

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JAMES R. ZAZZALI, as Trustee for the
DBSI Estate Litigation Trust and as
Trustee for the DBSI Private Actions
Trust,

Plaintiff,

v.

DOUGLAS L. SWENSON; CHARLES
HASSARD; JOHN M. MAYERON;
WALTER E. MOTT; FARRELL
BENNETT; JOHN D. FOSTER;
THOMAS VAR REEVE; GARY
BRINGHURST; JEREMY SWENSON;
DAVID SWENSON; MICK &
ASSOCIATES PC LLO, BRYAN S.
MICK; JOHN DOE 1-50; and XYZ
CORPORATION 1-50,

Defendants.

Case No. 1:12-CV-224-S-MJP

**ORDER ON REPORT AND
RECOMMENDATION**

This matter comes before the Court on the Report and Recommendation (R&R) of Magistrate Judge Mikel H. Williams (Dkt. No. 366) on Plaintiff's motion for summary judgment (Dkt. No. 211), the motion of Defendants' for Civil Rule 56(d) relief (Dkt. Nos. 319-21). Only Defendant Douglas Swenson filed any objections to the R&R. (Dkt. No. 366). Having reviewed the R&R, the objections, the response, and all related papers, the Court incorporates and adopts the R&R but modifies it as follows:

1. Plaintiff's motion for summary judgment (Dkt. No. 211) is GRANTED in Part and DENIED in part. The Court GRANTS summary judgment to Plaintiff as

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to the issue of Defendants' personal liability. The Court however DENIES the motion as to the amount Defendants are personally liable. While the record before the Court shows the Defendants may be liable up to \$196,689.54, the amount for any offset or credit properly attributed to the assets held in the Liquidating Trust is unknown.

2. Because outstanding issues of fact exist as to the offset or other credits, the Court GRANTS Defendant Mayeron's motion for conditional Rule 56(d) relief (Dkt. No. 319-20) so that Defendants may retain experts and depose Paul Judge in accordance with the Court's scheduling order.
3. The Court takes Defendant Douglas Swenson's motion under Rule 56(d) and related objections to the R&R as they pertain to the motion for the stay (Dkt. No. 379) under advisement until it hears oral argument in the motion to stay.

The Clerk is ordered to provide copies of this order to all counsel.

Dated November 22, 2013.



Chief United States District Judge for the
Western District of Washington
Sitting by Special Designation