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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DISH NETWORK, LLC., et al.,	)	Civil No. 09-1553-L(WVG)
	)	
Plaintiffs,	)	ORDER COMPELLING PRODUCTION OF
	)	DEFENDANTS' BUSINESS RECORDS
v.	)	
	)	
SONIC VIEW USA, INC., et al.,	)	
	)	
Defendants.	)	
	)	
<hr/>	)	

On March 4, 2011, the Court compelled Defendants to produce several categories of financial documents.<sup>1</sup> This order was appealed and upheld by the District Judge assigned to the case. Defendants produced some responsive documents and claimed that they did not have any further responsive documents. However, the production was incomplete. Therefore, Plaintiffs subpoenaed Defendants' banks for complete responsive information. Defendants moved to quash the subpoenas.

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<sup>1/</sup> These included documents sufficient to show Defendants' net worth and profits, income statements, operating statements, profit and loss statements, balance sheets and tax returns.

1           On August 23, 2011, the Court granted in part and denied in  
2 part Defendants' Motion to Quash. Specifically, the Court ordered  
3 that the subpoenaed documents be produced to Defendants' counsel for  
4 redaction of personal expenses such as medical bills and household  
5 expenses. The Court further ordered that, within ten days, the  
6 documents be produced to Plaintiffs along with a privilege log.  
7 This order was also appealed and upheld by the District Judge  
8 assigned to the case. Defendants failed to comply with the order to  
9 produce in a timely fashion.

10           On November 21, 2011, the Court ordered Plaintiffs' counsel  
11 to submit a list of Defendants' previously-subpoenaed business  
12 financial records indicating the account numbers of the records and  
13 the status of their production. The Court also ordered Defendants'  
14 counsel to submit letter briefs addressing the discoverability of  
15 Defendants' business financial records. On November 23, 2011, the  
16 Court received Plaintiff's counsel's list ("Exhibit A list"). On  
17 December 5, 2011, the Court received the letter briefs from  
18 Defendants' counsel.

19           On December 19, 2011, the Court ordered Defendants to produce  
20 the records identified in the Exhibit A list on or before January  
21 20, 2012. Defendants were permitted to redact personal expenses and  
22 Cyndi Phu's separate property interests.<sup>2</sup> On January 19, 2012, one  
23 day before the deadline, Defendants produced some but not all of  
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28           <sup>2/</sup> Cyndi Phu, a non-party to this lawsuit, is the wife of Defendant Alan  
Phu.

1 these records.<sup>3</sup> Therefore, Defendants have again failed to substan-  
2 tively comply with the Court's order.

3 The Court, having reviewed the pertinent letters and briefs,  
4 and GOOD CAUSE APPEARING, HEREBY ORDERS:

5 A. On or before April 24, 2012, Defendants shall produce  
6 statements for all Sonicview and HT Solutions bank accounts,  
7 including but not limited to, HT Solutions accounts at Wells Fargo  
8 Bank ending in 2087 and 3798, from January 1, 2006 to present.

9 Defendants contend that discovery closed on September 30,  
10 2011 and that Plaintiffs are consequently time-barred from raising  
11 a discovery dispute. However, the Court has ordered discovery since  
12 that date due to Defendants' repeated failure to comply with the  
13 Court's orders (specifically those orders dated March 4, 2011;  
14 August 23, 2011; and December 19, 2011.) The Court has no intention  
15 of rewarding Defendants for their delays and willful failure to  
16 comply with court orders by cutting off Plaintiffs' rightful pursuit  
17 of discovery.

18 Defendants further contend the Sonicview and HT Solutions  
19 bank accounts were not compelled by the December 19, 2011 Order.  
20 However, the December 19, 2011 order was directly related to the  
21 previous orders which did specify those accounts. Even if produc-  
22 tion of the Sonicview and HT Solutions bank accounts were not  
23 compelled by the December 19, 2011 order, their production was  
24 nonetheless compelled by other previous orders.

25 B. On or before April 24, 2012, Defendants shall produce  
26 records for the following additional accounts ("New Accounts"):

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28 <sup>3/</sup> Defendants' March 2 letter to the Court claims that they "produced all  
of the records listed in Exhibit A" but contradict themselves four sentences  
later, stating that the documents were produced "[w]ith three exceptions..."

1           1. Bank of America and Wells Fargo accounts with numbers  
2 ending in 4697, 1348, 6060, 2592, 6421, 3859, 1647, 6265, 7359, and  
3 9990, which received transfers from Roberto Sanz's accounts, from  
4 January 1, 2006 to present.

5           2. Bank of America accounts with numbers ending in 5815,  
6 1199, 4649, 6320, 7448, 8548, and 3388 which received transfers from  
7 Duane Bernard's accounts, from January 1, 2006 to present.

8           3. Scotttrade and USAA Federal Savings accounts which  
9 received transfers totalling \$200,000 and \$18,500, respectively,  
10 from Duane Bernard's accounts, from January 1, 2006 to present.

11           Defendants object to production of these accounts on the  
12 basis that they were not included on the Exhibit A list. However,  
13 the Exhibit A list includes categories of accounts whose numbers  
14 were unknown. When discovery produces new information that identi-  
15 fies previously unknown accounts to which large transfers have been  
16 made, the interests of justice require production of the newly  
17 discovered accounts. Here, Plaintiffs' diligence yielded identifi-  
18 cation of new and relevant accounts for which timely requests for  
19 production were made. They must now be produced.

20           Defendants further contend that they "have no present  
21 obligation to explain or clarify any particular entry in any of the  
22 bank statements which were produced in compliance" with the December  
23 19, 2011 order. However, given the timing, number, and size of the  
24 transfers made from the produced accounts to the New Accounts, the  
25 transfers may have been fraudulent. The burden rests with Defen-  
26 dants to explain why statements for the New Accounts should not be  
27 produced. Defendants have failed to do so.

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1 C. On or before April 24, 2012, Defendants shall produce all  
2 financial records pertaining to Wells Fargo account numbers ending  
3 in 7683, 5347, and 6221, from January 1, 2006 to present. Further-  
4 more, Defendants shall produce statements for the same period  
5 pertaining to any other accounts that received more than \$5,000.00  
6 in a single transaction from the Wells Fargo accounts ending in  
7 7683, 5347, 6221.

8 Defendants withheld production of information pertaining to  
9 these accounts, claiming that they are the sole and separate  
10 property of Cyndi Phu, a non-party to this lawsuit. However,  
11 Plaintiffs note that Defendant Alan Phu transferred \$223,834.37 to  
12 one of these accounts (numbered 7683) through his Satellite Dish  
13 Expert account. On this basis, Plaintiffs contend that the Uniform  
14 Fraudulent Transfer Act ("UFTA") applies. See Cal. Civ. Code §§  
15 3439.04-3439.05. UFTA reflects, in part, California's "general  
16 policy of protecting creditors from fraudulent transfer, including  
17 transfers between spouses."<sup>4</sup> Mejia v. Reed 31 Cal. 4th 657, 668  
18 (2003). Defendants have not explained this transfer or identified  
19 any reasonably equivalent value received in exchange for it.  
20 Therefore, statements from this account are necessary to determine  
21 whether the transfer must be set aside as fraudulent under UFTA.<sup>5</sup>  
22 See Keeley v. Anderson, 14 Cal. App. 2d 467, 470 (1936) (to  
23 determine whether transfer from husband to wife was made to defraud  
24 creditors, evidence regarding all circumstances must be examined);

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26 <sup>4/</sup> This policy has been recognized for over a century. See, e.g.,  
27 Threlkel v. Scott, 4 Cal. Unrep. 346, 348 (1893) (a fraudulent conveyance from  
husband to wife is void as against his creditors, irrespective of his intention  
to commit a fraud.)

28 <sup>5/</sup> The Court's March 4, 2011, order makes clear its intention not to  
conduct separate discovery on the issue of damages, should liability be proven.

1 see also Filip v. Bucurenciu, 129 Cal. App. 4th 825, 834 (2005)  
2 ("Whether a conveyance was made with fraudulent intent is a question  
3 of fact, and proof often consists of inferences from the circum-  
4 stances surrounding the transfer.") Thus, where a defendant and his  
5 non-party spouse commingle assets into a single account, and the  
6 transfer appears fraudulent, the recipient account must be consid-  
7 ered tainted for discovery purposes. Accordingly, in this case,  
8 financial records pertaining to the recipient accounts are relevant  
9 and discoverable.

10 Defendants' contention that the receiving account is solely  
11 held in a non-party's name due to a transmutation agreement is  
12 simply immaterial. First, although "California permits postnuptial  
13 agreements to transmute community property into separate property,  
14 [such] transmutation can [still] amount to a fraudulent transfer."  
15 In re Kimmel, 367 B.R. 174, 177 (N.D. Cal. 2007). Second, it is not  
16 beyond comprehension that an individual may attempt to conceal ill-  
17 gotten gains by transferring them to an account held solely by a  
18 trusted non-party rather than one bearing his or her own name.  
19 UFTA's prohibition on fraudulent transfers does not contain an  
20 exception allowing fraudulent transfers between spouses. Therefore,  
21 the California policy allowing the creditors of one spouse to  
22 enforce UFTA against transfers between spouses applies even when the  
23 recipient now holds the subject property solely. See, e.g., Mejia  
24 v. Reed, 31 Cal. 4th 657, 664, 668-69 (2003).

25 D. On or before April 24, 2012 Plaintiffs shall file with  
26 the Court a brief that states the amount and legal basis for their  
27 requests for expenses and monetary sanctions under Rules 11 or 37.

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1 The brief shall also contain documents that support the amount of  
2 monetary sanctions requested.

3 E. On several prior occasions, similar production of records  
4 has been ordered by the Court. On those occasions, the Court  
5 permitted Defendants to redact personal expenses and solely-held  
6 property. Since Defendants have abused this opportunity by  
7 "redacting" entire accounts without good cause, the Court will not  
8 extend this privilege to Defendants again. All statements ordered  
9 produced by this order shall be produced in their entirety. Any  
10 privacy interests will be protected by the Protective Order already  
11 in place in this case.

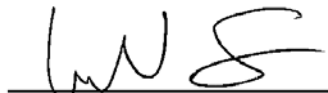
12 IT IS SO ORDERED.

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14 DATED: April 10, 2012

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Hon. William V. Gallo  
U.S. Magistrate Judge

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