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Receiver of the Assets of

DebtWorks, Inc., and

Andris Pukke

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Federal Trade Commission v. Ameridebt, Inc., et al.

CASE No. PJM 03-3317

**Receiver's Opposition to Motion of Non-Party Media Choice, LLC to
Quash Subpoena or, in the alternative, for Protective Order**

Filed July 10, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERIDEBT, INC., et al.,

Defendants.

Civil Action No. PJM 03-3317

**RECEIVER'S OPPOSITION TO MOTION OF NON-PARTY MEDIA CHOICE, LLC
TO QUASH SUBPOENA OR, IN THE ALTERNATIVE, FOR PROTECTIVE ORDER**

Robb Evans & Associates LLC as Receiver over the assets of Andris Pukke and DebtWorks, Inc. ("Receiver") hereby opposes the Motion of Non-Party Media Choice, LLC ("Media Choice ") to Quash or, in the Alternative, for Protective Order ("Motion") pertaining to a subpoena to Bank of America ("Bank") seeking production of bank account records for accounts of Media Choice. The Receiver contends the Motion should be denied based on the following and on the Memorandum of Law, Declaration of Gary Owen Caris and Request for Judicial Notice filed concurrently herewith in support of this Opposition.

I. INTRODUCTION

The Receiver was appointed pursuant to this Court's Preliminary Injunction Order with Asset Freeze, Appointment of a Receiver, Repatriation of Assets, and Other Equitable Relief dated April 20, 2005 (the "Preliminary Injunction Order"). The Court subsequently made limited modifications of the Preliminary Injunction Order, pursuant to which Magistrate Judge Charles B. Day has been assigned to hear and determine discovery disputes related to this action, and certain of the receivership provisions were expanded to permit liquidation of all assets and to clarify other powers of the Receiver under the Order. See Revised Order (A) Assigning

Magistrate Judge; and (B) for Limited Modification of Receivership Provisions of Preliminary Injunction Order entered December 13, 2005. The Court subsequently entered the Stipulated Final Judgment and Permanent Injunction as to Defendants DebtWorks, Inc. and Andris Pukke ("Final Judgment") on May 17, 2006, which continues the Receiver's powers and duties under the receivership provisions of the Preliminary Injunction Order.

On or about June 6, 2006, the Receiver issued a subpoena to Bank of America to obtain bank account records of non-party Media Choice ("Subpoena"), a copy of which is attached as Exhibit 1 to the Motion. On June 21, 2006, Media Choice filed its Motion challenging the Subpoena on three grounds. Principally, Media Choice challenges the Subpoena on the grounds that it is unduly intrusive in that it seeks information regarding the "financial accounts of a non-party against which no claims have been asserted." Motion, p. 1. The Motion also claims that the subpoena seeks records that are beyond the scope of the Receiver's authority. Third, Media Choice contends that the Receiver did not follow Maryland state law by including a certificate on the face of the subpoena that a copy of the Subpoena was served on the party whose records were requested. All of these assertions are meritless.

The Receiver and Media Choice, through counsel, agreed that Bank of America should defer production of documents in response to the Subpoena until the Court or the parties resolve their disputes concerning the Subpoena. No documents have been produced by Bank of America as of this date pursuant to the Subpoena.

II. STATEMENT OF RELEVANT FACTS PERTAINING TO MEDIA CHOICE

Section VI of the Preliminary Injunction Order sets forth the powers and duties of the Receiver, which include the power and duty to take custody, control and possession of all Receivership Property (Prel. Inj. Order, Section VI.A.2), to hold, conserve and manage such Property, to prevent the dissipation and concealment of such Property (Prel. Inj. Order, Section VI.A.3), to oversee the operation of businesses owned or controlled by the Defendants or that constitute Receivership Property (Prel. Inj. Order, Section VI.A.6), and to investigate the nature and location of and obtain records pertaining to all such property, including through subpoena powers expressly granted to the Receiver under the Order (Prel. Inj. Order, Sections VI.A.1, VII,

VIII, IX.D and XIII). The term "Receivership Property" is broadly defined as "any Assets, wherever located, that are (1) owned, controlled, or held by or for the benefit of Pukke or DebtWorks, in whole or in part; (2) in the actual or constructive possession of Pukke or DebtWorks; (3) held by an agent of Pukke or DebtWorks, including as a retainer for the agent's provision of services to either or both of them; or (4) owned, controlled or held by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, trust or other entity directly or indirectly owned or controlled by either Pukke or DebtWorks, including The P Family Trust, The P II Family Trust, and The Pukke 2002 Family Trust." Prel. Inj. Order, Definition K.

The Receiver issued the Subpoena for the Media Choice records in question based on the Receiver's ongoing investigation and discovery to locate assets comprising Receivership Property and any such property that may have been transferred to third parties or may be held in the name of third parties. The Receiver's investigation pertaining to Media Choice and sources of information which led the Receiver to issue the Subpoena for the account records in question included but is not limited to (a) the deposition of Cook, (b) the deposition of Janis Pukke, the father of Andris Pukke, and (c) documents produced pursuant to other records subpoenas which suggest that assets constituting Receivership Property were directed to be transferred to Media Choice by Janis Pukke and by Peter Baker, one of Andris Pukke's close friends and a person who has apparently assisted Pukke in trying to divert and convert Receivership Property in violation of the Preliminary Injunction Order, in particular with respect to a \$6.4 million residence acquired in Baker's name two months after the receivership in July 2005 located at 69 Emerald Bay, Laguna Beach, California and as to Pukke's ownership interests in a major development in Belize known as Sanctuary Bay Estates owned by Dolphin Development Company, Ltd. as to which Pukke is the majority shareholder.

The pending Motion is supported by a declaration of Stephen Todd Cook ("Cook") in which Cook states that he is the managing member and President of Media Choice which was formed February 23, 2005, approximately two months prior to the issuance of the Preliminary Injunction Order. The Cook declaration further attests that Media Choice has had no business

dealings with Ameridebt, Inc., DebtWorks, Inc. or Andris Pukke (“Pukke”) or any entity related to Pukke and has never held any assets of those entities or of Pukke or any entity related to Pukke.

This Motion and the issues raised therein are similar and closely related to another discovery dispute pending before the Court involving Cook and a subpoena issued by the Receiver for his personal bank account records at Bank of America. The Receiver requests that the Court take judicial notice of the Motion of Non-Party Stephen Todd Cook to Quash Subpoena, or in the Alternative, for Protective Order (“Cook Motion”), the Receiver’s extensive opposition papers filed in response to the Cook Motion and the reply filed by Cook. Conspicuously absent from the pleadings filed in connection with the Cook Motion is any declaration by Cook supporting the arguments and reply, particularly in light of the deposition testimony of Cook cited extensively by the Receiver in the opposition to the Cook Motion.

A. Cook Testimony Concerning His Relationship with Pukke and Media Choice

On November 16, 2005, the Receiver conducted the deposition of Cook. Cook, along with Peter Baker (“Baker”), is one of Pukke’s closest friends. (Cook Transcript (“Trans.”)¹ 163:16-22; 166:8-9; 167:12-21.) In fact, Cook equates his friendship with Pukke to his relationship with his family. (Cook Trans. 168:18-21.) Cook has testified that he has known Pukke since they went to high school together in New York. (Cook Trans. 15:4-24.)

Cook testified at the deposition regarding Media Choice. Cook testified that Media Choice is a limited liability company and that he “absolutely” was the sole member of Media Choice. (Cook Trans. 94:15-21.) He testified that Media Choice is a company that sells leads and advertising time on television and that it was not profitable in 2005. (Cook Trans. 94:15-17; 99:15 – 100:12; 125:20-22.)

B. Janis Pukke Testimony and Bank Records Regarding Media Choice

Cook’s testimony regarding his sole ownership of Media Choice directly contradicts

¹ Excerpts of the Cook Transcript cited in this opposition are attached collectively as Exhibit 1 to the Caris Declaration.

testimony by Pukke's father, Janis Pukke, at his recent deposition conducted on May 22, 2006 and which prompted the Receiver to issue the Subpoena for Media Choice records. Banking records produced by Janis Pukke for a bank account at Hansabanka, a bank in Latvia where Janis Pukke was born, showed a transfer of \$200,000 from the Hansabanka account was made to Media Choice on June 10, 2005, approximately six weeks after the Preliminary Injunction Order was issued. See Caris Decl., para. 7 and Tab 13 to Receiver's Report of Activities for the period of January 1, 2006 through June 23, 2006 ("Receiver's 2006 Report"). When questioned as to the reason for the transfer of this large sum to Media Choice, Janis Pukke stated that "he bought stock in the company."² (Janis Pukke Trans. 229:3-10.) Janis Pukke further testified that he understood that Media Choice was a media publishing company owned by a friend of his son Andris, and clearly repeated in response to a series of questions that through the payment he was making an investment in the company to acquire an ownership in Media Choice, that the payment was not a loan and that for that payment he acquired 200,000 shares of Media Choice, although he did not receive the shares of stock. (Janis Pukke Trans. 229:2 – 230:18.) Janis Pukke acknowledged that he heard about Media Choice through his son Andris and that he was not sure which of Andris Pukke's friends was involved in the company but believed it was Todd Cook. (Janis Pukke Trans. 229:24 – 230:3; 230:19 – 231:6.)

Because this payment precedes Cook's testimony that he was the sole owner of Media Choice by five months, either Cook lied about his being the sole owner of the company, or Janis Pukke lied about the reason for the \$200,000 transfer from the Hansabanka account to Media Choice, or they both lied. Facts adduced to date suggest that Andris Pukke and Janis Pukke have been concealing Andris Pukke's true ownership of funds in the Hansabanka account and moving these funds to persons and entities in violation of the Preliminary Injunction Order.

The fact that the funds came from the Hansabanka account is especially noteworthy and significant with respect to the issue of Receivership Property which the Receiver has a clear duty

² Excerpts of the Janis Pukke Transcript cited in this opposition are attached collectively as Exhibit 2 to the Caris Declaration.

to locate and seize. The Hansabanka account from which the funds to Media Choice were transferred is held in the name of Janis Pukke. However, Andris Pukke identified that same account as his account on a loan application he prepared and submitted to a third party lender in 2003. See Caris Decl., para. 7 and Tab 10 to Receiver's 2006 Report. Further, approximately \$12.7 million in purported dividends and Sportingbet.Plc ("Sportingbet") stock sale proceeds were deposited into that same Hansabanka account, most of it shortly before the Preliminary Injunction Order was issued. (Janis Pukke Trans. 174:2-9; 175:2 -176:21; 177:8-20.)

Sportingbet is the successor to the entity Internet Opportunity, an entity founded by another of Pukke's close friends, John Vipulis, who is also Janis Pukke's godson.³ (Janis Pukke Trans. 133:20 – 134:12; 135:23 – 136:6.) Pukke listed the Internet Opportunity stock as an asset on his financial statement submitted in connection with his divorce proceedings in Maryland. See Receiver's 2006 Report, p. 6. The facts and circumstances pertaining to the Hansabanka account are detailed in the Receiver's latest account filed with the Court on June 29, 2006.

C. Peter Baker Connection with Pukke, Receivership Assets and Media Choice

The Receiver requests that the Court take judicial notice of the Receiver's Special Report filed on or about September 19, 2005 and the Receiver's Reports of Activities filed on March 3, 2006 and June 29, 2006 in particular with respect to activities pertaining to Dolphin Development Company, Ltd. and the residence located at 69 Emerald Bay, Laguna Beach, California. As reflected in the Reports, Andris Pukke has continued to exercise substantial post-receivership control over Dolphin Development in Belize despite the terms of the Preliminary Injunction Order and Final Judgment which make the entity and its assets Receivership Property based on Pukke's majority ownership interest. Peter Baker also holds a small interest in Dolphin Development and is apparently controlling activities of the entity, including continuing to sell lots at the Sanctuary Bay development without the Receiver's consent, authorization or approval. With respect to the 69 Emerald Bay property, these Reports detail the evidence that indicates

³ The Receiver is also involved in an unresolved discovery dispute over documents subpoenaed from an accounting firm covering John Vipulis and a number of entities with which he is associated which is pending in the District Court for the Southern District of Florida.

Peter Baker acquired that property on behalf of Pukke, taking title in his name to circumvent the asset freeze and receivership provisions of the Preliminary Injunction Order.

The Receiver subpoenaed records of the e-mail account peterbelize@gmail.com from Google. The Receiver successfully defeated a motion by Peter Baker to quash the Google subpoena. Pursuant to the Court's order⁴ on the motion to quash, Google turned the e-mail records over to Peter Baker's attorney who was responsible for producing the documents to the Receiver as well as providing a privilege log covering attorney-client privileged or truly "private" communications as described in Magistrate Judge LaPorte's order, a copy of which is attached as Exhibit 2 to the Supplemental Declaration of Gary Owen Caris in support of this opposition which is filed concurrently herewith with a request that such Supplemental Declaration be filed under seal. Baker produced documents to the Receiver which include numerous documents subject to a claim of "privacy" that clearly were intended to be withheld in violation of the letter and spirit of the Court's ruling, including a document identified in the supplemental declaration of Gary Owen Caris which is filed herewith along with the Receiver's concurrent application to file the Supplemental Caris Declaration and the attached e-mail exhibit under seal.⁵ The Supplemental Caris Declaration addresses the relevance and import of the e-mail attached thereto to the pending discovery dispute. In this publicly filed pleading, the Receiver notes that the e-mail identifies Media Choice as the recipient of additional funds transferred from an offshore brokerage account that the Receiver believes is connected to the receivership.

⁴ This discovery dispute was heard and determined in the District Court for the Northern District of California.

⁵ A review of the attached e-mail along with numerous other documents identified as "private" on Baker's privilege log makes it clear the document is not subject to a valid claim of privacy, and the Receiver has disputed Baker's position in this regard. To date, Baker has taken no steps to seek an order determining that the documents produced in fact constitute "private" documents not relevant to the Receiver's investigation and that should be returned to Baker's counsel. However, in an abundance of caution, the Receiver addresses the content and import of the e-mail in question in the separate Supplemental Caris Declaration to be filed under seal with Court permission.

The Receiver's investigation has demonstrated a mode of operating for Pukke by which he uses a network of close friends and family to hold, hide and transfer assets in which he holds a beneficial ownership interest. Pukke also has used various entities which he has owned or controlled, directly or indirectly, to funnel millions of dollars to these same friends, associates and family members through "loans" or "investments," most of which are undocumented and have never been repaid. Media Choice appears to be another entity Pukke has used as a medium to transfer funds in apparent circumvention of the Preliminary Injunction Order. The Receiver is entitled to explore the disposition of the \$200,000 in funds transferred to Media Choice by Pukke or Pukke's father post-receivership in June 2005, as well as any other transfers to or from the account that may lead to the discovery of evidence pertaining to Receivership Property.

While the Receiver has not repeated the deep connections between Pukke and Cook that are detailed in the Receiver's Opposition to the Cook Motion of which the Receiver has requested the Court take judicial notice, the Receiver notes that Cook and Pukke have a close business relationship through co-ownership in at least one company, a network of business dealings between their respective companies, loans made by Pukke's companies to Cook and Cook's companies and numerous mutual friends and business associates, several of whom own businesses that not coincidentally are located and operated at the same location as that of Media Choice and other Cook owned or controlled companies, such as Prudent Choice.

D. Relevance, Burden of Proof and Receiver's Right to Make Independent Review

The party seeking to preclude discovery bears the burden of demonstrating discovery should not be provided. The Motion fails to meet that burden. Cook's self-serving and conclusory attestations that Media Choice has not had business dealings or held assets of Ameridebt, DebtWorks and Pukke is in fact belied by banking records and the testimony of Pukke's own father. Further, the Receiver, as a court-appointed fiduciary and arm of the Court directed to investigate Pukke and Receivership Property is entitled to assess the veracity of Cook's conclusions and to determine which sworn statements made by Cook and Janis Pukke to the Receiver are false, by making an independent review of the Media Choice records in light of the other information and records available to the Receiver. The Receiver is entitled to make an

independent assessment of the connection between Media Choice and the receivership and is not required to rely on the statements of one of Pukke's closest friends, one who himself and through his company Prudent Choice has been the beneficiary of Pukke's loans aggregating over \$2.1 million that remain outstanding. For the reasons detailed herein, the Motion should be denied and the documents ordered produced by the Bank forthwith.

The Receiver's accompanying Memorandum of Law sets forth the reasons the objections to the Subpoena raised by Media Choice fail to provide a legal basis for the Court to quash the Subpoena. At most, as set forth in the Memorandum, Media Choice may be entitled to a limited protective order to protect any personal information in the records obtained from being disclosed publicly, such as the bank account number on the account or any taxpayer identification number that may appear in the account records. Any need to protect the records from public disclosure that the Court may find Media Choice has demonstrated, however, does not justify quashing the Subpoena or precluding the documents from being produced to the Receiver given the evidence indicating that Receivership Property may have been transferred to the Media Choice account post-receivership at the behest of Pukke and/or that the receivership estate may have an ownership interest in Media Choice based on the \$200,000 purported investment in that company from a bank account previously claimed by Andris Pukke to be his personal account on his sworn financial statement to a third party financial institution.

III. CONCLUSION

The Receiver respectfully submits that the Motion should be denied.

Dated: July 10, 2006

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