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CLERK U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHER DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
LEVEL PROPANE GASES, INC., <i>et al.</i> ,	)	Case No. 02-16172
	)	Jointly Administered
Debtors.	)	
<hr style="width: 350px; margin-left: 0;"/>	)	JUDGE RANDOLPH BAXTER

**MOTION FOR EXPEDITED DISCOVERY**

Level Propane Gases, Inc., and its affiliated debtor entities, debtors and debtors in possession herein (collectively, the “Debtors”), request expedited discovery relating to the backup tapes and other electronically stored information belonging to the Debtors currently in the possession of William H. Maloof (“Maloof”). Debtors seek an order directing Maloof, *inter alia*, to immediately turnover to Vestige Ltd., an entity specializing in computer forensic analysis, copies of the backup tapes and/or any electronically transmitted and stored information provided by Jonathan Caldwell (“Caldwell”). *See* Caldwell’s affidavit attached to Motion of William H. Maloof to Vacate the Court’s Decision of February 28, 2008 (Dkt. No. 3348, the “Motion”). Further, Debtors seek production of the computers used by Maloof to produce the e-mails attached to his motion so that the authenticity of the printed e-mails purportedly generated from these backup tapes can be determined. The production of a mirror image of Maloof’s entire hard drive is essential to further establish when Maloof first had access to and became aware of e-mails that he asserts to have only recently discovered.

## **BACKGROUND**

On June 18, 2008, Maloof filed the Motion with the Court claiming that he had obtained e-mails evidencing the perpetration of a fraud on the Court. The e-mails came attached to an affidavit signed by Caldwell. In his affidavit, Caldwell claims that he printed the attached e-mails from backup tapes he retained of Level Propane's server that Caldwell purports to have made during his employment with Level Propane. Caldwell further states that he then copied the backup tapes and specific portions thereof to provide them to Maloof. Maloof's motion suggests that Maloof has printed e-mails from the information Caldwell electronically transmitted.

On June 24, 2008, counsel for Debtors served discovery requests upon Maloof, attached as Exhibit A. On June 25, 2008, counsel for Debtors contacted Maloof's counsel regarding expediting the requests, attached as Exhibit B. Twice since initially being contacted by Debtors' counsel, Maloof's counsel has indicated that he would "get back to" Debtors' counsel with a response to the request to expedite discovery. To date, no such response has been received. Accordingly, the undersigned counsel certifies that a good faith request has been made to seek concurrence with this discovery motion before filing same with the Court. However, Debtors can no longer wait for an answer as time before the hearing in which Maloof intends to argue the e-mails are authentic and constitute proof of a fraud on the Court is quickly dwindling.

## **RELIEF REQUESTED**

The backup tapes, and all of the information contained thereon, are unquestionably the property of the Debtors which Debtors are entitled to recover pursuant to 542(e) of the Bankruptcy Code. Thus, there can be no dispute that Debtors are entitled to the information sought.

The grounds for the urgency is two-fold. Debtors have a very short time period to conduct the forensic analysis necessary to show the e-mails are not authentic before the hearing on the Motion of William H. Maloof to Vacate the Court's Decision of February 28, 2008. Furthermore, Debtors are concerned that the electronic backup tapes and discs purportedly made from these tapes are at risk of further alteration and possible destruction. To prevent further alteration and to allow for an independent determination of the authenticity of the e-mails attached to Caldwell's affidavit, Debtors seek the turnover of certain electronically stored information to Vestige Ltd. for forensic imaging and testing and seek to image those computers used by Maloof to review and/or produce the information. The imaging of the computers is essential to obtain certain logs and to conduct certain types of forensic analysis to exclude or establish possible alteration of the e-mails produced.

WHEREFORE, the Debtors request the entry of an order directing Maloof to immediately turnover the items identified on Exhibit A attached hereto, including but not limited to making all individual computers used to access the information Maloof obtained from Caldwell available for mirror imaging by Vestige, Ltd. To protect Maloof's confidential and privileged information, Vestige Ltd. can produce any documents to be viewed by Debtors to counsel for Maloof three days before making the document available for viewing by Debtors' counsel.

Dated: Cleveland, Ohio  
June 30, 2008

Respectfully submitted,

/s/ Mariann E. Butch

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Debtors and Debtors in Possession

**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2008, a copy of the foregoing *Motion For Expedited Discovery* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Mariann E. Butch

One of the Level Propane Gases, Inc., *et al.*,  
Debtors and Debtors in Possession