UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	CHAPTER 11
BULLIONDIRECT, INC.,	§	CASE NO. 15-10940-tmd
Debtor.	§	

DECLARATION OF DAN BENSIMON IN SUPPORT OF DEBTOR'S RESPONSE TO MOTION TO CONVERT (Relates to Documents 123 and 128)

I, Dan Bensimon, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief.

INTRODUCTION

I am the Chief Executive Officer and Chief Reorganization Officer of BullionDirect, Inc. ("BullionDirect" or "BDI"). I am familiar with the general business and financial affairs and day-to-day operations of BullionDirect, both as the pre-petition debtor and as it will be operating in the above-referenced Chapter 11 case as the Debtor-in-Possession.

I submit this declaration ("Declaration") to assist the Court and other parties in interest in understanding the circumstances that existed as of the date on which the Debtor filed its *Debtor's Response in Opposition to Motion by the Official Committee of Unsecured Creditors for Conversion to Chapter 7* (Doc#128) (the "Response") to the *Motion by the Official Committee of Unsecured Creditors for Conversion to Chapter 7* (Doc#123) (the "Motion to Convert") filed by the Creditors Committee ("the Committee").

1. My introduction to BullionDirect, Inc. came on June 19, 2015, when I first met Charles McAllister, the then sole director and Chief Executive Officer of BullionDirect. The purpose of the meeting was to determine whether or not I would be willing to serve as a restructuring consultant to the company. After several weeks of questioning McAllister and examining company documents, it appeared to me that the BullionDirect business had been very poorly run for the entirety of its existence but that the web-based precious metals trading platform was well-designed and was popular with its customers, most of whom did not seem to realize that the depiction of their accounts available online were at the least misleading. The available tax returns - none had been filed for several years - reflected a company that had

45,000 or so customers and was generating revenues, on average for the preceding 10 years, of $70,000,000 per year, and had accumulated net losses of some $16,000,000 as of the end of 2010. (A later return would show losses to have ballooned to $41,000,000 by the end of 2012. The database lacked accounting controls and was not integrated with the expense side of financial records, much of which was incomplete and stored in the cloud. Although I did not know the precise number at the time, McAllister admitted that there were outstanding claims well into the millions. Unfortunately, I did not know at the time how incomplete and fragmented the books and records actually were. BullionDirect had effectively ceased operations in May or June of 2015, and was the subject of inquiries and investigations by multiple state attorneys-general and local police and prosecutors. It was apparent that McAllister could not be placed in charge of the company if any goal of restructuring could be realized. To add to the degree of difficulty, the company had substantially less funds than would normally be budgeted for a Chapter 11 reorganization.

2. Notwithstanding these daunting problems, I believed that a line of secure packaging business which McAllister had been attempting to bring to fruition for the preceding three (3) years under Nucleo Development, had a realistic chance to be the engine for creation of a source of funding that could either repay creditors or fund the restart of the website (with significant changes in the business plan, accounting controls and transparency), or both. Based on those perceptions, I agreed to be hired as Chief Restructuring Officer of BullionDirect, Inc. and the director and manager of Nucleo Development Company, LLC, a wholly owned subsidiary that had provided some of the software for the website platform and which had been the entity in which the "esignature" business was to be developed. BullionDirect, Inc. was placed in Chapter 11 on July 20, 2015.

3. McAllister never admitted to having siphoned off precious metals or funds from the company, and my preliminary research did not turn up any real estate or other property or assets in his name or the names of his family. He lived in what appeared to be a modest home and drove a high mileage, non-luxury vehicle. This does not mean that funds or other assets were not squirreled away, but unlike Messrs. Madoff and Stanford, there were no ostentatious displays of wealth. Nonetheless, I understood that McAllister and other former management would potentially be the targets of investigation and possible prosecution. Having just completed a case in which a Chapter 11 creditors committee, for which I was financial advisor,

had been assigned estate causes of action, and that, after converting into a litigation trust, with members of that committee becoming litigation trust board members, and I having become litigation trustee, causes of action were brought that generated settlements sufficient to generate $70,000,000 in payments to creditors, I offered to the Creditors Committee in this case the right to pursue causes of action against McAllister and others. That offer was made in my initial meeting with counsel for the Committee and was repeated the next day at the First Meeting of Creditors. The Committee appeared to accept the offer, but certainly never notified me, my counsel or the U. S. Trustee that the Committee did not accept the offer.

4. On two separate occasions the Committee counsel was invited to prepare a budget for professionals in the case. On other occasions, Committee counsel was offered cooperation and assistance in conducting examinations of potential litigation targets under Bankruptcy Rule 2004, but counsel declined, despite once having proposed Rule 2004 examinations of the same individuals himself. (Counsel for the Committee learned today in a phone call that one witness he resisted examining played a much greater role in BullionDirect's demise than the Committee was willing to admit.) The Committee did not require the Debtor's permission or assistance to utilize Rule 2004, and would have been able to obtain permission from the court to sue McAllister and others immediately. The Committee did neither. When the Debtor sought the Committee counsel's cooperation in addressing the difficult issue of the ownership of the contents of the Delaware vault, an issue the court had indicated that he wanted to have addressed as a priority, counsel again declined to participate.

5. The effort to complete the esignature transaction, which included an American supplier, Systech International, and a large Italian secure packaging company, dragged on for some time, in part because the Italian company was willing to conduct very few negotiations or business in the month of August, something of a European business custom. The Committee, after execution of non-disclosure agreements, monitored the negotiations. An agreement with Systech International was executed in September and final negotiations with the Italian company were underway. Unfortunately, at the last minute, the Italian company indicated that its test of the esignature product had produced ambiguous results. The negotiations have been stalled since mid-October as Systech International analyzes the Italian company's test data.

6. Without the projected revenues from the esignature transaction, a plan to restart the website business is not feasible. No amount of modifications to the business plan will make

the business self-funded, at least not for a year or more. My view from the beginning has been that a restart of the website business could provide an additional source of payments to BullionDirect creditors. With funding, given the history of the business, e.g. 45,000 customers generating $70,000,000 in average annual transactions, has value, and 80% of those customers are not creditors in this case and did not have a bad experience. Even though the Committee suggests that a Chapter 7 trustee can sell these assets, the Committee has admitted that a Chapter 7 liquidation is likely to be a fire sale with no real opportunity to realize a going concern value. In my opinion, a conversion to Chapter 7 will inevitably lead to loss of significant value to creditors, not only with respect to the web platform, but as to the stalled but not terminated esignature transaction (Nucleo Development is not in Chapter 11). We know that entities in the industry with whom we have spoken, that may have been willing to consider investment in a going concern, have now been persuaded by the Committee to wait for the fire sale.

7. With those consequences in mind, when Cheryl Huseman, McAllister's 70-year old mother, a patent attorney at Chevron, offered to provide funding from a home equity loan so that a plan could be proposed, I felt obligated to at least examine the proposal. I would never have contemplated inviting any member of the McAllister family to make such an offer, in part because I have been made fully aware of the animosity of creditors, likely deserved, to anyone associated with McAllister. Indeed, the Committee has been vocal in directing its opprobrium to me personally. My attempt to bring the Committee into the discussion before negotiating with Ms. Huseman resulted in a delayed conference call that was not productive, but was loud and dysfunctional. The following day, counsel for the Committee demanded that the Committee be given veto power over any plan (this before Debtor's exclusivity had expired and before an offer had been made by Ms. Huseman). When Huseman and Murph (her husband) did make an offer, a copy of which is attached to Debtor's Response (Doc. No. 128), it provided for $200,000 in debtor-in-possession financing, secured by estate assets (excluding the contents of the vault and causes of action, all of which would be placed in a litigation trust for the benefit of creditors), convertible to an asset purchase offer under a plan, a plan which would provide for solicitation of other bidders (often referred to as a "stalking horse bid"). The plan also provided for a 7-year retention of a profits interest by creditors in the new company, starting at 80% and stepping down to 50%. The Committee responded by demanding that the asset purchase offer (presumably by any bidder) be stripped from any such plan and that the minimum bid be

$300,000. So, the Committee's offer to a bidder: pay $300,000, but you get no assets, only a possible repayment through 25% of net profits.

8. The Committee has made it abundantly clear that the Huseman/Murph offer is particularly offensive because it seeks a release of estate claims against them. Huseman/Murph has agreed to revise its offer so that the issue of funding and any release would be dealt with under a plan that creditors get to vote on. The Committee may have a reasonable basis for trying to prevent creditors from voting on a plan, but the basis has not yet been disclosed. The Committee alleges that Huseman was complicit in the fraudulent business practices of her son. The Committee has not yet provided any detail on which that assertion is based. It is clear from the corporate records that Huseman and Murph were minority shareholders in the company, and that she provided some advice on securing the BullionDirect process patent, and participated in some discussions with retained intellectual property attorneys and a consultant, Randy Russell, in 2011, regarding Dodd Frank compliance. I have not discovered any evidence that she actually participated in management of the business, and a recent search of company records did not produce any evidence of payment to Huseman in the past three (3) years. The Committee also alludes to a "family trust" but provides no further description. It is impossible to otherwise respond to the Committee's allegations unless some detail is provided. It is my experience that creditors' committees often require that its argument against a plan be included in the disclosure statement. That would be appropriate here. Allow the creditors themselves to decide whether or not a release is a fair trade-off for funding. Let the Committee disclose, and allow the creditors to vote.

9. It is my opinion that a plan under which the website business is restarted could provide a substantial additional payment to creditors when compared with the probable outcome of asset sales under Chapter 7. Under a plan it is also possible for creditors to receive claim payments in the form of precious metals rather than in currency. It must be noted that the plan transactions could also provide some avenues for funding litigation. The CRO and his counsel are willing to discuss a plan that provides for payment of professional fees in periodic installments rather than at confirmation as required under 11 U.S.C. § 1129(a)(9). It is difficult to understand why the Committee is so obviously trying to prevent the creditors, whose interest the Committee represents, from deciding for themselves whether or not to vote on a plan. Ideally,

the stalking horse bid of Huseman/Murph will generate other, higher bids, thus placing the new company on a more sustainable footing.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 7th day of December, 2015.

Dan Bensimon, President/Chief Restructuring Officer - BullionDirect, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Response* has been served via the Court's ECF Noticing System, by First Class Mail, postage prepaid, via e-mail or by facsimile transmission, if so indicated, to the creditors and parties in interest on the current Master Service List on the 7th day of December, 2015, and to the Website Claimants via Constant Contact.

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