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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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UV2, LLC, a Michigan limited liability  
company, as successor interest to UV2,

No. CV 10-01269-PHX-ROS

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Plaintiff/Judgment Creditor,

**REPORT AND RECOMMENDATION**

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vs.

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EMC TELECOM CORPORATION, an  
Arizona corporation, now known as  
EMCT ACQUISITIONS, INC.,

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Defendant/Judgment Debtor.

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DIGITAL VENTURES, LLC, an Arizona  
Limited Liability Company,

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Garnishee/Judgment Debtor.

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CC BILL, LLC, an Arizona limited  
liability company,

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Garnishee.

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TO THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE, UNITED STATES  
DISTRICT COURT:

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This matter arises on Plaintiff/Judgment-Creditor UV2, LLC's ("Plaintiff")  
Application for Writ of Garnishment against Garnishee CC Bill, LLC ("Garnishee"), filed  
on December 19, 2012. (Doc. 53.) Defendant/Judgment Debtor Garnishee Digital Ventures,  
LLC ("Digital Ventures") was previously ordered to pay restitution to Plaintiff in the amount  
of \$602,735.00, as principal, with interest accruing at the rate of 0.18% per annum from  
December 12, 2012. (Doc. 49.) Plaintiff seeks the Writ because of its belief that Garnishee

1 is in possession of property in which Digital Ventures has a nonexempt interest. On January  
2 9, 2013, Garnishee filed its Answer admitting that “CC BILL, LLC, provides payment  
3 processing services for judgment debtor. We provide payment to judgment debtor on a  
4 weekly basis. The account in question receives approximately \$18,000-\$20,000 weekly.  
5 Account on hold.” (Doc. 63.) On January 28, 2013, Garnishee filed an Amended Answer,  
6 denying that it held property of Digital Ventures, claiming that:

7 [Garnishee] has become apprised of an erroneous statement inadvertently  
8 made in its original Answer. Specifically, due to misleading information  
9 internally, CC Bill was mistaken as to who the ‘Judgment-Debtor’ identified  
10 in the Application for Writ of Garnishment was. Upon further review, CC Bill  
11 has determined that, contrary to its original Answer, the actual Judgment  
Debtor - Digital Ventures, LLC - holds no client accounts with CC Bill. The  
‘account in question’ noted in CC Bill’s original answer properly belongs to  
Pink Bird Media, who CC Bill now understands is merely another garnishee.  
(Doc. 70, at 1.)

12 On January 31, 2013, Plaintiff filed an Objection and Request for Hearing Regarding  
13 Garnishee’s Answer, averring therein that good cause exists to believe that Garnishee does  
14 in fact have additional money belonging to Digital Ventures, and that, based upon discovery  
15 provided in ongoing litigation in state court involving the parties, there is “substantial  
16 evidence showing that CC Bill has significant financial obligations to [Digital Ventures].”  
17 (Doc. 75.)

18 This Court, pursuant to A.R.S. §12-1580, scheduled a telephonic Conference between  
19 Plaintiff and Garnishee on February 25, 2013. (Doc. 73.) During the telephonic conference,  
20 Plaintiff waived its right to a hearing on its objection. Plaintiff was directed to file a  
21 Memorandum in support of its objection by March 4, 2013, and Garnishee was directed that  
22 any responsive pleading must be filed by March 28, 2013. On March 4, 2013, Plaintiff filed  
23 a Memorandum in Support of Plaintiff’s/Judgment-Creditor’s Objection to Garnishee WMM  
24 Holdings, LLC’s Answer. (Doc. 86.) Garnishee has not filed a response.

25 Plaintiff argues that Garnishee is indebted to Digital Ventures as set forth in  
26 Garnishee’s original Answer. Plaintiff asserts that the money Garnishee notes in that original  
27 answer that it receives, “is held and eventually transferred to the benefit of [Digital  
28 Ventures].” (Doc. 86, at 2.) Furthermore, Plaintiff states:

1 [Garnishee’s original] Answer was based on the payment-processing services  
2 CC Bill performed for DV’s website, which have been nominally titled to Pink  
3 Bird. For the reasons discussed in the Double D/Pink Bird Memorandum,  
4 because the transfer of DV’s assets was fraudulent, to the extend CC Bill  
5 remits funds to Pink Bird - or any other party - that are generated from the  
6 [amateurstraightguys.com] website, those funds belong to DV and are subject  
7 to garnishment here. ... The CC Bill records showing that CC Bill continues  
8 to do processing for DV’s [amateurstraightguys.com] website, ... are attached  
9 hereto.  
10 (Doc. 86, at 2.)

11 Plaintiff suggests that CC Bill amended its original Answer under pressure from Pink  
12 Bird, and notes that its Amended Answer, though signed by CC Bill in-house counsel, at the  
13 bottom of page two bears the watermark of the law firm “Benedetto Torgenson, PLC,” the  
14 firm that represents Pink Bird and Double D Holdings in this action. (Doc. 86, at 2.)

15 Despite having an opportunity to respond to Plaintiff’s Memorandum, Garnishee did  
16 not file a response. The Court finds that the uncontroverted documents provided by Plaintiff  
17 are sufficient to support their assertions as set forth in their Memorandum in Support of  
18 Plaintiff’s/Judgment-Creditor’s Objection to Garnishee CC Bill, LLC’s Answer, that  
19 Garnishee is in possession of money or property belonging to Digital Ventures. As such, the  
20 Court will recommend the granting of the Writ. See also LRCiv 7.2(I) (if a party files a  
21 motion, and the opposing party “does not serve and file the required answering memoranda,  
22 ... such non-compliance may be deemed a consent).

23 In accordance with the foregoing,

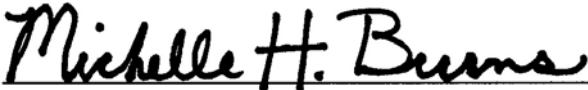
24 **IT IS HEREBY RECOMMENDED** that Plaintiff’s Objection to Garnishee’s  
25 Answer, (Doc. 75), be **SUSTAINED**, and judgment be entered against Garnishee CC Bill,  
26 LLC.

27 **IT IS FURTHER RECOMMENDED** that the Court order Plaintiff to submit a  
28 proposed form of judgment within 30-days of the Court’s final order.

This recommendation is not an order that is immediately appealable to the Ninth  
Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of  
Appellate Procedure, should not be filed until entry of the District Court’s judgment. The  
parties shall have fourteen (14) days from the date of service of a copy of this

1 recommendation within which to file specific written objections with the Court. See 28  
2 U.S.C. § 636(b)(1); Fed.R.Civ.P. 6(a), 6(b) and 72. Thereafter, the parties have fourteen (14)  
3 days within which to file a response to the objections. Failure to timely file objections to the  
4 Magistrate Judge’s Report and Recommendation may result in the acceptance of the Report  
5 and Recommendation by the district court without further review. See United States v.  
6 Reyna-Tapia, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003). Failure to timely file objections to any  
7 factual determinations of the Magistrate Judge will be considered a waiver of a party’s right  
8 to appellate review of the findings of fact in an order of judgment entered pursuant to the  
9 Magistrate Judge’s recommendation. See Fed.R.Civ.P. 72.

10 DATED this 20<sup>th</sup> day of May, 2013.

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13 Michelle H. Burns  
14 United States Magistrate Judge  
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