

1 Don Logan
2 **32 East 57th Street, 12th Floor**
3 **New York, NY 10022**
4 Tel (949) 872 6806

Interested Party, Don Logan *in propria persona*

5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
7

8 In re 9 COBALIS CORP., Debtor-in-Possession.	Case No. 8:07:12347-TA Chapter 11
10 COBALIS CORP., a Nevada corporation, 11 12 Plaintiff, 13 vs. 14 YA GLOBAL INVESTMENTS, L.P., a Delaware 15 limited partnership, formerly known as 16 CORNELL CAPITAL PARTNERS, LP; and 17 YORKVILLE ADVISORS, LLC, a Delaware 18 limited liability company, 19 Defendants.	Adversary No. 08:09-AP-01705-TA Declaration of Don R Logan regarding Judicial Misconduct of Baker Botts eavesdropping, conspiracy to commit eavesdropping conspiracy to commit extortion. Hearing: March 6 th 2011 Time: 2pm Court Room: 5b Judge : Albert

21
22 Don R. Logan hereby files Declaration of Don R Logan regarding Judicial Misconduct of Baker
23 Botts eavesdropping, conspiracy to commit eavesdropping conspiracy to commit extortion and
herein respectfully submits following facts for the courts consideration.

24 **Conspiracy to commit Eavesdropping & Eavesdropping**

25 Upon Charles Luckey McDowell, Ryan Goins and Eric Sunderland. **Eavesdropping and**
26 a crime under *California Penal Code* § 632

27 This court can not sanction criminal conduct from Baker Botts attorneys named herein within
28 this affidavit.

1 Charles Luckey McDowell has once again offered the court a set of documents that clearly
2 violate my civil rights and California Law. at no time did Mr. McDowell seek respondents
3 consent to have attorneys Goins and Söderlund eavesdrop and that when Charles Luckey
4 McDowell telephoned respondent, Mr. McDowell knew respondent was in California.

4 Charles Luckey McDowell, with the assistance of Ryan Goins and Eric Sunderland conspired to
5 eavesdrop upon a non attorney, and a non party to this case in a manner that caused the three
6 men to commit the crime of Eavesdropping. The attorneys violated their duty to the public by
7 eavesdropping on a telephone conversation with a California resident who was neither a debtor
8 or a creditor in the instant case. Statements made and entered into this court under penalty of
9 perjury have provided unconditional proof that these men will do anything to accomplish the
10 objective that each seeks, regardless of the consequences to others.

9 Ryan Goins admission of guilt for criminal conspiracy and eavesdropping **Exhibit 1**
10 Eric Sunderlands admission of guilt for criminal conspiracy and eavesdropping **Exhibit 2**

10 At no time did Mr. McDowell seek permission of Don Logan, as would have been required by
11 law at the ONSET of the phone call (ie, Mr Logan this is Luckey McDowell, I have here in the
12 room with me ect.) yet Mr McDowell and his co conspirators have already admitted that no such
13 notice was issued or provided in any way whatsoever to have his fellow staff members listen in
14 on the phone call, as is fully detailed in the declarations proffered to the court.

14 Had Mr. McDowell requested that I allow 2 of his fellow staff members listen in I would have
15 outright refused. I had reasonable expectations that the phone call that I was on, with Charles
16 Luckey McDowell was private, and NOTHING was ever uttered to the contrary.

16 Eavesdropping on a confidential telephone conversation, without the consent of *all* parties, is a
17 criminal offense in California. *Penal Code* § 632, which is annexed hereto.

18 Unlike other states, such as New York, in which this is permitted based on the consent of *one*
19 party to the conversation, the Supreme Court of California has held that when the telephone call
20 involves a California resident, in California, **all** parties must consent. *Kearney v. Salamon* 39
21 Cal.4th 95 (2006).Case annexed.

21 The same Supreme Court has also held that even if the call is made from a sister state in which
22 eavesdropping is permitted, § 632 is still violated if the dialer, in this instance Charles Luckey
23 McDowell, knew that the call was being made to a California resident in California. *Flanagan v.*
24 *Flanagan* 27 Cal.4th 766 (2002).

24 By ignoring California law that prohibits wiretapping without a court warrant, the attorneys
25 demonstrated willfulness, recklessness and a complete disregard of state law that the
26 court is bound to enforce.

26 There were no mitigating factors for another to listen in on the conversation as might have
27 been the case if you did not speak English and a translator was required. As in individual not
28 represented by an attorney, I am particularly vulnerable. Charles Luckey McDowell, Ryan

1 Goins and Eric Sunderland thought they could get away with it because they believed I was
unaware of my rights.

2 This trampling of my rights has had a profound psychological effect on me as I
3 have been made to feel as a victim whose rights can be abused with impunity. This
4 has affected my ability to earn income and I have filed for Chapter 13.

5 Respondent Logan herein request that Charles Luckey McDowell, Ryan Goins & Eric
6 Sunderland each be found in contempt of court, and sanctioned be applied in the amount as
7 specified in the California. *Penal Code* § 632 of the State of California, in the amount of
8 \$5000.00 for each infraction of conspiracy as well as actual eavesdropping and further request
9 that this court forward the matter for criminal prosecution with the Orange County District
Attorney, and further issue a order barring each from the practice of Law, and further issue an
order disbarring each from the further practice of Law in the State of California and register
such order within the California Bar.

10 **Conspiracy to Commit Extortion**

11 In October 2011 I received a e mail form Charles Luckey McDowell requesting that we meet for
12 dinner. An certified copy of that e mail is herein attached and labeled as **Exhibit 3**

13 As this court can understand I was concerned with regard to the intent of McDowell at this meeting
14 and expressed such concern in a reply e mail sent to McDowell and attached herein as **Exhibit 3**,
never the less I agreed to meet him at a specific time and location (Roy's in Newport Beach)

15 Shortly after I sent conformation that I would meet with Mr McDowell, he sent a e mail stating that
16 Ryan Goins was going to join us. Raising my concern level, I asked a close friend of mine, Ret.
17 Superior court Judge Robert Polis, to join us and he accepted the invitation. Judge Polis has never
offered me legal advice, he is a good friend and was already aware of the many aspects of this matter
due to our many personal conversations. **Exhibit 4**

18 I e mailed McDowell and told him that Judge Polis would join us and his reply was to request that
19 the Sr. Litigator from Baker Botts be allowed to speak to Judge Polis prior to the meeting date.

20 Unfortunately Judge Polis was ill that day and as I drove to meet Mr. McDowell I received a call
21 from the Judge and was informed that he was not going to be able to make it. I went to Roy's and
22 waited for McDowell. Shortly after we were seated attorney Grantham stopped by and spoke to
McDowell and Goins, but he had to depart and I was left alone with these 2 attorneys.

23 Upon the conclusion of dinner attorney McDowell, whom had done ALL of the talking, leaned over
24 to me and said "If you go after Ryan, for eavesdropping, he would go after me for perjury" and he
then went on to describe the claim that he felt was incorrect regarding something that I had said in
moving papers.

25 I had already informed McDowell that I had every intention of moving forward with a criminal
26 complaint for Eavesdropping well before the dinner date. This statement was clearly witnessed by
27 Ryan Goins, at the dinner table at the time the threat was made.

1 Needless to say I was taken aback by his statement and after it was made, by McDowell dinner
ended quickly and we each departed

2 Rule 801(d)(2)(E) of the Federal Rules of Evidence provides that a “statement” is not hearsay if it
3 “is offered against a party” and is “a statement by a co-conspirator of a party during the course and
4 in furtherance of the conspiracy.” The admission of a co-conspirator statement against a defendant is
5 proper where the government establishes by a preponderance of evidence that: (1) a conspiracy or
6 scheme existed; (2) the defendant and the declarant were members of that particular conspiracy or
7 scheme; and (3) the statement was made during the course and in furtherance of the conspiracy or
8 scheme. See, e.g., *Bourjaily v. United States*, 483 U.S. 171, 175 (1987); *United States*
9 *v. Westmoreland*, 312 F.3d 302, 309 (7th Cir. 2002).

7 **Conclusion**

8 Attorney disciplinary proceeding came within ambit of bankruptcy court's “core” jurisdiction,
9 where conduct on which disciplinary sanction was predicated took place in course of attorney's
10 representation in matters central to administration of bankruptcy case. While recommended
11 procedure is for matters involving attorney discipline to be referred to standing committee, in
12 order to relieve bankruptcy court from serving in dual roles of prosecutor and arbiter in
13 investigation, prosecution and discipline of attorneys, such a referral is not required.

12 **Bankruptcy court may disbar or suspend attorney only upon clear and 13 convincing evidence.**

14 These attorneys violated their duty *to the public* by eavesdropping on a telephone conversation

- 15 • with a California resident who was neither a debtor or a creditor in the instant case.
- 16 • By ignoring California law that prohibits *wiretapping* without a court warrant, the attorneys
- 17 • demonstrated willfulness, recklessness and a complete disregard of state law that the
- 18 • court is bound to enforce.
- 19 • Once drawn to their attention, **the attorneys *did not express any regret.***
- 20 • There were no mitigating factors for another to listen in on the conversation as might have
- 21 • been the case if you did not speak English and a translator was required.
- 22 • As in individual not represented by an attorney, I am particularly vulnerable. They
- 23 • thought they could get away with it because they believed I was unaware of my rights.
- 24 • This trampling of rights has had a profound psychological effect on me as I
- 25 • have been made to feel as a victim whose rights can be abused with impunity. This
- 26 • has affected my ability to earn income and I have filed for Chapter 13.
- 27 • Besides asking the Court to suspend the involved attorneys, the Court can also refer
- 28 • the matter to the appropriate bar association and the Orange County district attorney

26 This Bankruptcy court, upon learning of possible breaches of California Rules of Professional
27 Conduct by Chapter 13 debtor's attorney while representing debtor in matters central to
28 administration of bankruptcy case, had authority to investigate and to impose its own sanctions
in addition to referring matter to the State Bar of California, and did not have to refer matter to

1 standing committee. Cal.Prof.Conduct Rule 1-101 et seq where orders notified attorney that
2 bankruptcy court was considering sanctions, including suspension or disbarment, and specified
3 the sanction able conduct and the evidence required. U.S.C.A. Const.Amend. 5;
4 Cal.Prof.Conduct Rule 1-101 et seq.

5 Bankruptcy court may impose a sanction in exercise of its inherent power to do so upon a
6 finding of willfulness, recklessness, or other fault by offending party. 11 U.S.C.A. § 105(a).

7 Factors that court should consider in choosing an appropriate sanction for attorney's professional
8 misconduct are: (1) whether the duty violated was one owed to client, to public, to legal system
9 or to profession; (2) whether attorney acted intentionally, knowingly or negligently; (3) whether
10 attorney's misconduct caused a serious, or potentially serious, injury; and (4) whether there are
11 aggravating and/or mitigating factors.

12 Aggravating factors, which justify an increase in degree of discipline imposed for attorney's
13 professional misconduct, include considerations such as whether attorney acted with dishonest
14 or selfish motive, whether he refused to acknowledge wrongful nature of his conduct, and
15 vulnerability of attorney's victim.

16 The bankruptcy court's inherent authority includes the power to suspend or disbar attorneys who
17 appear before it. Crayton, 192 B.R. at 976.

18 An attorney subject to disciplinary action is not entitled to the presumption of innocence, the
19 "beyond a reasonable doubt" burden of proof, confrontation of witnesses, id. at 564–65, or a
20 jury trial.

21 In the Central District of California, the bankruptcy court is empowered to supervise and
22 discipline attorneys via BLR 1001–2, which incorporates CLR 11–1 through 11–9, relating to
23 attorneys appearing in that district. CLR 11–6, entitled "Discipline," provides:

24 (a) General. In the event that a Judge has cause to believe that an attorney has engaged in
25 unprofessional conduct, the Judge may do any or all of the following:

- 26 (1) Initiate proceedings for civil or criminal contempt under Title 18 of the United States
27 Code and Rule 42 of the Federal Rules of Criminal Procedure;
- 28 (2) Impose other appropriate sanctions;
- (3) Refer the matter to the appropriate disciplinary authority of the state or jurisdiction in
which the attorney is licensed to practice;
- (4) Refer the matter to the Court's Standing Committee on Professional Conduct; or
- (5) Refer the matter to the Chief Judge for her or him to consider whether to issue an
order to show cause under Civ. L.R. 11–7.(emphasis added).

The bankruptcy court apparently imposed the suspension here at issue based on subsection (2),
which authorizes "other appropriate sanctions."

1 Aggravating factors include considerations which justify an increase in the degree of discipline
2 imposed, such as a dishonest or selfish motive, refusal to acknowledge wrongful nature of
3 conduct, and the vulnerability of the victim. *Id.* at 981 (citing ABA Standards 9.21 and 9.22).

4 Baker Botts, Charles Luckey McDowell, Ryan Goins and Eric Sunderland continue to create
5 vicious litigation in a effort to harass and annoy LOGAN in direct retaliation for my requests
6 to turn over documents to federal and state criminal authorities and each has clearly shown that
Sanctions are the only way this court can issue a warning to them and others that this type of
conduct will not be tolerated or accepted by the courts.

7 Movant in this motion herein requests that under the guidelines as set forth in the American Bar
8 Association standards, that Ryan Goins be fined a sum of &100,000.00 and be disbarred from
9 the practice of law for a period of not less then one year, in the central distinct of California, and
furthermore movant herein requests that this court under its authority forward this matter over to
the Orange County District Attorney for formal criminal charges.

10 Movant in this motion herein requests that under the guidelines as set forth in the American Bar
11 Association standards, that Charles Luckey McDowell be fined a sun of 100,000.00 and be
12 disbarred from the practice of law for a period of not less then one year, in the central distinct of
California, and furthermore movant herein requests that this court under its authority forward
13 this matter over to the Orange County District Attorney for formal criminal charges.

14 Movant in this motion herein requests that under the guidelines as set forth in the Amaerican
Bar Association standards, that Eric Sunderlandbe fined a sun of 100,000.00 and be disbarred
15 from the practice of law for a period of not less then one year, in the central distinct of
California, and furthermore movant herein requests that this court under its authority forward
16 this matter over to the Orange County District Attorney for formal criminal charges..

17 Movant in this motion herein requests that under the guidelines as set forth in the American Bar
18 Association standards, that Baker Botts be fined a sun of 100,000.00 to serve as notice that this
type of Judicial misconduct will not be further tolerated..

19 Respondent Logan herein request that Charles Luckey McDowell, Ryan Goins & Eric
20 Sunderland each be found in contempt of court, and sanctioned be applied in the amount as
21 specified in the California. *Penal Code* § 632 of the State of California, in the amount of
\$5000.00 for each infraction of conspiracy as well as actual eavesdropping and further request
22 that this court forward the matter for criminal prosecution with the Orange County District
Attorney, and further issue a order barring each from the practice of Law, and further issue an
23 order disbarring each from the further practice of Law in the State of California and register
such order within the California Bar.

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25 Respectfully resubmitted: Date: December 19th, 2011

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28 **Victim**, Don Logan *in propria persona*

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PROOF OF SERVICE OF DOCUMENTS

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is **32 East 57th Street, 12th Floor New York, NY 10022** A true and correct copy of the foregoing document(s) described as:

Declaration of Don R Logan regarding Judicial Misconduct of Baker Botts eavesdropping, conspiracy to commit eavesdropping conspiracy to commit extortion.. will be served or was served (a) on the Judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. SERVED VIA NOTICE OF E MAIL

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by e mail. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

On December 19th, 2011, I served the following persons and/or entities.

Via e mail

Debtor Cobalis Corporation
Attn: Chaslav Radovich, President

Via Personal Delivery to Chambers

The Honorable Theodor C. Albert
U.S. Bankruptcy Court – Santa Ana
411 West Fourth Street,
Santa Ana, CA 92701

Via e mail

C. Luckey McDowell
Baker Botts LLP
2001 Ross Avenue
Dallas, TX 75201-2980
Email: luckey.mcdowell@bakerbotts.com

Via e mail

Richard B. Harper
Kristin E. Flood
Baker Botts LLP
30 Rockefeller Plaza, 44th Floor
New York, NY 10112
Email: richard.harper@bakerbotts.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

12/19/11 Don Logan /s/ Don Logan
Date Type Name Signature

1 Don Logan
2 **32 East 57th Street, 12th Floor**
3 **New York, NY 10022**
4 Tel (949) 872 6806

Interested Party, Don Logan *in propria persona*

5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

7 In re 8 COBALIS CORP., Debtor-in-Possession.	Case No. 8:07:12347-TA Chapter 11
9 COBALIS CORP., a Nevada corporation, 10 11 Plaintiff, 12 vs. 13 YA GLOBAL INVESTMENTS, L.P., a Delaware 14 limited partnership, formerly known as 15 CORNELL CAPITAL PARTNERS, LP; and 16 YORKVILLE ADVISORS, LLC, a Delaware 17 limited liability company, 18 Defendants.	Adversary No. 08:09-AP-01705-TA MOTION TO HAVE CHARLES LUCKEY MCDOWELL DEEMED AS A HOSTILE WITNESS Hearing Date: March 6 th 2012 Time: 2pm Court Room: 5b Judge: T. Albert

19
20 Don R. Logan hereby files this MOTION TO HAVE CHARLES LUCKEY MCDOWELL
21 DEEMED AS A HOSTILE WITNESS in the matter the above captioned case under federal rule
22 Rule 611: Mode and Order of Interrogation and Presentation, and allow the cross examination of
Charles Luckey McDowell, under oath at the hearing March 6, 2012.

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24 Respectfully submitted: Date: December 18st, 2011

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28 **Victim, Don Logan *in propria persona***

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PROOF OF SERVICE OF DOCUMENTS

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is PO Box 1564 Costa Mesa CA 92627.

A true and correct copy of the foregoing document(s) described as:

MOTION TO HAVE CHARLES LUCKEY MCDOWELL DEEMED AS A HOSTILE WITNESS. will be served or was served (a) on the Judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. SERVED VIA NOTICE OF E MAIL

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by e mail. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

On December 18th ~ 20th, 2011, I served the following persons and/or entities.

Via personal delivery

Debtor Cobalis Corporation
Attn: Chaslav Radovich, President
2030 Main Street, Suite 1300
Irvine, CA 92614

Via Personal Delivery to Chambers

The Honorable Theodor C. Albert
U.S. Bankruptcy Court – Santa Ana
411 West Fourth Street,
Santa Ana, CA 92701

Via e mail

C. Luckey McDowell
Baker Botts LLP
2001 Ross Avenue
Dallas, TX 75201-2980
Email: luckey.mcdowell@bakerbotts.com

Via e mail

Richard B. Harper
Kristin E. Flood
Baker Botts LLP
30 Rockefeller Plaza, 44th Floor
New York, NY 10112
Email: richard.harper@bakerbotts.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

12/18/11	Don Logan	/s/ Don Logan
Date	Type Name	Signature

1 Don Logan
2 **32 East 57th Street, 12th Floor**
3 **New York, NY 10022**
4 Tel (949) 872 6806

Interested Party, Don Logan *in propria persona*

5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
7

8 In re 9 COBALIS CORP., Debtor-in-Possession.	Case No. 8:07:12347-TA Chapter 11
10 COBALIS CORP., a Nevada corporation, 11 12 Plaintiff, 13 vs. 14 YA GLOBAL INVESTMENTS, L.P., a Delaware 15 limited partnership, formerly known as 16 CORNELL CAPITAL PARTNERS, LP; and 17 YORKVILLE ADVISORS, LLC, a Delaware 18 limited liability company, 19 Defendants.	Adversary No. 08:09-AP-01705-TA MOTION TO HAVE ATTORNEY RYAN GOINS DEEMED AS A HOSTILE WITNESS Date: March 6 th , 2011 Time 2pm Court room 5b Judge T Albert

20
21
22 Don R. Logan hereby files this MOTION TO HAVE RYAN GOINS DEEMED AS A
23 HOSTILE WITNESS in the matter the above captioned case under federal rule Rule 611: Mode
24 and Order of Interrogation and Presentation, and allow the cross examination of Ryan Goins,
under oath during the hearing as setforth in the caption above

25 Respectfully submitted: Date: December 18st, 2011

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27 **Victim**, Don Logan *in propria persona*
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PROOF OF SERVICE OF DOCUMENTS

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding.
My business address is **32 East 57th Street, 12th Floor New York, NY 10022**

A true and correct copy of the foregoing document(s) described as:

MOTION TO HAVE RYAN GOINS DEEMED AS A HOSTILE WITNESS. will be served or was served (a) on the Judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. SERVED VIA NOTICE OF E MAIL

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by e mail. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

On December 18th ~ 20th, 2011, I served the following persons and/or entities.

Via personal delivery

Debtor Cobalis Corporation
Attn: Chaslav Radovich, President
2030 Main Street, Suite 1300
Irvine, CA 92614

Via Personal Delivery to Chambers

The Honorable Theodor C. Albert
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411 West Fourth Street,
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Kristin E. Flood
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30 Rockefeller Plaza, 44th Floor
New York, NY 10112
Email: richard.harper@bakerbotts.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

12/18/11	Don Logan	/s/ Don Logan
Date	Type Name	Signature

1 Don Logan
2 **32 East 57th Street, 12th Floor**
3 **New York, NY 10022**
4 Tel (949) 872 6806

Interested Party, Don Logan *in propria persona*

5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

7 In re 8 COBALIS CORP., 9 Debtor-in-Possession.	Case No. 8:07:12347-TA Chapter 11
10 COBALIS CORP., a Nevada corporation, 11 12 Plaintiff, 13 vs. 14 YA GLOBAL INVESTMENTS, L.P., a Delaware 15 limited partnership, formerly known as 16 CORNELL CAPITAL PARTNERS, LP; and 17 YORKVILLE ADVISORS, LLC, a Delaware 18 limited liability company, 19 Defendants.	Adversary No. 08:09-AP-01705-TA Motion for Sanctions upon Charles Luckey McDowell, Eric Sunderland and Ryan Goins and the Law Firm of Baker Botts for conspiracy to commit eavesdropping, eavesdropping, and conspiracy to commit extortion Date: March 6th 2011 Time 2:pm Court Room 5b Judge: T. Albert

20 Don R. Logan hereby files this motion requesting sanctions upon Charles Luckey
21 McDowell, Eric Sunderland and Ryan Goins

22 This motion is accomplished by way of the attached declaration of Don Ramey Logan

23 Respectfully submitted: Date: December 19th, 2011

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26 **Victim, Don Logan *in propria persona***
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PROOF OF SERVICE OF DOCUMENTS

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding.

My business address is **32 East 57th Street, 12th Floor New York, NY 10022.**

A true and correct copy of the foregoing document(s) described as:
Motion for Sanctions & declaration of Don Logan in support of motion for sanctions.
will be served or was served (a) on the Judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. SERVED VIA NOTICE OF E MAIL

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by e mail. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

On **December 19th**, 2011, I served the following persons and/or entities.

Via personal delivery Debtor Cobalis Corporation
Attn: Chaslav Radovich, President

Via Personal Delivery to Chambers

The Honorable Theodor C. Albert
U.S. Bankruptcy Court – Santa Ana
411 West Fourth Street,
Santa Ana, CA 92701

Via e mail Via e mail

C. Luckey McDowell Richard B. Harper
Baker Botts LLP Kristin E. Flood
2001 Ross Avenue Baker Botts LLP
Dallas, TX 75201-2980 30 Rockefeller Plaza, 44th Floor
Email: luckey.mcdowell@bakerbotts.com New York, NY 10112
Email: richard.harper@bakerbotts.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

12/19/11 _____ Don Logan _____ /s/ Don Logan _____
Date Name Signature

1 Keith C. Owens (CA State Bar No. 184841)

2 **VENABLE LLP**

2049 Century Park East, Suite 2100

Los Angeles, California 90067

Telephone: 310.229.9900

Facsimile: 310.229.9901

Email: *kcowens@venable.com*

3
4 C. Luckey McDowell (TX State Bar No. 24034565)

5 **BAKER BOTTS L.L.P.**

2001 Ross Avenue

6 Dallas, Texas 75201-2980

Telephone: 214.953.6500

7 Facsimile: 214.661.6503

Email: *luckey.mcdowell@bakerbotts.com*

8 Counsel for YA Global Investments, L.P.

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**

13 In re:	Case No 8:07-bk-12347-TA
14 COBALIS CORPORATION,	Chapter 11
15 Debtor.	
16 Cobalis Corporation,	Adv. No. 8:09-ap-1705-TA
17 Plaintiff,	DECLARATION OF RYAN A. GOINS IN
18 v.	SUPPORT OF REPLY TO DON LOGAN'S
19 Cornell Capital Partners LP, Yorkville	OPPOSITION TO YA GLOBAL'S MOTION
20 Advisors LLC, and YA Global	FOR SUPPLEMENTAL FINDINGS OF FACT
21 Investments, L.P.	AND CONCLUSIONS OF LAW
22 Defendants.	DATE: June 23, 2011
	TIME: 2:00 p.m.
	PLACE: Courtroom 5B
	411 West Fourth Street
	Santa Ana, CA
	Judge: HON. THEODOR C. ALBERT

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28 DAL02:586701.2

1 My name is Ryan A. Goins. I am over the age of 21 years and I am competent to
2 make this Declaration. I have personal knowledge of the facts as stated in this Declaration. I am
3 an attorney for creditor YA Global Investments, L.P. ("YA Global"). I make this declaration in
4 support of YA Global's *Reply to Don Logan's Opposition to YA Global's Motion for*
5 *Supplemental Findings of Fact and Conclusions of Law* (the "Reply").

6 1. On the afternoon of January 11, 2011, Luckey McDowell asked me to join him in
7 his office for a telephone call to Don Logan. In light of the allegations on the website
8 yagiscam.com, Mr. McDowell asked me to be present for the call for the express purpose of
9 witnessing his first telephonic interaction with Mr. Logan. I was present for the entire call to
10 Mr. Logan, which was made on a speakerphone. I did not bill YA Global for the time I spent
11 witnessing the call, but did so as a courtesy to Mr. McDowell.
12

13 2. The call itself is particularly memorable to me because of the speed at which
14 Mr. Logan spoke. Mr. Logan answered the call. After Mr. McDowell introduced himself, he
15 informed Mr. Logan of the time and place for the January 18, 2011 hearing. I vividly remember
16 the call because of the pace at which Mr. Logan spoke in his response to Mr. McDowell. After
17 Mr. McDowell informed Mr. Logan of the hearing, Mr. Logan spoke for the bulk of the call.
18 Mr. Logan spoke so rapidly that Mr. McDowell was almost completely unable to offer a
19 response.
20

21 Pursuant to 28 U.S.C. § 1746, I, Ryan A. Goins, declare under penalty of perjury that the
22 foregoing is true and correct.
23

24 Executed this 16th day of June 2011 in Dallas, Texas.

25 
26 Ryan A. Goins
27
28

1 Keith C. Owens (CA State Bar No. 184841)
2 **VENABLE LLP**
3 2049 Century Park East, Suite 2100
4 Los Angeles, California 90067
5 Telephone: 310.229.9900
6 Facsimile: 310.229.9901
7 Email: *kcowens@venable.com*

8 C. Luckey McDowell (TX State Bar No. 24034565)
9 **BAKER BOTTS LLP.**
10 2001 Ross Avenue
11 Dallas, Texas 75201-2980
12 Telephone: 214.953.6500
13 Facsimile: 214.661.6503
14 Email: *luckey.mcdowell@bakerbotts.com*

15 Counsel for YA Global Investments, L.P.

16 **UNITED STATES BANKRUPTCY COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SANTA ANA DIVISION**

19 In re:	20 Case No 8:07-bk-12347-TA
21 COBALIS CORPORATION,	22 Chapter 11
23 Debtor.	24 Adv. No. 8:09-ap-1705-TA
25 Cobalis Corporation,	26 DECLARATION OF RYAN A. GOINS IN
27 Plaintiff,	28 SUPPORT OF REPLY TO DON LOGAN'S
29 v.	30 OPPOSITION TO YA GLOBAL'S MOTION
31 Cornell Capital Partners LP, Yorkville	32 FOR SUPPLEMENTAL FINDINGS OF FACT
33 Advisors LLC, and YA Global	34 AND CONCLUSIONS OF LAW
35 Investments, L.P.	36 DATE: June 23, 2011
37 Defendants.	38 TIME: 2:00 p.m.
	39 PLACE: Courtroom 5B
	40 411 West Fourth Street
	41 Santa Ana, CA
	42 Judge: HON. THEODOR C. ALBERT

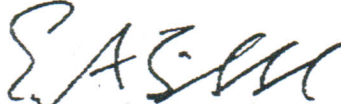
1 My name is Eric A. Söderlund. I am over the age of 21 years and I am competent
2 to make this Declaration. I have personal knowledge of the facts as stated in this Declaration. I
3 am an attorney for creditor YA Global Investments, L.P. ("YA Global"). I make this declaration
4 in support of YA Global's *Reply to Don Logan's Opposition to YA Global's Motion for*
5 *Supplemental Findings of Fact and Conclusions of Law* (the "Reply").

6 1. On the afternoon of January 11, 2011, Luckey McDowell asked me to join him in
7 his office for a telephone call to Don Logan. In light of the allegations on the website
8 yagiscam.com, Mr. McDowell asked me to be present for the call for the express purpose of
9 witnessing his first telephonic interaction with Mr. Logan. I was present for the entire call to
10 Mr. Logan, which was made on a speakerphone. I did not bill YA Global for the time I spent
11 witnessing the call, but did so as a courtesy to Mr. McDowell.

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13 Mr. Logan spoke. Mr. Logan answered the call. After Mr. McDowell introduced himself, he
14 informed Mr. Logan of the time and place for the January 18, 2011 hearing. I vividly remember
15 the call because of the pace at which Mr. Logan spoke in his response to Mr. McDowell. After
16 Mr. McDowell informed Mr. Logan of the hearing, Mr. Logan spoke for the bulk of the call.
17 Mr. Logan spoke so rapidly that Mr. McDowell was almost completely unable to offer a
18 response.

19 Pursuant to 28 U.S.C. § 1746, I, Eric A. Söderlund, declare under penalty of perjury that
20 the foregoing is true and correct.

21 Executed this 16th day of June 2011 in Dallas, Texas.

22 
23 Eric A. Söderlund
24
25
26
27
28

Hotmail

New | Reply Reply all Forward | Delete Junk Sweep ▾ Mark as ▾ Move to ▾ Cate

Inbox (105)

Folders

Junk (528)

Drafts (195)

Sent

Deleted (63)

City

shore

small business accounti...

WFLC

WFOCLC

Search Results

[New folder](#)

Quick views

Flagged (2)

Office docs (2)

Photos (6)

Shipping updates

[New category](#)

Messenger

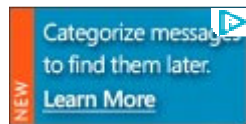
[9 invitations](#)

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Re: Dinner Oct 26th 6:45pm [Back to messages](#) |

To see messages related to this one, [group messages by conversation](#).

Charles L. McDowell

10/18/11

To logan_don@hotmail...

[Reply](#)

Sounds great. Thank you for setting it up. We'll see you next Wednesday, and I look forward to meeting you, Robert.

From: Don Logan [mailto:logan_don@hotmail.com]

Sent: Monday, October 17, 2011 11:51 PM

To: McDowell, Luckey

Cc: Goins, Ryan; Robert Polis <rjpolis@aol.com>

Subject: Dinner Oct 26th 6:45pm

Hello Everyone!,

We are confirmed for a table for 4 at Roy's in Fashion Island at 6:45pm the 26th of October.

[Roy's Newport Beach](#)

www.roysrestaurant.com - 453 Newport Center Drive, Newport Beach - (949) 640-7697

Look forward to it, see you all then!

Cheers!

Don Ramey Logan

Subject: RE: Country of culinary preference

Date: Mon, 17 Oct 2011 15:01:00 -0500

From: luckey.mcdowell@bakerbotts.com

To: logan_don@hotmail.com

CC: Ryan.Goins@bakerbotts.com

That works for me. My colleague Ryan Goins will be in town for the depositions, so I have asked him to join us. I hope it's an enjoyable night.

Diet and e
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them

Learn mo

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See Impo
Informa



TRY

LIVALO® (pitavastatin) prescription medicine diet, has been approved treatment of high ch has not been studied on reducing heart-re

Important Safety Information for (pitavastatin) 1

Who should NOT take LIVALO?

LIVALO is not for everyone, including:

- Those who have an allergic reaction to pitavastatin or any of its ingredients
- Anyone with a history of liver disease

PRESCRIBING INFORMATION
IMPORTANT SAFETY INFORMATION

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Monday, October 17, 2011 2:54 PM
To: McDowell, Luckey
Subject: RE: Country of culinary preference

Ok I will accomidate, is it possable to meet on the eve of the 26th?

Don Ramey Logan

Subject: RE: Country of culinary preference
Date: Mon, 17 Oct 2011 13:36:36 -0500
From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com

Don -- how about a nice steak? Or if you prefer, we can do Italian, Japanese, or just about anywhere with a good wine list. I'm a pretty adventurous eater.

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Tuesday, October 11, 2011 11:12 PM
To: McDowell, Luckey
Subject: Country of culinary preference

Luckey,

As I am fortunate to have traveled to many parts of the world, I would like to offer you a chance to do the same, through our meal.

What country of culinary preference would you prefer, should you have any option to visit anywhere, for our meal, sir.

Don Ramey Logan

Subject: Re: Department of Justice Motion
Date: Tue, 11 Oct 2011 21:11:35 -0500
From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com

Don - my offer wasn't meant as a trick, just an opportunity to see if a face to face discussion might clear up any misunderstandings. I don't represent YA in the NJ action against you, so it wouldn't be a formal settlement discussion. Maybe it would lead to nothing, but I honestly think we are talking past one another sometimes. It's up to you. I'll be back in town Oct 27 if you want to take me up on the offer.

In vino veritas.

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Tuesday, October 11, 2011 08:59 PM
To: McDowell, Luckey
Subject: RE: Department of Justice Motion

Luckey, are you kidding?

Your client sued me for a half a billion dollar and you with your reputation want to get together to chit chat over dinner?

Why on Earth would you want to do something like that, without malicious intent?

Really? If you are for real, and you would be willing to agree that it is all off the record and confidential I might consider it, but to tell you the truth, it has nothing to do with "this" case, YA took down American Eagle, within days of a San Jose Judge (Elving) signing a order that gave me 2.5 million. YA Global shortsold the stock of Lunan and I got screwed. Oh ya, plus you lied to a Federal Judge about me, and tricked a judge into dragging me into court.

Fun Fact: BJ mart has NEVER EVER ONCE been inside a court room, in the 3 years that cases went on. You used a trick and fooled the judge into thinking he had a order that would have put me into contempt. I want your bar card to burn in my fire place, understand better now ?

YA Global is responsible. I had a chance to be a part of the Dot com IPO's and my contemporaries were people like Mark Cuban, Rob Glaser and the likes. I opted out and ended up building American Eagle, to have it stolen from me.

I just want my money, Luckey. If Dinner would result in something that resembles money, and the dismissal of that stupid **HALF A BILLION DOLLAR** New Jersey matter, you name the date and I will pick the place, but it is for discussion of s settlement and everything is confidential, bu I will at least show you the nice place to eat. I am thinkin about going to NY to build a YA Gloal booth in the Wall Stret demonstration. Time to enlighten the masses, unless you wa to get together for some "grub"...

Do you mind if one of my Judge friends (Municipal Court) join us?

Your move, Luckey.

Don Ramey Logan

Subject: Re: Department of Justice Motion
Date: Tue, 11 Oct 2011 18:47:40 -0500
From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com

Don -- we should get together for dinner sometime and figure out why you are so focused on this case. Interested?

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Tuesday, October 11, 2011 06:01 PM
To: McDowell, Luckey
Subject: RE: Department of Justice Motion

"Elmer"

Ya know Chas is correct, you really do look just like Elmer Fudd. The name sticks like glue Elmer GLUE, get it!

My computer crashed so I am a few days behind, I had hoped to give you the disk and motion today sorry I missed you.

Have a nice trip home, Elmer.

Don Ramey Logan

Subject: Re: Department of Justice Motion
Date: Sat, 1 Oct 2011 11:01:08 -0500
From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com
CC: Ryan.Goins@bakerbotts.com

Don -- I refer you to the protective order entered in case 8:09:01705, doc 137.

Paragraph 2 enjoins you from disseminating any Discovery Materials (defined in paragraph 1) to any one.

Paragraph 3 prohibits you from using the materials for personal use, including use in another legal case absent prior order of the court.

Paragraph 4 provides that you may seek a prior order from Judge Albert by filing such documents under seal or for in camera

review. You may not file the Discovery Materials on ecf or otherwise make them available. When you deliver any documents to the court, you are required to contemporaneously provide me with a copy of all such documents and filings delivered to the court. CD-Rom or other electronic format is authorized by the order.

The order goes on to address additional matters, but to answer your current question --- you are required by court order to immediately share with me, and only me, copies of all materials that you provide the court.

If you have further trouble reading or understanding the order, please let me know.

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Saturday, October 01, 2011 10:30 AM
To: McDowell, Luckey
Subject: RE: Department of Justice Motion

Did you read the e mail Luckey?

Can you read ok?

ONCE AGAIN, i HAVE DRAFTED A MOTION TO SUBMIT TO jUDGE aLBERT. tHE us jUSTICE DEPARTMENT HAS REQUESTED MY FILES AND i WILL MOTION THE COURT TO DO SO. I UNLIKE YOU AM NOT A IDIOT. I KNOW WHAT THE ORDER SAID please dont treat me like a idiot.

As you do not want to provide the answer to the question, rather choosing to ast like a idiot, I will provide the copy to the judge and e mail you the motion and will NOT give you a copy of the disk.

Have a nice day, as a idiot.

Don Ramey Logan

Subject: Re: Department of Justice Motion
Date: Sat, 1 Oct 2011 08:03:24 -0500
From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com
CC: Ryan.Goins@bakerbotts.com

Don -- please review the injunction that was entered against you last Spring and comply in all respects. If you don't fully understand the injunction or have any questions, please let us know. You are currently enjoined from disclosing any information obtained through discovery in this case, whether obtained directly or indirectly, without prior approval from the bankruptcy court.

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Friday, September 30, 2011 12:34 PM
To: McDowell, Luckey
Subject: Department of Justice Motion

Hows life in the gold plated facet rat race? Did you like to post card?

Hafve you spent any time on the islands? I rode over 300 miles, on my bike in the 7 days I was on Oahu. Did a complete circle around the whole island. way fun.

On a business note: I have a question, and at long last you get your wish and get a copy of the data that *I collected* .

I need to only make 2 disks correct, one for the Judge direct and one for you, buddy. I seal the judges copy and take it to chambers, or what here?

It is going to the DOJ's office in NJ, btw. by request!

I have a whole series of Appeal docs for you later as well.

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PLease get back to me ASAP on the disk issue or I will proceed as discribed above and simply mail your copy out later

Caio!

Don Ramey Logan

Subject: RE: Island style bro
Date: Thu, 8 Sep 2011 14:15:35 -0500
From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com

Not yet, but I'll keep an eye out for it. Thanks for thinking of me.

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Thursday, September 08, 2011 1:58 PM
To: McDowell, Luckey
Subject: RE: Island style bro

hey mon,

Did you get the pretty postcard mon!

Island Style

Don Ramey Logan

Subject: RE: Islands Hotel is designed to isolate people that are not from here, like you.
Date: Tue, 23 Aug 2011 10:16:37 -0500
From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com

Don --- we tried the Balboa yesterday on your recommendation, but it seemed a bit dated. I think we'll go elsewhere next time. Missed you in Court yesterday. Hope you are well.

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Tuesday, August 09, 2011 3:33 PM
To: McDowell, Luckey
Subject: Islands Hotel is designed to isolate people that are not from here, like you.

Hey Buddy!

You really might want to consider staying at the Balboa Bay Club, it is way more fun then that silly hotel you are at now. Far more relaxing, it has a lot more to do as well as much better energy and conf rooms too plus the First Cabin has some of the best food you will ever eat! Islands is the place that people that do not know any better tend to go to. Also you have so many options for dining at the Bay Club, all in a short walking distance. It has a small beach, lots of friendly people, a nice staff, great spa, gym as well as Ocean Front Dining!

For about the same price.....

Way Fun. I grew up at this club and my aunt had her 130 foot yacht at the BBC for years, (The Viking Princess) feel free to drop my name, as well as Auntee Ritas yacht name and you will get the royal treatment :) I have included some pictures of the bay I took a few days ago. FYI from my own perspective, it is a great place to visit (Duff)

few days ago, FYI you can even rent a electric motorboat (Durry) and take a tour around the harbor.

I sure would hate to have to live in Texas, it is a strange place. Enjoy the weather while you can.

LMK if you do stay at the BBC, and I will give you some pointers as to making your way around.

Have a wonderful day!

Don Ramey Logan

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Telephone: 214.953.6500

Facsimile: 214.661.6503

Email: *luckey.mcdowell@bakerbotts.com*

ATTORNEYS FOR YA GLOBAL INVESTMENTS, L.P.,

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re:

COBALIS CORPORATION

Debtor.

COBALIS CORPORATION

Plaintiff

v.

**YA GLOBAL INVESTMENTS, L.P.,
CORNELL CAPITAL PARTNERS, LP:
and YORKVILLE ADVISORS, LLC**

Defendants.

Case No. 8:07-bk-12347-TA

Adv. No. 8:09-ap-01705-TA

**OBJECTION TO MOTION FOR
SANCTIONS**

DATE: March 6, 2012

TIME: 2:00 p.m.

PLACE: Courtroom 5B

411 West Fourth Street

Santa Ana, CA

JUDGE: HON. THEODOR ALBERT

YA Global Investments, L.P. ("YA Global"), along with its individually named counsel (collectively, the Respondents) oppose Mr. Logan's motion for damages pursuant to Cal. Penal Code § 637.2 (the "Motion")¹ and respectfully state as follows:

¹ Dkt. 879.

1 **PRELIMINARY STATEMENT**

2 Don Logan lied to this Court, and he now complains that YA Global unfairly caught him
3 in his lie. Six months ago, Mr. Logan filed a series of pleading (i) denying that counsel for YA
4 Global gave him telephonic notice of an emergency hearing, (ii) accusing counsel of perjury for
5 declaring that the call occurred, and (iii) seeking counsel's incarceration and disbarment.²
6 Defending against the perjury accusations, YA Global filed phone records and supporting
7 affidavits proving that the Court-ordered telephone call occurred exactly as counsel had
8 previously declared. The Court agreed with YA Global and denied Mr. Logan's incarceration
9 motion.³

10 YA Global elected not to pursue Mr. Logan for his perjury to this Court regarding the
11 existence of the call, and instead hoped for an end to the disputes before this Court.

12 Mr. Logan, however, continues to pursue his personal vendetta against opposing counsel.
13 In his Motion, Mr. Logan now contends that counsel should be punished for improperly
14 participating in the Court-ordered telephone call—the same call that he previously said never
15 took place. Ironically, Mr. Logan's admission that he received telephonic notice from
16 Respondents necessarily indicts him for violating Rule 11, as he previously denied to this Court
17 that the call ever took place.

18 Mr. Logan's most recent claims ultimately fail on the merits, and his unwarranted
19 personal attacks against opposing counsel will never succeed.⁴ However, the merits of
20 Mr. Logan's claims cannot be adjudicated by this Court because it lacks post-confirmation
21 jurisdiction to consider Mr. Logan's tort claims against Respondents. Moreover, even if this
22 Court had jurisdiction, the tort claims against counsel must be presented in a separate adversary
23 action, not as a contested motion in an unrelated—and already fully adjudicated—dispute to
24 which neither Mr. Logan nor the Respondents are parties.

25 ² Dkts. 121, 136.

26 ³ Dkt. 125 (order denying Logan's motion); Dkt. 162 (supplemental findings on order)

27 ⁴ In light of the procedural and jurisdictional defects to Mr. Logan's Motion, a full discussion of the merits is
28 premature for this Objection. YA Global reserves the right to brief the fallacies of Mr. Logan's arguments when and
if he properly raises the issues before a court of competent jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

1
2 1. Don Logan first attacked YA Global and its counsel in January 2011, when he
3 levied serious criminal accusations against them on what this Court subsequently described as
4 “an obscene, derogatory and vindictive” website.⁵ In addition to profanity-laced threats, Mr.
5 Logan’s website also demanded payment of an undisclosed sum of money.

6 2. YA Global immediately moved for a protective order, and the Court scheduled an
7 emergency hearing on the protective order for January 14, 2011 (the “Notice Order”). In the
8 Notice Order, the Court directed counsel for YA Global to provide telephonic notice to, among
9 others, Mr. Logan by 5:00 p.m. Pacific on the same day. The Notice Order further directed
10 counsel for YA Global to file a Declaration of Notice and Service establishing that counsel
11 actually gave telephonic notice of the hearing to Mr. Logan.

12 3. Counsel for YA Global complied with the Notice Order. Specifically, counsel
13 called Mr. Logan, provided him with notice of the January 14 hearing, and filed the Court-
14 ordered declaration evidencing that call (the “Notice Declaration”). Mr. Logan failed to attend
15 the January 14 hearing. The Court therefore issued an order to show cause and, after a further
16 hearing, entered a protective order.

17 4. Notwithstanding this Court’s protective order, Mr. Logan continued his campaign
18 of baseless allegations of criminal wrongdoing, threats of criminal prosecution, and demands for
19 money through near-daily emails he sent to counsel for YA Global. On April 27, 2011, Mr.
20 Logan came to this Court seeking criminal prosecution of YA Global’s counsel for a litany of
21 imagined wrongdoings, including perjury by counsel in the Notice Declaration (the
22 “Incarceration Motion”). Specifically, Mr. Logan represented to this Court that counsel never
23 gave him telephonic notice of the January hearing as described in the Notice Declaration. In
24 June 2011, Mr. Logan filed a pleading in support of his Incarceration Motion in which he stated:

25
26
27 ⁵ Dkt. 213.

1 Mr. McDowell filed a “Proof Of Service” [the Notice Declaration]
2 with the court claiming that in January he called Respondent
3 Logan and informed ME that he had filed a motion regarding the
4 website YagiScam.com and that he informed me of the hearing
5 date and location. THIS IS A BALD FACED LIE. While Mr.
6 McDowell called my phone, he simply hung up when I answered.
7 Mr. McDowell’s Office Phone Records will PROVE that he has
8 lied to the court and never gave any notice whatsoever. He HUNG
9 up. (all emphasis in original)⁶

10 5. Mr. Logan’s representation to this Court was false. In response to this allegation,
11 YA Global provided the Court with counsel’s phone records and with statements by all three
12 participants on the call. Mr. Logan did not refute the veracity of either the statements or the
13 phone records, which showed that the phone call lasted for six minutes. Instead, caught in his
14 lie, Mr. Logan changed the story: now he admits that the phone call did occur, but claims that
15 counsel for YA Global impermissibly eavesdropped on the call.

16 6. The Court denied Mr. Logan’s Incarceration Motion⁷ and subsequently entered
17 findings and conclusions rejecting Mr. Logan’s arguments that counsel for YA Global perjured
18 himself.⁸ In its findings and conclusions, the Court unambiguously ordered the parties to cease
19 litigating Mr. Logan’s vendetta against YA Global and its counsel before the Court. *See* Dkt.
20 162 at ¶ 5 (“The Court further instructs the parties to this dispute to stop seeking relief from this
21 Court with respect to the foregoing matters.”).

22 7. If Mr. Logan’s incessant emails to counsel are to be believed, Mr. Logan has filed
23 numerous criminal complaints against Respondents for various wrongs, including accusations of
24 eavesdropping in violation of Cal. Penal Code § 632. Respondents have never been contacted by
25 any law enforcement personnel regarding any of these matters. Apparently unsuccessful with his
26 attempts to institute criminal proceedings, Mr. Logan has again sought relief from this Court—
27 despite the Court’s clear admonishment to take this dispute elsewhere. Now before the Court is
28 Mr. Logan’s motion seeking to recover money damages for the alleged eavesdropping, as

26 ⁶ Dkt. 136.

27 ⁷ Dkt. 125.

28 ⁸ Dkt. 162.

1 provided in Cal. Penal Code § 637.2 (providing a civil right of action for violations of
2 eavesdropping statute).

3 **ARGUMENT AND AUTHORITIES**

4 **A. The Court Lacks Jurisdiction**

5 8. This is a post-confirmation, post-conversion, and post-asset sale dispute solely
6 between non-debtor parties. Although Mr. Logan’s accusations are baseless and easily defeated
7 on the merits, this Court lacks subject matter jurisdiction to adjudicate the dispute. The Court’s
8 jurisdiction, “like that of other federal courts, is grounded in, and limited by, statute.” *Cal.*
9 *Franchise Tax Bd. v. Wilshire Courtyard (In re Wilshire Courtyard)*, 459 B.R. 416, 424 (B.A.P.
10 9th Cir. 2011) (quoting *Battle Ground Plaza, LLC v. Ray (In re Ray)*, 624 F.3d 1124, 1130 (9th
11 Cir. 2010)). By statute, bankruptcy courts only have jurisdiction over “proceedings arising under
12 title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). As detailed below,
13 Mr. Logan’s action for monetary damages under Cal. Penal Code. § 637.2 falls outside
14 Congress’ grant of jurisdiction.

15 (i) ***This dispute does not arise under or arise in a title 11 case***

16 9. Mr. Logan’s alleged right to relief does not arise under title 11. A right to relief
17 arises under title 11 only when the right is created by title 11 itself. *Harris v. Wittman (In re*
18 *Harris)*, 590 F.3d 730, 737 (9th Cir. 2009); *In re Wilshire Courtyard*, 459 B.R. at 424. The
19 Court lacks “arising under” jurisdiction because Mr. Logan seeks to recover on a remedy created
20 by the California legislature and codified in California state code, and not created by title 11.

21 10. Likewise, Mr. Logan’s claims do not “arise in” a case under title 11. Under the
22 Ninth Circuit’s interpretation of “arising in” jurisdiction, “arising in” refers only to an
23 “administrative matter unique to the bankruptcy process that has no independent existence
24 outside of bankruptcy and could not be brought in another forum, but whose cause of action is
25 not expressly rooted in the bankruptcy code.” *In re Wilshire Courtyard*, 459 B.R. at 425
26 (quoting *In re Ray*, 624 F.3d at 1131) (emphasis added). A bankruptcy court may exercise
27 “arising in” jurisdiction only when an action has “no independent existence outside of
28

1 bankruptcy and *could not* be brought in another forum.” *Id.* at 426 (quoting *In re Ray*, 624 F.3d
2 at 1131 (emphasis added by B.A.P.)). Mr. Logan’s state-law tort claim is not a matter unique to
3 the bankruptcy process, has independent existence outside of the bankruptcy court (an express
4 state statute), and could be brought in another forum. *See In re Ray*, 624 F.3d at 1132.
5 Mr. Logan’s claims therefore do not “arise in” a case under title 11, and the Court lacks “arising
6 in” jurisdiction over this matter.

7 **(ii) This dispute does not fall within the Court’s related to jurisdiction**

8 11. Mr. Logan’s allegations of eavesdropping are not “related to” the reorganization
9 (and now, liquidation) of Cobalis. The Court therefore lacks “related to” jurisdiction over
10 Mr. Logan’s claim for damages. Cobalis’ plan of reorganization was confirmed nearly two years
11 ago; its reorganization case was converted to liquidation more than six months ago; all of its
12 assets have been sold pursuant to § 363 of the Bankruptcy Code. Given the very limited issues
13 remaining in Cobalis’ bankruptcy case, the Court lacks “related to” jurisdiction over Mr. Logan’s
14 allegations.

15 12. A bankruptcy court may exercise “related to” jurisdiction over a post-
16 confirmation dispute only if there is a “close nexus connecting [the] proposed post-confirmation
17 proceeding in the bankruptcy court with some demonstrable effect on the debtor or the plan of
18 reorganization.” *In re Wilshire Courtyard*, 459 B.R. at 430 (citing *Binder v. Price Waterhouse &*
19 *Co. (In re Resorts Int’l, Inc.)*, 372 F.3d 154, 166-67 (3d Cir. 2004)). As a condition for post-
20 confirmation “related to” jurisdiction, “the outcome of the dispute must produce some effect on
21 the reorganized debtor or a confirmed plan.” *Id.* at 428.

22 13. The Court lacks post-confirmation “related to” jurisdiction because Mr. Logan’s
23 claims could not have any conceivable effect on Cobalis or its liquidation. Indeed, Mr. Logan is
24 attempting to recover tort damages solely for his own benefit, and not as a source of funds from
25 which claims against Cobalis could be paid. The outcome of this dispute between two non-
26 debtors will have no effect on Cobalis, the estate, or the liquidation process. *In re Wilshire*
27 *Courtyard*, 459 B.R. at 430 (no “related to” jurisdiction where outcome of tax dispute could have
28

1 no effect on debtor or plan); *In re Ray*, 624 F.3d at 1134 (state law claims related to section 363
2 sale order not within “related to” jurisdiction after sale completed and case closed).

3 14. Moreover, the central issues in Mr. Logan’s dispute with Respondents involve the
4 application of California state law, not bankruptcy law, to post-confirmation conduct. *See In re*
5 *Wilshire Courtyard*, 459 B.R. at 430 (no “related to” jurisdiction where dispute concerned
6 application of California tax laws to transactions affected by confirmed plan); *In re Ray*, 624
7 F.3d at 1134-35 (no “related to” jurisdiction where post-confirmation dispute concerned
8 California breach of contract claim); *Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries*
9 *Dev. Ass’n, Inc.)*, 439 F.3d 545, 549-50 (9th Cir. 2006) (no post-confirmation “related to”
10 jurisdiction to interpret settlement agreement’s effect on Alaska state law claims). Mr. Logan’s
11 claims are simply too far removed from issues of plan interpretation and the liquidation of
12 Cobalis to support “related to” jurisdiction. *In re Wilshire Courtyard*, 459 B.R. at 428 (noting
13 that post-confirmation “related to” jurisdiction only extends to matters that involve plan
14 interpretation and that yield a demonstrable impact on the reorganized debtor). Accordingly, the
15 Court may not exercise its “related to” jurisdiction over this post-confirmation, non-debtor
16 dispute.⁹

17 **B. Mr. Logan’s cause of action requires an adversary proceeding.**

18 15. Even if this Court had subject matter jurisdiction, the current Motion is
19 procedurally defective and fails to provide Respondents with the appropriate forum in which to
20 litigate the serious allegations. Federal Rule of Bankruptcy Procedure 7001(1) requires a party
21 to file an adversary proceeding when a party seeks to recover money or property. FED. R.
22 BANKR. P. 7001(1). Such matters may not be resolved as contested matters, but rather are
23 subject to the comparatively more robust procedures of part VII of the Bankruptcy Rules.
24 *Johnson v. TRE Holdings LLC (In re Johnson)*, 346 B.R. 190, 195 (9th Cir. B.A.P. 2006).

25
26 ⁹ The Supreme Court recently limited the Constitutional authority of bankruptcy courts to hear certain “related to”
27 matters. *See, e.g. Stern v. Marshall*, --- U.S. ---, 131 S.Ct. 2594 (2011). However, this dispute does not even rise to
28 the level of a “related to” dispute for the reasons set forth in this Response.

1 submit that, by bringing the Motion, Mr. Logan has not only admitted to signing and submitting
2 false criminal accusations to the Court but also has violated the Court's "go elsewhere" order.
3 Respondents therefore request that the Motion be denied in all respects with prejudice and that
4 Respondents be granted all other relief that is just and proper under these circumstances.

5 Respectfully submitted this 21st day of February 2012.

6 **BAKER BOTTS L.L.P.**

7 BY: /s/ C. Luckey McDowell

8 C. Luckey McDowell

9 **VENABLE LLP**

10 Keith C. Owens

11 Counsel to YA Global Investments, L.P.
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Keith C. Owens (CA State Bar No. 184841)

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Counsel for YA Global Investments, L.P.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re:

**COBALIS CORPORATION,
Debtor.**

COBALIS CORPORATION

Plaintiff,

v.

**CORNELL CAPITAL PARTNERS,
LP, YORKVILLE ADVISORS,
LLC and YA GLOBAL
INVESTMENTS, LP.,**

Defendants.

Case No 8:07-bk-12347-TA

Chapter 11

Adversary No. 8:09-ap-01705-TA

**DECLARATION OF C. LUCKEY
MCDOWELL IN SUPPORT OF OBJECTION
TO MOTION FOR SANCTIONS**

Judge: HON. THEODOR C. ALBERT

1 My name is C. Luckey McDowell. I am over the age of 21 years and I am
2 competent to make this Declaration. I have personal knowledge of the facts as stated in this
3 Declaration. I am an attorney for creditor YA Global Investments, L.P. ("YA Global"). I make
4 this declaration in support of YA Global's *Objection to Motion for Sanctions*.

5 1. Exhibit A is a true and correct copy email of correspondence from Don Logan
6 dated December 20, 2011.

7 Pursuant to 28 U.S.C. § 1746, I, C. Luckey McDowell, declare under penalty of
8 perjury that the foregoing is true and correct.

9 Executed this 21st day of February 2012 in Dallas, Texas.

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11 
12 C. Luckey McDowell
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Exhibit A

McDowell, Luckey

From: Don Logan [logan_don@hotmail.com]
Sent: Tuesday, December 20, 2011 9:42 AM
To: McDowell, Luckey; Goins, Ryan; Soderlund, Eric
Subject: You commit crimes to win motions it would be funny if it did not cause so much harm to people and the State of California

So I have no rights then is that correct, you are a hoot pal, you brought me into the case Luckey based upon a series of lies that have proven to be as such.

Are you telling me that I do not have the rights that others have in this court due to your trickery? I will show the Judge your e mail when I request the subpoenas. You are getting on the stand here pal, regardless of what you think. I have checked into this and you are going to testify, under oath.

I will have the Judge issue and approve them, as you will testify about the crimes that you have committed. You can oppose anything that I file and, as you might have noticed I am on a roll!

You commit crimes to win motions. I want to see you testify as a real judge looks on and watches you testify that you had your 2 pals break California law to win a motion. pretty slick if you had pulled it off, but you did not, so you are subject to jail time, and this proceeding now.

I would like to order sanctions, and disbarment for 3 please. Remember you created this mess. For the balance of my life I have the right to come and motion this court to use the documents and this court has a opened ended case that will NEVER GO AWAY.

You created this mess and now you will have to live with it. I will request a subpoena for the March 6th hearing for each of you fro Judge Albert, and yes I HAVE the right to do just that, according to Federal Rules of Civil Procedure and if you do not show up the court MUST issue a bench warrant for your arrest.

You must be so proud, Merry Christmas, Luckey perhaps it is time to join Santa here in the photo to the right in whatever it is he is doing.


MERRY
CHRISTMAS
Don Ramey Logan



From: luckey.mcdowell@bakerbotts.com
To: logan_don@hotmail.com
Subject: RE: Motion requesting more time to reply to objections for turnover of incriminating documents to government agencies
Date: Tue, 20 Dec 2011 15:21:34 +0000

[We are not consenting to service of anything, and dispute that you have the ability to issue any subpoenas in this matter.](#)

From: Don Logan [mailto:logan_don@hotmail.com]
Sent: Tuesday, December 20, 2011 9:10 AM
To: McDowell, Luckey
Subject: RE: Motion requesting more time to reply to objections for turnover of incriminating documents to government agencies

Luckey

I am having the district court in Dallas issue subpoenas for you, Ryan and Eric. Do you mind allowing service of these documents by e mail or am I expected to have you three sharp attorneys served in person?

How's that going to work out for you?

Don Ramey Logan

Confidentiality Notice: The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

1 Don Logan
2 **32 East 57th Street, 12th Floor**
3 **New York, NY 10022**
4 Tel (949) 872 6806

Interested Party, Don Logan *in propria persona*

5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

7 In re 8 COBALIS CORP., 9 Debtor-in-Possession.	Case No. 8:07:12347-TA Chapter 11
10 COBALIS CORP., a Nevada corporation, 11 12 Plaintiff, 13 vs. 14 YA GLOBAL INVESTMENTS, L.P., a Delaware 15 limited partnership, formerly known as 16 CORNELL CAPITAL PARTNERS, LP; and 17 YORKVILLE ADVISORS, LLC, a Delaware 18 limited liability company, 19 Defendants.	Adversary No. 08:09-AP-01705-TA Response to reply of Charles Luckey McDowell on Motion for Sanctions upon Charles Luckey McDowell, Eric Sunderland and Ryan Goins and the Law Firm of Baker Botts for conspiracy to commit eavesdropping, eavesdropping, and conspiracy to extortion Date: March 6th 2011 Time 2:pm Court Room 5b Judge: T. Albert

20 Don R. Logan hereby files this response to the objections raised by Charles Luckey
21 McDowell in his objection to my motion requesting sanctions upon Charles Luckey
22 McDowell Eric Sunderland and Ryan Goins.

23 **Eavesdropping is** a crime under *California Penal Code* § 632 . *Flanagan v. Flanagan*
24 27 Cal.4th 766 (2002). *People v. Conklin* ((1974) 12 Cal. 3rd 259, 270-273

25 No judge can ignore crimes that occur before him. In 1970, our 37th President “Richard
26 M. Nixon” was caught involved in a conspiracy to commit and actual wiretapping, and it
cost him his job.

27 Charles Luckey McDowell should be just as LUCKY as Mr. Nixon.
28

1 **It should always be kept in mind that Penal Code Section 632 is a criminal statute.**

2
3 Mr. McDowell now seems to be projecting his image and persona upon me and has now
4 claimed that I am a liar. He has in no way addressed the matter of the simple fact that he
5 and his coconspirators have broken the law in the course of this case many times, and for
6 some strange reason he is now parroting the same lies that he uttered and convinced the
7 court of over a year ago.

8
9 Mr. McDowell's original claims to the court were that I, Don Logan was working for
10 Gregory Grantham, and he certified that was a fact. He found one place on the web that I
11 had created and made that web entry FACT. At no time did he or his staff contact Mr.
12 Grantham, and ask for "investigator LOGAN", he just offered his lie to the court and it
13 became his selling point, and this court issued an Order to Show cause for contempt of a
14 letter (sic).

15
16 As a lawyer, Mr. McDowell had/has an obligation to assure the court that the story he
17 was telling the court was true, yet he found a page that he crafted into a total and
18 complete delusion, then offered it as fact to this court. He is a bald face liar if one ever
19 walked this earth.

20
21 Mr. McDowell was fully aware at all time that I was a former victim of YA global short
22 selling, yet he simply omitted that information as it did not coincide with the story he
23 had crafted. He lied to the court.

24
25 Mr. McDowell was FULLY AWARE that Superior Court Judge Robert Elving, in the
26 superior court of San Jose had in fact granted me a 2.5 million dollar writ of attachment
27 that would have been levied upon his clients' money as a course of law, had his client
28 not short sold that company (Bad Toys Inc) out of business, yet he lied about me,
omitting this from his moving papers.

He must have forgot to inform this court as it would simply made the delusional story
that he fabricated, more colorful for the court to really get its attention. It was a success
but it was done with lies.

22
23 This is not a motion about anything I have done. I am not a attorney for a "**White Shoe**
24 **Law firm**" (McDowell's description, not mine) whom should know better than to sign a
25 declaration under penalty of perjury that it conspired upon and committed a crime that is
26 considered serious act upon a none attorney in the great state of California.

27
28 If he did not want the exposure he should have never submitted the sworn decelerations
of Goins and Sunderlund. Opps, perhaps, but his Mr. Logan is the liar shell game simply
does not provide him with a lawful excuse, if he wishes to bring a motion for perjury he

1 may do so but it can never provide a excuse for actions as described in this motion and
committed in this case in this court.

2
3 Once again in another lie from the master at litigation poppycock and propaganda
4 Charles Luckey McDowell here in his objection McDowell reminds the court that the
bogus portrayal he created a year ago was deemed as OBSCENE by the court:

5 **In a legal context, the term obscenity is most often used to describe**
6 **expressions (words, images, actions) of an explicitly sexual nature. The word**
7 **can be used to indicate a strong moral repugnance, in expressions such as**
8 **"obscene profits", "the obscenity of war", etc. It is often replaced by the**
9 **word salaciousness.**

10
11 Yet I have after continued review failed in any context to find anything that was
12 OBSCENE, other than the fact that the documents that I was in control of had
13 continually displayed that YA Global was engaged in short selling of YA Global stock
14 and it had driven them out of business, factually speaking my most heinous crime was to
on a block page use a word that today is a regular part of just about every reality show on
TV (The F Word) that was seen for about 5 people.

15 Under McDowells new legal definition of the word OBSCENE any person that is deaf,
16 and can read lips he/she would be exposed to a continued stream of OBSCENITY” from
the moment you turn on the TV.

17
18 Never mind that this OBSENITY I was accused of is today offered via bleeps about 8
19 seconds on MOST reality shows, nothing sexual in nature WHATSOEVER was ever
20 placed by me upon any website, so factually speaking the only thing OBSCENE was as
the definition above shows a OBSCENE hedge fund and its lawyers taking apart a
business with short selling and stock manipulation, but that is not in any way my fault.

21 I would love to hear the court or even Mr. McDowell describe what it was that is
22 OBSCENE, otherwise that was once again just another lie from a man who will break
23 criminal laws to accomplish his objective of ruining people regardless of the cost

24 Luckey McDowell lied to the court over and over and created a illusion that something I
25 have done was OBSCENE. Luckey McDowell told the court I WORKED FOR GREG
26 GRANTHAM, and factually speaking Luckey McDowell is the signal biggest LIAR I
27 have ever encountered in my entire life. Bar None.

1 We went to dinner and everything that he said, as it turns out is a LIE. Puit him on the
2 stand and lets allow him to testify that he did not do the things that I have accused him
of, under oath.

3 NOT ONE WORD THAT HAS COME OUT OF HIS MOUTH IN REGARD TO ME
4 CAN BE TRUSTED OR HAS ANY FACTS BEHIND THEM, he is without question a
5 psychopath;

6 *A “Psychopath” is described as a person that is suffering from:*

7 **A personality disorder characterized by a pervasive pattern of disregard for,
8 or violation of, the rights of others.**

9 **Mr. Charles Luckey McDowell, who claims to have a J.D.from, Duke University
10 School of Law, 2001 - Arthur Larson Scholar B.B.A. (cum laude), economics and
11 insurance, Baylor University, 1999:** claims that I Don Logan am a liar and that is the
12 reason this court should turn a blind eye as his education did not provide him with
enough background to be able to refrain from committing crimes upon random people in
order to win motions in a bankruptcy case.

13 He claims that Don Logan is a liar, well Don Logan almost fell over laughing when Don
14 Logan got his first read on that.

15 Clearly Luckey McDowell has become desperate. He is going to take down his two pals
16 Ryan and Eric in the process.

17 He cites no case that has ever used this argument so it is novel effort at best.
18 I am not a liar, I have retired Judges that allow me to use their airplanes so his assertion
19 is nothing more then another Joke upon the court from one heck of a court jester, but I do
not find it funny at all.

20 He committed a criminal act and has NO EXCUSE, he even offers NO EXCUSE other
21 than this ridicules notion that Don Logan is a liar. Don Logan is not a lawyer, Don
22 Logan has no degree from a prestigious law school. Don Logan as it turns out is nothing
23 that Mr. McDowell expected, but Don Logan simply put has no need to lie here, my
every word contains more integrity then every hair that remains on the head of Charles
Luckey McDowell. One fact is unquestionable: Don Logan is not a liar, sorry Charlie.

24 On July 13, 2006, the California Supreme Court issued its opinion in Kelly Kearney, et
25 al v. Salomon Smith Barney, Inc. In this case, the plaintiffs alleged that employees of the
26 Atlanta branch of Salomon Smith Barney repeatedly recorded telephone conversations
27 with California clients without the clients’ knowledge or consent in violation of Section
632 of the California Penal Code. The plaintiffs sought both damages and injunctive
28 relief. The trial court sustained Salomon Smith Barney’s demurrer on the basis that the

1 conduct of the Atlanta-based employees was and is permissible under Georgia law and
2 dismissed the complaint. The court of appeals affirmed the judgment. The California
3 Supreme Court granted review to consider the “novel choice of law issue” present by the
4 case.

5 The court held that a true conflict existed between California and Georgia law and that
6 “as a general matter, the failure to apply California law in this context would impair
7 California’s interest in protecting the degree of privacy afforded to California residents
8 by California law more severely than the application of California law would impair any
9 interests of the State of Georgia.”

10 Having come to this conclusion, the court held that Section 632 applies when a
11 confidential communication takes place in part in California and in part in another state
12 and that California has a “strong and continuing interest in the full and vigorous
13 application of the section of Section 632 prohibiting the recording the telephone
14 conversations without the knowledge or consent of all the parties to the conversation.”

15 In dicta, the court indicated that the application of California law in this case would only
16 affect telephone conversations with clients or customers in California and would not
17 compel any action or conduct with regard to non-California clients or consumers. Also,
18 although no federal law was at issue, the court opined that federal law does not preempt
19 the application of California’s more protective privacy provisions.[3] In this context, the
20 defendant contended that in some instances federal law requires recording of telephone
21 conversations, citing NASD Rule 3010. The court found that nothing in Rule 3010
22 precluded a firm from informing a client that the conversation was being recorded.

23 So what is required of an out-of-state party that wishes to record a call with California
24 participants? The court provides some assistance. If an out-of-state caller discloses at the
25 outset of a call made or to be received from a California customer or client that the call is
26 being recorded, the parties will not have a reasonable expectation that the call is not
27 being recorded and the recording would not violate Section 632, because the parties
28 would have no expectation of privacy.

Turning to damages, citing legal uncertainty prior to its decision, the court refused to
impose damages for conduct undertaken in the past in reliance on the law of another
state. However, the Court strongly warns that “out-of-state companies that do business in
California now are on notice that, with regard to future conduct, they are subject to
California law with regard to recordings of telephone conversations made to or received
from California, and that the full range of civil sanctions afforded by California law may
be imposed for future violations” (emphasis added).

Section 637.2 of the California Penal Code Section 637.2 creates a private right of action
for violations of Section 632, and provides for damages in the amount of the greater of
\$5,000 or three times the amount of actual damages, if any, sustained by the plaintiff.

1 Note, however, that it is not a necessary prerequisite to an action under Section 637.2
2 that the plaintiff has suffered, or be threatened with, actual damages. As a result, the
3 court held that in a class action filed under Section 637.2, both the named plaintiffs and
4 members of the proposed class allegedly are direct victims of the unlawful conduct, and
5 not simply unharmed person suing on behalf of the general public.

6 Section 637.2 also provides for injunctive relief, and the court in Kearney, while
7 upholding the dismissal of the plaintiffs' claims for damages and restitution, allowed the
8 plaintiffs to proceed with their request for injunctive relief.

9 **Please keep in mind that Penal Code Section 632 is a criminal statute.**

10 Because Kearney was a civil case, however, the court did not rule on the possible
11 imposition of criminal penalties on out-of-state persons. The court did note that "the
12 imposition of criminal punishment on the basis of conduct that occurs in part outside of
13 California presents potential constitutional and statutory questions different from those"
14 that arise in a civil case, but it did discuss these questions. Accordingly, readers should
15 note that surreptitious recording of telephone conversations is a misdemeanor in
16 California and that it is unclear whether there are circumstances in which out-of-state
17 violators might be subject to criminal prosecution in California.[4]

18 -----
19 1. Section 632(a) provides in full: "(a) Every person who, intentionally and without the
20 consent of all parties to a confidential communication, by means of any electronic
21 amplifying or recording device, eavesdrops upon or records the confidential
22 communication, whether the communication is carried on among the parties in the
23 presence of one another or by means of a telegraph, telephone, or other device, except a
24 radio, shall be punished by a fine not exceeding two thousand five hundred dollars
25 (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state
26 prison, or by both that fine and imprisonment. If the person has previously been
27 convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the
28 person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by
imprisonment in the county jail not exceeding one year, or in the state prison, or by both
that fine and imprisonment." Section 637.2 of the California Civil Code Section 637.2
creates a private right of action for violations of Section 632, and provides for damages
in the amount of the greater of \$5,000 or three times the amount of actual damages, if
any, sustained by the plaintiff.

2. While Section 632 of the California Penal Code provides that all parties to the a
telephone conversation must be informed of or consent to the recording of the
conversation, Georgia law, similar to privacy statutes in a majority of states as well as

1 comparable federal law, requires only one of the parties to the call to consent (which
2 may be the party that is recording the call).

3 3. The court cited its decision in *People v. Conklin* ((1974) 12 Cal. 3rd 259, 270-273),

4 4. Further, in a footnote, the court made it clear that the present case does not address
5 whether secret recordings that were made prior to Kearney would or would not be
6 admissible in a judicial proceeding. Additionally, the court did not determine how its
7 analysis would apply in a case involving the isolated recording of a personal telephone
8 call by an out-of-state individual in a nonbusiness setting, or the recording of a phone
9 call by an out-of-state business that has a reasonable, individualized basis for believing
10 that a particular caller is engaged in criminal or wrongful conduct.

11 McDowell is correct in that I will work on these issues until he is behind bars; I firmly
12 feel that criminals and all of them deserve prosecution. Charles Luckey McDowell is no
13 exception. I was speaking to the attorneys at the Department of Justice about him when
14 his reply was e mailed to me, rather remarkably. Funny how things work out like that
15 some times.

16 He raises concern about going to jail and that is understandable, he would not do well,
17 liars are often ridiculed and exposed quickly, behind bars, and that can lead to more
18 unseemly behavior from the other inmates that could be unsettling and outright
19 uncomfortable at times for the lair but he should have thought of that before he and his
20 "White Shoe Law firm" *conspired against me, then committed a criminal act further
21 documenting it with declarations sworn to under PENILTY OF PERJURY*, offered to this
22 court and placed upon the lawful court records that each committed a crime, to win a
23 motion.

24 He has offered in no way WHATSOEVER any rebuttal that would cause this court to
25 ignore the fact that he committed a CRIME to win a MOTION. He does not dispute this
26 fact as such this court MUST act accordingly and refer this matter for criminal actions at
27 once.

28 The law clearly requires that this court MUST forward this matter to the California
Attorneys offices Orange County District Attorney, for proper criminal prosecution as
required by law in the California criminal courts.

Movant here in this motion further request that any monetary damages in the matter as
described in this motion and its supporting documents be decided upon by a jury.

Respectfully submitted: Date: February 29 19th, 2012

Victim, Don Logan *in propria persona*

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PROOF OF SERVICE OF DOCUMENTS

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding.

My business address is **32 East 57th Street, 12th Floor New York, NY 10022.**

A true and correct copy of the foregoing document(s) described as:

Response to reply on Motion for Sanctions

will be served or was served (a) on the Judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. SERVED VIA NOTICE OF E MAIL

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by e mail. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

On **February 29th**, 2012, I served the following persons and/or entities.

Via personal delivery Debtor Cobalis Corporation
Attn: Chaslav Radovich, President

Via Personal Delivery to Chambers

The Honorable Theodor C. Albert
U.S. Bankruptcy Court – Santa Ana
411 West Fourth Street,
Santa Ana, CA 92701

Via e mail Via e mail

C. Luckey McDowell Richard B. Harper
Baker Botts LLP Kristin E. Flood
2001 Ross Avenue Baker Botts LLP
Dallas, TX 75201-2980 30 Rockefeller Plaza, 44th Floor
Email: luckey.mcdowell@bakerbotts.com New York, NY 10112
Email: richard.harper@bakerbotts.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

2/29/12____ Don Logan_____/s/ Don Logan_____
Date Name Signature