APPENDIX "A"

THE COURT'S OBSERVATIONS AND FINDINGS ABOUT THE DEBTOR'S CREDIBILITY

The Debtor's credibility is called into question in multiple respects. Set forth below are several instances of the dissembling and deceit that illuminate the Debtor's lack of credibility.

1. The Debtor's Testimony That He Did Not Initially Schedule the Treatment Because He Did Not Believe It Had Any Value Is Not Believable

The Debtor testified that he did not initially disclose the Treatment on his original Schedule B because, among other reasons, he did not believe it had any value. [Finding of Fact No. 23]. The Court finds this explanation very suspect. Indeed, the Debtor scheduled two other assets—"unit in Gallow Hills Picture, LLC" and "patent applications"—as each having a value of $1.00. [Findings of Fact Nos. 16 & 19]. It strains credulity for him to schedule two assets as each having a value of $1.00 and yet not schedule the Treatment as at least having a value of $1.00. According to the Debtor, he knew on the Petition Date that New Line did not own the Treatment, the Perron Life Rights, or the Warren Life Rights. [Findings of Fact Nos. 7 & 9]; [Hr'g Tr. 153:25−154:3, Dec. 1, 2015]. He also knew on the Petition Date that he personally owned the Treatment and that two entities he controlled (Silverbird and Evergreen), or one entity for which he was an officer (Holdings), owned the Perron Life Rights and the Warren Life Rights. [Hr'g Tr. 124:17−23, Dec. 1, 2015]; [Findings of Fact Nos. 7 & 9]. Since the Debtor testified that ownership of all three of these assets is necessary to have the unfettered rights to produce "The Conjuring," [Hr'g Tr. 153:21−24, Dec. 1, 2015], he assuredly knew that as of the Petition Date, the Treatment had a value of at least $1.00, particularly since he and his affiliated entities had ownership, and therefore control, of all three of these assets on the Petition Date.

2. The Debtor's Testimony That He Did Not Realize the Treatment Had Any Value Until Late 2014 is a Blatant Misrepresentation for Three Separate and Distinct Reasons

First Reason: At the Hearing, when asked when he came to the conclusion that the Treatment had value, the Debtor responded as follows:

> I wasn't sure it had value, I knew that they [i.e. New Line and Warner Brothers] used it when the movie came out because you don't know what the movie is going to be, and they don't know what the use is until then… So I would say late 2014—when after talking to all these other lawyers who were working on other matters did I start to get an idea that maybe the right way to go was to reopen the bankruptcy.

[Hr'g Tr. 125:10−126:16, Dec. 1, 2015]. Yet, an email exchange on October 7, 2010 between the Debtor and New Line's senior vice president and head of business and legal affairs (Craig Alexander) underscores that on this date—which is four years earlier than late 2014—the Debtor believed that the Treatment had substantial value.

Specifically, on October 7, 2010—only ten weeks after the Debtor received his discharge and while his bankruptcy case was still open—he sent a very hostile email to Alexander. [Finding of Fact No. 40]. The Debtor sent this email less than one hour after receiving an email from Alexander in which Alexander stated that: "I am afraid I [i.e. New Line] can't buy your treatment. I don't think the writers ever saw it, and it would not be fair to them to introduce that into the credit administration." [*Id.*]. The Debtor, upset by this statement, responded with the following threat:

> Bullshit Craig, at least 60-65% of that story [for the screenplay of "The Conjuring"] if not more, is from *my* treatment . . . I shut my mouth up till now to get this [movie] made, but no more. All bets are off. I had this conversation with Peter Safran [one of the producers of "The Conjuring"] a while back and also with John, even before there were any 'issues' that this script was based on *my* story/treatment and transited way beyond any producer duties, so shouldn't I be credited/*paid* for that work. No more Mr. Nice Guy, no more patience. No one rips me creatively or otherwise. So I'll just sue everyone here

> because I have had enough of being defrauded and now screwed with. See you in court.

[*Id*.] (emphasis added).

The language that the Debtor used in this email unequivocally shows that: (1) the Debtor believed that he owned the Treatment; (2) the Debtor believed that New Line was improperly using the Treatment to develop the script (or screenplay) for "The Conjuring;" (3) the Debtor wanted New Line to pay him for its use of the Treatment; and (4) if New Line would not pay him for its use of the Treatment, he would file suit against New Line. The Debtor's email to Alexander thus shows that as of October 7, 2010, he believed that the Treatment had substantial value—indeed, enough to threaten to file suit if necessary. Therefore, the Debtor's testimony under oath that he did not believe the Treatment had value until "late 2014" is a bald-faced lie.

Second Reason: In addition to the above-referenced email, the Debtor's testimony on cross examination by New Line's attorney reflects an admission by the Debtor that he knew the Treatment had value in 2013:

> Q: Mr. DeRosa-Grund, yes or no, would you agree with me that "The Conjuring" theatrical motion picture had been reported to be one of the most profitable theatrical motion picture films of 2013?
> A: *Yes, sir*.
> Q: But as that film became more profitable and the value of "The Conjuring" treatment increased, you didn't schedule—you didn't go back and schedule "The Conjuring" treatment, did you?
> A: No, sir.
> Q: Okay. Your bankruptcy case was still open, but you didn't go back and reschedule it.
> A: No, sir.
> Q. Okay. Even though you knew *at that time* it had value, right?
> A: Yes, sir.

[Hr'g Tr. 114:25−115:14, Dec. 1, 2015] (emphasis added).

Thus, the Debtor, by his own testimony, acknowledged that in 2013, the Treatment had value after "The Conjuring" began showing in movie theaters nationwide.[1] This admission directly contradicts his testimony that he only realized that the Treatment had value in "late 2014."

Third Reason: Aside from the email of October 7, 2010 and the Debtor's courtroom testimony referenced above, the Debtor filed two lawsuits in the District Court—one on March 28, 2014 and the other on April 23, 2014—both of which sought damages for the alleged misappropriation of the Treatment. [Findings of Fact Nos. 44 & 45]. There is no question that March 28, 2014 and April 23, 2014 are not months that fall within "late 2014." The Debtor's litigation actions in early 2014 belie his testimony at the Hearing that he only came to the conclusion on the Treatment's value in "late 2014." He would not have sued for damages in the first quarter of 2014 unless he believed the Treatment had value at that time. The Debtor's actions speak louder—and shine the light on the truth—than his testimony at the Hearing that he only realized that the Treatment had value in "late 2014."

3. The Debtor's Testimony About Why He Waited a Year to Disclose to This Court That the Treatment has Value is Highly Suspect

The Debtor testified that he did not come to the conclusion that the Treatment had value until "late 2014." [Hr'g Tr. 125:10−126:16, Dec. 1, 2015]. Yet, he did not file the Motion to Reopen (disclosing the Treatment to this Court) until September 23, 2015, [Finding of Fact No. 53]—i.e. almost one year after he claims to have discovered that the Treatment had value. When

[1] According to all four of the complaints that the Debtor filed in the District Court, "The Conjuring" was released on July 19, 2013. [Civil Action No. 14-00793, Doc. No. 1, ¶ 24]; [Civil Action No. 14-01117, Doc. No. 1, ¶ 24]; [Civil Action No. 15-02273, Doc. No. 1, ¶ 38]; [Civil Action No. 15-02763, Doc. No. 1, ¶ 39]. "Films typically generate nearly one-third of their domestic ticket sales in the first three days of release." Eller, Claudia and Josh Friedman, LOS ANGELES TIMES, June 14, 2008, available at: http://www.sfgate.com/entertainment/article/Release-date-almost-as-important-as-good-film-3209001.php. Hence, in terms of exactly when the Debtor became aware that "The Conjuring" was a huge hit—and therefore that the Treatment had value—the time frame is probably late July of 2013. Yet, the Debtor did not amend his Schedule B at that time to disclose the Treatment.

questioned why he took so long to file the Motion to Reopen, the Debtor responded with "we did not have the financial resources to do so." [Hr'g Tr. 126:22−25, Dec. 1, 2015]. Yet, evidence shows that on July 2, 2014, the Debtor received a check from New Line for the amount of $750,000.00, representing the theatrical sequel rights payment required to be paid under the Option Quitclaim Agreement. [Finding of Fact No. 58]; [*see also* Hr'g Tr. 96:19−24, Dec. 1, 2015]. So, this Court has no doubt that the Debtor had the financial wherewithal to retain counsel in late 2014 to file the Motion to Reopen and pay the filing fee of $260.00. Indeed, after the Debtor's "discovery" that the Treatment had value in late 2014, the Debtor, for the first seven months of 2015, paid attorneys to represent him in the arbitration and to file yet another suit in the District Court seeking damages for the alleged misappropriation of the Treatment. [Findings of Fact Nos. 47, 48 & 52].

These circumstances convince this Court that contrary to what the Debtor testified, he did, in fact, have the financial means to retain an attorney and seek to reopen his case much earlier that he actually did; he simply did not want to do so because he was attempting, through lawsuits and arbitration, to receive payment himself for the use of the Treatment and avoid having any proceeds used to pay allowed claims from his case. The Debtor now seeks to reopen his case only after having failed in the District Court and in arbitration to recover damages from New Line for its use of the Treatment. The Debtor hopes that by reopening his case, the Trustee will aggressively seek to monetize the Treatment. The Debtor, in effect, wants the Trustee to take over the fight that he has already lost in order to force New Line to pay some substantial amount of money for the revenues that it has generated from its use of the Treatment to produce "The Conjuring." The Debtor no doubt expects that the Trustee will recover enough funds from

New Line that there will be plenty of cash left over for the Trustee to distribute to him after paying the outstanding claims in his case.

At the Hearing, the Debtor testified that he wants to reopen his case so that the Trustee can monetize the Treatment to pay his creditors. [Hr'g Tr. 64:11−12, Dec. 1, 2015]. The Court does not believe this testimony. The Debtor knows that he already received his discharge, [Finding of Fact No. 28], and he does not give a tinker's damn about his creditors. What he really wants is to pocket as much cash as he possibly can for New Line's use of the Treatment, and he has concluded that at this point, the best vehicle for doing so is to have the Trustee go on the offensive against New Line in the hope that the Trustee will have better results than he has had.

4. <u>The Debtor's Failure to Disclose His Ownership of Silverbird on His Schedule B is a Glaring Misrepresentation</u>

The Debtor failed to disclose his interest in Silverbird on his Schedule B. [Finding of Fact No. 18]. This omission is glaring because Silverbird, a few months prior to the Petition Date, owned the Perron Life Rights. [Finding of Fact No. 8]. Since the Debtor himself testified that ownership of all three of these assets (i.e. the Treatment, the Perron Life Rights, and the Warren Life Rights) is necessary to have the unfettered rights to produce "The Conjuring," [Hr'g Tr. 153:21−24, Dec. 1, 2015], his disclosure of Silverbird might well have led the Trustee to inquire about what business this entity was in and what assets it owned. After all, the Trustee had a duty to ascertain whether the Debtor's ownership interest in Silverbird itself had any value, and if so, whether that value could be monetized for the benefit of the Estate. *In re Nagy*, 432 B.R. 564, 568 (Bankr. M.D. La. 2010) ("[T]he trustee has a duty to investigate the value to the estate of scheduled property and to decide whether the property should be administered. . ."). Indeed, if the Trustee had known about Silverbird's existence and its ownership of the Perron

Life Rights, he might have learned—through questioning the Debtor concerning these rights—about the existence of the Debtor's interest in the Treatment, and been able to timely administer the Treatment for the benefit of the Debtor's creditors.

At the Hearing, the Debtor suggested that he did not schedule Silverbird because "it just shut down."[2] [Hr'g Tr. 100:16, Dec. 1, 2015]. However, he could not definitively remember whether it shut down before or after the Petition Date: "I don't remember. I think before but I don't remember." [Hr'g Tr. 100:19, Dec. 1, 2015]. Moreover, his excuse that "it just shut down" is undermined by the fact that the Debtor—in his capacity as a member and director of Silverbird—executed the Option Quitclaim Agreement, and the amendment thereto, several months *after* the Petition Date. [*See* New Line Ex. No. 4]. If Silverbird had really "just shut down," why was the Debtor signing a contract on behalf of Silverbird several months after the Petition Date? The Debtor's testimony that his Schedules were "honest and true at the time I signed [them]," [Hr'g Tr. 86:3, Dec. 1, 2015], is simply not true. In this Court's eyes, the Debtor's actions once again belie his testimony.

5. <u>The Debtor's Answer to Item Number 18a of his SOFA is Blatantly Misleading</u>

Item No. 18a required the following information of the Debtor:

> If the debtor is an individual, list the names, addresses, taxpayer-identification numbers, nature of businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

[2] The Court notes that merely because a company is dormant on the date of the bankruptcy filing does not relieve any debtor (including the Debtor in the case at bar) from disclosing in his schedules that he has an ownership interest in such a corporation. *In re Crumley*, 428 B.R. 349, 368−69 (Bankr. N.D. Tex. 2010).

The only information that the Debtor provided in response to Item No. 18a is as follows: "Tony DeRosa-Grund, XXX-XX-9860, Magnolia Texas, Patent Development." [Debtor's Ex. No. 2]; [Doc. No. 19]. It is noteworthy that the Debtor did *not* represent that he is in the business of producing and writing movies. Yet, in the four lawsuits that the Debtor filed in District Court, he asserted that he is a "motion picture producer." [Findings of Fact Nos. 44, 45, 52 & 53]. Moreover, at the Hearing, he testified that "I'm a motion picture producer and a writer." [Hr'g Tr. 40:6−9, Dec. 1, 2015]. Thus, when the Debtor was seeking damages in the District Court lawsuits for New Line's use of the Treatment, and when he is now attempting to convince this Court to reopen his case so that the Trustee will administer the Treatment (with the Debtor hoping that the Trustee's administration of the Treatment will generate sufficient funds such that after payment of allowed claims, there will be excess monies remitted to the Debtor), the Debtor wants the District Court and this Court to believe that he is a movie producer and writer who has been wronged by New Line. But, when the Debtor was completing his SOFA in July of 2009, he wanted this Court to believe that he was in the business of "Patent Development." The Debtor's failure to accurately disclose his profession in response to Item No. 18a casts serious aspersions on his credibility.

Item No. 18a also required the Debtor to disclose the names of any corporation, partnership, or sole proprietorship in which he was an officer, director, partner, or managing executive for the *six years preceding the Petition Date*. It also required him to disclose the names of any entity in which he owned at least 5 percent of the voting stock within the six years prior to the Petition Date. Despite this requirement, the Debtor failed to disclose the names of Holdings, Silverbird, Evergreen, Gallows Hill and the DBA. [Finding of Fact No. 24]. From his testimony at the Hearing and from his execution of the Option Quitclaim Agreement, Producer

Loanout Agreement, and COE, there is no question that Holdings, Silverbird, Evergreen and the DBA are all entities in which the Debtor has had a substantial ownership interest or served as an officer. [Findings of Fact Nos. 2, 3, 4, 5 & 7]. And, once again, if the Debtor had disclosed this information, the Trustee—through questioning the Debtor concerning the assets owned by these entities (such as the Perron Life Rights and the Warren Life Rights)—might have learned about the Treatment, and then been able to timely administer the Treatment for the benefit of creditors. The Debtor's failure to accurately disclose this information further stains his credibility.

6. <u>The Debtor's Answer to Item Number 16 of His SOFA is False</u>

Item No. 16 of the SOFA required the following information of the Debtor:

> If the debtor resided or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

The Debtor responded to this item by representing that he was "Not married." [Debtor's Ex. No. 2]; [Doc. No. 19, p. 26 of 31]. Yet, at the Hearing, when he was cross examined about the monthly rent or home mortgage payment of $7,700.00 that he disclosed on his Schedule J (entitled "Current Expenditures of Individual Debtor"), he gave the following testimony: "My wife and I live in a house. She had a contract for the house. I made the payments for her." [Hr'g Tr. 93:23−34, Dec. 1, 2015]. How can the Debtor reconcile his statement under oath on his SOFA that he was *not* married with his testimony at the Hearing that he was paying his wife's mortgage for her as of the Schedule Date (i.e. as of July 10, 2009)? The Debtor's misrepresentation about something as fundamental as to whether he is married casts yet another pall over his honesty.

Moreover, his testimony at the Hearing that "I made the [house] payments for her" directly contradicts his representation on Schedule I (entitled "Current Income of Individual Debtor") wherein he expressly represented that his income was "0.00." [Debtor's Ex. No. 7]. How could the Debtor have possibly been making monthly house payments of $7,700.00 for his wife if he had no income? It is clear that the Debtor has a penchant for telling falsehoods on fundamental issues. His ability to adhere to the Oath is nonexistent.

7. Examples of the Debtor's Non-Responsiveness to Questions Posed to Him by New Line's Counsel at the Hearing

Aside from the contradictions and lies already noted above, another measure of the Debtor's lack of credibility was his combative non-responsiveness at the Hearing to questions posed to him by New Line's counsel. Set forth below are just two of several instances of this conduct.

Example #1: Examining the Debtor about the letter sent to New Line by Sanford Dow, an attorney in Houston, [*see* Finding of Fact No. 50]—a letter that this Court believes contains language that might constitute a bankruptcy crime—New Line's counsel posed a very straightforward question to the Debtor: Was Dow representing the Debtor when he sent this letter to New Line? The Debtor's response was anything but straightforward:

> Q: So is it your testimony, sir, that Mr. Dow wasn't acting on your behalf?
> A: He was acting on behalf of Evergreen Media Holdings.
> Q: That's not my question. Was he or was he not acting on your behalf?
> A: Mr. Dow was given lots of latitude as to how he arrived at a resolution of the matter. We didn't deal with every single piece of correspondence from him every day.
> Q: I'll ask the question again, sir. Did Mr. Dow act on your behalf when he wrote or when he threatened to come to the bankruptcy court to reopen the case unless we agreed to a settlement on your terms?
> A: It's not a threat, sir. He was giving them a courtesy copy.

[Hr'g Tr. 129:4−17, Dec. 1, 2015].

Finally, when asked yet again whether Dow represented the Debtor at the time the letter to New Line was sent, the Debtor responded as follows: "He represented all of us." [Hr'g Tr. 131:9−13, Dec. 1, 2015].

The Debtor had good reason not to admit that Dow was representing him personally in 2015. The Debtor attempted to leave the impression with this Court that Dow was representing Holdings, and not him, because the Debtor wants this Court to believe that he did not have the financial wherewithal in late 2014 to hire an attorney to reopen his case and that therefore he could not possibly afford to have Dow represent him, individually, in 2015. [Hr'g Tr. 126:22−25, Dec. 1, 2015]. Indeed, the Debtor testified that the checks remitted by New Line were paid to Holdings, not to him—again in order to convince this Court that he personally lacked the funds to retain counsel in late 2014 to seek to reopen his case. [Hr'g Tr. 81:2−6, Dec. 1, 2015]. Yet, the check for $750,000.00 dated July 2, 2014 was made payable jointly to the Debtor and Holdings. [Finding of Fact No. 58]. Stated differently, the Debtor did indeed have access to funds to retain an attorney in late 2014, and Dow was in fact representing him as late as July of 2015. [*See* Finding of Fact No. 50, which is the letter from Sanford Dow of July 20, 2015 expressly setting forth that Dow was representing the Debtor]. The fact that Dow was also representing Holdings does not lessen the severity of the Debtor's attempt to escape admitting that Dow was also representing him, in his individual capacity. The Debtor's repeated attempts to avoid answering the question posed to him speaks volumes about his credibility.

Example #2: New Line's counsel asked the Debtor the following question:

> Q: Mr. DeRosa-Grund, this Exhibit No. 15 [i.e. the July 20, 2015 Letter from Dow to New Line; *see* Finding of Fact No. 50] was sent several months after an adverse JAMS arbitration ruling against you; is that correct?

A: There is no ruling. It's on appeal, so it's not enforceable.

[Hr'g Tr. 134:3−7, Dec. 1, 2015].

New Line's counsel asked this question because he was attempting to establish—and he succeeded—that the Debtor, after losing at the arbitration, still held off returning to this Court to disclose the Treatment and, instead, had his attorney attempt to reach a settlement whereby New Line would pay money to the Debtor and, in exchange, the Debtor would not seek to reopen his bankruptcy or seek a show cause order against New Line in this Court. [*See* Finding of Fact No. 50]. The Debtor, attempting to avoid testifying about Dow's Letter, tried to convince this Court that there has been no ruling in the arbitration proceeding. The Debtor's answer reveals his unwillingness to face the truth: in fact, the arbitrator issued a 32-page ruling denying all relief requested by the Debtor. [Finding of Fact No. 48].

In sum, the discussion in this Appendix "A" illustrates that the Debtor is not a credible witness in multiple instances.