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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§ Chapter 11
	§
R.E. LOANS, LLC,	§ Case No. 11-35865-BJH
R.E. FUTURE, LLC and	§
CAPITAL SALVAGE, a California	§ Jointly Administered
corporation,	§
	§
Debtors.	§

**EMERGENCY MOTION FOR AN ORDER DIRECTING RULE 2004
EXAMINATION OF WORDPRESS.COM**

COMES NOW the Official Committee of Note Holders (the “*Committee*”), pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “*Rules*”), hereby moves this Court for an order directing a Rule 2004 examination of Wordpress.com (“*WordPress*”). In support of this motion (the “*Motion*”), the Committee would respectfully show the Court as follows:

I.
JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicate for the relief

sought herein is § 105 of title 11 of the United States Bankruptcy Code (the “*Bankruptcy Code*”)¹ and Rule 2004.

II. **BACKGROUND**

2. On September 13, 2011 (the “*Petition Date*”), R.E. Loans, LLC (“*R.E. Loans*”), Capital Salvage and R.E. Future, LLC (“*R.E. Future*” and, with R.E. Loans and Capital Salvage, the “*Debtors*”) commenced voluntary chapter 11 cases in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

3. On September 21, 2011, the United States Trustee for the Northern District of Texas appointed the Committee, which retained the undersigned counsel on the same day. The U.S. Trustee subsequently filed the *Appointment of the Official Committee of Noteholders* on September 22, 2011 [Dkt. No. 77], as amended on November 16, 2011 [Dkt. No. 242] and January 27, 2012 [Dkt. No. 446].

4. Pursuant to orders entered on December 1, 2011,² and January 30, 2012,³ the Committee retained Akin Gump Strauss Hauer & Feld LLP (“*Akin Gump*”) to serve as the Committee’s general bankruptcy counsel and Diamond McCarthy LLP (“*Diamond McCarthy*”) to serve as the Committee’s special litigation counsel.

5. On June 26, 2012, this Court entered the Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ Modified Fourth Amended Joint Chapter 11 Plan of Reorganization, Dated June 1, 2012 [Dkt. No. 968] (the “**Confirmation Order**”), which

¹ Unless otherwise noted herein, all section (§) references are to the Bankruptcy Code.

² Dkt. No. 280.

³ Dkt. No. 449.

confirmed the Modified Fourth Amended Joint Chapter 11 Plan of Reorganization, Dated June 1, 2012 [Dkt. No. 905] (the “**Plan**”).

6. Pursuant to the Plan and Confirmation Order, on the Effective Date of the Plan, Dennis Faulkner will be appointed the Liquidating Trustee (the “*Liquidating Trustee*”) of the R.E. Loans Liquidating Trust (the “*Liquidating Trust*”). Pursuant to the Plan and Confirmation Order, all claims and causes of action of the Debtors’ estates will vest in the Liquidating Trustee, and the Liquidating Trustee will be authorized and empowered to take all actions necessary to investigate and pursue such claims and causes of action. The Liquidating Trustee will report to a “*Trust Committee*” of seven individuals—one representative from Mortgage Fund ’08 LLC and six former Committee members. It is anticipated that the Plan will become effective on June 29, 2012.

7. On June 22, 2012, a confidential document (the “*Work Product*”) prepared by Diamond McCarthy for the Committee was posted by an anonymous blogger on the website <http://equitatus.wordpress.com> (the “*Blog*”). The Blog is maintained by an anonymous blogger who goes by the name “equitatus,” and hosted by Wordpress.com. Upon information and belief, the primary business purpose of Wordpress.com is the hosting and servicing of blogs.

8. The publication of the Work Product on the Blog represents a serious breach of confidentiality and has raised a serious question as to how it came into the hands of an anonymous blogger. The Committee has conducted an internal investigation into the disclosure of the Work Product and, to date, has not been able to ascertain how it came to be posted on a public Blog.

III.
RELIEF REQUESTED AND BASIS THEREFOR

9. The Committee, for itself and for the Liquidating Trustee, requests authority under Bankruptcy Rule 2004 to conduct an examination of WordPress by oral or written discovery, as appropriate, for the purpose of obtaining information pertaining to the Blog and the identity of “Equitatus.” Once the identity of Equitatus is ascertained, the Committee (or the Liquidating Trustee, as applicable) plans to file a second request under Bankruptcy Rule 2004 intended to determine how a confidential document fell into the hands of a third party.

10. Bankruptcy Rule 2004(a) provides, in pertinent part, that “[o]n motion of any party in interest, the court may order the examination of any entity.” Fed. R. Bankr. P. 2004(a). Rule 2004(b) states that the examination may relate to, among other things, “any matter which may affect the administration of the debtor’s estate.” Fed. R. Bankr. P. 2004(b).

11. The scope of a Rule 2004 examination is “unfettered and broad,” as the wording of the rule indicates. *In re Brazemore*, 216 B.R. 1020, 1023 (Bankr. S.D. Ga. 1998). The scope of a Rule 2004 examination is far broader than the scope of discovery under Rule 26 of the Federal Rules of Civil Procedure. *See, e.g., In re Lang*, 107 B.R. 130, 132 (Bankr. N.D. Ohio 1989). Examinations under Rule 2004 may include within their scope, among many other things, any matter which may affect “the administration of the debtor’s estate,” and, in a chapter 11 case, any matter relevant to the case or to the formulation of a plan. *In re Brazemore*, 216 B.R. at 1023. The well-settled scope of discovery conducted under Rule 2004 is so fundamental to the bankruptcy process and permissibly broad that courts have gone so far as to use with approval words and phrases such as “fishing expedition,” “exploratory and groping,” and “inquisition.” *See, e.g., In re 2435 Plainfield Ave., Inc.*, 223 B.R. 440, 456 (Bankr. D. N.J.

1998); *In re Drexel Burnham Lambert Group*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991); *In re Johns-Manville Corp.*, 42 B.R. 362, 364 (S.D.N.Y. 1984).

12. In the instant case, the requested examination falls well within the scope of Bankruptcy Rule 2004. The sanctity of confidential and privileged communications is critical to a committee's ability to carry out its functions—indeed, the same is true for any party. Further, the Trust Committee that will interact with and oversee the activities of the Liquidating Trustee post-confirmation is largely composed of members of the current Committee. The Liquidating Trustee, who will succeed to the Committee's ongoing investigations and carry on the function of investigating and pursuing third party causes of action, will report to a Trust Committee largely comprised of members of the current Committee. For the Liquidating Trustee to successfully carry out his duties, it is critical for the Liquidating Trustee (and the Trust Committee) to be assured that confidential and privileged information is properly safeguarded and not subject to discovery through illicit means.

13. The Committee believes it is imperative that the source of the disclosure of the Work Product be identified and prevented from any future disclosure of confidential or privileged information. The scope of the examination requested herein is narrowly tailored to only that information necessary to identify the source and methodology of the disclosure of the Work Product.

14. The Committee has conferred with the Liquidating Trustee, and is informed that the Liquidating Trustee joins in the relief requested in this motion and intends to follow through on this effort following the dissolution of the Committee.

15. The Committee has reviewed the WordPress website and determined that WordPress does not provide a way to personally confer with WordPress regarding the relief

requested herein. Rather, the WordPress website directs that “Official, signed court orders can be emailed to court-orders@wordpress.com.”⁴ Accordingly, the Committee requests that this Motion be granted such that this Court’s order can be emailed to WordPress in accordance with WordPress’s own procedures.

IV. CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order (a) authorizing the Committee and the Liquidating Trustee, as applicable, to take oral and written discovery of WordPress.com, whether by subpoena or otherwise, on matters pertaining to the blog hosted at <http://equitatus.wordpress.com> (the “Blog”), the identity of the person known on that Blog as “Equitatus,” and the identity of any other persons authorized or registered to post messages or documents on the Blog, and (b) granting such other and further relief as the nature of this case may require.

Dated: July 3, 2012

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Michael P. Cooley

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-and-

⁴ See <http://en.wordpress.com/complaints/>

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that the WordPress.com website contains procedures that do not allow for personal conferences regarding the request contained herein. Rather, the WordPress website directs that “Official, signed court orders can be emailed to court-orders@wordpress.com.” Therefore, the Committee files this Motion as contested because it has not been able to confer with WordPress, but does not anticipate that WordPress will file an objection to this Motion.

/s/ Michael S. Haynes

Michael S. Haynes

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on July 3, 2012, a true and correct copy of the foregoing was provided via (i) ECF to all parties requesting notice, and (ii) email to the address provided on the WordPress.com website.

/s/ Michael S. Haynes

Michael S. Haynes

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
R.E. LOANS, LLC,	§	Case No. 11-35865-BJH
R.E. FUTURE, LLC and	§	
CAPITAL SALVAGE, a California	§	Jointly Administered
corporation,	§	
	§	
Debtors.	§	

**ORDER GRANTING EMERGENCY MOTION FOR AN ORDER DIRECTING
RULE 2004 EXAMINATION OF WORDPRESS.COM**

This matter having come before this Court on the *Emergency Motion for an Order Directing Rule 2004 Examination of WordPress.com* [Docket No. ____] (the “**Motion**”)¹ filed by The Official Committee of Note Holders, (the “**Committee**”); the Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; the Court finds that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court finds that proper and adequate

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

notice of the Motion has been given and that no other or further notice is necessary; the Court finds that the Committee has shown good and sufficient justification for the relief requested in the Motion, and that, on the record herein and after due deliberation thereon, good and sufficient cause exists for granting the relief requested therein; accordingly; **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED.
2. The Committee and the Liquidating Trustee, as applicable, are authorized pursuant to Federal Rule of Bankruptcy Procedure 2004 to conduct an examination of WordPress.com, by oral and written discovery, whether by subpoena or otherwise, on matters pertaining to the blog hosted at <http://equitatus.wordpress.com> (the “**Blog**”), the identity of the person known on that Blog as “Equitatus,” and the identity of any other persons authorized or registered to post messages or documents on the Blog.
3. The Court retains jurisdiction to determine any disputes regarding this order.

End of Order

Submitted and prepared by:

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