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10 Attorneys for: DEFENDANT HAMIED KAZEROONI

11 UNITED STATES BANKRUPTCY COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 RIVERSIDE DIVISION

14 In re

15 HAMIED M. KAZEROONI
16 APRIL B. KAZEROONI

17 Debtor.

CASE NO. 6:10-bk-39309 SC

ADV. NO. 6:10-ap-01649 SC

Chapter 7

18 EPAY, INC., a California Corporation,

19 Plaintiffs,

20 v.

21 HAMIED KAZEROONI, an individual, and
22 DOES 1 THROUGH 20, inclusive,,

23 Defendants.

**OPPOSITION TO PLAINTIFF'S
MOTION FOR CONSOLIDATION OF
RELATED CASES; DECLARATION
OF HAMIED KAZEROONI**

Date: April 6, 2011

Time: 2:00 p.m.

Courtroom: 126

Location: U.S. Bankruptcy Court
3420 Twelfth Street
Riverside, CA 92501

24 TO THE HONORABLE COURT:

25 HAMIED KAZEROONI, (hereinafter "Defendant") hereby submits the following opposition to
26 Plaintiff's Motion for Consolidation of related cases:
27
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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL STATEMENT

On or around October 30, 2009, Defendant received a direct deposit in his checking account in the amount of \$5,500. The amount deposited was not unusual as it was Defendant's agreed upon salary as Vice President and employee of UST Development, Inc. ("UST") Prior to such direct deposit, Defendant was unaware of any agreement or discussion that UST was having with Epay, Inc. regarding the provision of advance payroll funding. Defendant was not involved in the day to day financial management of UST. Defendant later learned, through the filing of a lawsuit against him on or around December 2, 2009, that some of the money he had received as his salary was obtained from Epay, Inc. and was not repaid to Epay, Inc. by UST in accordance with its contract with UST. Defendant was named personally in the lawsuit. Defendant was unable to afford legal representation and allowed a default to be taken against him. Defendant had hoped that UST would clear up any misunderstanding with Epay, Inc. and pay the amount due back to Epay, Inc.

UST continued to employ Defendant for the rest of 2009 and into 2010 but only compensated him on a sporadic basis. Defendant could no longer continue to work for next to nothing and decided to seek more gainful employment elsewhere. He resigned as a director and officer of UST through tendering a written resignation letter on June 30, 2010. At all times prior to his resignation, Defendant maintained personal bank accounts separate from that of UST, did not commingle his personal funds or assets with the funds or assets of UST and generally observed all corporate formalities in connection with the business he conducted as an employee, officer, and director of UST.

Defendant neither signed nor reviewed any contract with Epay, Inc. or participated in any way with any attempts to obtain advance payroll funding prior to Epay, Inc. advancing payroll funds to UST. All contract execution and negotiations were done between Epay, Inc. and David Bell without Defendant's knowledge. Epay, Inc. has clearly alleged in its prior state court complaint, David Bell's direct involvement in intentional misrepresentations to Epay, Inc. and his knowledge that UST did not have the financial ability to repay those funds (Exhibit "1" to Plaintiff's Notice of Motion and Motion for Consolidation of Related Cases, page3, lines 1 through 13).

1 **II. ANALYSIS**

2 **A. THIS COURT HAS DISCRETION TO DENY A MOTION TO CONSOLIDATE**

3 Rule 42(a) of the Federal Rules of Civil Procedure provides that “[i]f actions before the court
4 involve a common question of law or fact, the court may...(2) consolidate the actions; or (3) issue any
5 other orders to avoid unnecessary cost or delay. The use of the term “may” implies that consolidation
6 of actions is a matter left to this Court’s discretion. In addition, the actions are before two separate
7 courts, not the same court (Rule 42 refers to court in the singular form), Plaintiff provides no authority
8 for consolidating adversary proceedings pending before two separate courts in two separate
9 bankruptcies. The more rational application of Rule 42(a) is that when two proceedings are pending
10 before the same court and involve the same questions of fact or law, the court can decide to hear them
11 together rather than in two separate trials. Why has the Plaintiff chosen to bring this motion before this
12 Court rather than before the Hon. Catherine E. Bauer? Plaintiff is assuming that this Court has the
13 power to affect the bankruptcy and adversary proceedings of an entirely separate debtor before an
14 entirely different bankruptcy judge yet provides no statutory basis or case law for doing so. Aside from
15 this procedural hurdle, Plaintiff’s motion has no substantive support either, as set forth below.

16 **B. NO COMMON QUESTIONS OF FACT EXIST**

17 The Plaintiff has at all times attempted to hold all employees of UST jointly and severally liable
18 for accepting payment of their salaries for work they did for UST. The allegations in the state court
19 complaint state that David Bell was the person making the representations to Epay, Inc. and that David
20 Bell caused the stop payment of checks to Epay, Inc. The Defendant denies any involvement, direct or
21 indirect, in the decision to obtain advance payroll funding from Epay, Inc.. The disputed questions of
22 fact in Defendant’s case rest on the following:

23 1. Defendant’s participation and knowledge of the actions of UST and David Bell with reference
24 to Epay, Inc.

25 The disputed questions of fact in David Bell’s case rest on:

- 26 1. David Bell’s representations to Epay, Inc.
27 2. David Bell’s knowledge of the falsity of such representations
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- 1 3. David Bell's intent to deceive Epay, Inc.
- 2 4. Epay, Inc.'s reasonable reliance on David Bell's misrepresentations
- 3 5. Epay, Inc.'s damages

4 The only common fact that exists between David Bell and Defendant is that they were both officers,
5 shareholders, and directors of UST at the time Epay, Inc. advanced payroll funds. This is not a question
6 of fact, it is an undisputed fact.

7 **C. NO SIGNIFICANT COMMON QUESTIONS OF LAW EXIST**

8 The Plaintiff is correct that both lawsuits provide the same basis for recovery against David Bell
9 and Hamied Kazerooni, essentially non-dischargeable claims of fraud and conversion. However, the
10 questions of law that will be at the forefront in both cases are markedly different. David Bell's
11 representations were directly to Epay, Inc., there is no need to pierce the corporate veil, impute fraud
12 to him, or somehow find a way to legally link him to the wrongdoing of another person. Defendant
13 Kazerooni, on the other hand, had no involvement with Epay, Inc. prior to the direct deposit of funds
14 equal to that of his own salary into his bank account. To prevail against Defendant Kazerooni, Plaintiff
15 will have to resolve questions of law such as whether circumstances exist that are sufficient to pierce
16 the corporate veil, impute David Bell or UST's fraud to Defendant, or to legally hold him responsible
17 for the fraud or conversion carried out by another person. The issues of law in both cases are markedly
18 different. The trials, as a result, will be different.

19 **D. THERE IS A SIMPLE AND MORE EFFICIENT WAY OF TRYING THESE**
20 **MATTERS SEPARATELY**

21 The more appropriate method of handling these cases is to first have a trial to determine David
22 Bell's liability for fraud or conversion. That trial can be conducted before the Honorable Catherine E.
23 Bauer, the current judge assigned to David Bell's bankruptcy and adversary proceeding. Then, a second
24 trial can be conducted after David Bell's liability has been determined, before this Court, determining
25 whether David Bell and/or UST's fraud or conversion (if found in the first trial) can be imputed to
26 Defendant. This will obviate the need for the Defendant and his attorney to attend a trial that is
27 essentially all about David Bell and his direct actions of fraud or conversion. Since David Bell is
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1 currently unrepresented by counsel it will also lessen the likelihood that David Bell feels he is somehow
2 being represented by Defendant's counsel, since David Bell and Defendant would be co-defendants in
3 a consolidated case. As a corollary, David Bell, in the event of a consolidation, will also not have to sit
4 through parts of a trial (except perhaps as a witness) that involve issues of imputation of liability and
5 piercing the corporate veil. All of these separate and distinct issues will have to be determined by a
6 judge, there is no judicial economy in trying them in front of one judge as opposed to two judges.

7 **III. CONCLUSION**

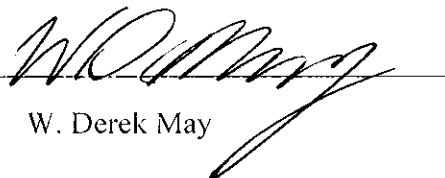
8 Based upon the preceding analysis, this Court should exercise the discretion given by Rule 42
9 of the Federal Rules of Civil Procedure to deny Plaintiff's motion in its entirety.

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11 Respectfully Submitted,

12 DATED: March 23, 2011

THE LAW OFFICES OF STEPHEN R. WADE, P.C.

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14 BY _____


15 W. Derek May
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DECLARATION OF HAMIED KAZEROONI

I, Hamied Kazerooni, hereby declare that:

1. I am one of the debtors and defendants in the above-entitled action. The facts stated below are true to my own personal knowledge and, if called as a witness, I could and would testify to their accuracy in a court of law.

2. On or around October 30, 2009, I received a direct deposit in his checking account in the amount of \$5,500. The amount deposited was not unusual as it was my agreed upon salary as Vice President and employee of UST Development, Inc. ("UST").

3. Prior to such direct deposit, I was unaware of any agreement or discussion that UST was having with Epay, Inc. regarding the provision of advance payroll funding.

4. I was not involved in the day to day financial management of UST.

5. I later learned, through the filing of a lawsuit against me on or around December 2, 2009, that some of the money I had received as my salary in 2009 was obtained from Epay, Inc. and was not repaid to Epay, Inc. by UST in accordance with its contract with UST. I was named personally in the lawsuit. I was unable to afford legal representation and allowed a default to be taken against me. I had hoped that UST would clear up any misunderstanding with Epay, Inc. and pay the amount due back to Epay, Inc.

6. UST continued to employ me for the rest of 2009 and into 2010 but only compensated me on a sporadic basis. I could no longer continue to work for next to nothing and decided to seek more gainful employment elsewhere. I resigned as a director and officer of UST through tendering a written resignation letter on June 30, 2010.

7. At all times prior to my resignation, I maintained personal bank accounts separate from that of UST, did not commingle my personal funds or assets with the funds or assets of UST and generally observed all corporate formalities in connection with the business I conducted as an employee, officer, and director of UST.

8. I neither signed nor reviewed any contract with Epay, Inc. or participated in any way with any attempts to obtain advance payroll funding prior to Epay, Inc. advancing payroll funds to UST. All

1 contract execution and negotiations were done between Epay, Inc. and David Bell without my
2 knowledge.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is true
4 and correct.

5 Executed at _____, California, on March 23, 2011.

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Hamied Kazerooni

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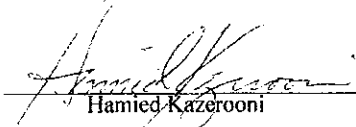
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1 contract execution and negotiations were done between Epay, Inc. and David Bell without my
2 knowledge.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is true
4 and correct.

5 Executed at Rancho Cucamonga California, on March 23, 2011.

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8 Hamied Kazerooni

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In re:
HAMIED M. KAZEROONI; APRIL B. KAZEROONI

Debtor(s).

CHAPTER 7

CASE NUMBER 6:10-bk-39309 TD

EPAY, INC. v. HAMIED KAZEROONI

ADV NO. 6:10-ap-01649 TD

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 400 N. Mountain Ave., Suite 214, Upland, CA 91786

The foregoing documents described **OPPOSITION TO PLAINTIFF'S MOTION FOR CONSOLIDATION OF RELATED CASES; DECLARATION OF HAMIED KAZEROONI** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On March 23, 2011, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Ziad Elrawashdeh ziadrawa@gmail.com
- United States Trustee (RS) ustregion16.rs.ecf@usdoj.gov
- Stephen R Wade dlr@srwadelaw.com

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On March 23, 2011, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

Via U.S. Mail

U.S. Bankruptcy Court
Hon. Scott C. Clarkson
411 West Fourth Street, Suite
5130
Santa Ana, CA 92701-4593

Via U.S. Mail

U.S. Bankruptcy Court
Hon. Catherine E. Bauer
3420 Twelfth Street, Suite 369
Riverside, CA 92501-3819

Via U.S. Mail

David Bell
3305 Park Vista Dr.
La Crescenta, CA 91214

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

3/23/11

Date

R. Duran

Type Name



Signature