50
MCR	7/9/2013	Analyzed detail of asset walkforward.	4.80	2,040.00
MCR	7/9/2013	Exchanged emails with Receiver regarding same.	0.20	85.00
MCR	7/9/2013	Teleconference with counsel regarding same.	0.30	127.50
ARR	7/10/2013	Assisted in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	3.20	768.00
ARR	7/10/2013	Continued assisting in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	4.50	1,080.00
BMR	7/10/2013	Performed quality control review procedures regarding Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	2.80	672.00
JLS	7/10/2013	Redacted bank statements.	1.60	152.00
JLS	7/10/2013	Retrieved dockets from Pacer.	0.50	47.50
JLS	7/10/2013	Retrieved and printed Novoprint, LLC bank statements for Aniza Rowe review.	1.40	133.00
JLS	7/10/2013	Retrieved and printed Quantec, LLC bank statements for Aniza Rowe review.	0.80	76.00
JLS	7/10/2013	Redacted bank statements for Novoprint and Quantec, LLC.	2.10	199.50
MCR	7/10/2013	Telecom with Peter Vogel regarding additional documents needed.	0.30	127.50
MCR	7/10/2013	Reviewed additional documents.	1.40	595.00
MCR	7/10/2013	Continued analysis and oversight of deposit detailing cash transactions during Receivership.	2.30	977.50

Lain, Faulkner & Co., P.C.

For Services Rendered in July 2013

7/1/2013 THRU 7/31/2013

Peter Vogel, Receiver

Litigation Services

Emp	Date	Description	Hours	Amount
ARR	7/11/2013	Assisted in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	3.90	936.00
ARR	7/11/2013	Continued assisting in the preparation of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	3.20	768.00
JLS	7/11/2013	Assisted with preparation of exhibits.	4.20	399.00
MCR	7/11/2013	Completed analysis and assembly of exhibit binders.	6.50	2,762.50
MCR	7/11/2013	Telecom with Peter Vogel regarding same.	0.20	85.00
ARR	7/12/2013	Prepared changes as requested by the Receiver of an accounting of Receivership assets to be filed in the pending Chapter 7 bankruptcy of Jeffrey Baron.	0.30	72.00
MCR	7/12/2013	Responded to request by Peter Vogel.	0.40	170.00
		Daily Log Total:	68.60	18,425.00

13-10696.28538

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

NETSPHERE, INC., MANILA INDUSTRIES, INC. AND MUNISH KRISHAN PLAINTIFFS, V. JEFFREY BARON AND ONDOVA LIMITED COMPANY, DEFENDANTS	§ § § § § § § § § § § § §	CIVIL ACTION NO. 3:09-CV-0988-F

NOTICE OF ENTRY OF ORDER REGARDING AUCTION SALE

TO ALL CREDITORS AND PARTIES IN INTEREST:

PLEASE TAKE NOTICE that pursuant to an Order entered on September 24, 2013, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in the Chapter 11 case of Ondova Limited Company, Case No. 09-34784-SGJ-11, has approved the Trustee's Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. §363(b) and (B) for Approval of Sale Procedures ("Motion") [Docket No. 1122]. A true and correct copy of the Order is attached hereto as Exhibit "A".

Respectfully submitted,

/s/ Raymond J. Urbanik

Raymond J. Urbanik
Texas State Bar No. 20414050
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street, Ste. 3800
Dallas, Texas 75201
(214) 855-7500 (telephone)
(214) 855-7584 (facsimile)
E-mail: rurbanik@munsch.com

ATTORNEYS FOR DANIEL J. SHERMAN, CHAPTER 11 TRUSTEE FOR ONDOVA LIMITED COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice was to all parties requesting electronic service through the Court's ECF system on October 3, 2013.

/s/ Raymond J. Urbanik
Raymond J. Urbanik

EXHIBIT A

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 20, 2013

United States Bankruptcy Judge

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.	§	

ORDER APPROVING TRUSTEE'S MOTION FOR (A) AUTHORITY TO SELL PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 363(B) AND (B) FOR APPROVAL OF SALE PROCEDURES

Came on for consideration the Trustee's Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. § 363(b) and (B) for Approval of Sale Procedures ("Motion") filed on August 14, 2013 [Docket No. 1110], by Daniel J. Sherman, Chapter 11 Trustee ("Trustee") for Ondova Limited Company ("Ondova" or "Debtor"), which Motion seeks authority to sell the internet domain name "servers.com" ("Domain Name" or "Asset") to proposed purchaser XBT Holdings, Ltd., or an affiliate thereof ("Purchaser"), for the sale price of $300,000.00, which offer has been designated as a stalking horse bid by the Trustee, subject to higher and better bids, if any, and this Court having considered the Motion, the arguments and representations of the

parties, and the evidentiary record before it, finds and concludes that[1]: (i) the relief requested in the Motion, including the sale procedures proposed therein ("Sale Procedures"), which include, *inter alia*, a four (4) week period for the Trustee to market the Domain Name, are fair, reasonable, appropriate and designed to maximize the value of the Asset to be sold by the Trustee as proposed therein; (ii) the Purchaser, having submitted an offer of $300,000.00 shall be designated stalking horse bidder and the proposed $20,000.00 breakup fee to be paid to Purchaser, if Purchaser is not the high bidder at an auction sale if an auction is conducted by the Trustee, is in all respects approved; (iii) the Trustee has exercised his sound business judgment in determining to sell the Asset to the Purchaser as set forth in the Motion and pursuant to the Sale Procedures; (iv) the Trustee has formulated the Sale Procedures in good faith for the purpose of maximizing the value of the Asset; (v) due and adequate notice of the Motion has been given to all creditors and parties in interest and no other or further notice is necessary; (vi) the proposed Purchaser is a disinterested party not in any way connected to the Debtor, the Trustee or any party-in-interest and therefore is entitled to the protections of 11 U.S.C. § 363(m); and (vii) after due deliberation thereon and for all of the reasons stated by the Court on the record, good and sufficient cause exists to grant the relief set forth herein as being in the best interests of the estate and this estate's creditors. Accordingly, it is hereby

ORDERED that as provided under 11 USC Section 363(b) and (f), the sale of the Domain Name is a reasonable exercise of the Trustee's judgment, is based on a sound business justification and should be approved. This Court approves the Motion to sell the Domain Name to Purchaser, or, alternatively, the winning bidder in the event an auction sale is conducted, under the terms and conditions set forth in the Motion free and clear of all liens, claims and encumbrances with any liens, claims and encumbrances attaching to the proceeds of the sale. It is further

[1] Findings of fact shall be construed ``as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

ORDERED for the reasons stated on the record and in this Order, all objections to the relief requested in the Motion are overruled in their entirety. It is further

ORDERED specifically that the Objection of Jeffrey Baron to Trustee's Motion to Sell Servers.com filed on September 7, 2013 ("Objection") [Docket No. 1115] is denied and overruled in its entirety. This Court, having considered all of the evidence presented, including the testimony of the Trustee and Jeffrey Baron ("Baron"), has determined that the record supports approval for the Motion in all respects. Baron, the former president of Ondova, asserting a reversionary interest in the Domain Name which would in essence convey to him personally proceeds from the sale of the Domain Name, failed to meet the necessary burden of proof under 11 USC § 363(p). Baron's claim of a reversionary interested, which he testified was granted to him on July 7, 2009, shortly before the Ondova Chapter 11 filing date of July 26, 2009, would be, at best, a claim subject to a bona fide dispute and the Court may proceed with the sale of the Domain Name pursuant to 11 U.S.C. § 363(b), (f) and (p). This Court notes that any party seeking to object to a sale of assets holds the burden of proof pursuant to 11 U.S.C. § 363(p) and based on the evidence presented at the hearing, Baron failed to meet his burden of proof as to any claim in and to the Domain Name. Regardless, this Court may sell an asset to which there is a bona fide dispute under 11 U.S.C. § 363(f) and in the event that there is a claim against such asset, such claim attaches to the proceeds to the same extent that they have validity against the actual asset. Finally, this Court was advised that John H. Litzler, the Chapter 7 bankruptcy trustee over Baron (Baron is a debtor in a pending Chapter 7 case before this Court) reached an agreement with the Trustee which allows Litzler to investigate whether Baron holds any legitimate claim or right with respect to the Domain Name. That agreement allows Litzler until October 31, 2013, to assert such claim, with such deadline being subject to extension by agreement of the parties. It is further

ORDERED that the Court finds that the Purchaser is a good faith purchaser for value and if the Purchaser is ultimately determined to be the winning bidder for the Domain Name, it

shall be entitled to all of the protections of § 363(m) of the Bankruptcy Code. Additionally the proposed break-up fee of $20,000.00 is approved and under certain conditions as described in the Motion, may possibly be increased by order of this Court.[2] It is further

ORDERED that the Trustee shall proceed with the sale efforts for the Domain Name pursuant to the Sale Procedures (a copy of which are attached as Exhibit "A"), which procedures are hereby approved. The Trustee is authorized to take any and all actions necessary or appropriate to implement the Sale Procedures including, but not limited to, advertising the Domain Name for purchase by auction sale in publications and internet websites as determined by the Trustee, and in the event qualified bidders are located, thereafter conducting an auction sale, which the Trustee has scheduled for October 29, 2013 at 2 p.m. Central time, in accordance therewith. It is further

ORDERED that the sale hearing to consider final approval of the sale of the Domain Name to the successful bidder as purchaser shall occur on **November 4, 2013, at 2:30 p.m.** prevailing Central time ("Sale Hearing"). It is further

ORDERED that the Trustee's proposed Notice of Sale (a copy of which is attached hereto as Exhibit "B") and the Sale Procedures are hereby approved and the Trustee shall cause such Notice of Sale, the Sale Procedures and this Order to be served or filed as follows: (1) filed on the docket of this case; (2) served on all parties who have requested notice in this bankruptcy case pursuant to Rule 2002; (3) the United States Trustee, (4) Peter Vogel, the Receiver for Jeffrey Baron and his counsel, (5) John Litzler, the Chapter 7 Trustee for Jeffrey Baron and his counsel; (6) filed on the docket of the Baron Chapter 7 case; and (7) all parties whom the Trustee believes may be potential purchasers of the Domain Name (all collectively, the "Notice Parties"). It is further

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[2] The Purchaser may seek a higher break-up fee if it is required to expend professional fees caused by any parties who might create additional delay or expense with respect to the Court approved sales process. Any increase in the break-up fee will be determined by this Court.

ORDERED that following the conclusion of the auction, the Trustee shall file and serve upon all Notice Parties, as well as any qualified bidders, notice of the auction results if an auction does occur or, alternatively, a notice that no auction sale was conducted, with such a notice to be filed by 5:00 p.m. Central time on October 31, 2013 ("Sale Notice"). The Sale Notice shall inform parties in interest of the intention to have this Court approve the sale of the Domain Name to the Purchaser, or other successful bidder, at the Sale Hearing. It is further

ORDERED that any objection to the sale of the Domain Name to the Purchaser or other successful bidder shall be in writing and shall set forth the basis of the objection and shall be filed with the bankruptcy court and served upon the Trustee so as to be received on or before November 1, 2013 at 5 p.m. Central time. It is further

ORDERED that this Court shall retain exclusive jurisdiction over matters related to or arising from the implementation of this Order including, but not limited to, any claim, matter or dispute arising from or relating to the Sale Procedures, the proposed sale or the implementation of this Order.

IT IS SO ORDERED.

END OF ORDER

Order Submitted by:

Raymond J. Urbanik
Texas Bar No. 20414050
Munsch Hardt Kopf & Harr, P.C.
3800 Lincoln Plaza
500 N. Akard St.
Dallas, Texas 75201-6659
Telephone: (214) 855-7500
Facsimile: (214) 855-7584
rurbanik@munsch.com

SALE PROCEDURES

a. As directed in the Order Approving Motion for (A) Authority to Sell Property of the Estate Pursuant to 11 U.S.C. § 363(B) and (B) For Approval of Sale Procedures ("Motion"), the Trustee shall market the Domain Name Servers.com, noting that it is part of a Bankruptcy Court auction, on Internet websites which are related to the server and webhosting industries and on Internet websites which relate to the Internet domain name industry (i.e. Domain Name Journal).

b. The Trustee shall have a period of thirty (30) days to market the Domain Name.

c. Any parties interested in purchasing the Domain Name must submit a bid in the amount of at least $330,000 and also submit financial information to the Trustee to demonstrate sufficient financial resources to purchase the Domain Name.

d. Any party that seeks to bid on the Domain Name shall be required to place with the Trustee a $40,000.00 deposit. A party which evidences financial resources and places a deposit shall be designated a Qualified Bidder. The deposit will be promptly refunded if a bidder is not the winning bidder or second highest bidder at the auction.

e. If there is one or more Qualified Bidders, an auction will be scheduled and conducted at the offices of counsel for the Trustee and the initial opening bid will be the highest bid received from a Qualified Bidder and all subsequent bidding will be in minimum increments of $10,000.00. Qualified Bidders participating in the auction may participate in person or by telephone. The Trustee shall have the absolute right and discretion to determine the highest and best bid (the "Winning Bidder") at the auction.

f. The second highest bidder shall agree to be the purchaser if the winning bidder fails to close.

g. Any party participating in the auction which is determined to be the winning bidder but which fails to close on the purchase of the Domain Name shall forfeit their deposit.

h. In the event that Purchaser is not the winning bidder, it shall receive a $20,000.00 break-up fee and, like any other Qualified Party which submitted a deposit but was not the winning bidder, shall receive the return of its deposit.

i. Parties seeking to submit bids must notify the Trustee prior to 5 pm Central time on October 25, 2013 and must submit a offer of at least $330,000, tender a deposit of $40,000.00 and provide evidence of financial ability to close.

j. The auction sale shall be conducted at the offices of Munsch Hardt Kopf and Harr, PC, 500 North Akard Street, Suite 3800, Dallas, Texas 75201 on Tuesday October 29, 2013 at 2 pm, Central time. Telephone participation at the auction sale will be permitted for qualified bidders.

k. The hearing to approve the sale of the Domain Name to the winning bidder will be held on November 4, 2013, at 2:30 p.m. at the United States Bankruptcy Court, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242.

EXHIBIT A

13-10696.28547

BANKRUPTCY AUCTION NOTICE

TECHNOLOGY DOMAIN NAME

"servers.com"

BANKRUPTCY COURT ORDERED SALE[1]

COURT APPROVED STALKING HORSE BID	$300,000.00
AUCTION OPENING BID	$330,000.00
BIDDING INCREMENTS	$ 10,000.00
MINIMUM DEPOSIT TO BECOME QUALIFIED BIDDER	$ 40,000.00
AUCTION LOCATION	DALLAS, TEXAS[2]
AUCTION DATE	OCTOBER 29, 2013 2 p.m. Central
FINAL COURT APPROVAL DATE	NOVEMBER 4, 2013 2:30 p.m. Central

FOR FURTHER INFORMATION
PLEASE CONTACT COUNSEL FOR
THE BANKRUPTCY TRUSTEE:

rurbanik@munsch.com

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[1] Case No. 09-34784-SGJ-11, U. S. Bankruptcy Court, Northern District of Texas
[2] Telephone participation permitted for qualified bidders

MHDocs 4700715_1 11236.1

EXHIBIT B

13-10696.28548

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

NETSPHERE, INC., MANILA INDUSTRIES, INC., AND MUNISH KRISHAN	§	
PLAINTIFFS,	§	
V.	§	**CIVIL ACTION NO. 3:09-CV-0988-L**
JEFFREY BARON AND ONDOVA LIMITED COMPANY,	§	
DEFENDANTS.	§	

RECEIVER'S MOTION FOR AUTHORITY TO IMMEDIATELY COMPLY WITH MANDATE, FOR WIND DOWN PLAN AND DISCHARGE, AND FOR PAYMENT CONSISTENT WITH THE MAY 29, 2013 ORDER OF THIS COURT

Receiver Peter S. Vogel (the "Receiver") seeks to timely comply with the Fifth Circuit mandate by respectfully requesting (1) permission to make payments as previously authorized by Order of this Court and (2) to wind down operations of the receivership by transferring its assets as directed by the mandate of the Fifth Circuit, the report and recommendation of the Bankruptcy Court or other order of this Court.

BACKGROUND REGARDING THE CURRENT STATUS OF THE RECEIVERSHIP ORDER AND THE RECEIVER'S REQUEST FOR AUTHORITY TO IMPLEMENT THE FIFTH CIRCUIT MANDATE

In November 24, 2010, the District Court established a receivership ("2010 Receivership Order") to control a vexatious litigant, Jeffrey Baron ("Baron"). *Netsphere v. Baron,* 703 F.3d 296, 305, 310 (5th Cir. 2012) ("The district court appointed a receiver primarily to control Baron's hiring, firing, and non-payment of numerous attorneys."). The Receiver was granted exclusive control over assets, including Baron's personal property, and the receivership "also included business entities owned or controlled by Baron, including Novo Point, LLC and

Quantec, LLC."[1] *Id.* at 310. On December 18, 2012, noting that Baron's "longstanding vexatious litigation tactics presented the district court with an exceedingly difficult situation[.]"[2] a Fifth Circuit panel issued an opinion vacating the 2010 Receivership Order, finding that the District Court "could have held Baron in contempt, imposed a fine or imprisoned him for disobedience . . . to its lawful . . . command. 18 U.S.C. § 401." *Id.* at 311. Having found that the imposition of the receivership was an improper remedy, the Fifth Circuit concluded that "the district court could not impose a receivership over Baron's personal property and the assets held by Novo Point and Quantec." *Id.* at 310-311.

Importantly, by subsequent Order, the Fifth Circuit made clear that its "opinion did not dissolve the receivership immediately." December 31, 2012 Fifth Circuit Order [Case: 10-11202, Doc. No. 00512097486, also DE 1130-1]. Specifically:

> We ordered a remand for an expeditious winding up of the receivership. No assets that were brought under the control of the receiver will be released immediately from that control even when the mandate is issued. The district court will thereafter have the authority to manage the process for ending the receivership as quickly as possible. December 31, 2012 Fifth Circuit Order

Consistent with the December 31, 2012 Fifth Circuit Order, the Court has ordered the Receiver to maintain the receivership estate during the Gap Period (from the filing of the

[1] Novo Point, LLC and Quantec, LLC ("Novo Point" and "Quantec") are entities that Judge Furgeson found to be alter egos of Baron, controlled by allegedly self-settled Cook Island trusts ultimately controlled by Baron as part of Baron's ongoing efforts to put assets beyond the reach of the courts of the United States. *Order,* February 3, 2011 [DE 268] at pages 19-20. Baron utilized Novo Point and Quantec to operate Internet domain name portfolios that generate revenue from customer visits to Internet domain sites (e.g., customer visits www.Dallas Cowboyys.com). Many of these Internet domain names have been alleged to be cybersquatting in nature by infringing trademarks of others and thus subject to a variety of claims. As noted above, these third party actions remain enjoined pending wind down and closing of the Receivership estate.

[2] "When Baron's hiring and firing of attorneys were first addressed, the court found clear and convincing evidence of Baron's contempt of court and said it could employ such tools as monetary sanctions or jailing Baron until he complied with court orders. The court concluded, though, that these remedies were insufficient because Baron had repeatedly ignored court orders." *Netsphere v. Baron,* 703 F.3d 296, 305, 311 (5th Cir. 2012)

involuntary through entry of the June 26, 2013 Order for Relief), effectively extending the 2010 Receivership Order (pending the wind down pursuant to the Fifth Circuit mandate) which, amongst other provisions, contains a broad injunction against any third party enforcement actions, and maintenance of the Internet domain names in the Receivership estate (*See, e.g.*, January 17, 2013 Interim Orders). As a result, a number of pending and threatened enforcement actions remain stayed, and the Receiver continues daily maintenance of the Internet domain-name portfolios.

However, the Fifth Circuit specifically directed a prompt return of the receivership's assets to Baron, payment of accrued receivership expenses, and winding down of the receivership.

Baron failed to convince the Fifth Circuit that "the appointment of the receiver was in bad faith or collusive." *Id.* at 313. Rather, the Fifth Circuit held that, "based on this record, that in creating the receivership ''there was no malice nor wrongful purpose, and only an effort to conserve property in which [the court] believed'' it was interested in maintaining for unpaid attorney fees and to control Baron's vexatious litigation tactics." *Id.* at 313. The Fifth Circuit also found that here "the record supports that the circumstances that led to the appointment of a receiver were primarily of Baron's own making . . ." and that "to a large extent, Baron's own actions resulted in more work and more fees for the receiver and his attorneys." *Id.* at 313. Finding that "equity controls when addressing the costs created by an improper receivership . . ." the Fifth Circuit concluded that "charging the current receivership fund for reasonable receivership expenses, without allowing any additional assets to be sold, is an equitable solution." *Id.* at 313.

Noting that the fees already paid in the receivership "were calculated on the basis that the receivership was proper" the Fifth Circuit found that "the amount of all fees and expenses must be reconsidered by the district court." *Id. at 313*. The Fifth Circuit also concluded "that everything subject to the receivership other than cash currently in the receivership . . . should be expeditiously returned to Baron under a schedule to be determined by the district court for winding up the receivership." *Id. at 313-314*. The Fifth Circuit also found that the cash in the receivership to be at least $1.6 million, and that any 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." *Id. at 314*. "To the extent the cash on hand is insufficient to satisfy fully what has been determined to be the reasonable charges by the receiver and his attorneys, those charges will go unpaid." *Id. at 314.*

Having considered and denied cross motions for rehearing en banc, on April 19, 2013, the Fifth Circuit issued as its mandate the December 18, 2012, opinion reversing the judgment of the District Court and "the cause was remanded to the District Court for further proceedings in accordance with the opinion of this Court." *See, Docket Entries 1255-1263, 09-cv-988.*

As detailed below, because of the Baron involuntary bankruptcy and the follow-on January 17, 2013 Interim Orders of the Bankruptcy and District Courts, the Receiver has been ordered to continue operating the receivership and retain control of part of the receivership assets despite the Fifth Circuit mandate to shut down the receivership, pay allowed expenses and return the assets. Now that the involuntary Baron bankruptcy has been confirmed, this Motion addresses the Receiver's request for authority to immediately implement the Fifth Circuit mandate by shutting down the receivership, paying allowed expenses and returning the assets.

Implementation of the mandate has been delayed pending a ruling in the Bankruptcy Court, since issued, adjudicating Baron a debtor, as detailed below.

A. Background of the Receivership Entities and Jeffrey Baron, the Individual Involuntary Debtor

Meanwhile, on December 18, 2012, in response to the Fifth Circuit opinion filed just hours before, a host of former unpaid Baron counsel initiated an involuntary chapter 7 bankruptcy case against Baron *individually*. *See In re Jeffrey Baron,* Case No. 12-37921 [DE 1]. The Novo Point and Quantec entities were not included in the involuntary bankruptcy petition filed by the petitioning creditors against Jeffrey Baron, individually. On June 26, 2013, Judge Jernigan entered an order for relief only against Baron individually, and pursuant to the provisions of 11 U.S.C. §543, the Receiver has provided an accounting to the Bankruptcy Court, and is complying with the statutory requirement to turnover Baron's personal assets to the duly appointed bankruptcy trustee.

By contrast, when the receivership was instituted, significant efforts were made to include Novo Point and Quantec (and other related Baron entities under the control of Baron) as "Receivership Parties" based upon alter ego and failure by Baron to observe proper formalities. *Order,* February 3, 2011 [DE 268] at pages 19-20. The District Court was convinced that including all of the Baron entities as Receivership Parties was the only way to insure that complete relief could be afforded creditors. *Id.*

Generally, a bankruptcy estate is comprised of all legal and equitable property interests of the *debtor*, wherever located and by whomever held. 11 U.S.C. §541(a). By not including the

Novo Point and Quantec entities as *debtors* in the involuntary Baron bankruptcy filing, generally their property interests would not become property of the Baron bankruptcy estate.[3]

Given that Baron individually has been the only party adjudicated an involuntary debtor, only Baron's personal assets have been included in the Baron bankruptcy estate. By contrast, the substantial domain name assets of other Receivership Parties, Novo Point and Quantec, have not been included in the Baron bankruptcy estate.

Novo Point and Quantec hold the registration of more than 150,000 Internet domain names central to Baron's domain monetization business and the ongoing litigation that was the source of the receivership order. Novo Point and Quantec, controlled by several alleged Cook Islands trusts settled by Baron and in which he is beneficiary, have consistently appeared in these cases, beginning with a July 2009 motion seeking intervention [DE 45 and 51], and including motions for clarification as to whether they were intended to be included within the receivership [DE 153, 154 and 155]. By order of December 17, 2010 [DE 176], this Court confirmed Novo Point and Quantec inclusion as Receivership Parties. The same day, counsel for Novo Point and Quantec entered an agreed Order with this Court with regard to management of Novo Point and Quantec. Shortly thereafter, following a subsequent hearing on Baron's motions to dissolve the Receivership, Judge Furgeson issued a detailed Order on February 3, 2011 [DE 268]. That order included a number of findings including that, among other things, Baron was operating a series of "alter ego" trust and corporate entities for the purpose of disrupting the judicial process, evading court orders, and placing assets beyond the reach of the courts. *Id. at* 19-20. Baron appealed the receivership order and numerous other orders, though he did not appeal the

[3] But see, *In re Shurley,* 115 F.3d 333 (5th Cir. 1997) where assets contributed by the debtor/grantor of a self-settled spendthrift trust and income generated therefrom are property of the estate.

February 3 order. Novo Point and Quantec also appealed the order of December 17, 2010, confirming their inclusion in the receivership, but also did not appeal from the February order.

Whether Novo Point and Quantec's assets are to be included in Baron's bankruptcy has been addressed in the July 26, 2013, Bankruptcy Court's *Sua Sponte Report And Recommendation To The District Court Proposing Disposition Of Assets Held In The Overruled Receivership Of Jeffrey Baron, In Accordance With Sections 541-543 Of The Bankruptcy Code* [DE 1304] (the "Report"), which contains a thorough recitation of the history of these cases. The Bankruptcy Court has concluded and recommended to this Court that the Novo Point and Quantec assets should be included in Baron's assets to be administered in his involuntary bankruptcy case. The Report remains pending in this Court.[4]

Baron, Novo Point, and Quantec have filed objections to the Report in which they contend, among other things, that the process for including Novo Point and Quantec in Baron's bankruptcy estate has been deficient—i.e., that the Bankruptcy Court should have issued notice of and conducted an adversary proceeding. The Receiver has taken no position on whether the Novo Point and Quantec assets should be included in the Baron bankruptcy estate. The Baron bankruptcy trustee supports the Bankruptcy Court's Report.

B. Implementing the Fifth Circuit Mandate

In its December 18 opinion, the Fifth Circuit reversed the 2010 Receivership Order and remanded this case to this Court with directives: a) to vacate the receivership and discharge the receiver, his attorneys and employees, b) to charge against the $1.6 million cash in the receivership fund the remaining receivership fees in accordance with its directive for the district

[4] To the extent the Court believes it necessary to comply with the Fifth Circuit mandate to expeditiously resolve the proper disposition of the Novo Point and Quantec assets *should it not adopt the Bankruptcy Court Report*, it may issue deadlines for interested parties to show cause in the Bankruptcy Court, or withdraw the reference and direct interested parties to weigh in on the issue (e.g., 28 U.S.C. §157(d)).

court to make a new determination of reasonable fees and expenses to be paid to the receiver, c) to expeditiously release to Baron, under a schedule to be determined by the district court for winding up the receivership, everything subject to the receivership other than cash currently in the receivership of $1.6 million, d) to the extent the $1.6 million 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, and f) no further sales of domain names or other assets are authorized. *Netsphere v. Baron*, 703 F.3d 296, 313-315 (5th Cir. 2012).

As noted in greater detail below, the Court has already fulfilled the directive to make a new determination of reasonable fees and expenses to be paid to the receiver in its May 29, 2013, *Order on Receivership Professional Fees* [DE 1287], allowing $1,296,550 in receivership expenses to various service providers to the Receiver.[5] However, because of the pending involuntary bankruptcy case against Baron, the Court did not then permit the immediate charging and payment of the newly reconsidered allowed fees.

1. The District Court has already Made a New Determination of Reasonable Fees and Expenses to be Paid to the Receiver

Mindful of the Fifth Circuit's mandate and the pending bankruptcy, in early May 2013, Judge Furgeson promptly conducted a three day trial to reconsider all of the receivership fees and expenses. On May 29, 2013 [DE 1287], Judge Furgeson issued his *Order on Receivership Professional Fees* in which he reconsidered an early advisory suggesting disgorgement from certain professionals, and authorized further payments (representing work completed but unpaid to that point) to the Receiver, Dykema and several others who conducted the day-to-day business

[5] This Order resolved Docket Nos. 1035, 1075, 1096, 1116, 1117, 1125, 1229, 1232, 1233, and 1234, but did not address continuing receivership expenses incurred since April 2013 of the Receiver and Dykema. The May 29, 2013 *Order on Receivership Professional Fees* also approved payments under the *Order Granting Motion For Fee Application For The Receiver in Regard to Certain Miscellaneous Receivership Professionals* [DE 1282]. The Receiver requests authority to also immediately pay these allowed miscellaneous receivership expenses as well.

of the Internet domain monetization[6] (i.e., renewing names, responding to hostile demands from those claiming trade mark infringement or other rights affected by Baron's registration of the domains). The additional allowed Receiver professional fees totaled $1,296,550, well below the more than $1.6 million in cash on hand in the receivership accounts. However, the Receivership continues to operate under the 2010 Receivership Order, the December 31, 2012 Fifth Circuit Order and January 17, 2013 Interim Orders,[7] the assets in specie have not been returned and the order's payment obligation has been delayed pending resolution of the then-pending question of whether Baron would be held to be a debtor in the involuntary bankruptcy.

2. Current Status of the Baron Bankruptcy and the Receivership

Within the *Order on Receivership Professional Fees* [DE 1287] the Court noted that while the "Fifth Circuit has directed this Court to wind up the Receivership and release assets to Baron and his entities . . . the court is unable to do this with the involuntary bankruptcy proceedings still in process." [DE 1287 Order of 5/29/13 at 8 n.5]. However, approximately one month later, on June 26, 2013, Baron was adjudicated a debtor and it became clear that Baron's personal assets were to be turned over to the Baron bankruptcy trustee, but the assets of the remaining Receivership Parties, Novo Point, and Quantec, would remain under the stewardship of the Receiver.

The Receiver had been ordered by the Bankruptcy Court and this Court to retain and operate the receivership assets during the "gap period" pending resolution of the question whether an order for relief would be entered against Baron individually, subject to maintaining

[6] Besides approving certain accrued miscellaneous receivership expenses, the Court also authorized "the payment of any additional fees and expenses incurred by these employees and professionals that accrue until the wind down and close of the Receivership estate." *Order on Receivership Professional Fees* [DE 1287] at pages 33-34. The Receiver also requests authority to pay these ongoing miscellaneous expenses until the wind down and close of the Receivership Estate.

[7] *See, January 17, 2013 Bankruptcy Court Interim Order* [DE 39, Case No. 12-37921], and *January 17, 2013 Order Adopting Bankruptcy Court Recommendations* [DE 1176] (collectively, the "1/17/13 Interim Orders").

the domains (i.e. paying the renewals and fending off claimants). *See, January 17, 2013 Bankruptcy Court Interim Order* [DE 39, Case No. 12-37921], and *January 17, 2013 Order Adopting Bankruptcy Court Recommendations* [DE 1176] (collectively, the "January 17, 2013 Interim Orders"). Now that the Order for relief has been entered against Baron, it is clear that the Bankruptcy Court has jurisdiction only over Baron's personal assets, but does not yet have jurisdiction over the assets of Receivership Parties Novo Point and Quantec.

In fact, the District Court has previously recognized the difficult position faced by both the Bankruptcy and District Courts. During hearings to determine Receiver expenses per the Fifth Circuit mandate, counsel for the Receiver reminded the Court (and all present) that the Receivership included Baron and his entities Novo Point and Quantec, but, as of that point, that only Baron was the subject of the bankruptcy. The Court agreed:

> "I think that's a great point. The fact that it's only Mr. Baron who's sought to be put into involuntary bankruptcy and there no effort to do anything to Novo or Quantec or any of that, then I know this is going to be hard for the new judge, somewhere I realize there is an automatic stay, but the reference should be withdrawn, and those parties should be spun off and sent back where they should be. Judge Jurnigan as far as I know is not going to have any authority over those companies at all, if there is a bankruptcy." Transcript of May 10, 2013, Day 3 of Receiver Professional Fee Trial at 78.

Third party claimants continue to file trademark infringement actions and have begun aggressively asserting the Fifth Circuit opinion vacating the receivership order as a basis for immediately pursuing their trademark infringement and Uniform Domain Name Dispute Resolution Policy ("UDRP") claims under the rules of the Internet Corporation for Assigned Names and Numbers ("ICANN") to get domains from Novo Point and Quantec under the authority of ICANN which is the world-wide body that registers all Internet domain names

including claims brought to WIPO[8] and other far flung forums.[9] Implementation of the mandate (and a decision on whether the Novo Point and Quantec assets are to be delivered to the Baron bankruptcy trustee) will clarify the status of these increasingly aggressive third party claimants.

Baron continues his longstanding practice of appealing virtually every order entered by either the Bankruptcy Court[10] or the District Court. Baron, Novo Point, and Quantec have objected to the Bankruptcy Court's Report (regarding the disposition of Novo Point and Quantec assets). Despite the Bankruptcy Court having denied Baron's recent emergency motions to appoint a replacement trustee for the Cook Island trusts controlling Novo Point and Quantec when the trustee resigned, Novo Point and Quantec appear to continue to object to these proceedings whilst having no sitting trustee or fiduciary/figurehead (other than Baron) available to guide and make decisions for those entities. It is quite possible that proceedings regarding the turnover of Novo Point and Quantec assets could continue for many months or years. The Fifth Circuit mandate contemplates a prompt resolution of the receivership, its expenses, and a turnover of receivership assets.

The primary remaining issue in the Baron bankruptcy is whether, as proposed in the Bankruptcy Court's Report, Novo Point and Quantec, should be treated as part of the Baron bankruptcy estate. While the Receiver urges resolution of that latter question in order to expedite

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[8] The World Intellectual Property Organization (WIPO) is an ICANN-approved administrative dispute provider that adjudicates domain name disputes (commonly referred to as "UDRPs") filed under the ICANN mandated Uniform Domain Name Dispute Resolution Policy (UDRP) via an Arbitration Panel.

[9] Despite the receivership injunction order entered November 24, 2010, staying any actions involving Receivership assets, and the 12/31/12 Fifth Circuit Order, WIPO has proceeded or communicated its intention to move forward in several pending matters. The Receiver has advised the parties that the Court has ordered the Receiver to continue operating the receivership and asserting the receivership injunction, pending the wind down mandated by the Fifth Circuit. *See, e.g., Receiver's Motion For Order To Show Cause Why WIPO And ICANN Should Not Be Held In Contempt*, [DE 1225 pending since 4/12/13]. *See, also*, Niall Head-Rapson email, Exhibit "A" for an example of recent third party claimant demands.

[10] By example, Baron appealed the entry of the order for relief and filed an emergency motion to stay all of his bankruptcy court proceedings. This relief was denied. October 1, 2013 *Order*, [DE 22] Civil Action No. 3:13-cv-3461-O.

his discharge, the issue with respect to past fees has been settled. The Receiver, his professionals and counsel have been continuing to operate and to safeguard all of the assets (pursuant to the January 17, 2013 Interim Orders) without payment for a considerable time. Dykema, by example, noted by the Court as having performed exemplary service, has only been paid for approximately 25% of its already approved work and continues to hold in trust more than $700,000 available to pay its outstanding allowed fee statements. Meanwhile, non-lawyer professionals continue to provide daily services to the Receivership and have not been paid in many months.[11]

In its December 18 Opinion, the Fifth Circuit assumed that all of the receivership assets would be promptly turned over to the Receivership Parties. Pursuant to bankruptcy turnover statute, 11 U.S.C. §543, Baron's personal assets have been directed to be in the hands of the Baron bankruptcy trustee. Regardless of whether Novo Point and Quantec's assets are returned to Novo Point and Quantec, or, as the Bankruptcy Court has recommended in its Report, to become part of the Baron bankruptcy estate, the Fifth Circuit mandate is clear that reconsidered allowed receivership expenses are to be paid out of the $1.6 million cash on hand. In fact, payment of those expenses are consistent with the provisions of 11 U.S.C. §543(c)(2) mandating the prompt payment of reasonable compensation for services rendered and costs and expenses incurred by a receiver. The District Court has already allowed $1,296,550 in receivership expenses, well more than $1.6 million cash is on hand, and the Receiver respectfully requests that the Court permit immediate payment of these allowed receivership expenses as another leg in implementing the Fifth Circuit mandate.

[11] The Court has already authorized "the payment of any additional fees and expenses incurred by these employees and professionals that accrue until the wind down and close of the Receivership estate." *Order on Receivership Professional Fees* [DE 1287] at pages 33-34.

C. Proposed Wind Down

Since the Receiver has already accounted for all receivership assets (as required by 11 U.S.C. §543(b)(2)), directed to turn over all Baron personal assets to the Baron bankruptcy trustee (as required by 11 U.S.C. §543(b)(1)), and the District Court has reconsidered and allowed receivership expenses, the only remaining activity for the Receiver to wind down the receivership and be discharged is to pay the allowed reconsidered receivership expenses of $1,296,550, and turn over the remaining Novo Point and Quantec assets to either Baron (or his bankruptcy trustee), or to Novo Point and Quantec.

Therefore, the Receiver respectfully requests immediate authority to pay the allowed reconsidered receivership expenses of $1,296,550, as well as allowed miscellaneous receivership expenses until the wind down and close of the Receivership estate, and direction from this Court as to where to turn over the remaining Novo Point and Quantec assets.

In either case, the creation of a predictable end to the Receivership would operate to the benefit of all involved and would make considerable strides toward adherence with the Fifth Circuit's mandate.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: */s/ David J. Schenck*
David J. Schenck
State Bar No. 17736870
Jeffrey R. Fine
State Bar No. 07008410
Christopher D. Kratovil
State Bar No. 24027427
1717 Main Street, Suite 4000
Dallas, Texas 75201
(214) 462-6455
(214) 462-6401 (Telecopier)

ATTORNEYS FOR THE RECEIVER,
PETER S. VOGEL

CERTIFICATE OF CONFERENCE

I hereby certify that on September 30, 2013, I reached out to counsel for the affected parties in writing seeking their position on the relief requested in this Motion—(1) a wind down of the receivership and concomitant disposition of the trust assets; and (2) payment of the receivership expenses pursuant to the mandate and prior order. With the exception of the Ondova bankruptcy trustee, all have declined to state a position. The Ondova bankruptcy trustee is not opposed to an announcement of a wind down plan, but indicates he is otherwise unable to take a position with respect to the rest of the relief sought. Because of the lack of response over multiple days, we treat this motion as opposed.

By: */s/ David J. Schenck*
David J. Schenck

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF system on all counsel of record on October 3, 2013.

By: */s/ David J. Schenck*
David J. Schenck

EXHIBIT A

Fine, Jeffrey

From: Schenck, David
Sent: Wednesday, October 02, 2013 1:26 PM
To: Fine, Jeffrey
Subject: FW: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision

---

From: Niall Head-Rapson [mailto:nh@mcdanielslaw.com]
Sent: Friday, June 14, 2013 12:13 AM
To: Schenck, David; Legal @ Fabulous.com; Domain Disputes
Cc: 57322853515210573228535152l0-7370c7@whoisprivacyservices.com.au; jamesmeckels@gmail.com; Fine, Jeffrey; joshua cox; pvogel@gardere.com; Massand, Neal; Kratovil, Christopher; legalenquiries@whoisprivacyservices.com.au; support@fabulous.com; OndovaLimited@gmail.com; 'udrp@icann.org' (udrp@icann.org)
Subject: RE: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision

Dear Mr Schenk

The documentation which has been provided in this process has set out that you had no locus to retain the domain question. The Judgment and the Order were clear. There is no justification for the retention of the domain name. I will therefore advise my client to commence recovery proceedings and look to you to recover the costs of that process.

Regards

Niall Head-Rapson
Director

McDaniel & Co.
19 Portland Terrace
Jesmond
Newcastle upon Tyne
NE2 1QQ

DX 62551
JESMOND

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Mobile: 07881 504 903
Fax: 0191 281 4333

nhr@mcdanielslaw.com
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From: Schenck, David [mailto:DSchenck@dykema.com]
Sent: 13 June 2013 20:04
To: Niall Head-Rapson; Legal @ Fabulous.com; Domain Disputes
Cc: 57322853515210573228535152l0-7370c7@whoisprivacyservices.com.au; jamesmeckels@gmail.com; Fine, Jeffrey; joshua cox; pvogel@gardere.com; Massand, Neal; Kratovil, Christopher; legalenquiries@whoisprivacyservices.com.au;

support@fabulous.com; OndovaLimited@gmail.com; 'udrp@icann.org' (udrp@icann.org)
Subject: RE: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision

In looking through my email, I'm not certain whether anyone has previously responded. I'll apologize for the delay if we haven't. Mr. Baron was subjected to an involuntary bankruptcy proceeding prior to the discharge of the Receiver. Those proceedings (and orders entered therein) have delayed discharge of the receiver and required preservation of the estate.

From: Niall Head-Rapson [mailto:nh@mcdanielslaw.com]
Sent: Thursday, May 23, 2013 12:39 AM
To: Niall Head-Rapson; Schenck, David; Legal @ Fabulous.com; Domain Disputes
Cc: 57322853515210573228535152105732285351521057322853515210-7370c7@whoisprivacyservices.com.au; jamesmeckels@gmail.com; Fine, Jeffrey; joshua cox; pvogel@gardere.com; Massand, Neal; Kratovil, Christopher; legalenquiries@whoisprivacyservices.com.au; support@fabulous.com; OndovaLimited@gmail.com; 'udrp@icann.org' (udrp@icann.org)
Subject: RE: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision
Importance: High

Dear All

I do not appear to have received a response to the email below. Can I have an explanation please as:

1. There is a Court Order in place Vacating the Receivership
2. There is a decision transferring the UDRP name to my client

The domain does not yet appear to have been transferred

Niall Head-Rapson
Director

McDaniel & Co.
19 Portland Terrace
Jesmond
Newcastle upon Tyne
NE2 1QQ

DX 62551
JESMOND

Switchboard: 0191 281 4000
Mobile: 07881 504 903
Fax: 0191 281 4333

nhr@mcdanielslaw.com
www.mcdanielslaw.com

From: Niall Head-Rapson
Sent: 07 May 2013 15:18
To: 'Schenck, David'; 'Legal @ Fabulous.com'; 'Domain Disputes'
Cc: '57322853515210573228535152105732285351521057322853515210-7370c7@whoisprivacyservices.com.au'; 'jamesmeckels@gmail.com'; 'Fine, Jeffrey'; 'joshua cox'; 'pvogel@gardere.com'; 'Massand, Neal'; 'Kratovil, Christopher'; 'legalenquiries@whoisprivacyservices.com.au'; 'support@fabulous.com'; 'OndovaLimited@gmail.com'; "udrp@icann.org'

(udrp@icann.org)'
Subject: RE: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision

Please can you provide copies in advance of any papers you will be filing. I presume that if the Order as set out in the decision is correct i.e. that the receivership is vacated then that is the end of the matter and there is no locus to bring an injunction and the decision must stand and the domain be transferred.

regards

Niall Head-Rapson
Director

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19 Portland Terrace
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Newcastle upon Tyne
NE2 1QQ

DX 62551
JESMOND

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www.mcdanielslaw.com

From: Schenck, David [mailto:DSchenck@dykema.com]
Sent: 06 May 2013 23:33
To: Legal @ Fabulous.com; Domain Disputes
Cc: Niall Head-Rapson; 573228535152105732285351521-7370c7@whoisprivacyservices.com.au; jamesmeckels@gmail.com; Fine, Jeffrey; joshua cox; pvogel@gardere.com; Massand, Neal; Kratovil, Christopher; legalenquiries@whoisprivacyservices.com.au; support@fabulous.com; OndovaLimited@gmail.com; 'udrp@icann.org' (udrp@icann.org)
Subject: RE: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision

While the Fifth Circuit decision has been entered and made final, that order specifically called for a remand to the trial court in order for that court to wind-down the receivership and discharge the receiver. Pending completion of that process, we have filed papers with the Court seeking to enforce the injunction relative to this specific name.

DYKEMA
David J. Schenck
Member
DSchenck@dykema.com
214-462-6413 Direct
214-462-6400 Main
855-227-4721 Fax
Comerica Bank Tower
1717 Main Street, Suite 4000
Dallas, Texas 75201
www.dykema.com

From: legal@fabulous.com [mailto:p.stevenson@au.darkbluesea.com]
Sent: Monday, May 06, 2013 4:44 PM
To: Domain Disputes
Cc: legal@fabulous.com; nhr@mcdanielslaw.com; 573228535152105732285351521O-

7370c7@whoisprivacyservices.com.au; jamesmeckels@gmail.com; Fine, Jeffrey; joshua cox; pvogel@gardere.com; Massand, Neal; Schenck, David; Kratovil, Christopher; legalenquiries@whoisprivacyservices.com.au; support@fabulous.com; OndovaLimited@gmail.com; 'udrp@icann.org' (udrp@icann.org)
Subject: Re: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision

Dear All Parties,

I refer to the UDRP Decision relating to the domain name- barbourinternational.com .

As the domain name is under the control of a Court Appointed Receiver, Fabulous must take instructions from the Receiver and will only implement the UDRP Decision should the Receiver approve such a transfer.

This is not the first time a UDRP Decision has been handed down in relation to the domain names under the control of the Court Appointed Receiver and we have in the past consulted with ICANN and been informed this is the correct way to proceed.

I have written to the Receiver and asked for his direction in relation to this matter. At this point in time I am still waiting for a decision.

Should anyone have any questions please let me know.

Regards,

Peter Stevenson
Operations Manager
Telephone +61 7 3007 0070
Facsimile +61 7 3007 0075
Email Legal@fabulous.com
www.Fabulous.com

From: "Domain Disputes" <Domain.Disputes@wipo.int>
To: nhr@mcdanielslaw.com, 57322853515210573228535152105732285351521057322853515210-7370c7@whoisprivacyservices.com.au, jamesmeckels@gmail.com, JFine@dykema.com, "joshua cox" <joshua.cox@outlook.com>, pvogel@gardere.com, NMassand@dykema.com, dschenck@dykema.com, ckratovil@dykema.com, legalenquiries@whoisprivacyservices.com.au, support@fabulous.com, OndovaLimited@gmail.com
Cc: legal@fabulous.com
Sent: Monday, 6 May, 2013 8:55:51 PM
Subject: (LMGS) D2013-0283 <barbourinternational.com> Notification of Decision

WIPO Arbitration and Mediation Center

May 6, 2013

Re: Case No. D2013-0283
<barbourinternational.com>
Notification of Decision
Dear Parties,

Please find attached the full text of the decision issued on April 21, 2013 by the Administrative Panel in the above-referenced case.

The Administrative Panel's finding is as follows:

"For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <barbourinternational.com> be transferred to Complainant."

Pursuant to Paragraph 4(k) of the Uniform Domain Name Dispute Resolution Policy, the concerned Registrar Fabulous.com shall proceed to implement the above decision on the tenth business day (as observed in the location of that Registrar's principal office) after receiving this notification. The concerned Registrar will not implement the decision if, before the 10-day waiting period has expired, the Respondent submits official documentation (such as a copy of a complaint, file stamped by the clerk of the court) to the Registrar demonstrating that it has commenced a legal proceeding against the Complainant in a jurisdiction to which the Complainant has submitted under Paragraph 3(b)(xiii) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules).

Pursuant to Rules, Paragraph 16(a), the Registrar is directed to inform the Complainant, the Respondent, the Internet Corporation for Assigned Names and Numbers (ICANN) and the WIPO Arbitration and Mediation Center as soon as possible of the specific date on which the Administrative Panel's decision will be implemented, absent a notification by the Respondent in accordance with the above.

A signed version of the Decision shall be forwarded to the parties in due course.

Sincerely,

Jessica Park
For Laura Martin Gamero
Case Manager

34, chemin des Colombettes, 1211 Geneva 20, Switzerland
T +41 22 338 82 47 F +41 22 740 37 00 E domain.disputes@wipo.int W www.wipo.int/amc

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

RESPONSE AND OPPOSITION TO VOGEL'S MOTION FOR PAYMENT OF ADDITIONAL RECEIVER'S EXPENSES [DOC 1322] AND BRIEF IN SUPPORT

Novo Point LLC and Quantec LLC respectfully respond to Vogel's motion for payment of additional receiver's expenses [Doc 1322] and respectfully show grounds and good cause to deny Vogel's motion, as follows:

I.
EXISTING ORDERS

1. Judge Furgeson has previously entered an order resolving the relief requested by Vogel's present motion [Doc 1322]. On May 29, 2013, Hon. Judge Furgeson entered an "Order on Receivership Professional Fees", entered as Doc. 1287. In the order, at pages 45-46, the Court ordered as follows:

> "The Court understands that payment now depends on the cash reserves of the Receivership estate. The Court has allowed Gardere and the Trustee to retain the funds already distributed, **but will authorize <u>no more</u>**."

2. In making the order of this Court, Judge Furgeson was explicit in making clear that absolutely no more receivership fees would be allowed in the case.

3. Hon. Judge Furgeson was also explicit in stating that there was an **unresolved** issue as to the "cash reserves" from which any fee payment could be made. This issue is significant as discussed below.

II.
JURISDICTIONAL AND AUTHORITY ISSUES

4. As expressly noted by Judge Furgeson, there is an unresolved issue as to what funds, if any, would be used to pay the receivership 'expenses'. The issue has been briefed in prior filings. (Doc 1313 at page 4, et. seq.). For convenience of the Court, the relevant portion of the briefing is as follows:

> Pursuant to the Fifth Circuit's decision, any allowed disbursements of receivership expenses can be made *only* from cash held by the receiver *at the time the Court's opinion was handed down*.[1] Notably, the Fifth circuit did not authorize any amount of fees and did not address which estate was authorized to bear the burden of any fees. Moreover, the Fifth Circuit was express in requiring, on December 18, 2012, the return of "everything subject to the receivership other than *cash **currently** in the receivership*".[2]
>
> In determining what fees should be allowed, if any, controlling Fifth Circuit precedent requires that expenses charged against an estate be limited **"to the extent that they have inured to its benefit"**.[3] Further, an

[1] *Netsphere, Inc. v. Baron*, 703 F.3d 296, 313 (5th Cir. 2012)(December 18, 2012 decision requiring return of "everything subject to the receivership other than cash *currently in the receivership*"). DOC 1169 at 7 clarifies that the "Assets are to be returned ... [to the] entities that were subject to the receivership".
[2] *Netsphere, Inc. v. Baron*, 703 F.3d at 313.
[3] *Speakman v. Bryan*, 61 F.2d 430, 431 (5th Cir. 1932).

award of fees against any estate must separately consider "what time and services counsel and receiver gave to each fund, and what part of their expenses were in fact necessary for each."[4] Each separate fund held by the receiver must be treated as an independent and separate estate **'as if separate receivers had been appointed for each'**.[5]

Judge Furgeson expressly ruled that disbursement of funds to the receiver would be limited to availability of those funds. Judge Furgeson, however, did not address which cash funds would be made available or the limit on those funds.

Novo Point LLC and Quantec LLC did nothing to cause the imposition of the wrongful receivership and there is no basis to charge their cash accounts with any portion of the costs relating to Mr. Baron.

Further, the attention of this Honorable Court is directed to the fact that although the receivership order has been vacated by the Fifth Circuit, the receiver has continued to gather more assets and has built a cash reserve, that it now seeks to use to pay itself fees, instead of pre-paying renewal fees for the domain name assets at issue.

Nothing in the Fifth Circuit's mandate authorized the receiver to hold or pay itself from income generated from receivership assets *after* the Fifth Circuit's mandate vacating the receivership order was issued. Rather,

[4] *See Bank of Commerce & Trust Co. v. Hood,* 65 F.2d 281,283-4 (5th Cir. 1933) (fees must be charged against each fund held by receiver as if separate receivers had been appointed for each).
[5] *Id.*

receivership 'expense' disbursements were expressly limited to disbursements from the cash held by the receiver *at the time the Fifth Circuit handed down its decision in December 2012*.[6]

It appears that over half a million dollars of additional cash has been seized by the receiver ***after*** the receivership order was vacated by the Fifth Circuit. The Fifth Circuit clearly and expressly did not grant authority to use funds gathered after the receivership was vacated to pay the receiver's "expenses". Moreover, there is no authority in law for a court to exercise jurisdiction over an income stream from assets produced subsequent to the vacating of a receivership order on appeal.

5. The Court's attention is directed to the two key legal rules with respect to the source of funds for the payment of receivership expenses, as follows:

The Fifth Circuit has ruled in the seminal case of ***Speakman v. Bryan*, 61 F.2d 430, 431 (5th Cir. 1932)**, that receivership fees in a reversed receivership may be charged against a receivership estate only "to the extent that they have inured to its benefit". Thus, the authority to take funds from an estate in a reversed receivership is limited to "reimbursement out of the property for his expenditures which have actually benefited the estate". *Id*. at 432.

Similarly, the Fifth Circuit has ruled that when a receiver holds more than one estate, the source of payment for receiver's expenses must be

[6] *Netsphere, Inc. v. Baron*, 703 F.3d at 313 ("cash ***currently*** *in the receivership*").

based on the estate for which the expenses were incurred. ***Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281, 283-4 (5th Cir. 1933)**. The Fifth Circuit ruled that fees must be charged against each fund held by receiver as if separate receivers had been appointed for each and held:

> "[An] accurate inquiry ought to be made as to what time and services counsel and receiver gave to each fund, and **what part of their expenses were in fact necessary for each**" *Id.* at 284.

III.
CONCLUSION

Based upon the forgoing grounds, Novo Point LLC and Quantec LLC respectfully oppose the payment of additional receivership expenses requested by Vogel. Upon the grounds and cause shown above, Novo Point LLC and Quantec LLC respectfully move this Honorable Court to deny Vogel's motion (DOC 1322).

Respectfully submitted,

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FOR NOVO POINT LLC and
QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne

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

NETSPHERE, INC., Et. Al.	§	
Plaintiffs,	§	
vs.	§	Civil Action No. 3-09-CV-0988-L
	§	
JEFFREY BARON, Et. Al.	§	
Defendants	§	

MOTION TO DISREGARD VOGEL'S RE-ARGUMENT OF MOTIONS ALREADY BRIEFED TO THE COURT [DOC 1324], RESPONSE TO VOGEL'S RE-WORKED ARGUMENT AND MOTION FOR EVIDENTIARY HEARING

Novo Point LLC and Quantec LLC respond to Vogel's re-argument for payment of receiver's 'fees' [Doc 1324] and respectfully show cause to reject and disregard Vogel's re-argument, as follows:

I.
PROCEDURAL BACKGROUND

1. In a series of previously filed motions and responses, the issue has been argued as to the need to determine from what funds, if any, the receiver's 'fees' may be taken.[1]

2. Apparently concerned that after careful consideration this Honorable Court will make such a determination, at the eleventh-hour Vogel offers erroneous re-argument as Doc 1324.

II.
UNDERLYING LAW AND CONTROLLING PRECEDENT

3. As previously briefed, pursuant to the binding precedent of the Fifth Circuit,

[1] *E.g.*, Docs. 1310, 1312, 1313, 1324, 1325.

there are two key underlying rules relating to determining the source of funds for paying receivership fees, as follows:

1. The Fifth Circuit has ruled in the seminal case of *Speakman v. Bryan*, 61 F.2d 430, 431 (5th Cir. 1932), that receivership fees in a reversed receivership may be charged against a receivership estate only "to the extent that they have inured to its benefit". Thus, the authority to take funds from an estate in a reversed receivership is limited to **"reimbursement out of the property for his expenditures which have actually benefited the estate"**. *Id*. at 432.

2. The Fifth Circuit has ruled that when a receiver holds more than one estate, the source of payment for receiver's expenses is based on the estate for which the expenses were incurred. *Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281, 283-4 (5th Cir. 1933). The Fifth Circuit ruled that fees **must be charged against each fund held by receiver as if separate receivers had been appointed for each** and held:

> "[An] accurate inquiry ought to be made as to what time and services counsel and receiver gave to each fund, and **what part of their expenses were in fact necessary for each**" *Id.* at 284.

4. This is the controlling law. Vogel's argument contains no responsive argument as to the law. Rather, Vogel's argument seeks to *reinvent* the holding of the Fifth Circuit in vacating– with eight separate judgments of reversal– the receivership wrongfully imposed at Vogel's urging and based on Vogel's erroneous briefing.

III.
VOGEL'S ERRONEOUS RE-ARGUMENT

5. Vogel's argument attempts to reinvent the Fifth Circuit's vacating of the receivership order as 'continuing the receivership order in effect until a later date.' Vogel's argument is erroneous. The Fifth Circuit ruled explicitly:

"The order appointing a receiver is vacated."[2]

6. Similarly, the receivership fee awards were not affirmed, but were remanded for reconsideration. As ordered by the Fifth Circuit, "[T]he amount of all fees and expenses **must be reconsidered** by the district court."[3]

7. As previously briefed, payment for those fees was not allowed out of future income and was expressly restricted. The Fifth Circuit ruled on December 18, 2013 that:

> "We also conclude that everything subject to the receivership other **than cash currently in the receivership,** ... should be expeditiously released"

8. The receiver's physical possession of receivership assets was not immediately dissolved, but rather, the physical receivership was ordered wound up expeditiously under a schedule determined by the district court.[4] The Fifth Circuit did not allow the receiver any fees for the winding up of the physical receivership.

---

[2] *Netsphere, Inc. v. Baron*, 703 F.3d 296, 311 (5th Cir. 2012).
[3] *Id*. at 313.
[4] *Id*. at 313-314.

9. Crucially, there is a fundamental difference between the receivership order authorizing the receivership (which was vacated by the Fifth Circuit), and the receivership in fact that was created by Vogel's hands holding the assets of others (which the district court was ordered to wind down expeditiously).

Fifth Circuit Standard for determining "reasonable expenses" for each receivership estate

10. With respect to ordering payment of receivership 'fees' from any particular fund, careful attention to the rules of allocation are central to the duty charged to this Honorable Court. As previously briefed, there is a fundamental jurisdictional flaw with the receivership. Because the district court lacked subject matter jurisdiction over the property in the first place,[5] it acquired no jurisdiction over the property by imposing the receivership. *Cochrane v. WF Potts Son & Co.*, 47 F.2d 1026, 1028 (5th Cir. 1931) (**"courts may not seize property without jurisdiction, and then claim jurisdiction over the property because it is in the possession of the court."**). Without jurisdiction, there is no power to make any charge against the property to pay receivership 'fees.'[6]

11. The Fifth Circuit remanded for a determination of "reasonable receivership expenses".[7] As a matter of controlling precedent, those expenses are limited to "expenditures which have actually benefited the estate"[8] and must be charged

[5] *Netsphere, Inc.* at 310 ("A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy.").
[6] *Lion Bonding & Surety Co. v. Karatz*, 262 U.S. 640, 642 (1923).
[7] *Netsphere, Inc.* at 313.
[8] *Speakman*, at 432.

against the specific estate they have benefited.[9]

12. NovoPoint LLC and Quantec LLC make no objection to charging any expenses against Baron's personal property. As held by the Fifth Circuit, the circumstances were understood by the Court to be "primarily of Baron's own making".[10] However, NovoPoint LLC and Quantec LLC object to charging expenses due from Mr. Baron but sought to be paid from their corporate assets.

Vogel's Unsuccessful Appellate efforts are not reasonable expenses of the LLC estates

13. Vogel's argument complains that Baron appeals too often. In fact, it was Vogel **alone** who sought en banc review by the Fifth Circuit– and he was absolutely rejected (without a single judge voting in his favor). Moreover, while Vogel has often induced rulings resulting in appeals, **Vogel has not prevailed on the merits in defending a single appeal that he has induced**. With that, in seeking an order for payment of fees from Novo Point LLC and Quantec LLC that includes fees for Vogel's ***unsuccessful*** defense of appeals and unsuccessful petition for en banc rehearing, Vogel is seeking the imposition of costs for Novo Point LLC and Quantec LLC's, ("the LLCs"), successfully exercising their statutory right of appeal. Vogel's costs in unsuccessfully defending on appeal the unlawful receivership (he induced the district court to grant and to continue) have provided no benefit to Novo Point LLC or Quantec LLC.

[9] *Bank of Commerce & Trust Co.*, at 284.
[10] *Netsphere, Inc.* at 313.

14. The Supreme Court has ruled that "imposition of a penalty for having pursued a statutory right of appeal is a violation of due process of law". *North Carolina v. Pearce*, 395 U.S. 711, 724, 738-9 (1969) (There is a Due Process right to successfully appeal "without being deprived of life, liberty, or property as a result"). Accordingly, to charge the assets of the LLCs for the expenses of Vogel in losing his fight to maintain an unlawful receivership would be a violation of the LLCs' fundamental right of Due Process to appeal.

IV.
VOGEL'S LATEST FILING RAISES SERIOUS FACT QUESTIONS AS TO VOGEL'S PREVIOUS ERRONEOUS REPRESENTATIONS TO JUDGE FURGESON

Erroneously Represented No Names were Lost in UDRP Judgments

15. Vogel represented to Judge Furgeson that he had successfully defended multiple UDRP complaints against the LLCs and was thus deserving of substantial fees. See Doc. 1287 at pages 27-28 ("was bombarded with actual and threatened claims of cybersquatting or claims under the Uniform Domain Name Dispute Resolution Policy ("UDRP") .... were incredibly successful and no names were lost during their representation."). In Vogel's latest filing he revealed, apparently for the first time, that his prior testimony to the Court was in error and, in fact, he had not successfully prevented the UDRP adjudications against the LLCs.

16. Based on Vogel's new revelation—made apparently for this first time in his latest filing (Doc. 1324)– that he lost the UDRP adjudications, the matter has been investigated and it appears that **Vogel has failed to defend the merits of any UDRP claim and caused the serial loss of UDRP adjudications by default**. As

reported by the UDRP panels, in one adjudication after the next, Vogel had an attorney send a series of letters, refuse to offer any defense on the merits and otherwise entirely neglected the UDRP complaints. Even after being warned by the UDRP panel that the arbitration action was proceeding, Vogel knowingly and intentionally defaulted—over and over and over again. Attached as Exhibit "A" are a sampling of the much larger number of UDRP judgments Vogel has lost because he neglected to offer **any** defense on the merits. Over and over in one adverse judgment after the next, there is a clear pattern of "Respondents' Default", (Exhibit "A" at 20, 25, 35, 38, 42, 44, 48, 62), and Vogel over and over again lost domain names to adverse judgments because he "did not reply to the Complainant's contentions". See Exhibit "A" at 25, 38, 44, 49, 55, 64, and 71.

17. In light of Vogel's new revelation contradicting his previous representations that formed the basis of Judge Furgeson's fee assessment, before any funds are allowed as receiver's "expenses" an evidentiary hearing should be held to determine the truth of this crucial factual matter which directly impacts the value of Vogel's services as receiver. **Judge Furgeson awarded fees based on the belief that Vogel worked hard to successfully prevent any UDRP losses and Vogel's lawyers "were incredibly successful and no names were lost during their representation".** Doc. 1324 at 28. [11] If, as it now appears, Vogel erroneously represented the facts and, in fact, habitually neglected to defend the merits of the

[11] Further, it now appears that Vogel was 'exaggerating' to Judge Furgeson in claiming to have been able to "reclaim names that Receivership parties had lost even prior to the invocation of the Receivership". *Id.*

UDRP complaints and lost in serial fashion one UDRP complaint after the next by default, the receiver's "fee" award must be re-examined.

Erroneously Represented Acquiring and Managing the Assets of 17 Businesses Nationwide

18. Judge Furgeson awarded the large receivership fees based also on Vogel's work in collecting and managing the assets of seventeen additional parties. Doc. 1324 at 27. ("During the course of their representation, Gardere located and acquired 17 additional parties that fell under the Receivership order and began to task of managing these businesses. To obtain these assets, Gardere needed to work with local counsel around the country and the world and file motions in various courts."). However, in Vogel's latest filings in the Bankruptcy Court, all trace of the assets and businesses Vogel claims to have managed "around the country" for the past two years has **vanished**.[12] At best, Vogel has forgotten to account for assets he is holding for seventeen additional parties around the country, or, at worst, Vogel's recent bankruptcy court filing reveals what may be a **fraud on the court**.

19. Vogel is seeking an order paying fees. Those fees were expressly awarded based on Judge Furgeson's understanding that Gardere obtained the assets of 17 additional parties "around the country" and has been managing their businesses. Doc. 1324 at 27. Vogel's latest filings are inconsistent with his previous representations and contain no mention of the assets and business operations of 17 additional parties around the country. **In light of the new evidence** that the receiver did not do the massive work he and his lawyers claimed to have done, a

[12] Doc 283 (and exhibits) filed in the Baron involuntary Bankruptcy, case 12-37921-sgj7.

hearing should be held before the disbursement of any receivership "fees".

V.
OTHER ERRONEOUS DETAIL IN VOGEL'S MOTION

20. Vogel has represented that if his motion were granted the total receivership expenses awarded since the Fifth Circuit's Opinion of December 18, 2013 would be $1,296,550.00. Vogel has apparently forgotten Docs. 1222 and 1282, ordering an additional $111,788.39 and $118,126.05 in payments, respectively. Thus, the total sought by Vogel to be charged against the absolute cap of $1.6 Million (assuming funds from the proper estate are available) is $1,526,464.44 and not the $1,296,550.00 Vogel erroneously represents.

21. Vogel has made frequent references to the February order denying Baron a stay. Doc. 268. Neither Novo Point LLC nor Quantec LLC were parties to that hearing and the Court's order makes no findings regarding either entity. Vogel argues that Baron did not appeal the order, as if that had some significance. The Court should not be fooled by Vogel's argument; as a matter of law it is not possible to directly appeal from an order denying a motion to stay a receivership. *London Records v. De Golyer*, 217 F.2d 574, 574-575; (5th Cir. 1954)("The order of stay was neither a final order nor an order granting an interlocutory injunction, but was merely an interlocutory order which might be revoked at any time, and as such was not appealable"); *Grand Beach Co. v. Gardner*, 34 F.2d 836 (6th Cir. 1929)("The statute [allowing appeal from receivership orders] makes no provision for an appeal from an interlocutory order denying a motion to vacate the original

appointment").

22. Vogel mentions that the LLCs entered an agreement with respect to management within the receivership. However, that agreement provided Vogel would not take over the LLCs management and would allow them to be managed by the management which had been appointed by the entities' owner, Southpac. Vogel broke the agreement and attempted to directly control the LLC entities through a court order for Mr. Nelson to be the entities' manager.

23. Novo Point LLC and Quantec LLC have a duly appointed manager, Ms. Lisa Katz, who was appointed more than two years ago to take over operations when the receivership was vacated or dissolved. Ms. Katz has appeared in court on behalf of the LLCs and is ready, willing, and able to both speak with a single voice and to take over management of the LLCs' affairs. Ms. Katz was selected for the position, years ago, in part because she was familiar with Mr. Schepps, having attended (in different class years) the same law school, and in part because she was familiar with the Gardere law firm and had served as a board member of the Vogel Alcove, a charity honoring Vogel's parents. In short, Ms. Katz was selected by Southpac to be the operations manager for Novo Point LLC and Quantec LLC because she was familiar with all parties involved and was a neutral, trustworthy party with a strong background in marketing, mathematics, programming, and a law degree. Ms. Katz has been employed as operations manager for over two years waiting for the return of the LLCs' assets. Vogel is well aware of that fact.

VI.
CONCLUSION

24. The Fifth Circuit expressly vacated the receivership order. *Netsphere, Inc.* at 311 ("The order appointing a receiver **is vacated.**"). That has left Vogel with naked possession of assets. As discussed above, the Court lacks subject-matter jurisdiction over the receivership assets. *Id.* at 310 ("A court lacks jurisdiction to impose a receivership over property that is not the subject of an underlying claim or controversy").

25. Careful attention to the rules of allocation of expenses from receivership estates are central to the duty charged to this Honorable Court. As a matter of controlling precedent, allowable receivership expenses are limited to "expenditures which have actually benefited the estate"[13] and **must be charged against the specific estate they have benefited**.[14]

26. Judge Furgeson awarded certain expenses amounts (expressly subject to availably of appropriate funds) based on the belief that Vogel had obtained assets from 17 business around the country and has been managing those 17 nationwide businesses for the past two years. Vogel's recent filings of a complete receivership inventory are inconsistent with such facts. Based on Vogel's recent filings, it appears Vogel's prior representations about acquiring the assets of 17 entities around the country and operating those businesses may be a fraud on the court.

27. Judge Furgeson also believed that Vogel had been incredibly successful in defending the UDRP complaints and that Vogel prevailed on every case and "no

[13] *Speakman*, at 432.
[14] *Bank of Commerce & Trust Co.*, at 284.

names were lost" in UDRP proceedings. Vogel's latest filing has revealed new evidence that, in fact, it appears that Vogel defaulted on the UDRP complaints and **lost** the UDRP disputes by failing to offer any defense on the merits of **any** of the claims. The matter is real and substantial.

28. Vogel's fees are clearly not justified if Vogel misled this Court and instead of preventing any adverse UDRP judgments has instead **defaulted** on the UDRP claims. If, in fact, domains have been lost to adverse UDRP judgments awarded against the LLCs because of Vogel's neglect to defend the claims on the merits, Vogel's prior representations are materially inaccurate. Vogel is clearly not entitled to payment if he has covered up the fact that he has not defended the UDRP proceedings and has merely delayed the final execution upon the claims he has lost through neglect. It appears from Vogel's latest filing and the public record that Vogel defaulted on the UDRP disputes and has acted to covered up his defaults by temporarily delaying the carrying out of the execution of the adverse judgments. Based on Vogel's new disclosure, an evidentiary hearing is warranted.

VII.
PRAYER

Based on the foregoing, Novo Point LLC and Quantec LLC respectfully pray that this Honorable Court reject and disregard Vogel's re-argument of the motions already briefed for this Honorable Court.

The LLCs further pray that an evidentiary hearing be held prior to the allowance of any payment for receivership expense so that this Honorable Court can make a determination as to the proper source of funds for the expense payment,

and examine the new evidence which contradicts the prior representations upon which Judge Furgeson based his fee award.

An evidentiary hearing is necessary to prevent what may be a fraud on the court. At this time, it appears that contrary to the basis upon which Judge Furgeson granted substantial receivership fees: (1) Vogel did not obtain the assets of 17 entities around the country and manage their business affairs and (2) Vogel's counsel were not "incredibly successful and no names were lost during their representation" but the opposite, Vogel serially lost domain names in UDRP proceedings because he neglected to defend the claims on the merits and has merely delayed execution on the judgments to cover up the fact the names were lost through neglect.

Respectfully submitted,

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FOR NOVO POINT LLC and
QUANTEC LLC

CERTIFICATE OF SERVICE

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

CERTIFIED BY: /s/ Christopher A. Payne
Christopher A. Payne