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12 Attorneys for Worldplaza Corporation

13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF NEVADA

15 SECURITIES AND EXCHANGE )  
16 COMMISSION, )

Case No. CV-S-05-1006-PMP-GWF

17 Plaintiff, )

(Formerly MS-S-05-0036)

18 vs. )

19 DAVID TANNER, Individually, and d/b/a )  
20 CAPITAL ENHANCEMENT CLUB, )  
21 ROCKY D. SPENCER, MARROC )  
22 CORP. and RICHARD P. KRINGEN, )

23 Defendants, )

24 and )

25 MARGARET F. SPENCER, OMNIBUS )  
26 LLC, VECTRA RESOURCES, LLC, and )  
27 ENVIRONMENTAL SOLUTIONS, INC., )

28 Relief Defendants. )

29 **OPPOSITION OF WORLDPLAZA CORPORATION TO**  
30 **MOTION OF RECEIVER *PENDENTE LITE*, LARRY E. COOK, FOR**  
31 **TURNOVER OF PROPERTY OF THE RECEIVERSHIP ESTATE**  
32 **TRANSFERRED TO WORLDPLAZA CORPORATION**

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OCT 26 2005

JONES VARGAS

1 COMES NOW Worldplaza Corporation (“Worldplaza”), by and through its undersigned  
2 counsel, and in opposition to Motion of Receiver of Receiver *Pendente Lite*, Larry E. Cook, For  
3 Turnover of Property of the Receivership Estate Transferred to Worldplaza Corporation (Doc. 12)  
4 (the “Turnover Motion”), respectfully states as follows:

5 **A. Relief Sought By Receiver**

6 1. The Receiver requests the Court enter an Order directing Worldplaza to transfer  
7 title and interest to the Receivership estate for two lots of real property in Dayton, Nevada. The  
8 Receiver attempts to justify this request by alleging, in a conclusory and unsubstantiated fashion,  
9 that “WorldPlaza did not return reasonably equivalent value for the Dayton Properties ...”  
10 Turnover Motion ¶ 18.

11 **B. Action Not Timely Filed**

12 2. The Turnover Motion should be dismissed with prejudice because the Receiver  
13 failed to timely file with this Court the Complaint and Order Appointing the Receiver. 28 U.S.C.  
14 § 754 states, in relevant part, that:

15 A receiver appointed in any civil action or proceeding involving  
16 property, real, personal or mixed, situated in different districts shall,  
17 upon giving bond as required by the court, be vested with complete  
jurisdiction and control of all such property with the right to take  
possession thereof.

18 ....

19 Such receiver shall, within ten days after entry of his order of  
20 appointment, file copies of the complaint and such order of  
21 appointment in the district court for each district in which property  
is located. The failure to file such copies in any district shall divest  
22 the receiver of jurisdiction and control over all such property in that  
district.

23 3. Although the Receiver herein was appointed on May 4, 2005, the underlying  
24 Complaint and Order of Appointment was not filed with this Court until May 19, 2005, fifteen  
25 days after appointment. *See* MS-S-05-0036 (Docket Nos. 1 and 2). While the Turnover Motion  
26 makes reference to 28 U.S.C. § 754, the Receiver failed to comply with the provisions thereof.  
27 *See* Turnover Motion ¶ 1.

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**C. Motion Fails To Comply With Local Rules**

4. The Receiver claims entitlement to relief under two theories; “constructive trust” and “applicable fraudulent transfer statutes.” Turnover Motion ¶ 9. The Receiver however fails to provide citation to the “applicable fraudulent transfer statutes” and the single case cited by the Receiver purportedly in support of that claim, *Cunningham, as Trustee for Ponzi v. Brown*, 265 U.S. 1 (1924), does not interpret fraudulent transfer statutes.

5. Local Rule 7-2(d) states, in relevant part, that “[t]he failure of a moving party to file points and authorities in support of the motion shall constitute a consent to the denial of the motion. ...” Without citation to any authority whatsoever, the Receiver’s fraudulent transfer claim should be denied with prejudice. Likewise, the constructive trust claim should be denied due to the Receiver’s failure to cite to any authority within the Ninth Circuit. *See* Turnover Motion ¶ 9.

**D. Dispute Must Be Resolved By Plenary Proceedings**

6. Should this Court nevertheless consider the Turnover Motion despite the Receiver’s non-compliance with 28 U.S.C. § 754 and LR 7-2(d), it must still be dismissed because the relief sought can be obtained only through plenary, as opposed to summary, proceedings. Indeed, “a receiver must file a plenary action against a third party who possesses claimed receivership property, rather than invoking summary proceedings ancillary to the main action[,] ... when, for example, a receiver asks the court to determine the ultimate merits of the parties’ claims to the property.” *U.S. v. Arizona Fuels Corp.*, 739 F.2d 455, 458, (9th Cir. 1984). More recently, the Court of Appeals for the Ninth Circuit, interpreting *Arizona Fuels*, stated that the plenary proceeding requirement specifically applies “to third parties *in possession* of the property.” *SEC v. American Capital Investments, Inc.*, 98 F.3d 1133, 1147, (9th Cir. 1996), *abrogated on other grounds, Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 118 S. Ct. 1003, 1012, 140 L. Ed. 2d 210 (1998).

7. With respect to the instant motion, the Receiver alleges in a conclusory fashion that Worldplaza, a third party to the underlying action, possesses properties belonging to the Receivership estate. Worldplaza, on the other hand, will dispute that by demonstrating absolute

1 ownership rights to the properties in question. Worldplaza would be prejudiced by summary  
2 proceedings without being able to confront the Receiver's unsubstantiated allegations through  
3 oral and written discovery as well as all through the procedural safeguards afforded by the  
4 Federal Rules of Civil Procedure. Therefore, this dispute must be resolved by plenary  
5 proceedings.

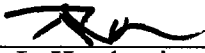
6 WHEREFORE, for the reasons set forth above, Worldplaza Corporation respectfully  
7 requests the Court enter an Order:


- 8 (i) Denying the Turnover Motion with prejudice, or, in the alternative;
- 9 (ii) Denying the Turnover Motion without prejudice and with leave for the Receiver to file  
10 a plenary action.

11 DATED this 25 day of October, 2005.

12 BACHNER & HERSKOVITS, P.C.

SNELL & WILMER L.L.P.

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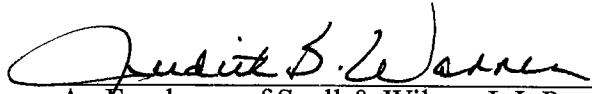
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Snell & Wilmer L.L.P., and that on this date, pursuant to Fed. R. Civ. P. 5(b), I am serving the attached *Opposition of Worldplaza Corporation to Motion of Receiver Pendente Lite, Larry E. Cook, for Turnover of Property of the Receivership Estate Transferred to Worldplaza Corporation*, on the party set forth below by Federal Express (or other overnight delivery):

Ryan W. Herrick, Esq.  
Jones Vargas  
100 West Liberty Street, 12th Floor  
P.O. Box 281  
Reno, NV 89504-0281  
Telephone 775-786-5000  
Attorneys for Larry E. Cook,  
Receiver, *Pendente Lite*

DATED this 25 day of October, 2005.

  
An Employee of Snell & Wilmer L.L.P.

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