Exhibit E

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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In re:

TONI F. NATALIE

Debtor.

Case No. 99-16195
Chapter 7

KEITH RANIERE

Plaintiff

vs.

TONI F. NATALIE

Defendant.

ENTERED ON DOCKET
1/7/03
INITIALS: KC

Adv. Proc. No. 01-90027

APPEARANCES:

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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

Memorandum-Decision & Order

The matter before the court is the objection to discharge filed by Creditor Keith Raniere ("Plaintiff"). The court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2)(J) and 1334(b).

Facts

Based on the documents filed in the Debtor's case and the testimony and exhibits admitted at trial, the court finds the following:

The Debtor filed a Chapter 7 petition on October 27, 1999. National Health Outlet A Place of Creations, Inc. ("NHO"), a corporation owned by the Debtor, also filed a Chapter 7 petition on that date. Gregory Harris, Esq. was appointed the trustee in each bankruptcy case.

On her Schedule F (Creditors Holding Unsecured Nonpriority Claims), the Debtor states that she owes the Plaintiff $2,000 for "1996-99 property claims." Her Schedule F lists a claim for Albany Restaurant in the amount of $46,800.09; it also states the debt was for "1999 Guarantor purchases" and that a codebtor exists. The codebtor listed on the Debtor's Schedule H (Codebtors) for the Albany Restaurant debt is NHO. NHO's Schedule H lists the Debtor as a codebtor on the Albany Restaurant debt. Neither the Debtor nor NHO lists Albany Restaurant on its Schedule G (Executory Contracts and Unexpired Leases).

Both the Debtor's and NHO's Schedules F also state which unsecured nonpriority claims are subject to setoff; they are remarkably similar. The Debtor's Schedule F lists the claims of 10 Lake Corporation, Advanta Leasing Services, American Express Centurion Bank, Fleet Leasing Corp. (Sanwa), GE Capital, GE Capital Colonial Pacific Corp., PC Information Leasing Corp. and Southeastern Leasing & Equipment Corporation. NHO's Schedule F[1] lists Copelco Capital, Inc., GE Capital, GE Capital Colonial Pacific Corp., IFC Information Leasing Corp. and Preferred Capital Corporations as creditors having claims subject to setoff.

In response to Schedule B's (Personal Property) question 5, the question which asks what

[1]NHO's Schedule F is missing page 1.

books, pictures, art objects, etc. a debtor owns, the Debtor checked the box labeled "NONE." On the amended Schedule B she filed on April 21, 2000, however, she states she owns "Paintings, Prints, Posters" worth $1,100. She later testified at one of her depositions that the $1,100 value included her son's painting and posters and prints and that the frames were worth more than the actual graphics themselves.

During her depositions, Michael Rudin, Esq., the Debtor's former bankruptcy attorney,[2] often commented about her Schedule B amendment, particularly her belief that the artist presented the portrait to her son as a gift. (*See* Ex. 5 pp. 66-67.) However, at trial the Debtor denied that she had previously testified the painting belonged to her son. (Tr. 90.) In an affidavit the Debtor signed on January 28, 2000 and later filed with the court, the Debtor stated, "All the artwork I had consisted of art worth no more than Five Hundred and 00/100 Dollars ($500.00), all of which were sold in 1998 to pay my medical expenses." Whenever asked under oath if she ever had an appraisal of the artwork done, she answered she had not.

On her Schedule B, the Debtor also listed an ownership interest in Blue Crystal LLC and Hi-Step Enterprises, Inc. During her depositions, she testified she was at least a part owner of both entities and both operated pizzerias.

Both the Debtor and NHO had a section 341 meeting of creditors scheduled for December 13, 1999. The Debtor attended the meeting as an individual in her own case and in her capacity as a corporate officer of NHO in the corporation's case.[3] Several individuals

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[2]Christian H. Dribusch, Esq., was substituted as attorney for the Debtor in this adversary proceeding on June 12, 2001.

[3]At trial, the court received the transcript of the 341 meeting into evidence for impeachment purposes only. (Tr. 99.)

attended the meetings, including the Trustee and her former counsel. An attorney for one of the creditors asked the Debtor a series of questions regarding transfers "in the last six years." (Ex. 28 pp. 14-15.)[4] During that line of questioning, Rudin interrupted the creditor's attorney and asked him questions like "of what value?" and "without value or for value?"

When the Trustee conducted his due diligence, including reviewing tax returns and corresponding with or otherwise interviewing third parties, he used documentation the Debtor produced. He ultimately filed a no distribution report in each case and NHO's case was closed. Later, the Trustee reopened that case to provide the Debtor's business associate, Nancy Saltzman ("Saltzman"), with an opportunity to purchase the Debtor's interest in five or six of the business entities she disclosed in her schedules. Saltzman never made an offer so the Trustee closed the corporation's case again.

The Debtor attended high school until the ninth grade. Prior to her business and personal involvement with the Plaintiff, the Debtor sold fruit baskets out of her home. The Plaintiff and an associate of his named Karen Unterreiner helped the Debtor form numerous business entities. He prepared many of the documents submitted to third parties by the Debtor; he also assisted in acquiring equipment.

In March or April 1999, the Debtor and Plaintiff's personal relationship ended. Thereafter, he began harassing her and otherwise disrupting her business to the point where she hired Rudin. At trial, the Plaintiff did not controvert the Debtor's testimony that his influence over her caused her to surrender her adopted son to her ex-husband.

Approximately one month prior to filing for bankruptcy protection, the Debtor closed

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[4]The court admitted Exhibit 28 for impeachment purposes only. (Tr. 99.)

NHO and secured the equipment in the building it leased from the landlord. When the Debtor visited the site more than a year later, she noticed much of the equipment NHO had leased remained there and was being used by the current tenant. She neither took the equipment nor sold any of it. NHO has disclosed in its Statement of Financial Affairs, however, that certain small restaurant equipment was sold to Zylos, Inc. and the proceeds were used to pay sales taxes. An employee of ILC, an equipment lessor, corroborated the Debtor's testimony that the landlord was in possession of the equipment post petition. (Tr. p. 42.) An employee of Quiktrak, a company that does onsite inspection and inventory verification, testified that he personally saw up to 75% of the equipment the equipment lessors were looking for on the premises. (Tr. p. 59.)

Salzman filed a section 523 adversary proceeding[5] against the Debtor and requested certain documentation from her and NHO. No one has challenged the Debtor's testimony that she provided approximately 33 banker boxes of records. The boxes contained personal checks, business checks, bank statements, credit card statements, tax returns, corporate books, Quickbook reports and lease agreements. The Debtor was unable to provide the computer records she kept for the various corporations she owned due to a computer virus. None of the documents she provided to Salzman have been returned.

On September 15, 1999, Hi-Step Enterprises, Inc., a non-debtor corporation the Debtor owns, sold certain assets, including the name "Mr. Shoes Pizza," to Zylos, Inc., an entity operated by the Debtor's mother, Joan Schneier. The Debtor's brother ran Hi-Step's day to day operations. The proceeds were allegedly used to pay Hi-Step's tax obligations although no one

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[5]Ms. Salzman was represented by the law firm of Whiteman, Osterman & Hanna. An attorney from that firm, Mr. Leslie Apple, "assisted" the Plaintiff's attorney in this adversary proceeding. (Tr. 4.)

offered any other evidence supporting or challenging that. The Debtor, in a January 28, 2000 affidavit, swore, "Hi Step never owned the name Mr. Shoes Pizza." (Ex. 7 ¶ 12e.)

According to Schneier's testimony and a promissory note dated June 30, 1998, on or around June 30, 1998, more than one year prior to filing, she received artwork from the Debtor after paying her approximately $10,000. Both Schneier and Gerald P. Dagostino, C.P.A., signed the note as witnesses. At trial, Dagostino testified that he did not recall signing the document but his usual business practice was to sign documents on or near the date reflected on them. The document itself is confusing. Although it purports to be Ms. Schneier's written promise to pay the Debtor $10,000 for artwork, pictures and paintings, the Debtor signed the document as a guarantor.

Confusing the artwork sale matter more is a transcript of the Debtor's November 15, 2000 deposition. She testified she intended to sell her the artwork, then analogizes the transaction to the second mortgage her mother had obtained on the Debtor's house. Later on she testified that if the payments provided for in the agreement had been made, her mother would not have had any right to the artwork because the Debtor would not have owed her any money, but then stated she did not know if the artwork was the security for the payment of her debt to her mother. (*See* Ex. 6 pp. 64-66.)

Schneier testified the Debtor used the $10,000 to pay for surgery the Debtor needed to lessen the harmful physical effects resulting from a damaged silicon implant and to keep her business afloat during her recovery. She also testified she did not have sufficient room in her home initially to take possession of the artwork. Prior to moving to Rochester and after her husband recovered from a heart attack, Schneier had the artwork removed from the Debtor's residence with the help of family and friends. Once she took possession of it, she retained it.

One part of Schneier's testimony the court found disturbing was her description of the Plaintiff's harassment of her and her family, including the Debtor. Schneier recounted the time the Plaintiff sent police to her house and the numerous occasions he threatened her and her family on the phone. The only other aspect of the Plaintiff's case in chief worth noting is his Exhibit 13, particularly the document captioned "Preferred Capital 'Schedule A'" ("P.C. Schedule A"). The P.C. Schedule A states it is a lease between Preferred Capital Corporation and National Health Network, Inc. and lists the equipment it covers, including a 2-door freezer and 3-door cooler from Albany Restaurant.

Before the trial concluded, the court read a quote from its *Raymonda*[6] decision. In doing so, it intended to emphasize the heavy burden placed upon a party objecting to a discharge and to comment on what it perceived as a lack of proof regarding the Plaintiff's section 727(a)(2) and section 727(a)(4) causes of action. (*See* Tr. 215-217; 220-221.)

Arguments

In his opening brief, the Plaintiff contends the Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(4) for knowingly and fraudulently making a false oath or account regarding the existence, ownership, possession and value of artwork, some restaurant equipment, the "Mr. Shoes" trade name and the oil painting called "Michael." He asserts she did not list the art as a secured debt on the bankruptcy petition so she could remove the collection from the court's purview and purchase it back at any time. The Plaintiff goes on to state the Debtor is a beneficiary under her mother's will and stands to inherit the art back; he references his

[6]Case No. 00-90060, Adv. Proc. No. 99-91199 (Bankr. N.D.N.Y. 2001).

"Appendix D - "Secret Benefit." In that document, he recites a part of the Debtor's November 15, 2000 deposition where she testified she was a beneficiary under her mother's life insurance policy.

The Plaintiff also asserts the Debtor should not receive a discharge based on 11 U.S.C. § 727(a)(3) for concealing information or failing to preserve recorded information regarding her financial condition or business transactions, particularly the value of her art collection. He also argues a denial of her discharge is warranted pursuant to 11 U.S.C. § 727(a)(5) for failing to explain the loss of assets or deficiency of assets to meet her obligations, in particular, the equipment purchased from Albany Restaurant.

Raised for the first time in a part of his opening brief labeled "Merger Agreement," the Plaintiff contends NHO's bankruptcy was fraudulent. He does not, however, provide any statutory or case law analysis to support this contention.

In her response to the Plaintiff's opening brief, the Debtor asserts the Plaintiff has not met his burden of proof on any of the section 727 causes of action, including the gravamen of his complaint, section 727(a)(4). Regarding section 727(a)(2), she argues the Plaintiff has not proven that any of her or NHO's property had been, or was permitted to be, transferred, removed, destroyed, mutilated, or concealed within one year before the date of filing with the intent to hinder, delay, or defraud a creditor. According to the Debtor, the evidence shows any sale of an asset was for fair consideration and the proceeds were used for her or NHO's legitimate expenses.

Regarding section 727(a)(3), the Debtor contends the Plaintiff has submitted no evidence of what "recorded information" she concealed, destroyed, mutilated, falsified or failed to keep from which her or NHO's financial condition or business condition might be ascertained. She asserts her uncontradicted testimony and that of her mother are that 33 banker boxes of books and records were provided to the parties in interest. According to her, she did not provide the Plaintiff with an appraisal of the artwork because she had no such appraisal, thus, she had no "recorded information."

The Debtor also contends the Plaintiff did not meet the requirements under sections 727(a)(5) or 727(a)(7) because she cooperated in the NHO bankruptcy proceeding and satisfactorily explained the loss or deficiency of assets. To her, assets were not lost, rather, the assets were the lease agreements she listed on the bankruptcy petition and not the equipment pieces referred to in those lease agreements. She argues the Plaintiff has not submitted any evidence that those assets were worth any less at the time of filing than they were worth at the time of the lease agreements' inception. For the Debtor, her testimony and that of one of the Plaintiff's witnesses support a finding that approximately one month before the filing of the petition, most of the equipment was on the former NHO premises after they were vacated, that equipment was locked up and, later, a new tenant used it. She asserts the equipment lessors did little to retrieve and liquidate the equipment post petition and contends the Plaintiff has not produced any documentation or other evidence demonstrating that she transferred, liquidated, or otherwise disposed of any of the leased equipment prior to the filing of the NHO petition. She also contends he has not shown she received a benefit from such transfer, liquidation or disposition.

As for the Plaintiff's main contention, his section 727(a)(4) argument, the Debtor begins by challenging his interpretation of what happened at her section 341 meeting. She points out that not only did the court admit the transcript of that meeting for the limited purpose of impeachment, but even if it had been received as direct evidence, there is no evidence her statement, made while surrounded by several individuals, was made "knowingly" and "fraudulently." She contends there is no evidence of a secret deal between her and her mother which shows she retained a legal or beneficial right to the artwork, that her mother gave her anything other than fair value for it and that she used the proceeds for anything other than her surgery and business's expenses. She cites *Cullinan Assocs., Inc. v. Clements*, 215 B.R. 818 (W.D. Va.), *aff'd*, 131 F.3d 133 (4th Cir. 1997), and argues her mistaken statement is different from the one the debtor made in *Raymonda* because in that case the debtor had sufficient time to consider the simpler questions posed. In contrast, she asserts she did not have sufficient time to consider all of the "in the last six years" questions she was asked. Furthermore, unlike the debtor in *Raymonda* who still had and used the tools when he filed, the Debtor sold the artwork more than a year prior to filing her petition and did not possess it when she did file.

Regarding the "Michael" painting, the Debtor asserts her amended schedule was a defensive move by her so that if she had any rights in the painting, those rights were disclosed. The Debtor's response to the Plaintiff's challenge regarding the "Mr. Shoes" transaction is that the uncontradicted testimony shows the proceeds of the Hi-Step Enterprises, Inc. sale of its assets, including the Mr. Shoes name, to Zylos, Inc. was for fair value and used to pay tax creditors of that non-debtor entity. The Debtor contends the Plaintiff's papers acknowledge and concede that she relied on her attorney with regard to her deposition testimony regarding who owned the "Mr. Shoes" trade name. Distinguishing *Raymonda* once again, the Debtor states she never owned the trade name "Mr. Shoes" and argues that because the transaction involved two non-debtor entities, it is not a matter which "include[s] the debtor's business transactions and the discovery of assets or the disposition of the debtor's property." She further argues the Plaintiff has not submitted any expert opinion or documentary evidence which shows the values of the corporations' stocks disclosed by her were worth anything other than zero. According to her, the zero value of the stock was corroborated by Saltzman's failure to make an offer to purchase all the entities' ownership interests.

In his[7] reply brief, the Plaintiff presents the court with a case law analysis that discusses *Raymonda* in more detail and distinguishes the cases the Debtor relies on in her opening brief. Although he lists 19 areas where the Debtor "misrepresents, deletes or provides directly contradicting testimony," overall he focuses on the Debtor's transfer and concealment of her artwork and the "Mr. Shoes" trade name and the absence and concealment of business equipment. (Plaintiff's Response to Defendant's Post-Trial Memorandum ("Response") unnumbered p. 2.) In his introduction, he also contests the Debtor's right "to declare corporate bankruptcy," arguing "[w]ithout the forged, invalid Merger Agreement in place both the Natalie and NHO bankruptcies immediately unravel." (Response unnumbered p. 1.)

The Plaintiff also challenges the Debtor's explanation of the loss or deficiency of assets, her characterization of the leases as assets, her offer to make them available to parties in interest, her failure to provide a list of every piece of equipment (leased or owned) and her representations that either the new tenant or the landlord had the equipment. Regarding the Debtor's assertion

[7]The pronoun the Plaintiff uses when referring to the party pursuing the objection to discharge causes of action is "we." The convoluted format and content of his two briefs, especially his "appendices" and his "supplements," make them extremely difficult to follow and do not indicate who, if anyone, might be an additional plaintiff.

that there is no proof that Albany Restaurant provided any equipment to her or NHO, he refers to Exhibit 13, particularly the agent's finding regarding 75% of the equipment, not 100%. He downplays the leasing companies' lack of action and the Debtor's inability to access the premises once she filed and he argues that if the leasing companies had abandoned equipment, then it should go into the estate to pay the Debtor's creditors. He also argues Exhibit 9 supports a finding that the Debtor's assets dropped from the $650,000 value she placed on them within a year of filing.

Finally, the Plaintiff asks the court to take judicial notice of seven facts. He lists them in a document labeled "Appendix C - Public Record Appendix."

Discussion

I. Validity of the NHO Petition

The Plaintiff did not formally object to the filing of NHO's petition until he challenged their validity in his post trial briefs. Moreover, he neither substantiates his argument with uncontested facts nor provides supporting case law. While the court often conducts its own research when deciding issues, it is certainly not responsible for making a party's prima facie case, especially when that party is represented by counsel. Thus, this issue will not be considered by the court.

II. Judicial Notice

The Plaintiff also did not ask the court to take judicial notice of seven "facts" until he filed his reply brief.[8] Although the Federal Rules of Evidence provide for "mandatory" judicial

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[8]When a plaintiff raises a new issue in a reply brief, the court usually allows the defendant to file a brief addressing it. For reasons that will become apparent, the court did not allow the Debtor to do that in this proceeding.

notice of adjudicative facts, the request itself does not merit serious consideration given the Plaintiff's failure to supply the court with the necessary information. FED. R. EVID. 201(d). Merely indicating "anyone can call or visit" is not sufficient when the burden of collecting the information lies with the proponent, not the court, particularly when phone numbers or addresses have not been provided.

Furthermore, at least one of the "facts" cannot be ascertained by a mere phone call since state taxing authorities cannot release taxpayer information in the absence of a proper judicial order. *See* N.Y. TAX L. § 202. If the court followed the state law requirements and entertained issuing an order, it would not execute one without first providing the Debtor with an opportunity to be heard. Also, although the federal rules allow for a request at any time, the timing of the request seems to be part of the Plaintiff's answer to the challenges the Debtor raised in her brief, i.e., his attempt to fix what he missed getting into evidence prior to the close of trial.

The court does not hold the Plaintiff's seven "facts" are "self-evident truths that no reasonable person could question, truisms that approach platitudes or banalities." *Hardy v. Johns-Manvile Sales Corp.*, 681 F.2d 334, 347-48 (5th Cir. 1982). Accordingly, the request is denied.

III. Objections to Discharge

As the court has already pronounced, the denial of a discharge is not only an extremely drastic and harsh sanction, it is the death penalty of bankruptcy. *Raymonda*, at p. 4. Like many other objection to discharge adversary proceedings, the matter here involves two vital bankruptcy maxims: the debtor's paramount duty to fully and accurately prepare his or her petition, schedules and statements and the Bankruptcy Code's purpose of giving a deserving debtor a fresh start. *Id.*

While all of the policy precepts of *Raymonda* apply to this case, a material factual distinction between this case and *Raymonda* is that the Trustee has not asserted the Debtor failed to disclose assets or other information on her bankruptcy petition or the NHO bankruptcy petition. The individual challenging the Debtor's discharge is her former boyfriend. Although he is a creditor of the Debtor, compared to the similar creditor bodies in the two cases, his claim is very small. Moreover, unlike the more typical scenario of the Chapter 7 estate's fiduciary objecting to a debtor's discharge, this matter smacks of a jilted fellow's attempt at revenge or retaliation against his former girlfriend, with many attempts at tripping her up along the way.

After careful consideration of the entire record, with particular attention paid to the Plaintiff's post trial briefs and appendices, the court concludes the Plaintiff did not meet his burden of proving, by a preponderance of the evidence, that the Debtor should not receive a discharge.

A. 11 U.S.C. § 727(a)(2)

Bankruptcy Code § 727(a)(2) provides for the denial of a discharge if:

> [T]he debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or had permitted to be transferred, removed, destroyed, mutilated, or concealed –
>
> (A) property of the debtor, within one year before the date of the filing of the petition; or
>
> (B) property of the estate, after the date of the filing of the petition.

The Plaintiff's brief does not contain any argument supporting an objection to discharge pursuant to § 727(a)(2). As for the Debtor's sale of her artwork, the Plaintiff did not offer any testimony that the sale of it was for other than fair consideration or that the proceeds were used for anything other than her or her business's legitimate expenses. Thus, any causes of action based on it are dismissed.

B. 11 U.S.C. § 727(a)(3)

Bankruptcy Code §727(a)(3) provides for a denial of discharge if:

> [T]he debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case.

Of course, sophisticated debtors are held to a higher level of accountability. *In re Sethi*, 250 B.R. 831 (Bankr. E.D.N.Y. 2000). In the instant case, however, the Debtor has a ninth grade education and, prior to her involvement with the Plaintiff, the extent of her business practice was selling fruit baskets from her home. As already found, the uncontradicted testimony was the parties in interest received, but have yet to return, 33 banker boxes of books and records, including corporate and personal tax returns, bank statements, business checks, personal checks, corporate books and Quickbook reports. Although the Debtor did not provide the Plaintiff or the Trustee with an appraisal of the artwork, she did not do so because she did not have one. Unlike the tax returns and the books and records she was required to keep according to federal and state law, the Plaintiff has not convinced the court that the Debtor was required to obtain and retain an appraisal. Thus, he has failed to prove a section 727(a)(3) cause of action.

C. 11 U.S.C. § 727(a)(4)

The gravamen of the Plaintiff's objection is based on Bankruptcy Code §727(a)(4). Section 727(a)(4) provides for a denial of discharge if:

> [T]he debtor knowingly and fraudulently, in or in connection with the case –
> (A) made a false oath or account;
> (B) presented or used a false claim;
> (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
> (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs.

As the statute provides, the false oath or account must be both knowingly and fraudulently made and it must relate to a material matter, including the debtor's business transactions and the discovery of assets or the disposition of the debtor's property. *See In re Murray,* 249 B.R. 223 (E.D.N.Y. 2000).

The Plaintiff argues the Debtor left several items off of her petition, schedules and statements. They are treated in greater detail below:

1. The Artwork

The Plaintiff asserts the Debtor lied about artwork she either owned when she filed or transferred within six years of filing on several occasions. Each occasion is addressed below:

a. The Meeting of Creditors

The Plaintiff asserts the Debtor did not disclose the transfer of artwork at her § 341 meeting. To start, the transcript of the meeting was admitted for the sole purpose of impeachment, not as direct evidence. Even if the court accepted it as direct evidence, the Plaintiff does not point to any evidence to show her statement, made while surrounded by as many as 11 individuals, was made knowingly and fraudulently. There is no evidence the Debtor made any unusual transaction or deliberately covered her tracks, no evidence of a secret deal between her and her mother where she retained a legal or beneficial right to the artwork and no evidence her mother gave the Debtor anything but fair value for the artwork. The Plaintiff has not even supported his contention that the Debtor will inherit the art under her mother's will.

As for the proceeds the Debtor and her mother say she received, the only evidence in the record regarding them is the Debtor used them for her surgery and NHO's business expenses. The Debtor's confusion, nervous state or misunderstanding of the compound question she was asked at the section 341 meetings does not support a determination that a fraudulent misrepresentation occurred. *See Cullinan Assocs., Inc.*, 215 B.R. at 821. The context of the Debtor's "statement" is different from the debtor's in *Raymonda*. Here, the Debtor was not asked straightforward questions like "do/did you own paintings?" and "where are they now?" Rather, the series of questions asked involved broad, legally-worded queries which required the Debtor to recall "transactions" involving art and numerous other assets she allegedly owned during the six years prior to filing. The line of questioning prompted her attorney to ask clarifying questions. Given the context, especially Rudin's interruptions and involvement, the court does not infer fraudulent intent by the Debtor. *See Murray*, 249 B.R. at 228.

b. The Schedules and Amended Schedules

The same rationale applies with regard to the Debtor's Amended Schedule B. The Debtor did not disclose the existence of any artwork until she filed her Amended Schedule B, however, her credible testimony regarding the amendment is that she filed it to reflect the existence of the "Michael" painting, i.e., art belonging to her son. Furthermore, the Plaintiff has failed to prove, by a preponderance of the evidence, that she actually owned artwork when she filed.

c. The January 2000 Affidavit (Exhibit 7)

Although the Debtor's otherwise fairly credible story is once again supported by Exhibit 7, her January 2000 affidavit, Exhibit B arguably compromises it. In her affidavit she swears the artwork she sold in 1998 was only worth $500. However, Exhibit B, the promissory note between herself and her mother, and the testimony of the Debtor and her mother indicate she might have received as much as $10,000 for it.

To the court, if in her affidavit the Debtor had stated she had **received** $500 instead of stating what the value of the artwork was **worth** when she transferred it, the weight of the evidence behind the promissory note would have created quite a significant discrepancy in her story. Without the "received" statement, however, the court views the promissory note as evidence that the Debtor's mother paid approximately $9,500 too much for the artwork, in effect, gifting the Debtor that money so she could pay for her surgery. Due to the lack of any evidence in the record evidencing the various paintings and lithographs had a higher value when the Debtor transferred it to her in exchange for money for her medical and business expenses, the court does not find she lied in that affidavit. Thus, Exhibit 7 does not support a section 727(a)(4) determination.

2. The "Mr. Shoes Pizza" Trade Name

To the court, the only evidence the Plaintiff has to support a denial of discharge pursuant to section 727(a)(4) centers on the trade name "Mr. Shoes Pizza." As already found, the Debtor filed an affidavit dated January 28, 2000 in which she swore that Hi-Step Enterprises, her sole corporation, "never owned" the Mr. Shoes Pizza trade name. Yet, the Asset Purchase Agreement between Hi-Step and Zylos, even with its effective date discrepancy, reflects a sale of Hi-Step's assets to her mother's corporation, including that trade name. That agreement supports a finding that the Debtor's affidavit contained a false statement about an asset her non-debtor corporation owned.

Meeting section 727(a)(4)'s requirements that (1) the debtor made the statement under oath and (2) the statement was false, however, does not end the inquiry. *See In re Martin*, 208 B.R. 799, 805 (N.D.N.Y. 1997); *Raymonda*, p. 5 (citing *In re Scott*, 233 B.R. 32 (Bankr. N.D.N.Y. 1998) and *In re Kelly*, 135 B.R. 459 (Bankr. S.D.N.Y. 1992)). The Plaintiff also has to prove criteria three through five, namely: (3) the debtor knew the statement was false; (4) the debtor made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy. *Id.* According to the Second Circuit, testimony given "knowingly and fraudulently" means nothing more than "an intentional untruth in a matter material to the issue which is itself material." *In re Melnick*, 360 F.2d 918, 920 (2d Cir. 1966)(citing *In re Slocum*, 22 F.2d 282, 285 (2d Cir. 1927)).

To the court, the Debtor knew her May 2000 "never owned" statement was false when she made it. Of course, a debtor is unlikely to admit to an intentional false statement, therefore, the creditor may prove "knowledge" for purposes of section 523(a)(4)(A) by proving the debtor acted with reckless disregard for the truth. *In re Scott*, 233 B.R. at 44 (citing *In re Chavin*, 150 F.3d 726, 728 (7th Cir. 1998)). Here, while it is true the Debtor's attorney and not the Debtor herself answered essentially all of the questions regarding the ownership of the Mr. Shoes Pizza trade name during the April 24, 2000 deposition, the court finds the Debtor knew her January 28, 2000 affidavit contained the false statement when she signed it based on the extent of the documentation involved with the sale of that trade name and her ownership of Hi-Step. The court cannot find the Debtor, as sole owner of Hi-Step and the one who executed the sale documents on its behalf as president, did not know Hi-Step owned the Mr. Shoes Pizza trade name approximately one month before she filed. In light of the timing of the sale and the documentation behind it, any denial of knowledge by her would be both internally inconsistent and implausible and a reasonable factfinder would not credit it. *See In re Chavin*, 150 F.3d at 728.

Even a deliberately false statement, however, may not support a denial of discharge under section 727(a)(4) since the debtor must have also made the statement fraudulently. *In re Scott*, 233 B.R. at 44. Because it is difficult to prove directly, courts have allowed creditors to prove fraudulent intent using circumstantial objective evidence. *Id.* (citing *In re Devers*, 759 F.2d 751, 754 (9th Cir. 1985)). Whether the debtor derived a benefit or the creditor a detriment is often one of the most important circumstantial factors to consider. *Id.* (citing *In re Agnew*, 818 F.2d 1284, 1287 (7th Cir. 1987)). As a result, courts may consider materiality as a proxy for fraudulent intent. *Id.* (citing *In re Chavin*, 150 F.3d at 728).

Here, the circumstantial evidence persuades the court that the Debtor did not have the requisite fraudulent intent. The Debtor's story is the proceeds of the sale constituted fair value and were used to pay Hi-Step's tax creditors. Although the Debtor did not provide any documentation to support that, the Plaintiff's only challenge to it is based on information that is not part of the record, i.e., Appendix C - Public Record Appendix Fact #1. Furthermore, the court finds the Debtor heavily relied on Rudin when testifying that the Mr. Shoes Pizza trade name did not belong to Hi-Step. In fact, Rudin himself "testified" on quite a number of occasions during the Debtor's depositions.

Despite the Plaintiff's analogy, his prima facie case is not at all like the one the trustee presented in *Raymonda*. There, in addition to all the contradictions and inconsistencies, when questioned by the trustee at his adjourned § 341 meeting, the debtor was, as conceded by his own attorney, slow to disclose the existence of the tools. *Raymonda* at p. 7. Later, when testifying in court during the trial, the debtor readily admitted the trustee would never have found out about the tools if his ex wife had not noted their existence. *Id.* On the other hand, the Plaintiff's prima facie case did not leave the court with the same flippant, teeth pulling impression of the debtor that the trustee's presentation in *Raymonda* did. *See id.* at p. 8.

Furthermore, in *Raymonda*, the debtor retained the use and benefit of the assets he owned. *Raymonda*, at p. 5. Here, the Debtor herself never owned the trade name Mr. Shoes Pizza. Her asset, the stock of Hi-Step, was disclosed on her schedules and valued at zero. Even though she produced boxes of information, the Plaintiff did not produce an expert valuation or any other evidence to show that her stock was worth anything other than zero.

Although courts have inferred fraudulent intent from circumstantial evidence, the circumstances here do not warrant such a holding. *See In re Freudmann*, 362 F.Supp. 429, 433 (S.D.N.Y. 1973), *aff'd*, 495 F.2d 816 (2d Cir. 1974). The Second Circuit has determined the following circumstances constitute "badges of fraud":

> (1) the lack or inadequacy of consideration;
> (2) the family, friendship or close associate relationship between the parties;
> (3) the retention of possession, benefit or use of the property in question;
> (4) the financial condition of the party sought to be charged both before and after the transaction in question;
> (5) the existence or cumulative effect of a pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and
> (6) the general chronology of the events and transactions under inquiry. *In re Kaiser*, 722 F.2d 1574 (2d Cir. 1983)(citing *In re May*, 12 B.R. 618 (Bankr. N.D. Fla. 1980)).

Based on the findings and determinations already made, the court concludes the Plaintiff has not shown what badges of fraud exist here. Although the transfer was from the Debtor's corporation to her mother's corporation, the record does not contain any evidence to support a finding that either individual treated her corporate business as her own thereby deriving a personal "benefit" from the transaction.

Finally, the court recognizes once the creditor shows an intentional falsehood, "'the burden falls upon the debtor to come forward with evidence that it was not an intentional misrepresentation. If the debtor fails to provide such evidence or a credible explanation for his failure to do so, a court may infer fraudulent intent.'" *Raymonda*, at p. 7 (quoting *In re Murray*, 249 B.R. at 228). The court accepts the Debtor's explanation that her mother's corporation purchased the trade name as part of a larger sale and, based on the absence of any evidence to the contrary, paid sufficient consideration for it. Therefore, the Debtor has rebutted the inference of fraudulent intent. *Murray*, 249 B.R. at 228.

The egregious facts in *Raymonda* simply do not exist here. The lack of evidence coupled with the Debtor's attorney's apparent role in her business and her mother's role in both her personal and business life, leads the court to conclude that what the Debtor "intended," if anything, was to obtain money for her non-debtor business's assets and to place the trade name "Mr. Shoes Pizza" back into her mother's business where she had always been told it belonged. Having received no direct or indirect benefit, the court does not conclude she intended to defraud her creditors, thus, the causes of action based on § 727(a)(4) are also dismissed.

D. 11 U.S.C. § 727(a)(5)

Bankruptcy Code § 727(a)(5) provides for a denial of discharge if:

> [T]he debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities.

The Debtor has satisfactorily explained the loss of assets or deficiency of assets. The Plaintiff is apparently confused as to what constitutes an asset of a bankruptcy estate. Since the equipment was leased by the Debtor and/or her corporations, the personal property itself would not constitute estate property. The leases, however, would. In general, leases of personal property do not have much, if any, value, thus, the court would not necessarily view a debtor's mistake in not listing them on a Schedule B as fatal to receiving a discharge.

Given the Debtor's production of 33 boxes of personal and business records, there is nothing in the record to suggest she did not provide all the recorded information of her and NHO's business transactions. Furthermore, the Plaintiff has not submitted any evidence that the equipment leases were worth less at the time of filing than they were worth at the time of inception of the lease agreements.

Even if the court assumed the assets consisted of the equipment as opposed to the lease agreements, the Debtor's uncontradicted testimony was that approximately one month before the filing of the petition, the equipment was locked upon the premises. Although they are favorable to the Debtor's side of the story in large part, the court perceives all of the testimony from the equipment lessors as nothing more than solicitations by the Plaintiff to provide one or two sentence statements without substantiation or explanation. If the equipment lessors had determined the Debtor had violated their rights, why not exercise their own rights under state law prior to her bankruptcy filing and/or under the Bankruptcy Code after she filed? The court has also been left with the impression that the Plaintiff himself assisted in the acquisition of equipment and that he managed and controlled the businesses' day-to-day operations, at least until the day he and the Debtor parted company. If that is true, then arguably, he contributed to any diminution in value.

Finally, the Plaintiff has not provided any evidence that there was a loss or deficiency of assets prior to the Debtor and NHO filing bankruptcy petitions. He has not produced any documentation or other evidence demonstrating the Debtor transferred, liquidated or otherwise disposed of any of the leased equipment prior to the filings or received a benefit from a transfer or disposition. The only evidence offered is the Debtor's and some of the equipment lessors' testimonies that the landlord possessed the equipment post petition. Thus, the court concludes the Plaintiff has not met his burden of proving a section 727(a)(5) cause of action.

E. 11 U.S.C. § 727(a)(7)

Bankruptcy Code § 727(a)(7) provides for a denial of discharge if:

> [T]he debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case under this title or under the Bankruptcy Act, concerning an insider.

The provision was designed to induce the cooperation of individuals in related bankruptcy cases. *See In re Krehl*, 86 F.3d 737 (7th Cir. 1996). Section 727(a)(7) binds "'related cases together so that misconduct in one case by an individual may be chargeable against that individual in other related proceedings.'" *In re Transp. Mgmt Inc.*, 278 B.R. 226, 238 (Bankr. M.D. Ala. 2002)(quoting *Whiteside F.S., Inc. v. Siefkin*, 46 B.R. 479, 480-81 (N.D. Ill. 1985). Thus, the section acts to prevent debtors who are involved in several bankruptcy proceedings from failing to cooperate in proceedings in which their discharges are not at issue, and then, subsequently or simultaneously, obtaining individual discharges in their own cases. *Id.*

As the court has found, above, the Debtor cooperated with the Trustee in the NHO bankruptcy case. She even turned over boxes of information to creditors. Thus, the Plaintiff has not sustained his burden of proof on his section 727(a)(7) cause of action.

Accordingly, it is

ORDERED that the Plaintiff's objections to the Debtor's discharge are overruled and the Debtor shall receive her discharge forthwith.

Dated: JAN 7 2003
Albany, New York

Honorable Robert E. Littlefield, Jr.
United States Bankruptcy Judge

Exhibit F

Criminal Form 2 9/96

ORI No: NY 045051 J
Order No:
NYSID No:

Court County of SARATOGA
(address) P.O. BOX 4550 HALFMOON, NY 12065 State of New York

Present: Hon LESTER A. WORMUTH

People of the State of New York
-against-

Barbara J. Jeske
Defendant
Date of Birth: 11/7/50

ORDER OF PROTECTION

Non-Family Offense C.P.L. 530.13
❑ Youthful Offender (check if applicable)
Part
Docket No. W99-167
Indictment No.
Charges 240.26 Harassment 2nd

❑ Ex parte (check one)
☑ Defendant Present in Court

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND CONTINUE IN EFFECT UNTIL YOU REAPPEAR IN COURT.

☑ TEMPORARY ORDER OF PROTECTION. Whereas good cause has been shown for the issuance of a temporary ~~order of~~ protection [as a condition of ❑ recognizance ❑ release on bail ❑ adjournment in contemplation of dismissal]

❑ ORDER OF PROTECTION. Whereas defendant has been convicted of [specify crime or violation]

And the Court having made a determination in accordance with section 530.13 of the Criminal Procedure Law,

IT IS HEREBY ORDERED that the above-named defendant observe the following conditions of behavior (Check Paragraphs that Apply.

☑ Stay away from and/or from the
☑ [name(s) of protected persons] Toni F Natalie
☑ home of
☑ school of
☑ business of
☑ place of employment of
❑ other

❑ Refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the alleged offense and such members of the family or household of such victim or victims as shall be specifically named [specify victims or persons]

❑ Surrender any and all firearms owned or possessed, including, but not limited to, the following: Such surrender shall take place on or before [specify date/time]. at

☑ Specify other conditions NOT TO CONTACT BY TELEPHONE

IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby ❑ suspended or ❑ revoked (note final order only), and or ❑ the Defendant shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes) NOTE: If this paragraph is checked, a copy of this form must be sent to: New York State Police, Pistol Permit Section, State Campus Building #22, 1220 Washington Avenue, Albany, New York 12226-2252

IT IS FURTHER ORDERED that this order of protection shall remain in effect until 9/16/1999

DATED: 8/19/99

[signature]
JUDGE / JUSTICE
COURT (COURT SEAL)

❑ Defendant advised in Court of issuance of Order.

Received by Defendant [signature]
(signature)

❑ Service Executed Date: Time:

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize, and in some situations may require such officer to arrest a defendant who has violated its terms and to bring him or her before the Court to face whatever penalties may be imposed therefor

Exhibit G

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Michael A. Norwick, Esq.
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Attorneys for Rick Ross, The Ross Institute, Paul Martin and the Wellspring Retreat

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NXIVM CORPORATION, Plaintiff and Counterclaim-Defendant, vs. RICK ROSS, Defendant and Counterclaimant, vs. KEITH RANIERE, NANCY SALZMAN, KRISTIN KEEFFE, INTERFOR, INC., JUVAL AVIV, ANNA MOODY, JANE DOE and JOHN DOES 1-10, Counterclaim Defendants.	Civ. Action No. 2:06-cv-01051-DMC-MF Honorable Dennis M. Cavanaugh, U.S.D.J. **VERIFIED COUNTERCLAIM**

Defendant/Counterclaimant Rick Ross ("Ross"), by way of Counterclaim, states as follows:

NATURE OF CLAIMS

1. In an appalling effort to undermine Ross's constitutionally protected rights, while this matter was pending the above-named Plaintiff/Counterclaim Defendant and Counterclaim Defendants on information and belief conspired with non-party Joseph O'Hara, *inter alia,* (i) to unlawfully obtain Ross's bank records and those of his roommate; (ii) to unlawfully obtain Ross's telephone records; (iii) to rummage through Ross's garbage; (iv) to

improperly contact Ross *ex parte*, and interview him under false pretences outside the presence of his counsel; and (v) to attempt to lure Ross onto a cruise ship under false pretenses for reasons that remain unclear.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this Counterclaim pursuant to 28 U.S.C. § 1332 because it arises between a citizen of a State and citizens of a foreign state, and the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs. Supplemental jurisdiction also exists under 28 U.S.C. § 1367.

3. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b)(2) & (3), and 1391(c), because a substantial number of events giving rise to this action took place in the State of New Jersey, and because all other parties are subject to personal jurisdiction in the State of New Jersey.

PARTIES

4. Counterclaimant Rick Ross is a resident of Jersey City, New Jersey. Since 1996, Ross has operated a web site at www.rickross.com as a public resource, where individuals can examine and discuss information about cults, destructive cults, controversial groups and movements, and many other related subjects. In addition to operating www.rickross.com, and frequently serving in court as an expert witness on cult-related matters, Mr. Ross provides services as a cult intervention specialist. In that capacity, Ross helps families who seek assistance in facilitating discussions with family members who have become involved with cults and other controversial groups or movements. Such interventions typically involve providing help to family members concerned about a loved one who they believe has somehow become involved in a potentially unsafe group and/or situation -- most frequently with a group that displays the attributes of a "cult."

5. Plaintiff/Counterclaim Defendant NXIVM Corporation ("NXIVM") is a Delaware corporation with its principal place of business at 455 New Korner Road, Albany, New York 12205. Ross has published on his website reports from forensic psychiatrist John Hochman and clinical psychologist Paul Martin, alleging that NXIVM has many of the attributes of a "cult" and that NXIVM training is comparable to "brainwashing" -- a process of coercive persuasion or thought reform. NXIVM training has been linked to catastrophic results, including one suicide and at least three people who required psychiatric treatment, one of whom was hospitalized.

6. Counterclaim Defendant Keith Raniere ("Raniere") is the founder of NXIVM, and is its *de facto* leader and chief financial beneficiary. Raniere is known to his followers as "Vanguard."

7. Counterclaim Defendant Nancy Salzman ("Salzman") is the president of NXIVM, and is addressed by NXIVM followers as "Prefect."

8. Counterclaim Defendant Kristin Keeffe ("Keeffe") is an employee and "legal liaison" for NXIVM. NXIVM, Raniere, Salzman and Keeffe are collectively referred to herein as the "NXIVM Defendants."

9. Counterclaim Defendant Interfor, Inc. ("Interfor"), a New York corporation, is a private investigation firm with a principal place of business at 575 Madison Avenue, New York, New York 10022.

10. Counterclaim Defendant Juval Aviv ("Aviv") is the founder and president of Interfor.

11. Counterclaim Defendant Anna Moody ("Moody") is an employee of Interfor.

12. Non-party Joseph O'Hara ("O'Hara") is a former consultant to the NXIVM Defendants. O'Hara assisted NXIVM with, *inter alia*, engaging in unlawful, tortious and unethical activity to obtain improper advantage for NXIVM in this litigation. NXIVM alleges that O'Hara is its former attorney.

13. Counterclaim Defendant Jane Doe is an actress hired by the Interfor Defendants -- at the request of O'Hara and the NXIVM Defendants -- to pretend to have a daughter involved in NXIVM; she was introduced to Mr. Ross by Aviv as "Susan L. Zuckerman." Interfor, Aviv, Moody and Jane Doe are collectively referred to herein as the "Interfor Defendants."

14. John Doe's 1-10 are currently unidentified individuals who, upon information and belief, conspired with the NXIVM Defendants and the Interfor Defendants to assist them in harassing Mr. Ross and unlawfully invading Ross's privacy.

FACTS

15. In or about 2003, the NXIVM Defendants hired O'Hara as a consultant. In or about 2004, the NXIVM Defendants directed O'Hara to hire the Interfor Defendants to, *inter alia*, conduct an investigation of Ross, unlawfully obtain Ross's bank and telephone records, forage through Ross's garbage, uncover Ross's personal relationships, and compile a dossier on Ross containing scurrilous information -- all an offensive and unlawful violation of Ross's privacy.

16. Further, the NXIVM Defendants and O'Hara directed the Interfor Defendants to make improper *ex parte* contact with Mr. Ross, under false pretences and outside the presence of his attorneys -- in part for the purposes of improperly, unethically and unlawfully obtaining admissions and evidence to be used as leverage over Ross in this litigation. Also, upon

information and belief, the NXIVM Defendants conspired with the Interfor Defendants to lure Mr. Ross onto a cruise ship under false pretenses for reasons that remain unclear.

17. In or about November 2004, while this lawsuit was pending in the United States District Court in Albany, New York, Ross was contacted by Interfor, a private investigation firm. Shortly thereafter, Ross spoke with Interfor's president, Juval Aviv, who claimed to represent a woman whose 27-year old daughter "Judy" had become involved with NXIVM. According to Aviv, Interfor had learned of Mr. Ross's experience with such matters, and Aviv had recommended Ross to help the woman with her daughter. Mr. Ross disclosed to Aviv that he was then involved in this litigation with NXIVM, which had already been pending for over a year.

18. Ross agreed to meet with Interfor's client at its offices in New York City later in November 2004. There he met with Anna Moody, Aviv and the concerned mother -- defendant Jane Doe -- who was introduced to Ross as "Susan L. Zuckerman" ("Zuckerman"). Aviv identified Zuckerman as his long-time family friend, and told Ross that Zuckerman's daughter was involved with NXIVM. The story was decorated with a narrative in which Zuckerman's daughter had sold family heirlooms to obtain money to give to NXIVM, and that Zuckerman's husband had to buy back the items from pawn shops.

19. Some five months later Moody again contacted Ross, and on April 20, 2005, he again met with Moody and Zuckerman at Interfor's offices. During the course of Ross's two encounters with Aviv, Moody and Zuckerman at Interfor's offices, Ross was questioned concerning everything he knew about NXIVM, its *de facto* leader, "Vanguard" Raniere, and its president, "Prefect" Salzman.

20. Ross was also quizzed about the methods he might use to help Zuckerman by means of an intervention with her daughter. When Ross advised the Interfor Defendants that it is generally best to conduct an intervention as far away as possible from the cult or group, it

was suggested to him that the intervention be conducted on a cruise ship. Following Ross's first meeting at Interfor, he furnished its representatives with a retainer agreement, which was promptly returned to him bearing the signature "Susan L. Zuckerman," and "c/o Interfor."

21. During one or both of his meetings at Interfor's offices, Ross explained to the Interfor Defendants that he never works alone with the subject of a cult intervention, and that both "Zuckerman" and Juval Aviv would have to be present at all times. Moody appeared disappointed when Ross took this position, and she ultimately advised Ross that "Ms. Zuckerman" had decided not to go forward with the intervention.

22. Right before the 2006 Fourth of July holiday, Ross received an answering machine message from one Chet Hardin, a newspaper reporter for *Metroland*, a free weekly Albany-based newspaper. Hardin's message explained that he was trying to confirm a story about a NXIVM plot to lure Ross onto a cruise ship. It was only this message -- received more than a year-and-a-half after Ross first met with Interfor -- that caused Ross to realize both that NXIVM had hired Interfor, and that the stated purpose for meeting with him was a remarkably elaborate charade.

23. Based upon this information, it became clear that part of the purpose of Interfor's meetings with Ross was, in effect, to depose him without the permission of and outside the presence of his attorneys, Douglas Brooks and Thomas Gleason -- who were then representing Ross in this lawsuit while it was venued in the United States District Court for the Northern District of New York (and who have continued to do so following transfer, along with lawyers from Lowenstein Sandler). In seeking Ross's answers to various questions relating *inter alia* to his knowledge of NXIVM, "Vanguard" and "Prefect," the NXIVM and Interfor Defendants were, on information and belief, overtly attempting improperly to obtain information, admissions and statements from Ross that NXIVM could use to obtain leverage or advantage in this lawsuit.

24. After the Fourth of July holiday, Ross had an opportunity to speak by phone with the reporter, Chet Hardin. Hardin was working on a story that involved NXIVM hiring Interfor to investigate Ross and lure him onto a cruise ship. According to Hardin, the source of his story was former NXIVM associate Joseph O'Hara. O'Hara is currently the defendant in litigation brought against him by NXIVM in the Northern District of New York -- a lawsuit in which the question of whether O'Hara served as NXIVM's attorney or merely as a "consultant" remains a contested issue. There as here, NXIVM has asserted that O'Hara was acting as its attorney.

25. Hardin's article was published on August 10, 2006, and is attached hereto as Exhibit A. During Ross's discussion with Hardin, the reporter read to Ross from a report that had been written by Interfor and which, on information and belief, established unequivocally that Interfor and NXIVM had illegally obtained Ross's bank records: the report contains detailed information about deposits, withdrawals and checks drawn from Ross's personal checking account during 2004.

26. On July 5, 2006 attorneys for Mr. Ross obtained, from the PACER system from the Northern District of New York, a privilege log that NXIVM had filed in that court on April 7, 2006 in its litigation against Mr. O'Hara. The privilege log identifies a memorandum generated for NXIVM by Interfor, entitled "Interfor, Inc. Status Report Rick Ross November 2004." This privilege log entry -- which identifies the report as having been generated around the precise time that Interfor was making improper *ex parte* contacts with Ross -- provided unequivocal proof that NXIVM had hired Interfor. Based upon the information Ross obtained from Hardin and NXIVM's privilege log, Ross's attorneys caused subpoenas to be served on Interfor, Juval Aviv and Anna Moody on July 11, 2006, demanding that they produce documents and provide testimony in this matter.

27. Thereafter, on the evening of July 12, 2006, Ross received an unsolicited phone call from Joseph O'Hara. During that phone call, and another phone call O'Hara made to Ross the following week, O'Hara advised Ross of the following:

- That O'Hara was never NXIVM's lawyer;

- That O'Hara, Nancy "Prefect" Salzman and NXIVM legal liaison Kristin Keeffe all met with Interfor in connection with its investigation of Ross, and that they and Keith "Vanguard" Raniere were all aware of and/or directed Interfor's conduct;

- That Interfor bribed employees of Fleet Bank and one of Ross's phone providers, to illegally obtain copies of Ross's bank and telephone statements, respectively. On information and belief, it is also possible that Interfor obtained Ross's bank and telephone records through the practice known as "pretexting." Obtaining bank records in this manner constitutes a violation of federal law, with potential criminal penalties;

- That Interfor bribed someone who worked at, or resided in, Ross's apartment building to sort through his garbage; and that O'Hara is still in possession of a box sent to him by Interfor that contains Ross's garbage.

- That the "concerned mother" introduced to Ross by Interfor as "Susan L. Zuckerman" was an actress hired by Interfor.

- That O'Hara had received a death threat spray-painted on his property after he began speaking out publicly against NXIVM,

28. According to O'Hara, "Vanguard" Raniere, "Prefect" Salzman, and Keeffe had begun to plot with the Interfor Defendants to lure Ross onto a cruise ship for purposes that remain unclear. O'Hara told Ross that the NXIVM Defendants had discussed having Ms. Keeffe portray "Judy," the daughter of "Susan L. Zuckerman." According to O'Hara, Keeffe told him that the purpose of the bizarre plan to lure Ross onto the cruise ship was to "convert" Ross.

29. O'Hara told Ross that it was at about the time that this cruise ship plot was being concocted that O'Hara came to conclude that he could no longer be a willing participant in

NXIVM's conduct. O'Hara terminated his relationship with NXIVM sometime in early February 2005, as he stated in a formal termination letter dated March 11, 2005. In the letter to Salzman, O'Hara states that he:

> became aware of -- and informed you about -- a variety of activities that I believe to be illegal (Note: Although some of those activities admittedly involved 'grey areas' of the law, others involved, in my professional judgment, clear violations of a variety of civil and criminal statutes and regulations). Notwithstanding my advice to the contrary, you, your various companies and various individuals associated with those companies have continued to engage in those activities -- and, in several instances, have even expanded same.

The letter was attached as an exhibit to a March 26, 2006 submission from NXIVM's counsel to the Magistrate Judge in the Northern District of New York litigation against O'Hara, and is attached hereto as Exhibit B. Significantly, the Interfor Defendants' second meeting with Ross did not occur until April 20, 2005, long after O'Hara had terminated his relationship with NXIVM.

30. After O'Hara's conversation with Ross, he faxed Ross a report created by Interfor -- apparently the same report described by Chet Hardin on the telephone and in Exhibit A, *Metroland's* August 10, 2006 article. The report, ostensibly the same document that NXIVM's privilege log identified in the O'Hara case, is filled with scurrilous and largely inaccurate information about Ross, contains information taken not only from Ross's personal bank and telephone records, but further contains information from the bank records of Ross's roommate, who has nothing to do with Ross's work or with this matter. The report -- and the investigation upon which it is based -- represents an outrageous intrusion into Ross's personal privacy.

COUNT I
(Intrusion Upon Seclusion)

31. Mr. Ross realleges each and every preceding allegation as if fully set forth herein.

32. The NXIVM Defendants and Interfor Defendants, and upon information and belief, those Defendants acting in concert with John Does 1-10, intentionally and in a highly offensive manner intruded upon the seclusion and solitude of Mr. Ross and his private affairs, causing Mr. Ross to suffer damages.

WHEREFORE Mr. Ross hereby demands that judgment be entered against Plaintiff/Counterclaim Defendant and Counterclaim Defendants, awarding:

A. Compensatory damages;

B. Punitive damages;

C. Injunctive relief prohibiting the NXIVM Defendants and Interfor Defendants from, directly or indirectly, communicating or contacting Mr. Ross;

D. Monetary and non-monetary sanctions, attorneys' fees and costs of suit; and

E. Such other and further relief as the Court deems just and proper.

LOWENSTEIN SANDLER PC
Attorneys for The Ross Institute, Rick Ross, Paul Martin, and Wellspring Retreat, Inc.

By: /s/ Peter L. Skolnik

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(617) 742-9701 (Fax)

Dated: January 11, 2007

VERIFICATION

I, **RICK ROSS**, being of full age, hereby certify as follows:

1. I have read the Verified Counterclaim.

2. I certify that except where specifically alleged on information and belief, the facts set forth in paragraphs 4, 17-25 and 27-30 of the Verified Counterclaim are true based upon my personal knowledge and/or based upon documents I have reviewed.

3. I certify that, upon information and belief, I believe to be true the other facts and allegations set forth in the Verified Counterclaim.

I declare under penalty of perjury that the foregoing is true and correct.

Rick Ross

Executed on: January 11, 2007

Jan 11 2007 2:26PM ROSS INSTITUTE +1 201 435 7108 p.1

JURY DEMAND

Counterclaimant Rick Ross hereby demands a trial by jury as to all issues so triable.

LOWENSTEIN SANDLER PC
Attorneys for Defendants The Ross Institute, Rick Ross, Paul Martin, and Wellspring Retreat, Inc.

By: /s/ Peter L. Skolnik
Peter L. Skolnik

Dated: January 11, 2007

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that, to the best of my knowledge, the subject matter of this proceeding is not the subject of any other pending court action, or of any pending arbitration or administrative proceeding. I am aware that if the foregoing is willfully false, I am subject to punishment.

LOWENSTEIN SANDLER PC
Attorneys for The Ross Institute, Rick Ross, Paul Martin, and Wellspring Retreat, Inc.

By: /s/ Peter L. Skolnik
Peter L. Skolnik

Dated: January 11, 2007

EXHIBIT A

Stress in the Family

To some, it is a useful training program; to others, a cult. Either way, NXIVM and founder Keith Raniere remain embroiled in controversy

By Chet Hardin

It was 1991, and Toni Natalie was smoking again. She had thought that she had kicked the habit, but when her brother fell ill, she found herself spending all of her time at the hospital. "It was stressful," she says. "You know how it is." When his girlfriend offered her a cigarette, she took it.

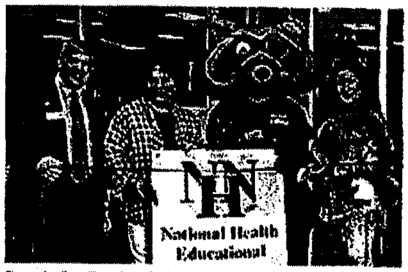
But she wanted to quit. So when Keith Raniere, who claims to be in the 1989 *Guiness Book of World Records* for "highest IQ," offered to help her, she thought, "Great! The world's smartest man wants to help me quit smoking?" Raniere told her that they would need to go to a quiet place, where he could talk to her.

"So we go into his office, and I remember him asking me questions like, 'What makes you nervous?' and 'What relaxes you?' Talking to me; touching my knuckles, using that as trigger points [for hypnosis]. And I came out of the room, and my husband says to me, 'Geez, what were you doing in there all that time?' And I was like, 'What do you mean all that time?' " She felt as though she had been alone with Raniere for 15 minutes. Her husband informed her that, no, she had been gone for almost two hours and 45 minutes.

"I guess some people are more susceptible to this stuff than others," she says. "I was the prime candidate. And that was the beginning of the end."

Raniere had made the news a few years earlier, when, as a 27-year-old state worker, he was accepted into the Mega Society, an exclusive union of those who possess extraordinarily high IQs. (Think Mensa on steroids. At the time, there were only three members worldwide). In a *Times Union* profile on Raniere, impressive claims were made: He graduated from Rensselaer Polytechnic Institute with three simultaneous degrees in math, physics and biology; he was able to spell "homogenized" by age 2, after seeing the word on a milk carton; and at age 4, he understood quantum physics. The article also stated that he had won the East Coast judo championship at 12 and had tied the state record for the 100-yard dash. Plus, he only needs two to four hours of sleep a night.

When Natalie met Raniere, he owned and operated Consumer's Buyline Inc., an outfit he had started a year earlier in Clifton Park. It was a discount buyers club—members were paid a commission for enrolling new members—and it brought in a lot of money. At its height, the company boasted 250,000 distributors nationwide and 173 local employees. One year, it reported sales topping $30 million.



Ready for Raniere's birthday party: Toni Natalie and Nancy Salzman

Natalie and her husband were in their early 30s, living in Rochester, and had been married for about four years. They had a small, adopted boy and a nice home. "We were in love," she says. "It wasn't like a *Gone With the Wind* kind of love. But we were happy. We were friends." They had just won the award for selling the most CBI memberships for the month, so they traveled to Clifton Park to pick up their prize and to see the company headquarters. Plus, she adds, they were curious about Raniere.

"When I went up to Clifton Park for the first time," Natalie recalls, "Pam Cafritz was running around in the background going, 'Is she *Family*? Is she *Family*? She looks like *Family*. Is she *Family*?' "

"And I remember Keith saying, 'Yes, she's *Family*.' "

Natalie had no idea what Cafritz, an associate of Raniere's, had meant; she just took it as the friendly enthusiasm of eccentric strangers.

"And Pam said, 'Is she *The One*?' " Natalie recalls.

"And Keith said, 'She could be.' "

Within a year, Natalie had left her husband and moved to Clifton Park to be with Raniere.

By the mid '90s, CBI had collapsed under the weight of 25 state and federal investigations. Attorneys general and others alleged that the company was an illegal pyramid. Raniere settled with New York state for around $50,000, but denied that he had been running a Ponzi scheme.

With CBI in ruins, Raniere moved on to his next venture: Executive Success Programs. He established the "human potential training" business in 1998 after meeting former nurse and noted hypnotist-therapist Nancy Salzman. Salzman had been working as a family therapist for years, and she boasted a reputation as a skillful practitioner of "neuro-linguistic programming" and Ericksonian hypnotherapy. Milton Erickson, who created this specialized form of hypnosis, was an American psychiatrist whose work included the exploration of hypnosis-inducing handshakes and the use of shock to eliminate phobias. Erickson is also noted for his work in neuro-linguistic programming, the controversial study of body-language cues and language patterns.

Salzman became the public face and president of ESP and Raniere became her "mentor."

It was around this time that Raniere began to call himself "Vanguard," Natalie says. "He was trying to find the right terminology for himself. Vanguard—creator of a movement."

According to ESP's Web site, they have "created international coaching standards that allow for accurate, consistent measurement of human psychodynamic performance. All ESP programs maintain standards of excellence and impart a unique, patent-pending technology called Rational Inquiry™ that enhances human performance in virtually every field of human endeavor."

ESP, or NXIVM (nex-ee-um) as it is more commonly known, is a growing and outwardly successful organization. Its classes are offered in Albany, Saratoga Springs, New York City, Washington state, Alaska and Mexico. Its seminars have drawn high-powered followers and supporters, including former U.S. Surgeon Gen. Antonia Novello; Sheila Johnson of Black Entertainment Television; relatives of two former Mexican presidents; Clare and Sara Bronfman, the daughters of billionaire Seagram's heir Edgar Bronfman Sr.; and on and on.

A 2003 *Forbes* article, "Cult of Personality," reported that NXIVM earned $4 million yearly at the time. In a July 2006 follow-up, the magazine alleged that Salzman now lives in Sara Bronfman's $6 million Manhattan apartment, with unlimited access to the Bronfman jet. Former NXIVM insiders claim to have witnessed the gifting of a $20-million "tribute" from the Bronfman daughters to Raniere at his 2004 weeklong birthday celebration, "Vanguard Week."

But along with its popularity and successes, NXIVM has drawn vocal opponents who allege that its training sessions are manipulative and destructive, exacting a cultlike devotion from students. And Raniere, they claim, is the classic example of a cult leader, who surrounds himself with fiercely devoted (and mostly female) followers.

"Keith has always had women in front of him," Natalie says. "That is what he does. He takes vulnerable women, and he very easily becomes everything they need or want."

NXIVM's goals, as stated on its Web site, are ambitious: "To help transform and, ultimately, be an expression of the noble civilization of humans." This includes the construction of training facilities or NXIVMs. One possible facility was proposed for southern Saratoga County. The two-story building would have been 67,000 square feet and would have included a physical-therapy center and day care, but residents resisted construction, and in 2003, the plan was nixed.

Happier days: Keith Raniere with Toni Natalie

Undeterred, NXIVM and its members continue to grow their real-estate holdings and own at least 12 properties in the Capital Region. These include single-family homes, condominiums and commercial property, the organization's training facilities on New Karner Road in Latham, and Romano's Family Restaurant on Route 9.

"Keith's ultimate goal has always been," Natalie says, "to have his own commerce, his own language, his own people where he is the king. . . . What he is doing is creating his own world in Clifton Park. . . . These people believe he is God. He believes he's God."

There are two courses of study offered through NXIVM. One, called Ethos, is relatively casual. A participant can attend any number of training sessions, offered regularly throughout the week. The classes last only a couple of hours, and focus on "emotional training." Susan Miller, CEO of Goold Orchards, attended nearly a dozen Ethos sessions. The program, she says, was good for her.

"It was a difficult time for me. My mom had passed away," she says. "I had good changes." But she resisted taking the other course of study offered: Intensives.

"They make a lot of pitches for it. And they charge a lot of money for that program. My gut kept telling me that [Intensives] were not the thing for me to take. I went to a sales pitch one time . . . and I never went back. It just didn't make any sense."

Intensive Training is offered in five-day and 16-day sessions. The courses can last up to 14 hours straight. Some former students, or Espians, have claimed that during these sessions, room temperatures are kept uncomfortably high, the food served either lacks the necessary protein to maintain strength or is served irregularly or not at all, and that a large number of coaches are present, creating an atmosphere of physical intimidation. The stress involved, they add, can be unbearable.

Kristin Marie Snyder was taking her second, 16-day Intensive in Alaska when she apparently suffered a complete psychological breakdown. Alaskan authorities suspect that Snyder, an seemingly successful young professional, drowned herself by canoeing out into the middle of Resurrection Bay and capsizing. She had been involved with NXIVM for four months.

Her suicide note, as reported in *Times Union* on Feb. 1, 2004, read: "I attended a course called Executive Success Programs . . . based out of Anchorage, AK, and Albany, NY. I was brainwashed and my emotional center of the brain was killed/turned off. I still have feeling in my external skin, but my internal organs are rotting. . . . I am sorry life, I didn't know I was already dead. May we persist into the future." Her parents claimed in the article that Snyder had become convinced that she had been responsible for the Columbia shuttle disaster.

"When I read her suicide letter," Natalie says, "I couldn't believe Keith was doing this to other people. I only thought he was doing this to me." As a result of therapy sessions with Raniere and Salzman, Natalie says that she became convinced that she had been responsible for the Nazi Holocaust.

One time, Natalie claims, a group of Espians cornered her in her office. A man in the group said to her, "Close your eyes. Close your eyes and hold out your hands." She did as she was told and held out her hands, in which he placed a knife.

"And I said, 'What's this?' "

Natalie says that the man replied: " 'You should know, because that's the knife you killed me with.' "

The pressure NXIVM places on its students to recruit others for Intensives is unremitting, says former Espian Maria (not her real name; she asked to remain anonymous for fear of retaliation). From a prominent Mexican family, she was 27 years old and studying for her master's degree in New York City when her brother recruited her.

"The first thing they tell you," Maria says, "is [that] if you want to become more involved with the organization, you have to bring two people for the next Intensive. So my brother brought my mother and myself."

In Intensives, she says, Espians are introduced to the "Matrix," NXIVM's ideology. And to learn the "Matrix," sections of material called "modules" are explored. "Every 'module' together completes the 'Matrix.' Everything links to each other," she says. "The 'Matrix' is very impermeable. It is a whole different way to see the world."

Each "module" touches on a basic element of the human condition, and has a name such as "Money," "Trust," or "The Fall."

To understand "The Fall," one must understand "suppressives." When a person is a destructive force in the world, Maria says, such as a serial killer, a terrorist, or a critic of NXIVM, when they exhibit "suppressive" traits, when they "destruct value," they are referred to as "suppressives." And just as Lucifer took a fall in *Paradise Lost* (an oft-referenced text in NXIVM circles), Espians are taught that "suppressives" are capable of taking "The Fall." Once they have, it is taught that they have developed an "anticonscience"—good feels bad to them and bad feels good.

It was in the teachings about "suppressives" and "The Fall" that Maria began to feel that NXIVM was warning: You cannot leave, you cannot criticize or question the organization.

NXIVM has a strict hierarchy with Raniere (aka "Vanguard") at the top. Directly beneath him is Salzman, who insists that students refer to her as "Prefect." Students are expected to bow to Vanguard and Prefect. Sashes are worn to determine an Espian's level.

"You start with a white sash when you are a student," Maria says. "Then you get a yellow sash when you coach. Then you get stripes. Then you get the orange sash. Nancy had a gold sash."

The higher in the hierarchy, the closer an Espian is to "integration," akin to being enlightened, perfect: Thoughts flow together flawlessly, Maria says, "like a plate without any cracks." Salzman is close to integration, she says, and Raniere is completely integrated.

He is treated, she says, "like a Buddha or a Christ."

After being taught the module's material, the students break up into groups. Espians from every rank sit together and discuss the lesson. "When you are in the group," Maria says, "you will be asked questions like: 'Is suicide good?' 'Is suicide bad?' "

A student might answer, " 'I think it is bad, because you are being a coward.' " To which a coach might reply: " 'I think suicide is not that bad. Because, if you are a bad person, if you are not 'constructing value,' if you are 'destructing value,' then you should not have a place in the world, and you should be happy to kill yourself.' " In this way, she says, a student's belief system is constantly undermined. Doubt is cast upon opinions, and beliefs are systematically torn down.

One technique NXIVM employs is called "Exploration of Meaning," or "EM."

Maria explains the process as she remembers it: A problem or "issue" is identified in the student. The coach, or a coach in training, questions the meaning of the "issue," leading the student along a seemingly logical path with predetermined questions to the root of that problem. And when a student can relate the problem's manifest to the problem's root, there is an "aha" moment. The student has had an "integration." And the more "integrated" you are, the more you are living according to NXIVM's "Matrix."

"It is mathematical technology," Maria says. "It is like a mathematical equation. And you end up at zero every time. And once you are in zero, they give you the answers." Even though the Espian feels each discovery is a product of their own soul searching, she adds, they are actually being programmed.

"It's fascinating. Can you imagine how brilliant this guy [Raniere] is?" she asks. "He really is a genius."

After training with NXIVM for six months, Maria suffered a psychotic episode that she attributed to extreme stress. She began hallucinating and had to be taken to the hospital.

"It was in the moment before . . . I went into my psychotic break," she says. "I felt that I had to decide between my boyfriend and my life, and Keith. And that's when I broke. It's the devotion to him; you have to give your life to him. I didn't want to lose my boyfriend, and I didn't want to lose my life—he [Raniere] wants to have the control of your life."

Maria spent the next two years in treatment, taking antipsychotic and antidepressant medications. She still gets nervous talking about NXIVM and says that former Espians like herself are afraid to speak out because they know how "suppressives" are treated.

One such "suppressive" is Rick Ross, a New Jersey-based cult- intervention specialist who has been involved in lawsuits with NXIVM for the past three years. The controversial anti-cult lecturer and "deprogrammer" first won the animosity of NXIVM by distributing the group's copyrighted material to mental-health experts for analysis and then posting their findings on his Web site, RickRoss.com. NXIVM sued him, seeking damages of nearly $10 million, and asked the courts to force Ross to remove the critical material. So far, the courts have upheld Ross' right to publish the reports.

Lawsuits are nothing new for Ross. At one point, he says, he was being sued by three groups simultaneously: the Gentle Wind Project of Maine, Land Mark Education, and NXIVM.

"I'm used to slap suits," he says. "This is nothing new to me. . . . I regard it as part of my work. If you are not being sued or threatened on a regular basis in my line of work, it would give you pause to wonder if your work is meaningful."

However, he says, he did not suspect the lengths NXIVM seemingly will go to silence its critics.

Rifling through his bank statements from September and October 2004, Ross gets lost in the pile of papers: "Debits, debits, where are deposits?"

"Oh, there it is," he says to himself.

He is frustrated.

"I don't do my own books."

Ross is on the phone with a reporter, attempting to confirm information in a document that he claims he has never seen. The reporter is holding a copy of the nine-page report, including a cover page and a page that warns of the document's strict confidentiality. It appears to have been prepared on Nov. 23, 2004, for the O'Hara Group & Associates LLC, an Albany-based consulting firm that allegedly was working for NXIVM at the time. The report appears to be the work of a New York-based industrial-espionage firm Interfor Inc. (The document was given to *Metroland* by a former NXIVM insider.)

The document bears the title "Status Report," under which Rick Ross' name is printed. It contains sections such as "Criminal Record" and "Communications." It appears to be the result of an effort by Interfor to collect personal and business information on Ross. And according to the NXIVM insider, Raniere ordered the gathering of information not only on Ross, but on Toni Natalie as well.

Interfor's president, Juval Aviv, worked for years as a counterterrorism consultant with the FBI. Before becoming a regular fixture on Fox News, Aviv claims that he was a member of the Israeli intelligence outfit Mossad. Aviv is the author of *The Complete Terrorism Survival Guide: How to Travel, Work and Live in Safety* and the fictional thriller *Max*. Steven Spielberg's *Munich* is based on a Mossad operation in which Aviv allegedly participated.

Ross finds his October 2004 bank statements.

"Give me a deposit," he says.

The section in the document titled Financial Information lists 14 transactions, debits and credits. The entry from Oct. 12, 2004, is read to Ross. It is correct.

"Well," he says, "they need to be arrested. They have penetrated into my checking account."

"Anything else?" he asks. Another deposit is confirmed, and a debit as well. The report, it appears, contains his private banking information.

"Mr. Aviv," Ross says, "had better get a good lawyer."

This is not the first time Ross has heard of Interfor or Juval Aviv. He says Interfor contacted him in November 2004 (apparently at the same time the firm was mining information on him) to retain his services.

Ross recounts his experience with Interfor: He was told that an old friend of Aviv's, a woman calling herself Susan L. Zuckerman, was seeking help in extracting her daughter, "Judy," from NXIVM, and they needed Ross' help. Interfor even cut him a check for $2,500 in November 2004 from its corporate account, stating that it was a retainer payment from Zuckerman. He met with Aviv, his assistant Anna Moody, and the woman who presented herself as Zuckerman at Interfor's office. There, he says, they hatched a plan to get Ross on a cruise ship with "Judy Zuckerman" so that he could confront her and work to deprogram her.

"They wanted to know everything that I knew about NXIVM," he says. "They asked me question after question. What did I really think of Keith Raniere? Did I think he was a cult leader? What did I think of their process of Intensives and seminars? How many complaints have I received [about NXIVM]?"

According to a NXIVM insider, the plan to get Ross on a crusie ship was a sting; the concerned-mother scenario was invented. And the role of daughter "Judy" was going to be performed by one of Raniere's closest associates, Kristin Keeffe. Perhaps, the insider says, they thought they could convert Ross.

The plan fell apart after Ross made it clear to Interfor that he would not be alone with the "Judy," that someone would have to be in the room with them, he says. That's his policy. Shortly after that, he was told that Susan Zuckerman had changed her mind. He was given no further explanation.

"What their goal was, ultimately, in the deception, I don't know," Ross says. But the scenarios are chilling. What could they have had in mind in going to such lengths to get him alone on a cruise ship with a member of NXIVM's inner circle?

Dr. Carlos Rueda, chairman of the Department of Psychiatry at Our Lady of Mercy Hospital in the Bronx, says that he, too, was contacted by someone, within the past few months, claiming to represent Interfor. They said they needed his advice: The daughter of a rich Mexican family had become involved in NXIVM, and she needed therapy.

"They sounded very credible," Rueda says. "They sounded very corporate."

After a couple of calls, he stopped hearing from them.

Rueda joined the chorus of NXIVM's critics after treating three former Espians who, he says, had "decompensated," or developed psychiatric illnesses.

Their ailments, he says, can be linked to NXIVM's training, which places tremendous psychological stress on its students.

"And this can be a devastating and long-term situation," he says. "Patients may continue to have episodes of psychosis or depression" far beyond the initial onset of the illness.

What disturbs Rueda most about NXIVM is its seeming lack of interest in the welfare of its students. He worries that the training seminars are just a way to make money, with no concern for the psychological damage they level. This, he says, can be seen in how the organization treats students who suffer breakdowns.

"They dump you as soon as they see that you are decompensating,' he says. "They say that you are 'weak.' "

Representatives of NXIVM and Interfor did not agree to be interviewed in time for this story.

"And you ask, 'Why would a sane person put up with this?' " Toni Natalie says. "You are so controlled by these people, when you are involved with them, you don't associate with anybody other than the 'Family.' You don't talk to anyone other than the 'Family.' It is a complete disassociation from everyone—your family, your husband, even your children if they get in the way."

It was 1998, and after more than six years with Raniere, Toni Natalie wanted out. She was taking the first NXIVM course when she had her own "aha" moment, realizing, she says, just how manipulated she had been by Raniere and Salzman.

"I realized I had been their Guinea pig," she says. "As I was teaching the course, I was seeing myself in all of my sessions with Nancy. I had had hundreds and hundreds of [therapy] sessions with Nancy and Keith." They had used those sessions, she believes, to experiment on her.

"It was scary as hell," she says. "I can't tell you how frightening it was."

After almost a year of working to divest herself emotionally and psychologically from Raniere and the Family, the day came when she finally snapped. It was over, of all things, a simple domestic spat.

"Keith was home sleeping while I was working, which was normal," she says. "I mean, this bullshit that Keith never sleeps—Keith sleeps all day long. He sleeps *all day long*."

She had asked Raniere to dry some clothes that were in the wash, pointing out to him a specific shirt that should not be dried because it would shrink.

"I came home, and he had put the shirt in the dryer. I said to him, 'I asked you not to do this.' And he starts screaming at me, 'You're stupid! How dare you tell me I don't know what I heard. I have perfect retention. I have a 240 IQ.' And he is screaming in my face: 'Tell me that you are wrong! Say that you are wrong!' "

He can't stand being told that he is wrong, she says.

"And I wouldn't do it. He told me if I didn't say that I was wrong . . . he would go. And that was it. I was like, 'I'm done.' And that's when the torture from the girls started."

Raniere, she says, was far from done with her.

"Don't forget," she says sarcastically, "I am 'The One.' I was supposed to bear the child that was going to change the world."

Raniere has in the past denied this allegation, saying that it is "not rational." Natalie insists that it is true. He was convinced that she was to have his child, she says. He even had members of the Family convinced, she says, despite the fact that Raniere knew that she is unable to have children.

He wrote her letters, she says, that are by turns admonishing and pleading. Other members of the Family wrote her letters, as well, on Raniere's behalf. They were convinced that she absolutely had to return and have his child.

"If I didn't return to him and bear this child, horrible things were going to happen," she adds. "So I am responsible for Sept. 11."

Kristin Keeffe came to her house once, she says, with her a bouquet of flowers and a candy box with the image of a mother and baby on it. She was crying, saying, " 'I had a vision that you changed your mind,' " Natalie says. " 'And you are coming back to us. And you are going to have the baby. I am so happy that you changed your mind and you are going to have the baby.' "

Natalie took the flowers and candies to Lawrence LaBelle, a judge in Saratoga at the time. LaBelle remembers the situation vividly. Natalie, he says, had gotten herself caught up with a "very, very unusual group. . . . It's a cult, I think, a very, very bad cult."

He can't believe Natalie is talking to reporters. Why, he asks, would she want to dredge up that misery?

"They do everything they can to destroy your life, to keep you quiet," she says. "Especially me, because I know so much about them." Five years ago, Natalie was diagnosed with post-traumatic stress disorder, she says, because of what she was put through.

"I know what was done to me," she continues. "I know what was done to my family. I know what they are doing to other families. I know how they mind-fuck people. I know how dangerous they are. I know how dangerous Nancy Salzman is, and Keith Raniere. They are very, very dangerous, scary people."

It has taken her six years of therapy, she says, to be able to talk at length about her experiences with Raniere. She still lives in fear, and she says, rarely leaves the house alone.

"The scary part of the organization," Natalie says, "is that they have a philosophy, his philosophy . . . called 'right action' or 'wrong action.' And if he believes that something is 'right action' . . . it is OK to do whatever it takes. If you had to kill somebody, and it is for the betterment of the Family, it would be OK."

chardin@metroland.net

EXHIBIT B

The O'Hara Group & Associates, PLLC
Attorneys and Counselors at Law

RECEIVED
MAR 15 2005

CONFIDENTIAL LEGAL DOCUMENT

March 11, 2005

SENT VIA E-MAIL, FAX AND
CERTIFIED MAIL ON SAME DATE
E-MAIL: nsalzman@nxivm.com
FAX #(518) 452-1255

Nancy Salzman
President
NXIVM Corporation d/b/a Executive Success Programs
455 New Karner Road
Albany, NY 12205

RE: Termination of Services

Dear Ms. Salzman:

I am writing to confirm that The O'Hara Group & Associates, PLLC (TOGA/PLLC) has decided to terminate its representation of you, your various companies[1], and various individuals associated with those companies[2]. Except as indicated otherwise herein, that termination is effective immediately[3].

Although I had expected that we would be able to conclude our professional relationship without any negative interactions, your ongoing allegations of malfeasance and misfeasance have made it clear that those expectations will not be realized. Moreover, after conferring with my legal counsel – and with my law firm's insurers – I have concluded that I must send you this written notification concerning some of the reasons for the above-referenced termination decision.

During the course of providing legal services to you, your various companies and various individuals associated with those companies[4], I became aware of – and informed you about – a variety of

[1] This includes, but is not necessarily limited to, the following companies: Buyers Associate, Inc. in Delaware; CSC III, LLC in Delaware; Elitemarketing Professionals, Inc. in Delaware; Executive Housing & Properties, Inc. in Delaware; Executive Housing & Properties, Inc. in New York; First Principles Incorporated in Delaware; NXIVM, LLC in New York; NXIVM Corporation in Delaware; NXIVM Corporation in New York; NXIVM Properties, LLC in New York; PSCI, LLC in Delaware; The Art of Movement, Inc. in Delaware; and The Think Fund, LLC in Nevada.

[2] This includes, but is not necessarily limited to, the following individuals: Barbara J. Bouchey, Clare Bronfman, Sara Bronfman, Pam Cafritz, Becky Freeman, Loreta Garza, Barbara Jeske, Kristin Keeffe, Dee Dee Mitzen, Keith Raniere, Kathy Russell and Michael Sutton.

[3] Based upon my prior E-mails – and based our prior discussions – you have been aware of my termination decision since sometime in early February. As a result, I do not believe that you, your various companies and/or various individuals associated with those companies will be adversely affected by the immediacy of this announcement (Note: Please advise me, in writing, if there is any matter – or individual – that will be adversely affected as a result of the timing of this decision).

[4] Notwithstanding your oral and written statements to the contrary, the reality is that I never "... worked for you". In this regard, all of the applicable evidence clearly indicates that TOGA/PLLC simply supplied a variety of legal services to you, your various companies and/or various individuals associated with those companies.

1025 Connecticut Avenue, N.W. • Suite #1012 • Washington, DC 20036 • Phone: (202) 828-1289 • Fax: (202) 857-9799 • E-mail: TOGAPLLC@aol.com

activities that I believe to be illegal (Note: Although some of those activities admittedly involved "gray areas" of the law, others involved, in my professional judgment, clear violations of a variety of civil and criminal statutes and regulations). Notwithstanding my advice to the contrary, you, your various companies and various individuals associated with those companies have continued to engage in those activities – and, in several instances, have even expanded same.

Although, you never executed any of the "Professional Services Agreements" that I submitted to you, I believe that all of TOGA's work to date is entitled to all of the protections that are associated with "Attorney/Client Privilege"[5]. In this regard, however, please be advised that this privilege only applies to work that was undertaken – and/or related discussions that occurred – during the period from July 1, 2004 through this date.

During the period between now and April 30, 2005, I will review all of my documents, files, etc. that concern you, your various companies and/or various individuals associated with those companies. Thereafter, I will retain copies of any materials that I deem to be necessary in order to be able to defend myself against your above-referenced claims – and return the originals of those materials to you.

Please feel free to contact me if you have any questions and/or if I can provide you with any additional information concerning this matter.

Sincerely,

Joseph J. O'Hara

Joseph J. O'Hara, Esq.
Managing Partner

cc: Stephen R. Coffey, Esq.

PS/ As a matter of professional courtesy, I have not yet disclosed the above-referenced termination action to any of the attorneys, consultants, etc. that I have secured on behalf of you, your various companies and/or various individuals associated with those companies. In this regard, however, I will, as necessary and appropriate, make such disclosures in the future.

PSS/ Provided that my current and/or future "Invoices" are paid on a timely basis – and provided that you forward to me the various "pre-payments" that I previously requested – I will also not close out any of the professional services accounts that I have previously established on behalf of you, your various companies and/or various individuals associated with those entities until April 30, 2005 (Note: That delay should afford you adequate time to establish new accounts with each such entity). If, however, those "Invoices" are not paid on a timely basis – and/or those "pre-payments" are not received on or before March 18, 2005 – I will immediately cancel each such account.

[5] You also never executed any of the various "Letters-of-Agreement" that I provided to you with respect to the consultant services that were previously provided by The O'Hara Group & Associates, LLC (TOGA/LLC) to you, your various companies and/or various individuals associated with those companies. In this regard, TOGA/LLC provided those services to you, your various companies and/or various individuals associated with those companies during the period from October 1, 2003 through June 30, 2004.

TOGA, PLLC

Exhibit H

Medvin & Elberg
ATTORNEYS AT LAW

PHILIP ELBERG*
ALAN Y. MEDVIN**

*Member N.Y., N.J. Bar
**Certified by the Supreme Court of New Jersey as a Civil Trial Attorney

ONE GATEWAY CENTER
NEWARK, NJ 07102
(973) 642-1300

FAX NO. (973) 642-8613

April 28, 2011

Honorable Mark Falk, U.S.M.J.
United States District Court
U.S. Post Office and Courthouse, Room 457
One Federal Square
Newark, New Jersey 07102

RE: NXIVM v. The Ross Institute, et al.
Docket No. 06-cv-01051 (DMC) (MF)

Dear Judge Falk:

Please accept this letter in lieu of a more formal submission in response to Your Honor's order of April 19, 2011 with respect to Ms. Bouchey's telephone records. I have reviewed the transcript of the colloquy with the court at the conclusion of Ms. Bouchey's deposition on April 18, 2011 as well as the transcript of the case management conference you conducted on March 8, 2011 and my notes of the telephone conference during the prior week.

On the basis of my review of those documents, it is clear to me that Your Honor views as potentially relevant within the meaning of Fed. R. Civ. P. 26 calls to or from parties in this case and their lawyers in that they at least have the potential to lead to the discovery of admissible evidence but that contacts with others, particularly former NXIVM members and critics is not relevant and would not be consistent with Fed R. Civ. P 26C (iii) because the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the discovery in resolving the issues.

The Rule 26 considerations are particularly significant here where my review indicates that there are more than 27,000 separate entries in Ms. Bouchey's phone records and the only issues before the court involve whether trade secrets were improperly taken, whether copyrights have been infringed and whether there was interference with a contract in 2002 or 2003 when all of the complaint related events occurred.

Against that background I am satisfied that Your Honor's order that permitted me to "redact the phone records to reflect communications with a limited number of individuals" is intended to be limited to relevant communications and individuals, which in practice means only parties and their lawyers. I am referencing now all such contacts without regard to whether they are in fact related to issues in this case because I do not know how to make that distinction. In order to move this along I have instructed Ms. Bouchey to make those redactions and we will be prepared to produce those redacted records promptly.

Ms. Bouchey has also asked me to request that Your Honor reconsider your directive that her deposition can be continued for an additional four hours. We ask that you reconsider for the following reasons.

(a) We now have a transcript of her latest deposition taken on April 18. I respectfully request that Your Honor review it since when agreeing to supervise the continuation of this deposition, you indicated that you reviewed the transcript of the first day of her deposition. The transcript demonstrates that plaintiffs' did far more than just "cover the waterfront" as Mr. Crockett sarcastically indicated. What it will show is that during an all day deposition my client was asked few questions that have anything to do with the issues being litigated or that relate in any way to the questions asked on the first day of her deposition with respect to NXIVM"s practices and record keeping. Rather, counsel spent the day asking Ms. Bouchey about her tax filings which they have somehow obtained and made conspicuous at her deposition, telephone conferences she had with others who were formerly associated with NXIVM -- pointedly letting her know through their questions that they had somehow learned of conversations that occurred on specific days and times in the last year -- and questions about Ms. Bouchey's personal life. The intended message to her was clear. Even when Mr. Crockett did ask about NXIVM"s practices with respect to what they claim is confidential, he asked the questions and used a tone of voice that was clearly intended to try to trick the witness, and I use the word "trick" in its most pejorative sense. If there is any question about this, I am certain Your Honor can obtain access to the videotape of the deposition.

(b) A comparison of the deposition of the two days demonstrates that the plaintiff and defendants spent roughly the same amount of time deposing the witness when breaks and lengthy objections are subtracted out. If your Honor's goal was to level the playing field that has been accomplished and more. I will quickly submit a calculation showing how much time each side spent if the Court wishes to see it.

(c) Mr. Crockett, who represents only Ms. Keefe, asked questions in great detail about NXIVM and Mr. Raniere, and clearly on behalf of those parties. Few of his questions were about issues that involve Ms. Keefe. Subjecting her to renewed questioning on behalf of NXIVM and Raniere would be both inappropriate, unreasonable and unfair.

(d) The record demonstrates that the deposition tactics used against Ms. Bouchey, including the side trip to Federal Court in Albany, by the NXIVM side of this case has been motivated not by an effort to demonstrate her bias to a jury but rather by an effort to demonstrate to Ms. Bouchey the extent of the litigants bias against her and their goal of using litigation tactics to scare her into silence. The best and most recent proof of that is not just their making sure she saw, while testifying, that the 3 NXIVM "observers" in the courtroom were reviewing her personal tax returns while Mr. Crockett asked questions about them. Even worse from my perspective is a series of emails that Mr. Crockett somehow felt compelled to send me taunting Ms. Bouchey within minutes after receiving a verdict in his California case. I have never seen anything like it. The exchange is attached as Exhibit A.

Respectfully submitted

MEDVIN & ELBERG

BY: PHILIP ELBERG

PE:pl
cc: All Counsel

From: Phil Elberg [mailto:pelberg@medelb.com]
Sent: Friday, April 15, 2011 01:49 PM Pacific Standard Time
To: WMcguire@tompkinsmcguire.com; Crockett, Bob (LA); robert.leonard@dbr.com; HKOFMAN@RIKER.com; rlandy@fklaw.com; rlandy@fklaw.com; Skolnik, Peter L.
Subject: Production of Documents

Dear counsel:

I have attached to this email the documents that were forwarded

to Judge Falk for in camera review. The name of each document corresponds to the numbering on the subpoena. If I have missed members of your respective firms that should receive these documents please forward them.

Phil Elberg

Philip Elberg
pelberg@medelb.com<mailto:pelberg@medelb.com>
Medvin & Elberg
One Gateway Center
Newark, New Jersey 07102
973-642-1300

From: BOB.CROCKETT@lw.com [mailto:BOB.CROCKETT@lw.com]
Sent: Friday, April 15, 2011 6:59 PM
To: Phil Elberg; WMcguire@tompkinsmcguire.com; robert.leonard@dbr.com; HKOFMAN@RIKER.com; rlandy@fklaw.com; PSkolnik@lowenstein.com
Subject: RE: Production of Documents

Thank you thank you thank you Barbara Bouchey for her contribution to our Plyam case and the help with malice. May she be as effective in the case against the Suttons and Ross. Yes sir.

Bob Crockett
Latham & Watkins

From: Phil Elberg [mailto:pelberg@medelb.com]
Sent: Friday, April 15, 2011 4:10 PM
To: Crockett, Bob (LA)
Subject: RE: Production of Documents

Maybe I am supposed to know what this means - I don't

Phil Elberg

EXHIBIT A

From: BOB.CROCKETT@lw.com
Sent: Friday, April 15, 2011 9:10 PM
To: Phil Elberg
Subject: RE: Production of Documents

You will. Thank her for me.

Robert D. Crockett

LATHAM & WATKINS LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Direct Dial: +1.213.891.8254
Fax: +1.213.891.8763
Email: bob.crockett@lw.com
http://www.lw.com

From: Phil Elberg [mailto:pelberg@medelb.com]
Sent: Friday, April 15, 2011 07:29 PM Pacific Standard Time
To: Crockett, Bob (LA)
Subject: RE: Production of Documents

I assume you must have won your case. Congratulations but don't you have more important things to do then sarcastically asking me to thank Barbara Bouchey? I really don't get it!

From: BOB.CROCKETT@lw.com
Sent: Saturday, April 16, 2011 12:01 AM
To: Phil Elberg
Subject: RE: Production of Documents

She was the reason we won. No sarcasm here.

Bob Crockett
Latham & Watkins

Exhibit I

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re: Joseph J. O'Hara

Debtor(s)

Case No.08-12108
Chapter 7

Clare Bronfman, and
Sara Bronfman,

Plaintiffs,

v.

Joseph J. O'Hara,

Defendant.

Adv. No.: 09-90006

MOTION FOR A PROTECTIVE ORDER UNDER F.R.CP. 26(b)(2) AND F.R.B.P. 7026 AND IN ADDITION FOR RELIEF UNDER SECTION 11 U.S.C. §105 AND F.R.B.P. 9011(b)(2).

1. The Plaintiffs commenced this adversary proceeding on January 5, 2009 alleging four grounds for their claim that their alleged debts should be excepted from discharge.
2. Although four causes of action are pled: Two 523(a) (2) claims, a 523(a)(4) claim and a 523(a)(6) claim no specific allegations are set forth. For example, the complaint at paragraphs 25 and 26 states:

> *25. The $2 M Loans were fraudulently obtained by the Defendant.*
> *26. The Defendant had no ownership in the security he offered the Bronfmans, andany value of the purported "security" for the $2 M Loans was overstated.*

3. The Plaintiffs have conducted what can only be described as extensive discovery, deposing the Defendant for a full day[1] and subpoenaing bank records, phone records, friends, accountants and business associates. They have made numerous document demands and sent redundant interrogatories and demands for admissions. At the same

[1] This is in addition to a full day 2004 examination of the debtor.

time, they have resisted discovery at every opportunity and refused to provide any of the records demanded of them by the defendant.2 They deliberately misled this Court and the opposing counsel regarding the availability of documents at the firm of Dreyer and Boyajian. (Attorney Dreyer did have a conference table filled two feet high from edge to edge of documents in the case of Nxivm v. O'Hara. However, these documents do not relate in any meaningful way to the section 523 complaint, and were not responsive to the Defendant's discovery request.)

4. What can only be described as abusive discovery went to an extraordinary level on January 22, 2010, when Attorney Bivona began issuing subpoenas to individuals who were entirely unrelated to the parties in this case. Nor do these individuals have any information regarding the Debtor or the creditors in this matter.
5. The purpose of the subpoenas as the attached statement show was the harassment of a third party, Barbara Bouchey, who is a former friend and advisor to the Plaintiffs and is now, upon information and belief, a possible witness in a federal investigation3 into the activities of the Plaintiff's and others involved with the organization Nxivm. As the Sunday Times Union relates, she gave unfriendly testimony in a California case. The clear purpose of the subpoenas is to gather information and harass Bouchey.
6. On January 25, 2010 I wrote to Attorney Bivona requesting an explanation of why individuals unconnected with this case were being subpoenas and requesting that the subpoenas be withdrawn.
7. On January 26, 2010, I again wrote requesting information as to why the four subpoenas had been issued. Again, Attorney Bivona refused to indicate how these individuals related to the dischargability action other than some vague reference to the fifth amendment response given by the Debtor. She further requested that I not copy the Court on my letters.
8. On the evening of the 26th, I began calling the subpoenaed parties in an effort to determine why they were being deposed. The first party to answer the phone was

---

[2] More accurately they have refused to acknowledge that no statements, correspondence, bills, receipt or other documents exist to support the broad allegations of the complaint.

[3] The Debtor is also a possible federal witness against the plaintiff.

Robert Petro who advised me he had never heard of Joseph O'Hara (see affidavit attached) and that he was acquainted with Barbara Bouchey. He told me how he had refused to be interrogated by Steven Rambam and how the subpoena was delivered under the supervision of Rambam. The following day other subpoenaed parties began contacting my office telling similar stories.

9. The actions of Damon and Morey have violated rule 9011 in that they used the subpoenas to harass witnesses in a totally separate matter.
10. This Court has authority to enter a protective order prohibiting the Plaintiffs from conducting any further depositions and cancelling the four currently scheduled pursuant to Rule 7026 and FRCP 26(b).
11. Under section 105 this Court can enter a temporary stay of further process in any matter related to this Bankruptcy case.
12. The Debtor has never received the documents that this Court directed the Plaintiffs produce. In lieu of producing said documents, the Plaintiffs alleged that said documents were part of District Court case number 05-CV-1045. Upon inspecting said records, there is no correspondence from or to the Plaintiffs, no documents that reference representations to the Plaintiff's from the Defendant. There is no document that establishes that the Debtor acted as their attorney either before or after the loans were made. Accordingly, absent some showing by Plaintiffs that they have other undisclosed documents, it is reasonable to assume that no such documents exist.

Wherefore, the Defendant requests an order:

1. Terminating further discovery;
2. Precluding the Plaintiffs from introducing any document or statements not previously disclosed;
3. Quashing the subpoenas issued to Kathy Ethier, Angela Ucci, Robert Petro, and Melanie Button;
4. Prohibiting the Plaintiffs' attorneys from issuing any further subpoenas without prior application to this Court;
5. Awarding appropriate attorney's fees and sanctions to Defendant; and

6. Such other and further relief as to this court seems just and proper.

Dated: February 1, 2010

Respectfully Submitted,

/s/ Richard Croak

Richard Croak
Attorney for Defendant
314 Great Oaks Blvd.
Albany, NY 12203
518-690-4410
fax: 518-690-4435
rcroak@richardcroak.com

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re: Joseph J. O'Hara

Debtor(s)

Case No.08-12108
Chapter 7

Clare and Sara Bronfman,
Plaintiff

V.

Adv. 09-90006

JOSEPH J. O'HARA

AFFIDAVIT OF MELANIE BUTTON

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.

Melanie Button, being duly sworn, deposes and says that:

1. She is more then eighteen years of age and resides at 26 Canterburywoods, Queensbury, NY 12804.

2. She has never to her knowledge met Joseph J. O'Hara nor has she conducted any business or personal activity involving Mr. O'Hara. She is aware of his name from other individuals, but has no information concerning him

3. She is Barbara Bouchey's personal assistant, and is aware that Barbara worked with the Bronfmans. However, the deponent had no involvement with the Bronfmans and had no business or personal relationship with any Bronfman at present and no knowledge of their business transaction with Joseph J. O'Hara and in particular has no knowledge of any loan agreements that were made.

4. She was informed by Barbara Bouchey that an individual named Steven Rambam was investigating Barbara. In December 2009 at about 9:10pm she was parking her car when a silver SUV pulled up very close to her car. A man got out with a woman. He identified himself as Mr. Rambam and demanded to speak to her when she refused to converse he made threats saying he

would see her in Court. He was very intimidating and she was frightened.

5. She lives in a townhouse complex and her neighbors have reported that unknown cars have been seen in her parking area and otherwise about her property.

6. The subpoena in this case was delivered by a woman who blocked her car and proceeded to bang on her hood and car window before leaving the papers.

7. She has no knowledge of the facts in this case or the parties involved and believes that she is being intimidated in regard to other matters

Dated: January ,2010

/s/
Melanie Button

Melanie S. Button

Melanie Button

Sworn to before me this 29 . day of January 2010

/s/

Notary Public, State of New York

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re: Joseph J. O'Hara

Debtor(s)

Case No.08-12108
Chapter 7

Clare and Sara Bronfman,
Plaintiff

V.

Adv. 09-90006

JOSEPH J. O'HARA

AFFIDAVIT OFAngela Ucci

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.

Angela, being duly sworn, deposes and says that:

1. She is more then eighteen years of age and resides at 73 Regent Street, Saratoga Springs, NY 12866.

2. She has never to her knowledge met Joseph J. O'Hara nor has she conducted any business or personal activity involving Mr. O'Hara. She is aware of his name from other individuals, but has no information concerning him

3. She is a hairdresser by occupation and has had the Bronfman sisters as customers, but has no business or personal relationship with any Bronfman at present and no knowledge of their business transaction with Joseph J. O'Hara and in particular has no knowledge of any loan agreements that were made.

4. She knows Barbara Bouchey and is aware that she is being harassed by certain parties related in some way to the Bronfmans.

5. The subpoena in the above referenced case has not as yet been delivered, but Steven Rambam and another woman have been harassing her family friends and customers. Mr. Rambam or his

agents have been to her hair salon at least six times.

6. She has heard threats second hand that she will be arrested or otherwise detained, the deponent herein, is very anxious about this matter and frightened by these individuals.

7 She requests the Court to enter an order of protection against the Bronfmans and their associates.

Dated: February 1, 2010

/s/

Angela Ucci

Angela G. Ucci

Angela Ucci

Sworn to before me this 1st day of February 2010

/s/

Notary Public, State of New York

RICHARD CROAK
Notary Public, State of New York
Reg. No. 02CR6032804
Qualified in Rensselaer County
Commission Expires Nov. 8, 2011

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re: Joseph J. O'Hara

Debtor(s)

Case No.08-12108
Chapter 7

Clare and Sara Bronfman,
Plaintiff

V.

Adv. 09-90006

JOSEPH J. O'HARA

AFFIDAVIT OF ROBERT PETRO

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.

ROBERT PETRO, being duly sworn, deposes and says that:

RP RP

1. He is seventy-~~one~~ years of age, a ~~retired~~ minister, residing at 93 Park Avenue, Latham, NY 12110.

2. He has never to his knowledge met Joseph J. O'Hara nor has he conducted and business or personal activity involving Mr. O'Hara.

3. He has heard of the Bronfman sisters, but has no business or personal relationship with any Bronfman.

4. He knows Barbara Bouchey and is aware that she is being harassed by certain parties related in some way to the Bronfmans.

5. The subpoena in the above referenced case was delivered by an individual accompanied by a man identifying himself as Rambo. This Rambo individual claimed to be a private defective from California. When asked for his credentials Rambo showed some identification but refused to let it be examined. Mr. Rambo threatened the deponent with arrest and otherwise sought to intimidate the deponent. (RomBom or RAMBAM)
RP

6. He, the deponent herein, is very anxious about this matter and frightened by the individuals that he has been led to believe are behind this investigation of Ms. Bouchey.

7 He requests the Court to enter an order of protection against the Bronfmans and their associates.

Dated: January 28,2010

/s/

ROBERT PETRO

Robert J. Petro

ROBERT PETRO

Sworn to before me this . day of January 2010

/s/

Notary Public, State of New York

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re: Joseph J. O'Hara

Debtor(s)

Case No.08-12108
Chapter 7

Clare and Sara Bronfman,
Plaintiff

V.

Adv. 09-90006

JOSEPH J. O'HARA

AFFIDAVIT OF KATHLEEN A. ETHIER

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.

Kathleen A. Ethier, being duly sworn, deposes and says that:

1. She is more then eighteen years of age and resides at 5 Robin Hood Court, Saratoga Springs, NY 12866.

2. She has never to his knowledge met Joseph J. O'Hara nor has he conducted and business or personal activity involving Mr. O'Hara. She is aware of his name from other individuals, but has no information concerning him

3. She is a massage therapist by occupation and has had the Bronfman sisters as customers, but has no business or personal relationship with any Bronfman at present and no knowledge of their business transaction with Joseph J. O'Hara and in particular has no knowledge of any loan agreements that were made.

4. She knows Barbara Bouchey and is aware that she is being harassed by certain parties related in some way to the Bronfmans.

5. The subpoena in the above referenced case was delivered by an individual accompanied by a man identifying himself as Steve Rombom (sounds like Rambo) who she knows to be Steven

Rambam. This Rambam individual claims to be a public official of some kind. He has been taking pictures of her house and car and hiding behind cars outside her home.

6. She has heard threats second hand that she will be arrested or otherwise detained, the deponent herein, is very anxious about this matter and frightened by these individuals.

7 She requests the Court to enter an order of protection against the Bronfmans and their associates.

Dated: January 29,2010

/s/

Kathleen A. Ethier

Kathleen A. Ethier

Kathleen A. Ethier

Sworn to before me this 29 . day of January 2010

/s/

Notary Public, State of New York

RICHARD CROAK
..., State of New York
... 02CR6032804
... Rensselaer County
Commission Expires Nov. 8, ___

Exhibit J

STATE OF NEW YORK
COUNTY COURT

COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DECISION AND ORDER
Indictment Number 9-1397

Joseph O'Hara,
Defendant.

APPEARANCES:

OF COUNSEL:

For the People:

HON. P. DAVID SOARES
Albany County District Attorney
Albany County Judicial Center
6 Lodge Street
Albany, New York 12207-1019

Christopher P. Baynes
Assistant District Attorney

For the Defendant:

Dreyer Boyajian
75 Columbia Street
Albany, New York 12210

Brian W. Devane

THOMAS A. BRESLIN, J. Defendant, by Omnibus Motion, moves for the following relief:

1. **Dismissal of Indictment for Alleged Defects in the Grand Jury Proceedings**

The People presented a "bare bones" case to the Grand Jury and the instructions were so brief as to fail to provide appropriate legal instruction. The terms "deprive" and "appropriate" were not defined but were essential to an understanding of the need to connote an intent to permanently deprive (see, People v Jennings, 69 NY2d 103). The prosecutor instructed that larceny can be committed in various ways but did not indicate which method was alleged in this case nor define the terms such as "trespassory taking" or "embezzlement". The instructions were inadequate to comply with the requirements of article 190 of the Criminal Procedure Law.

For purposes of prosecution in the future, it is noted that the prosecutor posed numerous leading questions throughout the presentation. While the rules of evidence may be somewhat more relaxed than at trial, nonetheless they are still applicable in a grand jury proceeding (see, CPL 60.15[1]).

Defendant's motion is granted and the indictment is dismissed.

The People's motion for leave to re-present is granted.

2. **Sealing of Affidavit and Exhibits**

Defendant's request to seal his affidavit and exhibits is granted and is applicable only to the affidavit by defendant and the exhibits appended thereto.

3. <u>Remaining Issues</u>

In light of this determination to dismiss the indictment, the remaining issues raised are not being addressed.

Dated: Albany, New York
June 19 , 2007

Thomas A. Breslin
County Court Judge

EXHIBIT K

STRATEGIC WEALTH ADVISORS
5784 Widewaters Parkway
Dewitt, New York 13214

To whom it concerns,

I would like to take this opportunity to provide a brief summary of both my business and personal experiences in knowing, working, interacting, and becoming close personal friends with Barbara Bouchey over the past 29 years. I originally met Barbara as a Regional Vice President for Franklin Funds at a business meeting at the Desmond hotel outside Albany as she was beginning her career as a financial planner in the summer of 1986. I continued to work with Barbara as I grew in my own career over the next 20 years in various capacities representing the leading investment management companies managing the territories of upstate New York and in some cases New England. We became not only close business associates but close personal friends over the next 20 years until I established my own investment advisory business with my wife in Syracuse, New York, and retired from traveling as my responsibilities as a parent became more demanding. We continue to remain friends to this day and communicate on a regular basis.

I have met with many if not all the top financial planners, "wire house brokers ", top investment management advisors and many of the top senior management executives in the investment industry from Buffalo to Boston for 20+ years and will summit that Barbara is one of the minority that has always exhibited the highest integrity, honesty, and caring for her clients, friends and associates. In my experience, Barbara has never deviated from doing "the right thing". In getting to know Barbara over the past 29 years, she has always acted in a fiduciary capacity to each and every client and business interaction I was aware of throughout her career. I would summit that Barbara would never compromise any relationship for personal gain and I would trust her completely in any dealings on any level. She is an exceptional individual in many ways and provides a tremendous example for integrity and success for the investment management and financial planning industry.

Should any further questions arise relating to Barbara character please do not hesitate to call me directly. My contact information is below.

Sincerely,

Richard S Petrell
Certified Investment Management Consultant
Managing Partner

315.218.7350 • Fax: 315.218-7348

By way of introduction, I am Andrew P. Selfridge, friend and client of Barbara Bouchey. It is with great pleasure that I write to you on her behalf.

I have known Barbara as a friend for more than a quarter of a century and have been a client of hers, and her financial service agency, for more than twenty years. I mention that because I have great confidence in her as an advisor, but even more importantly, I trust her.

The trust I place in her is based on her character. It is an absolute necessity that I trust Barbara implicitly as the steward of my retirement funds. For my personal well-being, I cannot afford even an inkling of doubt about Barbara as a trustworthy steward of my accounts. Not only does she exceed my expectations, she instills the same level of accountability in those she employs at her agency. Trust is a fragile commodity which Barbara does the utmost to protect.

In addition to her role as my financial advisor, Barbara is also a friend who has provided me sound counsel and support in areas that extend beyond the financial realm. In personal decisions in my life, she has been available to not only listen, but to also offer sound and balanced alternatives for my consideration that have proven to be valuable. True friends are hard to come by and I know that I can count on Barbara when I need a friend.

To associate the words character, trust, and friend with Barbara Bouchey is quite easy to do since she has earned each of them.

For the past twenty–two years I have been a development officer at the University of Virginia where I currently serve as a Senior Director in the Office of Principal Relationship Development. Please contact me if I can be of assistance to you.

UNIVERSITY of VIRGINIA
OFFICE of UNIVERSITY DEVELOPMENT

Andrew Selfridge
Senior Director
Office of Principal Relationship Development

400 Ray C. Hunt Drive • P.O. Box 400807
Charlottesville, VA 22904-4807
Phone: 434-924-0930 • Fax: 434-924-0556
Cell: 434-981-0143 • E-mail: aps2a@virginia.edu
www.virginia.edu/development/

Sincerely,

Andrew P. Selfridge

August 4, 2015

To Whom It May Concern:

For over three decades it has been my privilege to work with Barbara Bouchey in the capacities of instructor/student and financial advisee/advisor. Additionally, at my request, she conducted presentations as an investment expert for several professional groups.

At a time when a "financial planner" was viewed by many as a "four letter word," I trusted Barbara's judgment and decision making capabilities. I consistently recommended her to innumerable colleagues who also benefitted from her depth of knowledge, financial market acumen, and professionalism.

Her attention to detail, consistent professional development endeavors, and dedication to both profession and clients continue to set her apart from others in the field. I respect her both personally and professionally. I trust her judgment.

If you require additional information or have specific questions you would like answered, please do not hesitate to call me at 386.313.1899.

Susanne K. Stark, Ed.D.

Dean Emeritus, School of Business and School of Engineering and Industrial Technology, Hudson Valley Community College

www.voicesfordignity.com
info@voicesfordignity.com
702-305-2220

Voices for Dignity

August 4, 2015

To whom it may concern;

I have known Barbara Bouchey for over a decade and after countless interactions both personally and professionally, I can attest to the extraordinary nature of her character. Barbara has always been meticulous about details, ethics, and honesty. I have never once known her to be less than accurate regarding the portrayal of facts. In fact, I have never met a person who is more insistent that every representation be precise.

Barbara Bouchey is a woman that is 100% reliable. When she says that she will do something, her word is golden. Her integrity is impeccable, and she is insistent on following every rule, obeying every law. She is also one of the most emotionally evolved people I know. I have never seen her take a single action designed to demean or strike back at someone. She does not have a vindictive bone in her body. In fact, she sees people with eyes of empathy and compassion, even those who have wronged her.

Truly, Barbara Bouchey is a rare and precious woman who inspires many. If there were more women in the world like Barbara, the world would be a kinder, more ethical, safer place for all. Perhaps that sounds cliché, but in Barbara's case., it is the truth. I am honored to know Barbara Bouchey as a professional colleague and as a friend.

Kind regards,

Christine Marie
Founder, Voices for Dignity

August 3, 2015

Hello,

I'm Joyce Anastasia and I was invited, and later hired as a professional consultant, to Barbara Bouchey in early 2009 to facilitate her resignation from NXIVM. I have been her personal and business advisor on a regular basis ever since. Currently, I work as a leadership consultant and have advised, counseled and consulted thousands of people for the past three decades on issues related to personal empowerment, positive impact with truth and integrity, dynamically balancing intuition and logic and creating teams and companies that make a greater difference in our world. The book I recently published* addresses some of the issues that Barbara has had to face over the past 6 years, including seemingly unending legal attacks, harassment, stalking and other methods of Power Over (control) tactics that have negatively impacted her business, her reputation and her personal stress levels (which, in turn, affect her entire well-being).

In my professional opinion, Barbara Bouchey is one of the most courageous truth-seekers and truth-speakers I have ever personally met. She is filled with integrity and has demonstrated this consistently, and specifically on numerous occasions when others have attempted to tarnish her reputation. She has also served her clients with discernment, confidentiality and quality; despite the public harassment and attacks, Barbara continues to be dedicated, clear-minded and persistent, maintaining loyalty from many of her equally respected clientele. She exhibits this in her personal life as well! The consistent and questionable attacks that she has endured have had a devastating affect on her ability to attract new clients, because those individuals are seeing only what the media publishes, not the reputable, honest and caring soul that they would encounter...on a long-term and very consistent basis if they had an opportunity to work with her. This abusive utilization of the media and court systems has not only undermined Barbara's career, but it has served to defame her character in ways that, in my professional observation, are inaccurate at best, and severely damaging to her personal and professional life, at worst.

Additionally, Barbara is dedicated to the best in humanity, and her life path includes evolving the most honorable and gifted aspects of herself and others, expressing the highest, loving human potential possible. She is also open and willing to learn even better ways to be and lead in the world and not afraid to be authentic, including expressing natural human foibles (which exist in each and everyone of us). She does this with the intention of evoking the best in others with a policy of no harm.

If you have any further questions regarding the quality of character of this individual, Barbara Boucher, I would be happy to speak with you. Please feel free to contact me at 415-322-9442.

[**Extraordinary Leadership During Extraordinary Times*]

August 4, 2015

To Whom It May Concern:

I have been a close of friend of Barbara Bouchey for nearly 30 years. Barb and I were raised in very different worlds, economically and socially, yet forged an immediate and everlasting bond. Character bleeds through and transcends social classes. Barb's success is not accidental or antidotal. She has worked hard and overcome hardship and seemingly insurmountable obstacles in her life. I admire her greatly for her determination and her confidence and unwavering belief in her pursuits despite the doubters and naysayers that seemed to surround her at every turn.

We've shared joy and we've shared tragedy and I've witnessed firsthand her resolve to do the right thing at substantial cost to her personal and financial well- being. I and the majority of the population would have surrendered long ago if we were subjected to the torment and public shaming she has endured.

I stand by my friend for many reasons. I have the utmost confidence in her integrity and respect her for her courage to what's right. I work as a manager in the leading organization in the insurance industry for the past 14 years. We're in the integrity business; we sell promises for a living. The promise to be there and do the right thing when you need us to be. I'd purchase a policy from Barbara Bouchey without hesitation. I am proud to be her friend.

F. Marlene Laiacona

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Barbara J. Bouchey
ASSET MANAGEMENT
INCORPORATED

Investments
Retirement
Insurance
Estate
Tax

To Whom it May Concern:

I met Barbara Bouchey in 1999 when I was hired as one of her assistants for her financial planning firm. I worked for Barbara until a time came that I decided to leave her employ and start my own small business.

I began seeing stories in the media about Barbara that I had trouble believing. When I worked for her she ran a successful, aboveboard financial planning office. She hired smart competent people, she took care of her clients with service that was above and beyond in the industry and she ran a very tight ship with attention paid to the smallest detail in order to take excellent care of each client. She was honest, trustworthy and seemed to always do her best to do the right thing. In my mind, there was no way that she had changed into what they were portraying her to be.

After reaching out to her, Barbara asked me if I might want to come back to work for her firm. I did not hesitate to say yes. My experience for the last four years (and counting) is that she has not changed. She is still a smart businesswoman who gives good advice to her clients. She has not stopped providing excellent customer service by paying attention to those small details. She continues to be an honest and trustworthy person. Her clients are happy and well cared for and it is clear in my conversations with them that they appreciate all she does for them.

Personally, she has been an excellent mentor and has challenged me to be a better assistant. I have grown through this experience and hope to continue this growth and gain more knowledge with Barbara's help. She has also become a friend who I hope to continue to have a relationship with for many years to come.

Sincerely,

Christine Traver

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Administrative Assistant

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August 2015

To whom this may concern,

I have had the privilege of working for Barbara Bouchey for over 20 years. Over the years our professional friendship has developed into a personal friendship.

Barbara has always been a person who holds the ideals of integrity, hard work and compassion while maintaining loyal friendships. Her generosity can be seen by her philanthropic work that is publicized; however she is a person who believes in giving anonymously, without the need for recognition. To that point, I was the recipient of her generosity over 20 years ago. Barbara, took time out of her life to talk to me about my financial future. With a business that deals with the wealthiest people in our area, she cared enough about me and financial well being to council me on my financial future. She took time, met with me and my husband, she invested my meager $3000.00 and started me on the path to financial and personal independence. She inspired me to not over spend, to be mindful, to be generous and to save. At that point in my life, we were just fond business associates, she has no reason to reach out to me…except that is her nature!

She has been a pillar of our community, with an impeccable reputation not only in business but in her personal life. She has been voted the best of in her industry, has been selected to join many exclusive financial organizations, speaking all over the country and has worked for some very impressive people.

Barbara is passionate, extremely smart and loyal. She is a person who looks to the future and how to make things better. This is one of the reasons that she became involved in an organization that purported to make ourselves the world a better place. A woman of her standing could certainly have done other things, settled, but she CHOSE to stand up for her integrity. In a world where many take the easy way, she has suffered and continued.

I am honored to call her my friend, and I am in awe of her commitment to standing up for what is right, true and of integrity. Please reward her unwavering determination to prove that she has been wrongly accused.

Creatively yours,

Kim.

Kim Klopstock
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