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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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WMM HOLDINGS, LLC, a Nevada  
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 WMM Holdings, 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 sought the Writ because of its belief

1 that Garnishee is in possession of property in which Digital Ventures has a nonexempt  
2 interest. On January 9, 2013, Garnishee filed its Answer admitting it owed the Digital  
3 Ventures \$643.18. (Doc. 64.) On January 17, 2013, Plaintiff filed an Objection and Request  
4 for Hearing Regarding Garnishee WMM Holdings, LLC's Answer, averring therein that  
5 good cause exists to believe that Garnishee does in fact have additional money belonging to  
6 Digital Ventures, and that, based upon discovery provided in ongoing litigation in state court  
7 involving the parties, there is "substantial evidence showing that Garnishee has significant  
8 financial obligations to [Digital Ventures]." (Doc. 67.)

9 This Court, pursuant to A.R.S. §12-1580, scheduled a telephonic Conference between  
10 Plaintiff and Garnishee on February 6, 2013. (Doc. 73.) During the telephonic conference,  
11 Plaintiff waived its right to a hearing on its objection. Plaintiff was directed to file a  
12 Memorandum in support of its objection by February 20, 2013, and Garnishee was directed  
13 that any responsive pleading must be filed by March 6, 2013. On February 20, 2013,  
14 Plaintiff filed a Memorandum in Support of Plaintiff's/Judgment-Creditor's Objection to  
15 Garnishee WMM Holdings, LLC's Answer. (Doc. 82.) Garnishee has not filed a response.

16 Plaintiff argues that Garnishee is indebted to Digital Ventures by virtue of a 3-year  
17 Non-Exclusive Digital Distribution Agreement ("the Agreement") entered into between  
18 Garnishee and Double D Holdings, LLC ("Double D Holdings") on July 8, 2010. (Doc. 82,  
19 at 11-21.) Pursuant to the agreement, Garnishee had agreed to distribute and promote certain  
20 motion pictures, video titles, still photographs and other audio and visual content produced  
21 by Double D Holdings, and agreed to pay license fees, according to an incorporated  
22 schedule, by the 15<sup>th</sup> of each month. The agreement was signed by Double D Holdings  
23 Partners Scott Delong and Dennis Ashe and Garnishee president Scott Coffman. Plaintiff  
24 argues that Digital Ventures transferred its assets to Double D Holdings just prior to the  
25 effective date of the Agreement, and that this transfer was an attempt to avoid liability to  
26 Plaintiff on a judgment Plaintiff was seeing against Digital Ventures in a state court matter.  
27 Plaintiff asserts that this is a fraudulent transfer pursuant to the Uniform Fraudulent Transfer  
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1 Act, A.R.S. §44-1007(a)(1), and that therefore Plaintiff is entitled to garnishment against Garnishee.

2 In support of its claim, Plaintiff produces copies of a court minute entry in UV2, LLC  
3 v. Digital Ventures LLC, et al., Maricopa County Superior Court CV 2009-054788,  
4 reflecting that on July 2, 2010, the court granted Plaintiff's motion for summary judgment  
5 on count IV of Plaintiff's complaint, and entered judgment against Digital Ventures in the  
6 amount of \$36,665.27. (Doc. 82, at 34-37.) This claim pertained to a line of credit  
7 agreement between Plaintiff and Digital Ventures. (Doc. 82, at 3.) Plaintiff also produces  
8 an email Plaintiff sent to Garnishee on July 8, 2010, the same day the Agreement was signed,  
9 informing Garnishee of the court's ruling. (Doc. 82, at 25.) The same day, Garnishee sent  
10 an email to Digital Ventures confirming the Agreement and notifying Messrs DeLong and  
11 Ashe of Double D Holdings that a new account would be opened up for Double D Holdings  
12 and that movies would be transferred from Digital Ventures's account into the Double D  
13 Holdings account. (Doc. 82, at 9.) On July 13, 2010, counsel for Garnishee contacted Mr.  
14 Ashe to inform him that a third party (Plaintiff) had contacted him and made a claim to the  
15 proceeds that were being transferred from Digital Ventures to Double D Holdings. (Doc. 82,  
16 at 3, 44.)

17 Plaintiff also asserts that the Agreement merely replaced the prior nearly identical  
18 agreement between Digital Ventures and Garnishee that had been in place since 2002, with  
19 the only change being the substitution of Double D Holdings for Digital Ventures. (Doc. 82,  
20 at 2.) By the time the summary judgment ruling had become a final order, Plaintiff claims  
21 that Garnishee had assisted Digital Ventures in successfully transferring the account out of  
22 Digital Ventures's name and delaying Plaintiff's collection efforts. (Doc. 82, at 3.) Plaintiff  
23 paints a clear picture that Garnishee's previous financial obligation to Digital Ventures was  
24 simply transferred to Double D Holdings by virtue of the Agreement, but that the nature of  
25 services provided by Garnishee was not altered.

26 Despite having an opportunity to respond to Plaintiff's Memorandum, Garnishee did  
27 not file a response. The Court finds that the uncontroverted documents provided by Plaintiff  
28 are sufficient to support their assertions as set forth in their Memorandum in Support of

1 Plaintiff's/Judgment-Creditor's Objection to Garnishee WMM Holdings, LLC's Answer, that  
2 Garnishee is in possession of money or property belonging to Digital Ventures. As such, the  
3 Court will recommend the granting of the Writ. See also LRCiv 7.2(I) (if a party files a  
4 motion, and the opposing party "does not serve and file the required answering memoranda,  
5 ... such non-compliance may be deemed a consent).

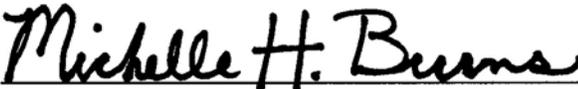
6 In accordance with the foregoing,

7 **IT IS HEREBY RECOMMENDED** that Plaintiff's Objection to Garnishee WMM  
8 Holdings, LLC's Answer, (Doc. 67), be **SUSTAINED**, and judgment be entered against  
9 Garnishee WMM Holdings, LLC..

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

12 This recommendation is not an order that is immediately appealable to the Ninth  
13 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of  
14 Appellate Procedure, should not be filed until entry of the District Court's judgment. The  
15 parties shall have fourteen (14) days from the date of service of a copy of this  
16 recommendation within which to file specific written objections with the Court. See 28  
17 U.S.C. § 636(b)(1); Fed.R.Civ.P. 6(a), 6(b) and 72. Thereafter, the parties have fourteen (14)  
18 days within which to file a response to the objections. Failure to timely file objections to the  
19 Magistrate Judge's Report and Recommendation may result in the acceptance of the Report  
20 and Recommendation by the district court without further review. See United States v.  
21 Reyna-Tapia, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003). Failure to timely file objections to any  
22 factual determinations of the Magistrate Judge will be considered a waiver of a party's right  
23 to appellate review of the findings of fact in an order of judgment entered pursuant to the  
24 Magistrate Judge's recommendation. See Fed.R.Civ.P. 72.

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

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28 Michelle H. Burns  
United States Magistrate Judge