

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

**RALPH S. JANVEY, IN HIS  
CAPACITY AS COURT-APPOINTED  
RECEIVER FOR THE STANFORD  
INTERNATIONAL BANK, LTD., et al  
Plaintiff,**

v.

**BEN BARNES AND BEN BARNES  
GROUP, L.P,  
Defendants.**

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**Civil Action No.  
3:10-cv-527**

**DEFENDANTS' OBJECTIONS TO PROFFERED  
EXHIBITS AND MOTION TO STRIKE**

**TO THE HONORABLE DAVID C. GODBEY,  
UNITED STATES DISTRICT JUDGE:**

Defendants submit these Objections and concurrent Motion to Strike directed at certain exhibits proffered by Plaintiff as part of Plaintiff's Response to Defendants' Motion to Dismiss, and in support thereof respectfully shows as follows:

**I. Background**

On April 12, 2010, Defendants filed their Motion to Dismiss pursuant to FRCP 12 (Doc. #8). Plaintiff filed his response to the Motion on May 3, 2010 (Doc. #11). Filed with the Response was an appendix containing three documents purporting to be copies of email messages, from, to or about Defendants. Two of the proffered exhibits (Exhibits 1 and 2) purport to be authored by Alan Stanford, while the third exhibit (Exhibit 3) purports to be "signed" by Ben Barnes, although the sender is Susan Martin.

**II. Specific Objections**

Defendants object to the proffered exhibits on the following grounds:

a. To all proffered exhibits in that they are submitted as "evidence" in response to a Motion filed under Rule 12(b), FRCP. Such an attempt to submit evidence in response to this type of motion is inappropriate and improper. In deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), courts must limit their inquiry to the facts stated in the complaint, documents either attached to or incorporated in the complaint, matters of which they take judicial notice, and documents in the public record. *Lovelace v. Software Spectrum, Inc.* 78 F.3d 1015, 1017-18 (5th Cir. 1996).

b. To all of the proffered exhibits in that each lacks authentication and/or appropriate foundation to qualify for admission into evidence.

c. To exhibits 1 and 2, and to the first portion of Exhibit 3 in that each constitute inadmissible hearsay as to these Defendants.

### **III. Motion to Strike**

Defendants respectfully move the Court to strike each of the proffered exhibits submitted as part of Plaintiff's responsive pleading. Defendants' Objections set forth hereinabove also serve as the basis for Defendants' Motion to Strike.

### **Conclusion**

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court sustain their objections to the proffered evidence and that their concurrent Motion to Strike be in all things granted and for such other and further relief to which Defendants may show themselves entitled.

Respectfully submitted

**WINSTEAD PC**

By:     /s/ Jay J. Madrid    

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ATTORNEYS FOR DEFENDANT BEN BARNES &  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of May, 2010, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, and that I have served all counsel of record via certified mail, return receipt requested. .

    /s/ Jay J. Madrid      
Jay J. Madrid