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Attorneys for Judgment Creditor DS HOLDINGS, LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**OFFICE DEPOT, INC.**, a Delaware corporation,

Plaintiff,

vs.

**JOHN ZUCCARINI**, individually and d.b.a. COUNTRY WALK; and DOES 1 through 10, inclusive,

Defendant.

**DS HOLDINGS, LLC**, a Colorado limited liability company,

Judgment Creditor,

vs.

**JOHN ZUCCARINI**, individually and d.b.a. COUNTRY WALK; and DOES 1 through 10, inclusive,

Judgment Debtor.

Case No. C-06-80356-SI

**JUDGMENT CREDITOR DS HOLDINGS, LLC'S AND INTERVENOR THE UNITED STATES OF AMERICA'S NOTICE OF MOTION AND MOTION TO AUTHORIZE SALE OF DOMAIN NAMES AND DISTRIBUTION OF PROCEEDS; MEMORANDUM OF POINTS AND AUTHORITIES**

DATE: August 13, 2010  
TIME: 9:00 AM  
CTRM: 10, 19<sup>th</sup> Floor

The Honorable Susan Illston

KRONENBERGER BURGOYNE, LLP  
150 Post Street, Suite 520  
San Francisco, CA 94108  
www.KBInternetLaw.com

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on August 13, 2010 at 9:00 a.m. or as soon  
3 thereafter as the matter may be heard in the above-titled Court, located in Courtroom  
4 10, 19<sup>th</sup> Floor of the United States District Court for the Northern District of California,  
5 located at 450 Golden Gate Avenue, San Francisco, CA 94102, Judgment Creditor DS  
6 Holdings, LLC ("DS Holdings") and Intervenor, the United States of America ("U.S.") will  
7 move the Court to authorize the sale of the domain names in the possession of the  
8 post-judgment receiver. DS Holdings and the U.S. will also move the Court to authorize  
9 the distribution of the proceeds in the possession of the post-judgment receiver.

10 DS Holdings and the U.S. make this motion so that the post-judgment receiver  
11 can proceed with the sale of the approximately 116 domain names in the receiver's  
12 possession to satisfy DS Holdings's judgment against Judgment-Debtor John Zuccarini  
13 and the U.S.'s tax liens against Zuccarini, whether these obligations are satisfied in  
14 whole or in part by the sale.

15 This motion is based on this notice, the memorandum of points and authorities in  
16 support of this motion, the declaration of Karl S. Kronenberger in support of this motion,  
17 the declaration of Michael W. Blacksburg in support of this motion, and any additional  
18 evidence and argument that the Court may receive at or before the hearing on this  
19 motion.

20  
21 DATED: July 30, 2010

22  
23 KRONENBERGER BURGOYNE, LLP

JOSEPH P. RUSSONIELLO  
United States Attorney

24  
25 By: s/ Henry M. Burgoyne, III  
26 Henry M. Burgoyne, III

By: s/ Thomas Moore  
Thomas Moore

27 Attorneys for Judgment Creditor,  
28 DS HOLDINGS, LLC

Assistant United States Attorney  
Tax Division  
Attorneys for the United States of America

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150 Post Street, Suite 520  
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**MEMORANDUM OF POINTS AND AUTHORITIES****INTRODUCTION**

On September 10, 2007, the Court appointed a post-judgment receiver to marshal Judgment Debtor John Zuccarini's domain name holdings and to sell these domain names (the "Domain Holdings") at auction to satisfy Judgment Creditor DS Holdings LLC ("DS Holdings")'s judgment against Zuccarini. While Zuccarini appealed the Court's decision, the Ninth Circuit affirmed the Court's order. The parties and the receiver are now ready to sell the Domain Holdings and to distribute the proceeds. The receiver has researched the most efficient and profitable way to sell the Domain Holdings. DS Holdings and Intervenor the United States of America ("U.S.") approve of the receiver's auction plan. Even Zuccarini has acknowledged that the proposed auction is a prominent and effective domain name auction.

Thus, DS Holdings and the U.S. ask the Court to authorize the sale of the Domain Holdings at the auction at the T.R.A.F.F.I.C. Domain Conference & Expo, in Miami, Florida, on October 19, 2010, to be held in conjunction with Latona's Brokerage & Auction House.

**BACKGROUND**

On December 18, 2006, DS Holdings registered in this Court a judgment issued against Zuccarini by the United States District Court for the Central District of California (the "Judgment"). [D.E. No. 1.] In connection with DS Holdings's efforts to enforce the Judgment, the Court issued an Order Prohibiting the Transfer of, or Change of Whois Registrant Information Relating to, the Domain Name Holdings of Judgment Debtor John Zuccarini (the "Preservation Order") on February 21, 2007. [D.E. No. 9.]

Subsequently, DS Holdings applied for the appointment of a post-judgment receiver to collect and ultimately dispose of Zuccarini's Domain Holdings, with the proceeds going toward the enforcement of the Judgment. [D.E. No. 18.] The Court granted DS Holdings's request and appointed Michael W. Blacksborg as a receiver (the "Receiver") [D.E. No. 30]. Zuccarini appealed the Court's decision to the Ninth Circuit.

1 [D.E. 34.]

2 On November 14, 2007 the Court granted in part and denied in part Zuccarini's  
3 motion to stay the enforcement of the Judgment pending the disposition of Zuccarini's  
4 appeal. [D.E. No. 47.] The Court stayed the auction of the Domain Holdings until  
5 Zuccarini's appeal was resolved. However, the Court denied Zuccarini's motion to stay  
6 the transfer of the Domain Holdings to the Receiver. (*Id.*) Thus, the Court held that "the  
7 domain names shall be transferred to receiver Michael W. Blacksburg. DS Holdings, as  
8 assignee of the judgment, is entitled to any profits arising out of the domain names prior  
9 to auction." (*Id.*) That same day, the Court issued an Order Granting Receiver's  
10 Request to Lift Preservation Order, which lifted the February 21<sup>st</sup> preservation order for  
11 the sole purpose of transferring control of the Domain Holdings to the receiver. [D.E.  
12 No. 48.]

13 On May 16, 2008 the U.S. sought to intervene in this action as a third party  
14 creditor of Zuccarini. [D.E. No. 71.] The U.S. alleged that Zuccarini owed a great deal  
15 of money in unpaid taxes, and that the U.S. had priority over DS Holdings in receiving  
16 revenue from Zuccarini. (*Id.*) The parties subsequently stipulated to—and this Court  
17 ordered—the intervention of the U.S. [D.E. No. 98.]

18 On February 26, 2010, the Ninth Circuit affirmed this Court's order appointing the  
19 Receiver. [D.E. No. 86.] Zuccarini again moved the Court to stay the auction of the  
20 Domain Holdings. [D.E. No. 88.] On May 12, 2010 the Court denied Zuccarini's motion.  
21 [D.E. No. 95.] On June 15, 2010 the Court issued an order denying Zuccarini's motion  
22 for emergency relief and Network Solutions, LLC's motion to intervene. [D.E. No. 119.]  
23 In this order, the Court said, "[t]he receiver and the parties are free to agree on a  
24 procedure for auction of the approximately 116 domain names that remain in the  
25 receiver's control, subject to the Court's approval." (*id.*) During the pendency of  
26 Zuccarini's appeal and motion practice—and continuing to the present—the Domain  
27 Holdings have generated revenue, which has remained in the possession of the  
28 Receiver. (Declaration of Michael W. Blacksburg in Support of Motion to Authorize Sale

1 of Domain Names (“Blacksburg Decl.”) ¶3.)

2 Following the entry of the Court’s June 15, 2010 Order, DS Holdings and the  
3 U.S. met-and-conferred about the disposition of the Domain Holdings and the  
4 distribution of the proceeds from the Domain Holdings. (Declaration of Karl S.  
5 Kronenberger in Support of Motion to Authorize Sale of Domain Names (“Kronenberger  
6 Decl.”) ¶2; Blacksburg Decl. ¶11.) Additionally, DS Holdings and the Receiver sought to  
7 meet-and-confer with Zuccarini about an appropriate procedure for the auction of the  
8 Domain Holdings, so as to maximize the sale proceeds. (Blacksburg Decl. ¶12;  
9 Kronenberger Decl. ¶3.)

10 After researching the industry, consulting with Zuccarini, and interviewing  
11 multiple domain name auction houses, the Receiver developed an auction strategy to  
12 maximize the proceeds from the sale of the Domain Holdings. (Blacksburg Decl. ¶¶5-  
13 9.) Specifically, the Receiver determined that the most prominent domain auction in the  
14 upcoming twenty-four months is the auction at the T.R.A.F.F.I.C. Domain Conference &  
15 Expo, in Miami, Florida, on October 19, 2010, to be held in conjunction with Latona’s  
16 Brokerage & Auction House (hereinafter, the “Auctioneer”). (*Id.* ¶6.) T.R.A.F.F.I.C. is  
17 considered to be the domain industry’s premier conference, attracting attendees that  
18 control over 20 million domain names with 50 million daily unique visitors. (*Id.* ¶7.)  
19 Latona’s Brokerage & Auction House is considered to be one of the most prominent  
20 auction houses for valuable domain names, and is the exclusive domain name auction  
21 company for the 2010 T.R.A.F.F.I.C. Domain Conference & Expo. (*Id.* ¶8.) This auction  
22 will allow both live bidding and worldwide Internet-based bidding. (*Id.*)

23 With the Court’s approval—and the Court’s lifting of its February 21, 2007  
24 preservation order and subsequent modification—the Receiver is prepared to enter a  
25 contract with the Auctioneer, so that the Auctioneer may market the Domain Holdings  
26 for auction at the October 19, 2010 T.R.A.F.F.I.C. conference. (Blacksburg Decl. ¶13.)  
27 The Receiver, relying upon the research and advice of the Auctioneer, will set reserve  
28 amounts for each domain name in the Domain Holdings. (*Id.* ¶10.) Any domain names

1 in the Domain Holdings that are not sold at the October 19, 2010 auction, due to the  
2 reserve not being met or otherwise, will remain in the receivership and continue to be  
3 monetized by the Receiver until the next appropriate auction, which may not occur until  
4 2011. (*Id.* ¶13.)

## 5 ARGUMENT

### 6 **A. The Court has the authority to instruct the receiver to sell the Domain Holdings and distribute proceeds.**

7  
8 DS Holdings and the U.S. (collectively, the “Creditors”) ask the Court to modify its  
9 February 21, 2007 preservation order and subsequent modification and to authorize the  
10 sale of the Domain Holdings by the Receiver.

11 A post-judgment receiver appointed under California Code of Civil Procedure  
12 section 708.620 is subject to the general provisions of receivership law regarding his or  
13 her rights and duties. Accordingly, after a receiver is appointed to enforce a judgment,  
14 he or she may: 1) carry the judgment into effect, 2) dispose of property pursuant to the  
15 judgment, 3) preserve property while the judgment is on appeal, or 4) collect and  
16 disburse interim proceeds. See Cal. C. Civ. P. 564(b)(3), (4); *Gold v. Gold Realty Co.*,  
17 114 Cal. App. 4h 791, 804 (2003). Receivers are officers of the Court, and by all  
18 authority may properly ask for instructions from the court concerning the administration  
19 of the property in their hands. See *Scott v. W. Pac. R. Co.*, 246 F. 545, 546 (9th Cir.  
20 1917).

21 The Creditors request that the Court: a) modify its preservation order to allow the  
22 receiver to dispose of the Domain Holdings, b) authorize the receiver to auction the  
23 Domain Holdings as soon as practicable pursuant to the method described above; c)  
24 authorize the Receiver to distribute all proceeds from the interim operation of the  
25 Domain Holdings, and from the sale by auction of the Domain Holdings, to DS Holdings  
26 and the U.S. according to their respective priority of interests, or as they may otherwise  
27 agree.

28 //

**B. The Receiver has developed an auction strategy to maximize the proceeds from the sale of the domain names.**

The Receiver has determined that the most effective way to maximize the proceeds from the sale of the Domain Holdings is to auction the Domain Holdings at the T.R.A.F.F.I.C. Domain Conference & Expo, in Miami, Florida, on October 19, 2010, in conjunction with Latona's Brokerage & Auction House. The Creditors approve of this auction plan, as indicated by their approval below. This plan involves considerable marketing of the Domain Holdings before the auction, the use of a respected domain name auctioneer, and reasonable reserve prices set for each domain name prior to the auction based on research by industry experts. For these reasons, the Court should lift its February 21, 2007 preservation order and subsequent modification and allow the Receiver to proceed with the forgoing plan to auction the Domain Holdings.

**CONCLUSION**

For all the reasons set forth above, the Court should modify its preservation orders and authorize the sale of the Domain Holdings and the distribution of the proceeds.

DATED: July 30, 2010

KRONENBERGER BURGOYNE, LLP

JOSEPH P. RUSSONIELLO  
United States Attorney

By: s/ Henry M. Burgoyne, III  
Henry M. Burgoyne, III

By: s/ Thomas Moore  
Thomas Moore

Attorneys for Judgment Creditor,  
DS HOLDINGS, LLC

Assistant United States Attorney  
Tax Division  
Attorneys for the United States of America

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**ATTESTATION OF CONCURRENCE IN FILING**

Pursuant to the General Order No. 45, section 45 X(B), for The United States District Court for the Northern District of California, I, Henry M. Burgoyne, III, hereby attest that the concurrence to the filing of this JUDGMENT CREDITOR DS HOLDINGS, LLC'S AND INTERVENOR THE UNITED STATES OF AMERICA'S NOTICE OF MOTION AND MOTION TO AUTHORIZE SALE OF DOMAIN NAMES AND DISTRIBUTION OF PROCEEDS; MEMORANDUM OF POINTS AND AUTHORITIES has been obtained from Thomas Moore who has provided the conformed signature above

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**OFFICE DEPOT, INC.**, a Delaware corporation,

Plaintiff,

vs.

**JOHN ZUCCARINI**, individually and d.b.a. COUNTRY WALK; and DOES 1 through 10, inclusive,

Defendant.

Case No. C-06-80356-SI

**[PROPOSED] ORDER GRANTING  
MOTION TO AUTHORIZE SALE OF  
DOMAIN NAMES AND DISTRIBUTION  
OF PROCEEDS**

**DS HOLDINGS, LLC**, a Colorado limited liability company,

Judgment Creditor,

vs.

**JOHN ZUCCARINI**, individually and d.b.a. COUNTRY WALK; and DOES 1 through 10, inclusive,

Judgment Debtor.

1 WHEREAS on December 18, 2006, DS Holdings, LLC (“DS Holdings”) registered  
2 in this Court a judgment issued against John Zuccarini (“Zuccarini”), entered by the  
3 United States District Court for the Central District of California (the “Judgment”). [D.E.  
4 No. 1.]

5 WHEREAS in connection with DS Holdings’s efforts to enforce the Judgment, the  
6 Court issued an Order Prohibiting the Transfer of, or Change of Whois Registrant  
7 Information Relating to, the Domain Name Holdings of Judgment Debtor John Zuccarini  
8 (the “Preservation Order”) on February 21, 2007. [D.E. No. 9.]

9 WHEREAS DS Holdings subsequently applied for the appointment of a post-  
10 judgment receiver to collect and ultimately dispose of Zuccarini’s domain name holdings  
11 (the “Domain Holdings”), with the proceeds going toward the enforcement of the  
12 Judgment. [D.E. No. 18.] The Court granted DS Holdings’s request and appointed  
13 Michael W. Blacksborg as the receiver (the “Receiver”) [D.E. No. 30].

14 WHEREAS Zuccarini appealed the Court’s order appointing the Receiver to the  
15 United States Court of Appeal for the Ninth Circuit. [D.E. 34.]

16 WHEREAS on November 14, 2007 the Court granted in part and denied in part  
17 Zuccarini’s motion to stay the enforcement of the Judgment pending the disposition of  
18 Zuccarini’s appeal. [D.E. No. 47.] The Court stayed the auction of the Domain Name  
19 Holdings until Zuccarini’s appeal was resolved. However, the Court denied Zuccarini’s  
20 motion to stay the transfer of the Domain Holdings to the Receiver. The Court held that  
21 “the domain names shall be transferred to receiver Michael W. Blacksborg. DS  
22 Holdings, as assignee of the judgment, is entitled to any profits arising out of the domain  
23 names prior to auction.”

24 WHEREAS on November 14, 2007 the Court issued an Order Granting  
25 Receiver’s Request to Lift Preservation Order, which lifted the February 21<sup>st</sup>  
26 preservation order for the sole purpose of transferring control of the Domain Name  
27 Holdings to the receiver. [D.E. No. 48.]

28 WHEREAS on May 16, 2008 the United States of America (“U.S.”) sought to

1 intervene in this action as a third party creditor of Zuccarini. [D.E. No. 71.] The U.S.  
2 alleged that Zuccarini owed a great deal of money in unpaid taxes, and that the U.S.  
3 had priority over DS Holdings in receiving revenue from Zuccarini. The parties  
4 subsequently stipulated to—and this Court ordered—the intervention of the U.S. [D.E.  
5 No. 98.]

6 WHEREAS on February 26, 2010, the Ninth Circuit affirmed this Court’s order  
7 appointing the Receiver.

8 WHEREAS on April 20, 2010 Zuccarini again moved the Court to stay the  
9 auction of the Domain Holdings. [D.E. No. 88.] On May 12, 2010 the Court denied  
10 Zuccarini’s motion. [D.E. No. 95.]

11 WHEREAS on June 15, 2010 the Court entered an order denying Zuccarini’s  
12 motion for emergency relief and Network Solutions, LLC’s motion to intervene. [D.E.  
13 No. 119.] The Court said, “[t]he receiver and the parties are free to agree on a  
14 procedure for auction of the approximately 116 domain names that remain in the  
15 receiver’s control, subject to the Court’s approval.”

16 WHEREAS during the pendency Zuccarini’s appeal and motion practice—and  
17 continuing to the present—the Domain Holdings have generated revenue, which  
18 revenue has remained in the possession of the Receiver except as necessary to pay  
19 the for the expenses of the receivership.

20 WHEREAS DS Holdings has sought to meet and confer with the Receiver, the  
21 U.S., and Zuccarini about the most efficacious way to auction the Domain Holdings and  
22 to maximize the proceeds.

23 WHEREAS DS Holdings and the U.S. have submitted to the Court—in the form  
24 of a noticed motion—a proposal for the mechanism by which the Receiver shall auction  
25 the Domain Holdings and maximize the proceeds.

26 After consideration of DS Holdings’s and the U.S.’s Motion to Authorize Sale of  
27 Domain Names and Distribution of Proceeds, and good cause having been found  
28 therefore, IT IS HEREBY ORDERED AND FOUND:

1           1.     The Court's Order Prohibiting the Transfer of, or Change of Whois  
2 Registrant Information Relating to, the Domain Name Holdings of Judgment Debtor  
3 John Zuccarini entered on February 21, 2007 [D.E. No. 1] and the Court's subsequent  
4 modification [D.E. No. 9] are hereby lifted for the sole purpose of allowing the Receiver  
5 to sell the Domain Holdings and distribute the proceeds through the procedures  
6 described in this Order.

7           2.     As soon as practicable, the Receiver shall coordinate and enter all  
8 necessary contracts with Latona's Brokerage & Auction House to auction the Domain  
9 Holdings at the T.R.A.F.F.I.C. Domain Conference & Expo, in Miami, Florida, on  
10 October 19, 2010 or the next available domain auction of similar prominence (the  
11 "Auction").

12          3.     As soon as practicable, the Receiver shall coordinate with the auctioneers  
13 to take commercially reasonable efforts to ensure that adequate marketing of the  
14 Auction of the Domain Holdings occurs. The Receiver shall reasonably consider all  
15 suggestions for additional marketing received from any party.

16          4.     As soon as practicable, the Receiver shall take commercially reasonable  
17 efforts, including but not limited to consulting with industry experts, to set an appropriate  
18 reserve price for each domain name within the Domain Holdings for the Auction.

19          5.     The Receiver shall provide notice of the reserve prices for each domain  
20 name in the Domain Holdings to all of the parties by September 19, 2010. The  
21 Receiver shall reasonably consider all suggestions to change the reserve pricing  
22 received from any party before September 26, 2010.

23          6.     The Receiver shall take all reasonable steps to sell the Domain Holdings  
24 at the Auction and to achieve the maximum price for each domain name in the Domain  
25 Holdings.

26          7.     As soon as practicable after the sale of the Domain Holdings—or the sale  
27 of any component of the Domain Holdings—the Receiver shall distribute the proceeds  
28 from the sale as described in Paragraph 8 of this Order.

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8. The Receiver shall distribute all funds in the receivership as such funds are available, other than as necessary to operate the receivership. Such funds shall be distributed to the U.S. and D.S. Holdings according to their priority of interest, or as the U.S. and D.S. Holdings otherwise agree. For clarification, the Receiver shall distribute all funds currently in the receivership, other than as necessary to operate the receivership.

9. By November 19, 2010, the Receiver shall file with the Court a report describing the status of the Domain Holdings, any sale of the Domain Holdings at the Auction, the prices received for the Domain Holdings if they were sold, any expenses incurred in selling the Domain Holdings, and the distribution of the proceeds.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_

THE HON. SUSAN ILLSTON  
United States District Judge