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18 **UNITED STATES BANKRUPTCY COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **SANTA ANA DIVISION**

20 In re: § CASE NO. 8:08-bk-13421
21 §
21 FREMONT GENERAL CORPORATION, a § CHAPTER 11
Nevada corporation, §
22 §
Debtor. §
23 §
24 Tax I.D. 95-2815260 §
25 §
26 §
27 §
28 §

**EMERGENCY MOTION OF DEBTOR AND
DEBTOR IN POSSESSION FOR ORDER
(A) LIMITING CERTAIN TRANSFERS OF
EQUITY INTERESTS IN THE DEBTOR
AND (B) APPROVING RELATED NOTICE
PROCEDURES; MEMORANDUM OF POINTS
AND AUTHORITIES; AND DECLARATION
OF GREGORY SOUKUP IN SUPPORT
THEREOF**

Hearing
[To Be Set By The Court]



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In re Phar-Mor, Inc.,
152 B.R. 924 (Bankr. N.D. Ohio 1993) *passim*

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11 U.S.C. § 541 4, 8

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LBR 2081-1(b) 1, 2

1 TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE ERITHE A. SMITH;
2 OFFICE OF THE UNITED STATES TRUSTEE; 20 LARGEST UNSECURED
3 CREDITORS; AND OTHER INTERESTED PARTIES:

4 Fremont General Corporation, the debtor and debtor in
5 possession in the above-captioned chapter 11 case (the "Debtor"),
6 hereby moves the Court (the "Motion") for entry of an order,
7 substantially in the form of the proposed Order attached hereto as
8 Exhibit "1," (A) limiting certain transfers of equity interests in
9 the Debtor and (B) approving related notice procedures.

10 The Debtor further requests, pursuant to Local Bankruptcy
11 Rule ("LBR") 2081-1(b), that the Court schedule a hearing on this
12 Motion on less than 2 court days notice, upon timely notice to the
13 Office of the United States Trustee, the 20 largest unsecured
14 creditors of the Debtor, shareholders that are known to hold more
15 than 5% of the Debtor's equity, and other interested parties, if
16 any (collectively, the "Interested Parties"). A copy of this
17 Motion was served, concurrent with the filing hereof with the
18 Court, on the Interested Parties by courier or overnight delivery.

19 **RELIEF REQUESTED**

20 By this Motion, the Debtor respectfully requests that the
21 Court enter an order, substantially in the form of the proposed
22 Order, (A) limiting certain transfers of equity interests in the
23 Debtor and (B) approving related notice procedures. This relief
24 will provide the Debtor with advance notice of certain transfers
25 that may jeopardize the federal consolidated net operating loss
26 carryovers of the affiliated group of which the Debtor is the
27 common parent ("NOLs"), and will enable the Debtor, if necessary,
28 to obtain substantive relief from this Court to protect those NOLs.


1 Moreover, the limited relief requested by this Motion will enable
2 the Debtor to closely monitor certain transfers of its equity
3 interests, and thereby ensure that the Debtor is in a position to
4 act expeditiously to prevent such transfers if necessary to protect
5 and preserve its NOLs.

6 This Motion is based on the annexed Memorandum of Points
7 and Authorities, the accompanying *Declaration of Gregory J. Soukup*,
8 the record in this case, and the arguments, evidence, and
9 representations that may be presented at or prior to the hearing on
10 this Motion.

11 Pursuant to LBR 2081-1(b)(1)(D), any opposition or
12 objection to the Motion may be presented before or at the time of
13 the hearing on the Motion, if one is scheduled by the Court.

14 **WHEREFORE**, the Debtor respectfully requests that the
15 Court enter an order, substantially in the form of the proposed
16 Order, (A) limiting certain transfers of equity interests in the
17 Debtor and (B) approving related notice procedures.

18
19 DATED: June 18, 2008



THEODORE B. STOLMAN
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PROFESSIONAL CORPORATION

20
21
22
23
24 -and-

25 ROBERT W. JONES
26 J. MAXWELL TUCKER
27 PATTON BOGGS LLP

28 Proposed Bankruptcy Counsel for the
Debtor and Debtor in Possession

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 In support of this Motion, the Debtor would respectfully
3 represent as follows:

4 I.

5 **INTRODUCTION**

6 The Debtor is a financial services holding company whose
7 principal asset is its indirect interest in Fremont Investment &
8 Loan ("FIL" or the "Bank")¹ - an institution troubled by the well
9 publicized deterioration in the "subprime" residential real estate
10 market. The Bank has been subject to significant regulatory
11 oversight for some time, in part because of its recent losses.

12 The NOLs reported on the Debtor's consolidated federal
13 corporate income tax return for 2007 amount to \$695,469,659 - over
14 two-thirds of a billion dollars. Such NOLs, if preserved, could
15 yield a tax benefit in excess of \$200 million. There is a very
16 real and immediate risk, however, that unregulated post-petition
17 trading in the Debtor's equity interests could reduce or destroy
18 the NOLs' value, the preservation of which could be critical for a
19 successful reorganization.

20 Accordingly, the Debtor requests that the Court enter (i)
21 limited and tailored restrictions on trading and (ii) discrete
22 noticing provisions, in order to allow the Debtor the ability to
23 take reasonable steps to protect its valuable NOLs and other tax
24 attributes from being unnecessarily dissipated in violation of the
25 automatic stay.

26
27
28 ¹ More specifically, as described below, the immediate parent of
FIL is wholly-owned by the Debtor.

1 II.

2 BACKGROUND

3 A. The Bankruptcy Filing and Jurisdiction.

4 The Debtor filed a voluntary petition for relief under
5 chapter 11 of the Bankruptcy Code on June 18, 2008 (the "Petition
6 Date"). The Debtor continues to operate its business and manage
7 its affairs as a debtor in possession pursuant to sections 1107(a)
8 and 1108 of the Bankruptcy Code.

9 No trustee or examiner has been appointed in the Debtor's
10 chapter 11 case. An official committee of unsecured creditors has
11 not yet been formed or appointed.

12 The Court has jurisdiction over this matter pursuant to
13 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C.
14 §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C.
15 § 157(b)(2).

16 The statutory predicates for the relief requested herein
17 are Bankruptcy Code sections 105(a), 362(a)(3), and 541.

18 B. The Debtor's Capital Structure and Business Operations.

19 FGC, the Debtor, is a financial services holding company,
20 and is a publicly held Nevada corporation with approximately 78
21 million shares of outstanding common stock (excluding certain
22 restricted shares).

23 FGC owns 100% of the common stock of Fremont General
24 Credit Corporation ("FGCC"), which in turn owns 100% of the common
25 stock of the Bank. The Bank offers certificates of deposit and
26 savings and money market deposit accounts through its 22 retail
27 banking branches. The Bank historically engaged in commercial and
28 residential real estate financing on a nationwide basis. The

1 Bank's residential real estate loans were originated through
2 regional loan production offices and independent loan brokers.
3 With the deterioration in the "subprime" residential real estate
4 market, however, the Bank began to experience significant losses.

5 **C. The NOLs.**

6 In connection with losses experienced by the Bank, the
7 Debtor has had significant operating losses in the recent past.
8 Reported NOLs for the 2007 tax year amount to over \$1 billion.
9 Approximately \$418 million of those NOLs were carried back to
10 earlier tax years to obtain a tax refund, leaving a NOL
11 carryforward for 2007 into 2008 of \$695,469,659. The Debtor's NOLs
12 are an extremely valuable asset because under the Internal Revenue
13 Code, 26 U.S.C. § 1 et seq. (the "IRC"), the Debtor can carry
14 forward NOLs to offset future taxable income for up to 20 taxable
15 years and thereby greatly reduce future aggregate tax obligations.

16 Based on the 35% corporate tax rate now in effect, the
17 NOLs are worth over \$200 million in potential future tax savings.
18 These tax savings - and the accompanying increase in cash flow -
19 will greatly facilitate a successful reorganization. While the
20 Debtor is still in the process of formulating its strategy to exit
21 from chapter 11, the nature of any plan ultimately negotiated with
22 the Debtor's stakeholders could be significantly enhanced by the
23 NOLs' presence as assets of the estate, ones well worth preserving.

24 A corporation's ability to use its NOLs may be reduced or
25 eliminated under certain circumstances. See, e.g., IRC §§ 269 &
26 382. The focus of this Motion is on one of those circumstances:
27 the possibility that the Debtor might experience an "ownership
28

1 change."² Pursuant to IRC section 382(g), an "ownership change"
2 occurs if, immediately after a "testing date," and as measured
3 during a rolling 3-year "testing period,"³ the percentage of the
4 corporation's stock (measured by value) held by certain significant
5 shareholders (i.e., shareholders who own 5% or more, or who are
6 deemed by Treasury Regulations to own 5% or more, even though they
7 own less than 5%) increases by 50 percentage points or more. The
8 percentage point increase by 5% shareholders or persons or entities
9 deemed to be 5% shareholders is referred to as an "owner shift."
10 Thus, an "owner shift" of more than 50 percentage points creates an
11 "ownership change,"⁴ and triggers the NOL limitation described
12 above. For example, if the owner shift to date is 47% and a
13 shareholder owning 6% of a corporation's stock increases his or her
14 stock ownership to 10% of the corporation's stock, the owner shift

15 ² In general, under IRC § 382, if a corporation undergoes an
16 "ownership change," the amount of NOLs that the corporation can
17 use in any given year to reduce its taxable income is limited to
18 an amount equal to (a) the value of the corporation's equity on
19 the date that the "ownership change" occurred, multiplied by (b)
20 the long-term tax-exempt rate on that date. Currently, the
21 long-term tax-exempt rate is 4.71 percent.

22 ³ Very generally, a "testing date" occurs when there is a change
23 in the percentage of stock owned by a 5% shareholder before or
24 after the change. The broader "testing period" generally
25 consists of the 3-year period prior to any given testing date.

26 ⁴ Under IRC section 382(g)(4)(A), all stockholders who
27 individually hold less than 5% of the shares of stock of a
28 company are generally deemed to be a single 5% stockholder
throughout the 3-year testing period, and transfers between such
stockholders are disregarded for purposes of determining whether
an "ownership change" has occurred. Thus, so long as half or
more of the corporation's stock is owned by less than 5%
stockholders throughout the 3-year testing period, there will be
no "ownership change" under IRC section 382. Accordingly, the
Debtor does not seek to impose the requested notice and hearing
procedures on transactions by stockholders holding less than 5%
of the Debtor's stock, provided that such stockholders do not
intend to accumulate a 5% or greater block of stock or add or
sell their shares to or from such a block.

1 increases from 47% to 51% (by reason of the additional 4%
2 acquisition) and an ownership change occurs.

3 Once all or part of a NOL is disallowed under IRC section
4 382 on account of an "ownership change," that NOL's use is limited
5 forever, and once an equity interest is transferred, the transfer
6 cannot be nullified without court action. Thus, unrestricted
7 transfers of the Debtor's equity securities could greatly hinder
8 the Debtor's reorganization efforts by causing it to lose NOLs that
9 could offset future taxable income. Potentially, this could
10 diminish the value of the Debtor's estate by more than \$200
11 million.

12 **III.**

13 **RELIEF REQUESTED**

14 By this Motion, the Debtor respectfully requests that the
15 Court enter an order, substantially in the form of the proposed
16 Order, (A) limiting certain transfers of equity interests in the
17 Debtor and (B) approving related notice procedures. This relief
18 will provide the Debtor with advance notice of certain transfers
19 that may jeopardize its NOLs, and will enable the Debtor, if
20 necessary, to obtain substantive relief from this Court to protect
21 those NOLs. Moreover, the limited relief requested in this Motion
22 will enable the Debtor to closely monitor certain transfers of its
23 equity interests, and thereby ensure that the Debtor is in a
24 position to act expeditiously to prevent such transfers if
25 necessary to protect and preserve its NOLs.

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1 IV.

2 AUTHORITIES

3 A. The NOLs Are Property of FGC's Bankruptcy Estate.

4 Section 541 of the Bankruptcy Code broadly defines
5 "property of the estate" to include "all legal or equitable
6 interests of the debtor in property as of the commencement of the
7 case" and "[a]ny interest in property that the estate acquires
8 after the commencement of the case." See 11 U.S.C. § 541(a).

9 In the seminal case of *Official Committee of Unsecured*
10 *Creditors v. PSS Steamship Co. (In re Prudential Lines, Inc.)*, 928
11 F.2d 565 (2d Cir.), cert. denied, 502 U.S. 821 (1991), the Court of
12 Appeals for the Second Circuit held that a debtor's NOLs are
13 property of the bankruptcy estate pursuant to Bankruptcy Code
14 section 541. See *id.* at 570-71; see also, e.g., *In re Prudential*
15 *Lines, Inc.*, 107 B.R. 832, 841 (Bankr. S.D.N.Y. 1989) ("[T]here are
16 compelling bankruptcy purposes for including NOL carry-forwards
17 within the ken of estate property. The losses relate to the period
18 when creditors were not paid and any value to be obtained should
19 belong to them. The statutory language, legislative history and
20 better reasoned case law permit no other conclusion."); *In re Phar-*
21 *Mor, Inc.*, 152 B.R. 924, 926 (Bankr. N.D. Ohio 1993) ("[T]he Court
22 finds that NOL's are property of the estate under the broad
23 language of [section] 541(a)(1) as a power or right which may be
24 exercised by a debtor for its own benefit.").

25 In fact, the Court of Appeals for the Ninth Circuit has
26 agreed under similar circumstances that NOLs are property of the
27 debtor's bankruptcy estate. See *United States v. Sims (In re*
28 *Feiler)*, 218 F.3d 948, 954 (9th Cir. 2000) (explaining that

1 "Congress intended that NOLs not be beyond the trustee's grasp" and
2 that such a "valuable asset was to be used for the benefit of the
3 estate"; affirming lower court's holding that NOLs were property of
4 the estate, such that debtors' prepetition election to carry
5 forward NOLs was a fraudulent transfer because the NOLs could have
6 been applied by the debtors' estates against prior years' returns
7 to receive a tax refund for the benefit of the estates' creditors).

8 Simply put, the NOLs are potentially valuable assets in
9 which the Debtor's estate and all its beneficiaries have a direct
10 and immediate interest. As such, there can be no real dispute that
11 the NOLs should be protected as property of the Debtor's estate
12 under the Bankruptcy Code. *See, e.g., Nisselson v. Drew Indus.,*
13 *Inc. (In re White Metal Rolling & Stamping Corp.),* 222 B.R. 417,
14 424 (Bankr. S.D.N.Y. 1998) ("It is beyond peradventure that NOL
15 carrybacks and carryovers are property of the estate of the loss
16 corporation that generated them."); *Phar-Mor,* 152 B.R. at 927
17 ("What is certain is that the NOL has a potential value, as yet
18 undetermined, which will be of benefit to creditors and will assist
19 Debtors in their reorganization process. This asset is entitled to
20 protection while Debtors move forward toward reorganization.").

21 **B. The NOLs Are Therefore Entitled to the Protection of the**
22 **Automatic Stay, and the Relief Sought By the Motion Is**
23 **Proper.**

24 Section 362 of the Bankruptcy Code operates as a stay,
25 immediately applicable to all entities on the Petition Date, of
26 "any act to obtain possession of property of the estate or of
27 property from the estate or to exercise control over property of
28 the estate." 11 U.S.C. § 362(a)(3).

1 Courts have repeatedly held that, as property of the
2 estate, NOLs are entitled to the protection of the automatic stay.
3 As explained by the twice-affirmed Bankruptcy Judge Buschman in
4 *Prudential Lines*, "the control provision of § 362(a)(3) is to be
5 defined by the underlying congressional purposes of preventing
6 dismemberment of the estate and assuring orderly distribution."
7 *Id.*, 107 B.R. at 842. Thus, "where a non-debtor's action with
8 respect to an interest that is intertwined with that of a bankrupt
9 debtor would have the legal effect of diminishing or eliminating
10 property of the bankrupt estate, such action is barred by the
11 automatic stay." *Prudential Lines*, 928 F.2d at 574.

12 This basic principle has been held to apply specifically
13 to situations where the transfer of a debtor's securities by its
14 shareholders would effect a "ownership change" under the IRC that
15 would have a deleterious effect on the value of the debtor's NOLs.
16 *See, e.g., Phar-Mor*, 152 B.R. at 927 (concluding that under such
17 facts, "sale of stock is prohibited by § 362(a)(3) as an exercise
18 of control over the NOL, which is property of the estate").

19 While the propriety of protecting NOLs in bankruptcy is
20 so well established that few courts deem it necessary to publish
21 formal decisions buttressing the result plainly expressed in
22 *Prudential Lines* and *Phar-Mor*, it is worth emphasizing that relief
23 akin to that requested by the Motion is regularly granted in
24 bankruptcy cases involving publicly traded securities and NOLs,
25 including other cases in this district. *See, e.g., In re Delta Air*
26 *Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Dec. 19,
27 2005); *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG)
28 (Bankr. S.D.N.Y. Oct. 28, 2005); *In re W.R. Grace & Co.*, Case No.

1 01-01139 (JKF) (Bankr. D. Del. Jan. 24, 2005); *In re Enron Corp.*,
2 Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Apr. 25, 2003); *In re*
3 *Consolidated Freightways Corp.*, Case No. 02-24284-MG (Bankr. C.D.
4 Cal. Apr. 1, 2003); *In re WorldCom, Inc.*, Case No. 02-13533 (AJG)
5 (Bankr. S.D.N.Y. Mar. 4, 2003); *In re US Airways Group, Inc.*, Case
6 No. 02-83984 (SSM) (Bankr. E.D. Va. Oct. 2, 2002); *In re Adelphia*
7 *Commc'ns Corp.*, Case No. 02-41729 (REG) (Bankr. S.D.N.Y. Sept. 27,
8 2002); *In re Williams Commc'ns Group, Inc.*, Case No. 02-11957 (BRL)
9 (Bankr. S.D.N.Y. July 24, 2002); *In re Metrocall*, Case No. 02-11579
10 (RB) (Bankr. D. Del. June 6, 2002); *In re Casual Male Corp.*, Case
11 No. 01-41404 (REG) (Bankr. S.D.N.Y. May 18, 2001); *In re Worldtex,*
12 *Inc.*, Case No. 01-785 (MFW) (Bankr. D. Del. Apr. 2, 2001); *In re*
13 *Reliance Acceptance Group Inc.*, Case No. 98-288 (PJW) (Bankr. D.
14 Del. Apr. 28, 1998); *In re Grossman's, Inc.*, Case No. 97-695 (PJW)
15 (Bankr. D. Del. Oct. 9, 1997).

16 **C. The Relief Sought By the Motion Is Narrowly Tailored and**
17 **Appropriate Under the Circumstances.**

18 Section 105 of the Bankruptcy Code provides that "[t]he
19 court may issue any order, process, or judgment that is necessary
20 or appropriate to carry out the provisions of this title." 11
21 U.S.C. § 105(a). The limited restrictions and notice procedures
22 contained in the proposed form of Order are both necessary and
23 appropriate to protect the Debtor's valuable NOLs in this case,
24 without unduly burdening the rights of existing shareholders.

25 First, the requested relief has been narrowly tailored to
26 apply only to those persons who own (or could own as a result of a
27 proposed transfer) equity in the Debtor of at least 3,904,160
28 shares or more (a "Substantial Equityholder," as defined in the

1 proposed Order submitted herewith). Thus, the Debtor seeks only to
2 impose the notice and hearing requirements on transfers of equity
3 interests by or to a relatively small group of persons. As a
4 result, the procedures requested by the Debtor would still permit
5 most transactions acquiring or disposing of the Debtor's equity
6 securities to continue, subject only to any otherwise applicable
7 law. In particular, the procedures and restrictions requested
8 hereby should rarely, if ever, apply to trading among small, "mom
9 and pop" public shareholders of the Debtor.

10 Second, the holders of the Debtor's equity interests that
11 are subject to the relief requested herein will not be unfairly
12 affected thereby. If a Substantial Equityholder⁵ wishes to
13 transfer its stock, then it may comply with the specified notice
14 procedures and then demonstrate, on a case-by-case basis, that a
15 particular proposed transaction or set of transactions will not
16 harm the estate by diminishing the value of the Debtor's NOLs. As
17 cogently articulated by the court in *Phar-Mor*, such a mechanism
18 remedies any adversity faced by the Debtor's current shareholders
19 insofar as

20 Each such motion will be considered on its
21 individual merits. In keeping with the purpose
22 of § 362(a)(3) to protect estate assets for the
23 benefit of all creditors, analysis of any
24 requested sale or transfer will require a
25 balancing of the interests of all creditors and
26 equity security holders in preserving the NOL
27 against the interest of the individual
28 applicant in realizing a significant benefit
from the sale or transfer. In addition, the
Court will consider the impact of the sale or

⁵ The other - likely far larger - group potentially affected by
the Motion is the class of prospective purchasers of the
Debtor's shares, who, by such purchases, could trigger an
"ownership change."

1 transfer on the Debtors' reorganization
2 process.

3 *Id.*, 152 B.R. at 927. The procedures set forth in the proposed
4 Order are specifically designed to allow for such case-by-case
5 analysis while simultaneously ensuring that the Debtor's valuable
6 NOLs are not needlessly destroyed.

7 Third, it is imperative that the Debtor and its advisors
8 closely scrutinize any transactions that would increase the risk of
9 an "ownership change" because several large shifts of ownership
10 have already occurred, the current trading value of the Debtor's
11 equity makes acquiring large blocks of such equity relatively
12 inexpensive (and therefore likely), and there may be a significant
13 delay until current Substantial Equityholders have to disclose
14 their stock transactions to the Debtor or to the SEC. Plus, for
15 the Debtor to adequately evaluate whether a particular transaction
16 would materially increase the risk of an "ownership change"
17 occurring, the Debtor will need to conduct a thorough investigation
18 to determine the identity of its stakeholders and the size of such
19 stakeholders' holdings before and after such proposed transaction.
20 Then, once the Debtor determines the identity of its current
21 stakeholders, the Debtor must make a very complicated legal
22 determination about whether any given proposed transfer of stock
23 would likely trigger an "ownership change" for purposes of IRC
24 section 382. The Debtor believe that it cannot conduct a
25 necessarily thorough and diligent investigation and analysis in
26 much less than twenty (20) days.

27 Fourth, once a NOL is limited under IRC section 382, its
28 use is limited forever - the harm is irreparable and simply cannot

1 be undone. It is thus critical that the Debtor have immediate
2 near-term protection and be afforded the key information necessary
3 to evaluate transactions that could increase the risk of an
4 "ownership change." The shortening of notice with respect to this
5 Motion and the emergency relief sought herein is necessary to avoid
6 an irreversible loss of a valuable asset of the estate and the
7 associated damage to innocent creditors, which loss will likely be
8 caused absent some restriction on unfettered trading in the
9 Debtor's equity securities. The Debtor anticipates that the
10 shortening of notice with respect to this Motion and prompt entry
11 of the proposed Order is the only viable solution that will permit
12 the Debtor and the Court to immediately begin to monitor equity
13 trading, and thereby create the best hope that NOLs will not be
14 unnecessarily lost. In fact, absent immediate and retroactive
15 relief, the Debtor fears that mere notice of this Motion could
16 initiate a sudden increase in trading, which could in turn hasten
17 an "ownership change" and the very limitation of NOLs that the
18 Debtor seeks to avoid.

19 Fifth, the proposed Order expressly contains several
20 provisions designed to protect the confidentially of any affected
21 holders and to further minimize the disruptive impact beyond the
22 scope necessary to accomplish the purposes of this Motion.

23 In sum, the Debtor's NOLs are valuable assets of its
24 estate that will facilitate the Debtor's reorganization and could
25 benefit all of its consistencies. But if the Debtor is unable to
26 monitor and object to certain transfers, the Debtor's future use of
27 those NOLs may be jeopardized. The Debtor has accordingly proposed
28 notice and hearing procedures that should impose minimal burdens on

1 affected entities and achieve a substantial benefit to the Debtor's
2 estate, and the Debtor believes that granting the relief requested
3 by this Motion is in the best interests of the Debtor's estates,
4 its creditors, and other parties in interest.

5 **V.**

6 **CONCLUSION**

7 For the reasons and based on the authorities set forth
8 above, the Debtor requests that the Court grant the Motion in its
9 entirety and enter the proposed form of Order forthwith.

10 Respectfully submitted,

11 DATED: June 18, 2008



12 THEODORE B. STOLMAN

13 MARK S. WALLACE

14 SCOTT H. YUN

15 WHITMAN L. HOLT

16 STUTMAN, TREISTER & GLATT

17 PROFESSIONAL CORPORATION

18 -and-

19 ROBERT W. JONES

20 J. MAXWELL TUCKER

21 PATTON BOGGS LLP

22 Proposed Bankruptcy Counsel for the
23 Debtor and Debtor in Possession
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Declaration of Gregory J. Soukup

I, Gregory J. Soukup, declare as follows:

1. I am a Partner of Ernst & Young LLP, accountants to debtor and debtor in possession in the above-captioned bankruptcy case. Except as otherwise indicated below, I have personal knowledge of the facts set forth herein and if called as a witness I could and would competently testify thereto.

2. I make this declaration in support of the *Emergency Motion of Debtor and Debtor in Possession For Order (A) Limiting Certain Transfers of Equity Interests in the Debtor and (B) Approving Related Notice Procedures* (the "Motion").

3. I am currently the West Zone Transaction Tax Leader of Transaction Advisory Services of Ernst & Young LLP. I have 32 years of experience in tax practice and am a member of the Ernst & Young LLP review committee for the firm's Internal Revenue Code Section 382 practice. During my tenure as the leader of the West Zone Transaction Advisory Services tax practice I have represented numerous companies related to insolvency, bankruptcy taxation and Section 382 issues. I have previously served in the Washington, D.C. National Tax practice of Ernst & Young LLP. I hold a B.A. degree (summa cum laude) from St. John's University (1972), a J.D. degree (cum laude) from the University of Minnesota (1976) and an LL.M degree (magna cum laude) from Georgetown University (1982). I have served as an adjunct tax professor in the Master of Business in Taxation program at both Golden Gate University and the University of Southern California and the LL.M program at Loyola University Law School in Los Angeles, California.

1 4. Fremont General Corporation is the common parent
2 of an affiliated group of corporations filing a consolidated
3 corporate federal income tax return ("the Fremont Group"). The
4 Fremont Group has reported on its 2007 federal income tax return
5 a federal regular tax consolidated net operating loss carryover
6 from the 2007 tax year into the 2008 tax year of \$695,469,659
7 (the "Fremont Group NOL").

8 5. The Fremont Group NOL, if preserved, generally
9 can be used to shield future income from federal corporate
10 income taxation and, subject to time-value-of-money
11 considerations, potentially has a current value exceeding \$200
12 million based upon current federal corporate income tax rates.

13 6. Internal Revenue Code ("IRC") section 382 places
14 limitations upon a corporation's use of its net operating loss
15 carryovers if an "ownership change" occurs with respect to such
16 corporation's stock. The limitation imposed by IRC section 382
17 is an annual limitation equal to the fair market value of all
18 the corporation's stock multiplied by the "long term tax exempt
19 rate." The long-term tax exempt rate fluctuates from month to
20 month based upon prevailing market rates of interest and is
21 currently 4.71 percent. For example, if the value of all of a
22 corporation's stock were \$100 million, it could only utilize
23 \$4,710,000 of its net operating losses per year if an "ownership
24 change" occurred with respect to its stock (based upon the
25 current long-term tax exempt rate of 4.71 percent, and subject
26 to certain exceptions relating to built-in gains and losses and
27 other items).

28

1 7. In the context of the Fremont Group, the
2 occurrence of an "ownership change" would materially and
3 adversely affect the Fremont Group's use of the Fremont Group
4 NOL because of the currently-depressed fair market value of
5 Fremont General Corporation stock.

6 8. For the foregoing reasons, Fremont General
7 Corporation must prevent an "ownership change" from occurring if
8 it is to preserve the use and value of the Fremont Group's NOL.
9 An "ownership change" occurs if persons or entities who hold (or
10 are deemed to hold) 5 percent or more of Fremont General
11 Corporation stock increase their ownership of stock by more than
12 50 percentage points over their lowest percentage point
13 ownership during the "testing period" (generally, the "testing
14 period" is the preceding three years). The percentage point
15 increase described in the preceding sentence is sometimes
16 referred to in tax parlance as an "owner shift". Thus, an
17 "owner shift" of more than 50 percentage points will trigger an
18 "ownership change" and the placement of an annual limitation
19 upon a corporation's use of its net operating loss carryovers.

20 9. Ernst & Young LLP has performed an analysis of
21 the extent of the "owner shift" with respect to Fremont General
22 Corporation's stock. Such analysis indicates that the current
23 "owner shift" is in the range of 45 percent. This is only
24 approximately 5 percentage points away from the critical more-
25 than-50 percent "owner shift" threshold that would trigger an
26 "ownership change" and a resulting severe limitation of the use
27 of the Fremont Group NOL. For example, if a person who is not
28 currently a shareholder of Fremont General Corporation were to

1 acquire 8 percent of the issued and outstanding common stock of
2 Fremont General Corporation, the "owner shift" would move from
3 approximately 45 percent to approximately 53 percent. This
4 would cause an "ownership change" to occur with respect to
5 Fremont General Corporation and would trigger a limitation of
6 the use of the Fremont Group NOL under IRC section 382.

7 ///

8 I declare under penalty of perjury under the laws of
9 the United States of America that the foregoing is true and
10 correct and that this declaration was executed at Los Angeles,
11 California on June 18, 2008.

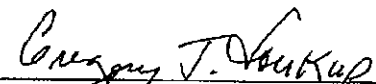
12
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14 _____
15 GREGORY J. SOUKUP
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Exhibit "1"

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14

15 Proposed Bankruptcy Counsel for the Debtor and Debtor in Possession

16 Debtor's Mailing Address
2727 East Imperial Highway
17 Brea, California 92821

18 **UNITED STATES BANKRUPTCY COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **SANTA ANA DIVISION**

21 In re: § CASE NO. 8:08-____-____
22 §
23 FREMONT GENERAL CORPORATION, § CHAPTER 11
24 a Nevada corporation, §
25 § [PROPOSED] ORDER (A) LIMITING
26 Debtor. § CERTAIN TRANSFERS OF EQUITY
27 § INTERESTS IN THE DEBTOR AND
28 § (B) APPROVING RELATED NOTICE
§ PROCEDURES
§
§
§
§

1 The *Emergency Motion of Debtor and Debtor in Possession*
2 *for Order (A) Limiting Certain Transfers of Equity Interests in the*
3 *Debtor and (B) Approving Related Notice Procedures* (the "Emergency
4 NOL Motion") came on for a hearing on June __, 2008 at ____ a.m.
5 Counsel appeared on behalf of Fremont General Corporation (the
6 "Debtor"). Other appearances, if any, are reflected on the Court's
7 record at the hearing.

8 The Court, having considered the Emergency NOL Motion,
9 the *Declaration of Gregory J. Soukup* in support thereof, and the
10 argument of counsel at the hearing, hereby finds that:

11 A. Unrestricted trading in equity interests of the
12 Debtor prior to the Debtor's emergence from Chapter 11 could
13 potentially limit the Debtor's ability, in connection with its
14 eventual emergence from bankruptcy, to utilize net operating loss
15 ("NOL") carryovers and certain other tax attributes for U.S.
16 federal income tax purposes, pursuant to the rules under section
17 382 of the Internal Revenue Code.

18 B. The trading restrictions and procedures set forth
19 herein are reasonable and proper in order to preserve such NOL
20 carryovers and other tax attributes, and are therefore in the best
21 interests of the Debtor, its estate, and its creditors.

22 C. The relief requested in the Emergency NOL Motion is
23 authorized and appropriate under sections 105(a), 362, and 541 of
24 the Bankruptcy Code.

25 **THEREFORE, IT IS HEREBY:**

26 **ORDERED** that the Emergency NOL Motion is granted on a
27 final basis retroactive to the Petition Date; and it is further
28

1 **ORDERED** that the following procedures and restrictions
2 are imposed and approved:

3 1. Notice of Substantial Equityholder Status. Within
4 thirty (30) days of the later of the entry of this Order and the
5 date on which an Entity becomes a Substantial Equityholder (as such
6 term is defined below in Section 8), each Substantial Equityholder
7 shall serve on the Debtor and its counsel, by facsimile or
8 overnight mail, a notice in the form attached hereto as Exhibit A-1
9 (a "Substantial Equityholder Notice"), setting forth summary
10 information regarding the aggregate amount of Stock of which that
11 Entity has Tax Ownership.

12 2. Restrictions and Procedures for Trading in Stock.
13 Any Entity that, after the Petition Date,

14 (i) is not a Substantial Equityholder and
15 wishes to purchase or otherwise acquire Tax
16 Ownership of an amount of Stock that would cause the
17 Entity to become a Substantial Equityholder;

18 (ii) is a Substantial Equityholder and
19 wishes to purchase or otherwise acquire Tax
20 Ownership of any additional Stock; or

21 (iii) is a Substantial Equityholder and
22 wishes to sell or otherwise dispose of Tax Ownership
23 of any Stock,

24 must, prior to the consummation of any such transaction, serve on
25 the Debtor and its counsel a notice in the form attached hereto as
26 Exhibit A-2, in the case of a proposed acquisition of Stock, or
27 Exhibit A-3, in the case of a proposed disposition of Stock (either
28 such notice, a "Proposed Stock Transaction Notice"). If no written

1 objection to the proposed transaction is filed with the Court by
2 the Debtor within twenty (20) calendar days following the receipt
3 of a Proposed Stock Transaction Notice, then the transaction may
4 proceed. If a written objection to the proposed transaction is
5 filed by the Debtor with the Court within such period, then the
6 transaction may not be consummated unless and until it is approved
7 by a final and nonappealable order of the Court. Any further
8 transactions within the scope of this Section 2 must be the subject
9 of additional notices as set forth herein with additional waiting
10 periods.

11 3. Confidentiality. The Debtor shall keep all
12 information provided in notices delivered pursuant to this Order
13 strictly confidential and shall not disclose the contents thereof
14 to any person, except (i) to the extent necessary to respond to a
15 petition or objection filed with the Court; (ii) to the extent
16 necessary to prepare tax returns or tax filings; (iii) to the
17 extent otherwise required by law; or (iv) to the extent that the
18 information contained therein is already public; *provided, however,*
19 that the Debtor may disclose the contents thereof to its counsel
20 and professional financial advisers and, upon the request of the
21 Creditors Committee or the Equity Committee, if any, shall disclose
22 information relating to any proposed Stock transaction to the
23 counsel and professional financial advisers of the Creditors
24 Committee or the Equity Committee, who shall keep all such notices
25 strictly confidential and shall not disclose the contents thereof
26 to any other person, including any member of the Creditors
27 Committee or the Equity Committee, subject to further Court order.
28 To the extent confidential information is necessary to respond to a

1 petition or objection filed with the Court, such confidential
2 information shall be filed under seal or in redacted form.

3 4. Sanctions for Noncompliance. Acquisitions and
4 dispositions of Tax Ownership of Stock in violation of the
5 restrictions and procedures set forth in Section 2 shall be void ab
6 *initio*, and the sanction for violating Section 2 shall be reversal
7 of the noncompliant transaction or such other (or additional)
8 measures as the Court may consider appropriate.

9 5. Discretionary Waiver by Debtor. The Debtor may
10 waive any sanctions, remedies, or notification procedures imposed
11 by this Order on parties other than the Debtor.

12 6. Notice of this Order. Within five (5) business days
13 of the entry of this Order, the Debtor shall (i) submit a notice of
14 the entry of this Order (substantially in the form attached hereto
15 as Exhibit B) for publication on the Bloomberg newswire service and
16 the Depository Trust Company Legal Notice System (also known as
17 LENS); (ii) post such notice together with a copy of this Order on
18 the website, if any, used for the posting of documents in the
19 Debtor's bankruptcy case; (iii) serve a notice of the entry of this
20 Order on (1) the Office of the United States Trustee for the
21 Central District of California; (2) any identified Substantial
22 Equityholders; and (3) the Internal Revenue Service. Following the
23 appointment of a Creditors Committee, counsel for the Creditors
24 Committee shall send such notice to their respective committee
25 members. Following the appointment of an Equity Committee, if any,
26 counsel for the Equity Committee shall also send such notice to
27 their respective committee members. All notices required to be
28

1 served on specific parties in accordance with this paragraph shall
2 be served by means of facsimile or overnight mail.

3 7. Continued Compliance with Other Applicable Laws and
4 Rules. The requirements set forth in this Order are in addition to
5 the requirements of the Federal Rules of Bankruptcy Procedure and
6 applicable securities, corporate, and other laws, and do not excuse
7 compliance therewith.

8 8. Definitions. For purposes of this Order, the
9 following definitions shall apply:

10 "Bankruptcy Code" means title 11 of the United
11 States Code.

12 "Chapter 11" means chapter 11 of the Bankruptcy
13 Code.

14 "Creditors Committee" means the official committee
15 of unsecured creditors that has been or will be appointed in
16 this case.

17 "Debtor" has the meaning given in the first
18 paragraph hereof.

19 "Emergency NOL Motion" has the meaning given in the
20 first paragraph hereof.

21 "Entity" means a person or entity for purposes of
22 the rules under section 382 of the Internal Revenue Code.

23 "Equity Committee" means a statutorily appointed
24 equityholders committee for the Debtor, if any.

25 "Internal Revenue Code" means the Internal Revenue
26 Code of 1986, as amended.

27 "NOL" has the meaning given in first paragraph of
28 the findings hereof.

1 "Petition Date" means June 18, 2008.

2 "Proposed Stock Transaction Notice" has the meaning
3 given in Section 2.

4 "Stock" means the common shares of Fremont General
5 Corporation, now trading under the symbol "FMNT."

6 "Substantial Equityholder" means an Entity that (1)
7 has Tax Ownership of at least 3,904,160 shares of Stock or (2)
8 at any time was a 5-percent shareholder of the Debtor within
9 the meaning of Treasury Regulations section 1.382-2T.

10 "Substantial Equityholder Notice" has the meaning
11 given in Section 1.

12 "Tax Ownership" means beneficial ownership for U.S.
13 federal income tax purposes as determined in accordance with
14 applicable rules under section 382 of the Internal Revenue
15 Code. To the extent provided in those rules, Tax Ownership
16 shall include, but not be limited to, direct and indirect
17 ownership (e.g., a holding company would generally be
18 considered to have Tax Ownership of all Stock owned by its
19 subsidiaries), ownership by members of a person's family and
20 persons acting in concert and, in certain cases, ownership of
21 an option, warrant, convertible security, or similar interest;
22 and it is further

23 **ORDERED** that, the relief provided in this Order is in
24 addition to, and not in lieu of, any and all other rights and
25 remedies available to the Debtor; and it is further

26 **ORDERED** that notwithstanding the possible applicability
27 of any of the Federal Rules of Bankruptcy Procedure or otherwise,
28

1 the terms and conditions of this Order shall be immediately
2 effective and enforceable upon its entry.

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IT IS SO ORDERED.

Dated: June __, 2008

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE

SUBSTANTIAL EQUITYHOLDER NOTICE

PLEASE TAKE NOTICE that, as of [____ _], 20__,
[_____] has Tax Ownership¹ of [_____] shares of the
Stock.

PLEASE TAKE FURTHER NOTICE that this Notice is being
served upon [_____].

This notice is given in addition to, and not as a
substitute for, any requisite notice under Rule 3001(e) of the
Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

[Name]

[Address]
[Telephone]
[Facsimile]

Dated: [____ _], [_____]

¹ Unless otherwise defined herein, each capitalized term shall
have the meaning ascribed to it in the Order (A) Limiting
Certain Transfers of Equity Interests in the Debtor and (B)
Approving Related Notice Procedures entered in the chapter 11
bankruptcy case of Fremont General Corp. (the "Order").

NOTICE OF INTENT TO PURCHASE OR OTHERWISE
ACQUIRE TAX OWNERSHIP OF STOCK

PLEASE TAKE NOTICE that [] intends to purchase or otherwise acquire Tax Ownership of [] shares of the Stock (the "Proposed Transaction").²

PLEASE TAKE FURTHER NOTICE that, prior to giving effect to the Proposed Transaction, [] has Tax Ownership of [] shares of the Stock.

PLEASE TAKE FURTHER NOTICE that, after giving effect to the Proposed Transaction, [] would have Tax Ownership of [] shares of the Stock.

PLEASE TAKE FURTHER NOTICE that this notice is being served upon [].

[] further acknowledges and agrees that (i) if the Debtor file a written objection to the Proposed Transaction within twenty (20) calendar days of the date of this notice, the Proposed Transaction may not be consummated unless approved by a final and nonappealable order of the Court; (ii) any transaction purportedly consummated in violation of the Order will be void *ab initio* and will result in the imposition of sanctions as provided in the Order; and (iii) any further transactions contemplated by [] that may result in [] purchasing or otherwise acquiring Tax Ownership of additional Stock will each require an additional notice to be served in the same manner as this notice.

Respectfully submitted,

[Name]

[Address]

[Telephone]

[Facsimile]

Dated: [], []

² Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Order (A) *Limiting Certain Transfers of Equity Interests in the Debtor* and (B) *Approving Related Notice Procedures* entered in the chapter 11 bankruptcy case of Fremont General Corp. (the "Order").

NOTICE OF INTENT TO SELL OR OTHERWISE
DISPOSE OF TAX OWNERSHIP OF STOCK

PLEASE TAKE NOTICE that [] intends to sell or otherwise dispose of Tax Ownership of [] shares of the Stock (the "Proposed Transaction").³

PLEASE TAKE FURTHER NOTICE that, before giving effect to the Proposed Transaction, [] has Tax Ownership of [] shares of the Stock.

PLEASE TAKE FURTHER NOTICE that, after giving effect to the Proposed Transaction, [] would have Tax Ownership of [] shares of the Stock.

PLEASE TAKE FURTHER NOTICE that this notice is being served upon [].

[] further acknowledges and agrees that (i) if the Debtor file a written objection to the Proposed Transaction within twenty (20) calendar days of the date of this notice, the Proposed Transaction may not be consummated unless approved by a final and nonappealable order of the Court; (ii) any transaction purportedly consummated in violation of the Order will be void ab initio and will result in the imposition of sanctions as provided in the Order; and (iii) any further transactions contemplated by [] that may result in [] selling or otherwise disposing of Tax Ownership of additional Stock will each require an additional notice to be served in the same manner as this notice.

Respectfully submitted,

[Name]

[Address]

[Telephone]

[Facsimile]

Dated: [], []

³ Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Order (A) *Limiting Certain Transfers of Equity Interests in the Debtor* and (B) *Approving Related Notice Procedures* entered in the chapter 11 bankruptcy case of Fremont General Corp. (the "Order").

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PUBLICATION NOTICE

Court Enters Order Restricting Trading in Equity of Fremont General Corporation.

The United States Bankruptcy Court for the Central District of California has entered an order that imposes substantial restrictions on the trading of equity interests in Fremont General Corporation. A copy of the order may be found at the following internet address: <http://www.kccllc.net/fremontgeneral>; questions regarding the order may be directed to the debtor and its counsel in writing. The case number for Fremont General Corporation's bankruptcy action is Case No. [_____].