

**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 PETITION AND FIRST DAY MOTIONS**

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 compelled the commencement of this Chapter 11 case and in support of (i) the Debtor's voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code") filed on July 20, 2015 (the "Petition Date") and (ii) the relief, in the form of motions for various relief that the Debtor has requested of the Court ("First Day Motions"). Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the relevant First Day Motion.

Except as otherwise indicated, all facts set forth in this declaration are based on my discussions with the former management of the Debtor, employees of the Debtor, Corporate documents, public records and to a limited extent, my personal knowledge. I am authorized to submit this Declaration on behalf of the Debtor.

1. **Company History.** - According to the corporate records of BDI and the Texas Secretary of State, BDI was incorporated in 1999 by its founders, Charles McAllister and Vivek Katyal. BDI began as a website-based precious metal exchange with a "match order" feature that allowed for sale and purchase of precious metals from a catalog maintained by BDI or by matching interested seller's products with a buyer's interest in that product, or the reverse. BDI

also provided vaulting or storage services for precious metal products. The web-based sale platform with the match order feature was awarded a business process patent in 1999. Like most precious metal exchanges, www.BullionDirect.com¹ was forced to deal with the relative instability of precious metal markets.

2. **Nucleo Development Company, LLC.** - In part to create a more diverse business plan, it appears that in 2010 BDI's management embarked on a diversification effort by trying to establish a potential market for its internet platform, seeking out advice on other possible businesses or markets which might benefit from the features of the BDI web platform and its match order capability. To focus on the development of the platform for licensing or sale, BDI formed Nucleo Development Company, LLC ("Nucleo") in 2011 as a wholly owned subsidiary which would become the central focus of the IT branch of BDI's business. According to prior management, BDI transferred funds to Nucleo for start-up expenses and continued funding Nucleo's operations until shortly before the Chapter 11 filing. Nucleo was reportedly the source of the software necessary to improve the BDI platform and to make it adaptable to any interested customer. Nucleo also engaged in negotiations with an entity willing to license certain product security intellectual property to Nucleo and a customer for the product security program. Nucleo is also in the early stages of contact with a state agency interested in the match order process and the web platform.

3. **Vault.** - In 2012 BullionDirect.com modified the terms of service under which its customers purchased and stored precious metals. BDI's management interpreted the provisions of the Terms of Service agreement such that when a customer placed an order, the precious metal was not actually purchased unless the customer agreed to take actual delivery of the product. Previously, the purchase order would have resulted in either delivery to the customer or storage of the product in a BullionDirect vault. Many of the customers who have contacted Declarant have contended that their understanding was that the orders placed with BullionDirect.com were to have resulted in the ordered (and paid for) product being placed in the vault. As of the petition date, the vault was located in Delaware and is owned by International Depository Services ("IDS"). Many BDI customers have contacted IDS demanding delivery of the product the customer believed to have been purchased. There is likely to be significant

¹ Another related website, www.NumisDirect.com, was set up for the rare coin market, but has done little business. There has been some interest expressed in selling or licensing the site to interested numismatics.

disagreement over the meaning of some of the provisions of the Terms of Service Agreement, particularly paragraph 6.7:

“When Title to Products Passes to Customer. Title to the Products purchased by Customer shall pass to Customer upon delivery to Customer or Customer’s appointed agent or designee. Products that have been delivered to BullionDirect®’s storage facility for Customer will be held in safekeeping on a fungible basis and Customer will receive title to an undivided share of the Products so held. Notwithstanding the passage of title to Customer, BullionDirect® may use such Products, in fungible form, held for Customer. Customer understands that such usage of the Products in this form may result in gains or losses, which will inure solely to the benefit of BullionDirect®.”

4. **Complaints and Investigation.** - In addition to the BDI customers who made demand on IDS, many other customers appear to have submitted complaints or demands for inquiry to the FBI, the Consumer Protection Division of the Texas Attorney General’s office, the Travis County District Attorney’s office, and the Austin Police Department. Internal communications indicate that the Debtor suspended much of its precious metal exchange business on or about June 17, 2015. The many complaints to investigatory agencies, the demands on IDS and demands on BDI by customers who believed that the product they had purchased was in the vault forced BDI to seek protection under Chapter 11 on July 20, 2015.

5. **Chapter 11 filed.** - Given the many questions, complaints and investigations besieging BDI’s existing management, it was apparent that any restructuring of BDI would require the services of someone who was not previously involved with the company. As reflected in the *Resume of Dan Bensimon*, attached as Exhibit A to this Declaration, I have been involved in the formal and informal reorganization or restructuring of many businesses, in and out of bankruptcy, including businesses in which intellectual property, e.g. patents, software licensing and web platforms, were a significant component. On July 20, 2015, Charles McAllister agreed to appoint me as the President, Chief Restructuring Officer and Sole Director of BDI, as well as the general manager of Nucleo Development Company, LLC. An application for approval of the retention of Unique Strategies Group, Inc., my financial consulting company, will have been filed prior to the hearing on the matters for which this declaration is given.

6. **Identifying Creditors.** - On information and belief, and based on the representations of prior management, there are approximately 5,000 “unresolved accounts”

involving BDI customers. Unfortunately, BDI was thinly staffed for a long period of time before the petition date so that there is not a pre-existing list of possible holders of claims. That information is being extracted from the BDI database. Charles McAllister has been cooperative in transferring information to the Declarant regarding the history of BDI and pending licensing and sales efforts, but his future involvement and availability are not expected. The Debtor appears to have relied on QuickBooks for the posting of information on vendors and expenses, and some of the Debtor's vendors may actually be the obligation of Nucleo. On information and belief, the possible holders of claims have been notified of the Chapter 11, the date set for the First Meeting of Creditors, and the deadline for filing proofs of claim. Debtor is working hard to file the schedules and Statement of Financial Affairs within the time required, but extraction of the necessary information has been difficult and Debtor may have to seek an extension of time to file. BDI has largely relied on contract labor or shared personnel and expenses with Nucleo.

7. **Challenges.** - As noted above, Debtor faces the challenges of reconstructing BDI's electronic data, books and records to make information retrieval relating to the thousands of unresolved accounts more efficient. At the same time, the potential sales and licensing opportunities for the BDI patent and its other intellectual property must be addressed to avoid loss of opportunity through neglect. The potential generation of licensing income by Nucleo Development must also be evaluated as a possible source of income available to distribute to BDI's creditors. The creation of a structure that will support a potential plan of reorganization must be considered and implemented. Unique Strategies Group, Inc. ("Unique Strategies") will analyze all of the potential opportunities and focus BDI and Nucleo's resources on those that will generate the most positive cash flows. Dan Bensimon and Unique Strategies will prepare both short-term and long-term plans that will attempt to generate returns to the creditors.

8. **Motion For Approval Of Operating Budget** - Debtor has filed an *Emergency Motion for Order Authorizing Payment of Expenses of Debtor in Possession* (Doc. No #13) seeking authorization for incurring and paying operational expenses while the Debtor prepares and files its schedules and Statement of Financial Affairs and prepares to file its disclosure statement and plan of reorganization. While §§ 1107 and 1108 allow a Debtor to conduct its business, Debtor does not anticipate resuming operation of Debtor's core precious metal exchange website except as may be proposed in a plan of reorganization. If the Debtor is to be able to transition its business model into one more oriented toward licensing or sale of web

platforms, sophisticated databases oriented toward the particular needs of customers or product security protocols, the Debtor will need to keep the websites available for demonstration. The Debtor's intellectual property has real potential for creating a source of funds to pay allowed claims of creditors. Payment of the projected expenses for professionals is subject to court approval.

9. **Motion to Modify Notice Procedures.** - Debtor has filed *Debtor's Emergency Motion for Order Limiting Notice and Implementing Certain Notice Procedures* (Doc. No #14). Most of the estimated 5,000 potential holders of claims will have done business with BDI at the BullionDirect.com website. Under the Terms of Service at the website, all transactions were carried through the website with most notices communicated via email notice. Email is both more effective and significantly less expensive than the regular mail, the default form for notice under the Bankruptcy Rules.

10. **Motion to Approve Disposition of Undeposited Checks.** - Debtor has filed an *Emergency Motion for Order Authorizing Disposition of Undeposited Checks* (Doc. No #15). On the petition date BDI had four (4) bank accounts at Wells Fargo with balances totaling approximately \$162,000². Debtor is in the process of transferring the contents of those accounts to its DIP bank account. There is no DIP lender or other entity asserting a cash collateral position with regard to the Wells Fargo accounts. However, on the petition date, the Declarant received a box of checks which had been received by BDI in relation to website transactions but which had not been deposited. The drafts, money orders and checks total more than \$500,000. For the reasons set forth in the motion, Debtor proposes to serve the senders of the checks with an Order that requires them to file an objection to the Debtor's claim that the undeposited checks are property of the estate and available to fund Debtor's reorganization effort.

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 28th day of July, 2015.



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

² Debtor may seek further approval for dealing with an account that was designated for IRA transactions. That account contains approximately \$19,000.

Dan Bensimon
7028 Cielo Azul Pass
Austin, Texas 78732

Highlights of Professional Experience:

LivePet, LLC. (2013 – Present)

Managing Member of Holding Company and its subsidiaries created to develop IP and products initially related to animal health. Various patents are pending, and development of production process is completed.

Unique Strategies Group, Inc. (1988 – Present) Principal

A financial consulting company specializing in: reorganization of corporate structures; in-depth analyses of corporate business plans and financial viability; bankruptcy/litigation strategic and analytical support; restructure of real estate and real estate related companies.

Crescent Resources Litigation Trust (2010- Present) Trustee

Through litigation and settlements, the Trust was able to recover enough funds to far exceed the projected return to approved unsecured creditors..

Crescent Resources, LLC and Subsidiaries, Crescent Resources Unsecured Creditors Committee (2009 –2010) Financial Advisor and Analyst

Crescent Resources was the largest privately held real estate entity to ever file for bankruptcy.

Liquidating Trustee of Comdaq.com bankruptcy dealing entirely with Sale of intellectual property . (2003-2004)

Liquidation Trustee of Living.com Including the liquidation of its intellectual properties. (2003-2005)

Owner/Operator (1989-Present)

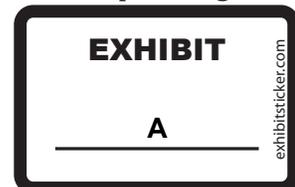
Own and operate several real estate entities for the purpose of developing residential lots and building single family homes and income producing properties.

Financial Adviser (1986- Present)

Engaged as a consultant to advise on financial affairs, corporate structures, economic functionality of general operations, and strategic modifications to business plans for many entities in Chapter 11 bankruptcies.

Big Red Sun, Inc. (2008) Receiver

Negotiated a separation of assets and operations between owners to the benefit of all. Creditors were paid 93% upon proper disposition of the corresponding real estate.



Nash Phillips Copus, Inc. (1986-1988) President (while in Chapter 11).
The largest privately held homebuilder in the country at the time. Assets of the combined entities totaled over \$500 million consisting of over 60 different projects.

Milton Development Corporation (1985-1986) Vice President.
Reorganized the company's financial operation.

Touche Ross & Co. (1968-1985) Accountant/ Partner
Started as an accountant in Auditing. Career was interrupted for three years after serving in Special Forces in the Army in 1968. Became a partner in 1979. Worked in the Los Angeles, Washington, D.C., New York, Paris and Austin offices. In charge of European audit operations 1979-1982.

Military Service (1968-1971) Army Special Forces after graduating Officers Candidate School.

Education (1964-1968) University of Maryland Bachelor of Science degree in Accounting and Economics.