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Homeland Self Storage Management LLC Order Deferring Defendants' Motion for Protective Order and Appointment of Special Master for Financial Discovery

John J. Goger
Superior Court of Fulton County

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**HOMELAND SELF STORAGE
MANAGEMENT, LLC.; ET. AL.** :
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 :
PLAINTIFFS; :
 :
 :
v. :
 :
**PINE MOUNTAIN CAPITAL
PARTNERS, LLC; ET. AL.** :
 :
 :
DEFENDANTS. :
 :
 :
_____ :

CIVIL ACTION FILE NO.:
2014-CV-246999

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ORDER
DEFERRING DEFENDANTS' MOTION FOR PROTECTIVE ORDER AND
APPOINTMENT OF SPECIAL MASTER FOR FINANCIAL DISCOVERY

THIS MATTER HAVING COME BEFORE THE COURT on Tuesday, December 2, 2014, before the Honorable Judge John J. Goger for a Rule Nisi hearing on Defendants' Motion for Protective Order concerning Plaintiffs' subpoenas to non-parties Wells Fargo Bank, N.A. and the Private Bank of Buckhead (collectively the "Banks") that were issued on August 18, 2014, and modified on August 20, 2014 (the "Subpoenas"). After having heard and considered the submissions and arguments of counsel for both parties, Defendants' Motion for Protective Order is **DEFERRED** pending the appointment and review by a special master, as follows:

This Court FINDS that Defendants have articulated a legitimate privacy concern about having the Banks produce Defendants' financial records to Plaintiffs absent any protection and oversight from the Court. This privacy concern must be weighed against Plaintiffs' relevant discovery requests for Defendants' Subpoenas that request certain financial records during the years when Defendant Kevin J. Irlbeck ("Irlbeck") was employed as CFO of Plaintiff Homeland Self Storage Management, LLC ("Homeland Self Storage"). Plaintiffs have alleged that Irlbeck

diverted Plaintiffs' funds into his or one of the other Defendants' bank accounts while employed as CFO for Plaintiff. This Court desires to have an independent investigation of certain of the parties' financial records so that it may determine the veracity of Plaintiffs' claim that Irlbeck misdirected Plaintiffs' funds into his or one of Defendants' bank accounts and whether this claim should be subject to dismissal.

After weighing Plaintiffs' discovery needs with Defendants' privacy concerns, this Court ORDERS that pursuant to USCR Rule 46, a Special Master shall be appointed. The Special Master shall be a Certified Fraud Examiner (CFE). Additionally, the Special Master shall also be a currently licensed or retired Certified Public Accountant (CPA), or have sufficient experience as a forensic financial examiner. If the parties cannot agree on a Special Master, then each side (Plaintiffs and Defendants) shall submit to the Court a proposed list of no more than three persons who are qualified to serve as the Special Master, including disclosure of any prior or active involvement with the proposed parties, lawyers, or law firms. The Court will then select the Special Master from one of the names provided by either Plaintiffs or Defendants, or make an independent selection of a qualified professional to serve as Special Master.

Until further order of the Court, the financial discovery in this matter will be directed to the Special Master and conducted as follows:

The Special Master is appointed for the limited purpose of reviewing both Plaintiffs' and Defendants' financial records (and any other documents the Special Master reasonably requests) for the period between January 2007 through August 2011 (the "Relevant Time Period"). Plaintiffs shall provide all of their financial records for the Relevant Time Period directly to the Special Master without any added instruction or direction upon the request of the Special Master. The Banks are hereby **ORDERED** to respond to the Subpoenas and provide responsive

documents directly and only to the Special Master once he or she has been appointed by the Court. To that end, the parties will provide the Banks with the contact information for the Special Master. Likewise, the Special Master shall, without any added instruction or direction, subpoena any and all of Defendants' banking records from any financial institution, other than the Banks, for the Relevant Time Period. Such banking records shall be produced directly to and only to the Special Master. All financials and other bank records for the Relevant Time Period must be provided to the Special Master no later than January 30, 2015.

The Special Master will conduct a forensic investigation into the foregoing financial records to determine whether, as Plaintiffs allege upon information and belief, Irlbeck misdirected any of Plaintiffs' funds to Defendants' bank accounts while employed as CFO for Plaintiff Homeland Self Storage.

The Special Master will take no direction or instructions from any of the parties or their counsel of record. The Special Master will not share any parties' financial information with any of the other parties to this litigation absent permission of the Court. Any other person that the Special Master employs for purposes of this investigation will be subject to the same conditions as the Special Master. If the Special Master requires further information or direction, he or she will direct all such questions or concerns only to the Court. Upon completion of the Special Master's investigation, the Special Master shall prepare and submit directly to the Court a written report containing an explanation of the methodology and results of that investigation. Counsel of record shall also receive a copy, on an attorney-eyes' only basis, of the Special Master's report. The Special Master's report shall be completed as soon as reasonably possible. Once the Special Master has received all the foregoing financial documents, he or she shall provide an estimate to the Court as to how much time is needed to complete the report, but

should give an update to the Court no less than every 45 days, after January 30, 2015, concerning his or her progress.


If necessary, after reviewing the report from the Special Master, the Court may require additional examination by the Special Master or augment or expand the scope of the Special Master's review.

Plaintiffs shall bear all costs associated with the Special Master until such time as the Court has had the opportunity to review the report of the Special Master to determine if any fee-shifting would be appropriate under the circumstances.

Until further order of the Court, all other motion practice or further discovery by the parties is **STAYED** pending review of the report of the Special Master.

Ruling on Defendants' Motion to Dismiss or for a More Definite Statement is **DEFERRED** until this Court has had the opportunity to review and consider the report of the Special Master.

It is **SO ORDERED**, this 12 day of December 2014.



JUDGE JOHN J. GOGER,
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

Copies to:

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