

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re

CASE NO. 9:08-bk-04360-ALP

ULRICH FELIX ANTON ENGLER,
PRIVATE COMMERCIAL OFFICE, INC.,
and PCO CLIENT MANAGEMENT, INC.,

CHAPTER 7
(Substantively Consolidated)

Debtors.

**TRUSTEE'S NOTICE OF FILING SUPPLEMENTAL AUTHORITY
IN SUPPORT OF MOTION TO SUBSTANTIVELY CONSOLIDATE
NON-DEBTOR DOUGLAS INVESTMENTS, LLC WITH AND
INTO THE DEBTORS' BANKRUPTCY ESTATES**

ROBERT E. TARDIF, JR. (hereinafter the "Trustee"), as Chapter 7 Trustee for the substantively consolidated bankruptcy estates of Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. (hereinafter referred to collectively as the "Debtors"), by and through his undersigned counsel, hereby files this Notice Of Filing Supplemental Authority In Support Of Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates [D.E. 212] (the "Motion to Substantively Consolidate") and hereby notifies all interested parties of his intent to rely upon the following additional authorities in support of the Motion to Substantively Consolidate:

1. *Fish v. East*, 114 F.2d 177 (10th Cir. 1940) (approving substantive consolidation of a non-debtor with a debtor because the non-debtor was merely an "instrumentality" of the debtor being used to delay creditors);
2. *Soviero v. Franklin National Bank of Long Island*, 328 F.2d 446 (2d Cir. 1964) (because non-debtor entities were "but instrumentalities of the bankrupt [debtor] with no separate existence of their own," and there existed a unity of interest and ownership, the Second Circuit Court of Appeals affirmed district court's confirmation of turnover order finding

that the non-debtor assets belonged to the debtor and should be administered as part of debtor's bankruptcy estate);

3. *In re Tureaud*, 45 B.R. 658 (Bankr. N.D. Ok. 1985), *aff'd*, 59 B.R. 973 (N.D. Okla. 1986) (finding that corporate non-debtors were the individual debtor's alter egos, that the debtor organized the corporate non-debtors merely as a front to raise money for his purposes and to hinder and delay creditors, that the corporate non-debtors were a sham and served as a conduit for the debtor, and that any potential prejudice of substantive consolidation was greatly outweighed by the much greater potential for prejudice, harm, and waste if substantive consolidation was not ordered, the court ordered substantive consolidation of the corporate non-debtors and debtor);
4. *Matter of Baker & Getty Financial Services, Inc.*, 78 B.R. 139 (Bankr. N.D. Oh. 1987) (substantively consolidating non-debtor individuals into the substantively consolidated bankruptcy estate of three corporate debtors where the non-debtor individuals formed the corporate debtors, which were operated as a Ponzi scheme, and the totality of the circumstances made it clear that the corporate debtors were the non-debtors' alter egos);
5. *Moran Pipe & Supply Co., Inc.*, 130 B.R. 588 (Bankr. E.D. Ok. 1991) (substantively consolidating a corporate non-debtor with a corporate debtor based on an alter ego theory);
6. *Simon v. New Center Hospital (In the Matter of New Center Hospital)*, 187 B.R. 560 (E.D.M.I. 1995) (affirming the bankruptcy court's substantive consolidation of a corporate debtor and non-debtor affiliated entities after finding that the non-debtor entities were alter egos of the debtor and that both the *Augie/Restivo* and *Auto-Train* tests for substantive consolidation were satisfied);
7. *In re Bonham*, 226 B.R. 56 (Bankr. D. Ak 1998), *aff'd*, 229 F.3d 750 (9th Cir. 2000) (finding that corporate non-debtors were the alter egos or instrumentalities of the individual debtor, that the debtor used the corporate non-debtors for a fraudulent purpose, namely a Ponzi scheme, and that the financial affairs of the corporate non-debtors and the debtor were hopelessly entangled, the court held that substantive consolidation was justified under either the *Eastgroup Properties* test or the *Augie/Restivo* test); and
8. *Simantob v. Lahijani (In re Lahijani)*, 2005 WL 4658490 (Bankr. C.D. Cal. 2005) (concluding that extraordinary circumstances required for substantive consolidation are present where the debtor and non-debtor

entities are alter egos of each other and where the debtor uses corporate non-debtor assets as if they were his own).¹

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Trustee's Notice Of Filing Supplemental Authority In Support Of Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates has been filed with the Court and thereby furnished to all creditors and parties in interest registered on the Court's CM/ECF System on the 15th day of June, 2010.

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.

¹ The unreported decision of *Simantob v. Lahijani (In re Lahijani)*, 2005 WL 4658490 (Bankr. C.D.Cal. 2005) is attached hereto as **Exhibit "A."**