

Shauna R. Miller, Bar No. 015197
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288
Phone: (602) 340-7278
Email: LRO@staff.azbar.org

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA

**GRANT H. GOODMAN,
Bar No. 0009463**

Respondent.

PDJ-2011-_____

MOTION FOR INTERIM SUSPENSION

[SBA File No. 11-1872]

The State Bar of Arizona, through undersigned bar counsel, moves the Presiding Disciplinary Judge ("PDJ"), pursuant to Rule 61, Ariz. R. Sup. Ct., to order the interim suspension of Respondent Grant H. Goodman. Respondent has engaged in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice.

This motion is supported by affidavits, attached as Exhibits A through D, bar counsel's verification and the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Interim suspensions are governed by Rule 61, Ariz. R. Sup. Ct. In part, it provides the following:

Rule 61. Interim Suspension by the Court

(a) Grounds for Interim Suspension. An interim suspension may be entered upon a showing that a lawyer appears to be ... engaging in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice

(b) Period of Interim Suspension. A lawyer may be suspended from the practice of law for an indeterminate interim period not in excess of five (5) years pending further order of this court.

(c) Procedure

1. ...

2. ...

A. ...

B. ...

C. Response. Respondent shall file a response to the motion within ten (10) days of service of the motion. After receiving the response or after the time for filing a response has passed, **the presiding disciplinary judge shall promptly rule on the motion** or conduct an evidentiary hearing.

(Emphasis added.)

Respondent is engaging in "vexatious behavior" that has cost the litigations he has dragged into the legal system "a staggering amount of legal fees." Despite millions of dollars in sanctions awarded against Respondent, he is still filing "'incomprehensible ... intemperate and unsupported allegations ... and ... misstatements of law and fact' that assert 'frivolous claims against judges, prior opposing counsel and their spouses' even when his complaints 'involv(e) already fully litigated claims.' See *Stone/Summit Builders v. Greenberg Trauig*, No. CV 09-2454-PHX-MHM, Judge Murgia." (Exhibit A, Judge Peter H. Cahill's affidavit and minute entry, pgs 11 and 12.) Bar counsel just received an email from Respondent Wherein he demands complete copies of Ms. Long/Raynak, Mr. Hall and Mr. Ravenscroft's files within 48 hours. Respondent will not stop his vexatious behavior until he is forced to do so. (Exhibit C, Respondent's June 13, 2011 email) The State Bar moves the PDJ to suspend Respondent, as allowed by Rule 61(c)(2)(C), Ariz. R. Sup. Ct.

I. Respondent's Misconduct

A. File no. 10-0598:

a. Summary of Complaint – This file deals with a probate matter. Respondent's "client" was represented by a guardian and conservator and Respondent has made numerous allegations against them, other fiduciaries, health care providers, the Court and several judges for allowing the "client's" estate to be depleted of millions of dollars, leaving the "client" destitute. The complainants in this file are Gary Strickland, Silvia Arellano, and Dr. Jack Potts.

b. Summary of Factual Findings of Investigation:

- i. Mr. Ravenscroft had been determined incapacitated by a Maricopa County Superior Court Judge on September 1, 2009. The Public Fiduciary was appointed Temporary Guardian of Mr. Ravenscroft. Brian Williamson of the Public Fiduciary's office was assigned as Mr. Ravenscroft's guardian.
- ii. On January 27, 2010, Respondent filed a Federal Court Complaint¹ ("the Federal lawsuit") knowingly presenting the signature of an incapacitated individual, Edward Abbott Ravenscroft, III, in verification of the pleading.
- iii. Respondent was fully aware of the incapacitated state of his client that is evidenced by a reading of the Federal lawsuit as well as by the fact that Respondent had contacted Mr. Williamson several days prior to the filing seeking the Guardian's consent.

¹ CV10-0183-PHX-GMS – *Ravenscroft v. Sun Valley Group, Inc., et al.*

- iv. Subpoenas were issued by the Public Fiduciary both in PB2009-000505 (the Probate case) and 2:10-cv-00183-GMS (the Federal lawsuit) requesting that Respondent provide the Public Fiduciary with a copy of his fee agreement with Mr. Ravenscroft, which he failed to do.
- v. On March 18, 2010, Mr. Strickland, Counsel for Ms. Arellano the Public Fiduciary, filed an application for an Order to Show Cause. Mr. Strickland filed the application because, (1) Dr. Jack Potts, court-appointed Independent Mental Health Examiner in PB2009-000505, had requested the fee agreement as part of his evaluation of Mr. Ravenscroft's fitness for greater independence, and (2) Mr. Strickland, Ms. Arellano, and Dr. Potts had concerns regarding the possibility that Respondent was exploiting a vulnerable adult.
- vi. The Honorable Karen L. O'Connor issued an Order to Show Cause ("OSC") in *Matter of the Guardianship of and Conservatorship for: Edward Abbott Ravenscroft III*, No. PB 2009-000505 on March 22, 2010, directing Respondent to explain why he should not be held in contempt for his refusal to disclose his fee agreement with Mr. Ravenscroft.
- vii. On March 24, 2010, after oral argument during the OSC Hearing, Judge O'Connor ordered the disclosure of the fee agreement.
- viii. On March 25, 2010, Respondent gave notice that he was voluntarily withdrawing the Federal lawsuit, without prejudice.

- ix. By assignment of the Presiding Judge of the Superior Court of Maricopa County, Judge Peter Cahill was assigned to *Mallet v. The Sun Valley Group et. al.*, CV2010-011840; *Ravenscroft v. The Sun Valley Group et. al.*, CV2010-011828; and *Raynak v. The Sun Valley Group et. al.*, CV2010-011839.
- x. On May 13, 2010, Judge Cahill issued a minute entry granting attorney sanctions and other relief against Respondent. Judge Cahill has provided the State Bar with an Affidavit wherein he expresses his belief that Respondent is engaging in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice, as further set forth in the attached Minute Entry. Exhibit A.

B. File no. 10-0703

- a. Summary of Complaint: This file deals with a probate matter. Respondent's "client" was represented by Southwest Fiduciary as her temporary conservator. Respondent has made numerous allegations against the complainant in this matter, other fiduciaries, health care providers, the court and several judges for allowing the "client's" estate to be depleted of millions of dollars, leaving the "client" destitute. The complainant is Gregory DeVico ("Mr. DeVico"), Chairman and CEO of Southwest Fiduciary.
- b. Summary of Factual Findings of Investigation.

- i. Southwest Fiduciary ("SFI") was appointed the temporary conservator for Helga Mallet ("Ms. Mallet") on February 22, 2008.
- ii. Stacey L. Johnson was appointed counsel for Ms. Mallet and Jon D. Kitchel was appointed Guardian ad Litem.
- iii. On September 12, 2008, Sun Valley Group was appointed the Successor Temporary Conservator for Ms. Mallet, which discharged SFI from that position.
- iv. On January 22, 2009, SFI filed its Petition of Approval of First and Final Account of Conservator, Payment of Fees and Expenses, Exoneration of Bond and Final Discharge of Conservator ("the Petition for Approval of First and Final Account" or "the Petition")....
- v. On October 23, 2009, the court entered its Order Approving the First and Final Account.
- vi. On January 8, 2010, Ms. Mallet entered into a fee agreement with Respondent, even though she was still under the protection of a conservatorship.
- vii. On January 26, 2010, Respondent filed a Federal Court Complaint² ("the Federal lawsuit") alleging that the defendant's, including SFI, acquired Ms. Mallet's money by charging so-called "exorbitant" fees, thereby making them all liable for various claims, including a Federal RICO claim, a civil rights violation, an Arizona Racketeering claim, a breach of

² *Helga Mallet vs. Zimmerman et al.*, CV10-0161-PHX-NVW, January 26, 2010.

fiduciary duty/malpractice claim, an exploitation of a vulnerable adult claim, and a consumer fraud claim.

- viii. The statements contained in the Complaint are representations to the Court. Respondent alleges in the complaint that the SFI Defendants of spending "virtually every penny" of \$100,000.00 they had taken from Ms. Mallet's account while doing nothing to protect her other assets."
- ix. Mr. DoVico says Respondent's allegation is refuted by the State Court accounting that showed approximately \$82,000.00 of the \$100,000.00 withdrawn pursuant to a court order had been used for the purpose of protecting assets for Helga Mallet.
- x. In addition, the facts Respondent relies on in his complaint to justify the allegations he makes against Mr. DoVico were known by Ms. Mallets' lawyers, Ms. Johnson and Mr. Kitchel, and neither one raised those facts as defenses or objections to the Petition or, if raised, they were rejected by the court.
- xi. Neither Ms. Johnson nor Mr. Kitchel filed an appeal of the Order approving the First and Final Accounting.
- xii. On November 24, 2010, Judge Peter Cahill dismissed Respondent's lawsuit against SFI.
- xiii. On May 13, 2010, Judge Cahill issued a minute entry granting attorney sanctions and other relief against Respondent. Judge Cahill has provided the State Bar with an Affidavit wherein he expresses his belief that attorney Respondent is engaging in

conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice, as further set forth in the attached Minute Entry. Exhibit A.

C. File no. 10-0742.

- a. Summary of Complaint; Complainant is John D. Everroad and the file is supported by a Memorandum Decision and Order Incorporating Memorandum Decision issued by U.S. Bankruptcy Judge Curley and attached hereto as Exhibit B. This complaint encompasses a long running civil matter Respondent has been involved in that deals with Respondent's extensive and extremely complicated conduct from 2004 through 2010 in a civil/bankruptcy matter that involved Respondent personally and where he represented himself, his wife, and multiple companies that he owed.
- b. Summary of Factual Findings of Investigation:
 - i. This is a state court action that Respondent, on behalf of himself, his wife and what the court calls the "Goodman entities," had brought for determination that they had been released of any liability on their guarantees as result of court-approved settlement agreement between a Chapter 7 trustee and a lender. The matter was removed to bankruptcy court and Respondent moved to remand for lack of jurisdiction. Defendant creditors in turn moved to dismiss and asked for relief under the All Writs Act.

- ii. The bankruptcy court held that: (1) it had jurisdiction over the removed state court action, (2) that a court-approved settlement agreement between Chapter 7 trustee and lender, could not be relied upon by Respondent as a defense to their liability on guarantees, and rambling 62-page complaint which Respondent filed had to be dismissed for failure to state claim, and (3) as remedy for vexatious conduct of Respondent in repeatedly seeking determination that they had been released of any liability on their guarantees as a result of this settlement agreement, it was proper for the bankruptcy court to enter a prospective injunction pursuant to the All Writs Act to prohibit Respondent from thereafter filing such claims in any court unless they first obtained bankruptcy court's approval for pursuing such claims.

D. File no. 10-1930:

- a. Summary of Complaint: Complainant is the court appointed guardian and conservator for Elizabeth Lesemann, Denice Shepherd. Judge Harrington also submitted the matter for review. Elizabeth Lynn Lesemann is an Adult Protected/Incapacitated Person and a Ward of the Probate Court over which Judge Harrington presides. Respondent identified himself as a lawyer in an attempt to meet with Ms. Lesemann at the facility where she lives, insisted on seeing Ms. Lesemann, intimated to the caregivers that he was Ms. Lesemann's attorney and threatened the caregivers when they called Ms. Shepherd.

b. Summary of Factual Findings of Investigation supported by Denice Shepherd's ("Ms. Shepherd") affidavit. The State Bar will file the affidavit under separate cover as soon as it has been received. The State Bar did not feel it could wait even a few more days to file this motion given Respondent's June 13, 2011 email.

- i. Ms. Shepherd is an attorney who also serves as a licensed fiduciary. She is court-appointed in Pima County Superior Court Cause No. GC20080503 to serve as the guardian and conservator for Elizabeth Lynn Lesemann (Ms. Lesemann). She has served as such for approximately two years.
- ii. Ms. Lesemann has very serious physical and mental health diagnoses. She is under the regular treatment of medical providers. All of her conditions are currently stable and she resides in an adult care home. Ms. Lesemann is and has been represented by Leigh Bernstein ("Ms. Bernstein"), the court appointed counsel in the guardianship proceeding.
- iii. Ms. Lesemann is the beneficiary of a family trust. The trustee is currently represented by attorney Charles Giddings ("Mr. Giddings").
- iv. In October 2010, Ms. Shepherd learned a man named "Steve" called the adult care home and asked for Ms. Lesemann, misrepresenting himself as a "friend" of a "friend." The care home has caller ID and the call appeared to come from a pay phone. The care home personnel gave Ms. Lesemann the

phone. Ms. Lesemann later told Ms. Shepherd's case manager that she did not know Steve.

- v. Approximately one week later "Steve" called again, but the employee did not give the call to Ms. Lesemann.
- vi. On Sunday, October 3, 2010, a man identifying himself as "Attorney Goodman from Phoenix" showed up at the adult care home and demanded to see "Lynn Lesner". The care home employee refused admittance. Respondent demanded the care home employee deliver his business card to Ms. Lesemann and threatened the care home employee if she failed to do so.
- vii. The employee gave Ms. Lesemann the card and asked her if she wanted to go outside where Respondent was waiting. Ms. Lesemann said she just "want[ed] to see," and went outside with the care home employee. Respondent attempted to whisper to Ms. Lesemann but the owner of the care home had arrived and introduced herself interrupting his attempt.
- viii. Respondent asked the care home employee and the owner to leave so he could speak to Ms. Lesemann in private and they refused. The care home employee called Ms. Shepherd's case manager, Amanda Molina, who spoke with Respondent.
- ix. Respondent refused to state the purpose of his attempt to contact Ms. Lesemann, intimating that she was his client. Respondent claimed the purpose of seeing Ms. Lesemann was "privileged information" and he would not provide that

information to the case manager. Respondent was very assertive and demanding.

- x. When Respondent returned the telephone to the care home employee, Ms. Molina could hear him talking and he told the care home employee he was already adverse to Ms. Shepherd's office and he did not want to be adverse to the care home as well, which Ms. Molina interpreted as a threat toward the care home people.
- xi. On Monday, October 4, 2010, Ms. Shepherd contacted Mr. Giddings and Ms. Bernstein. Neither had knowledge of Respondent's alleged involvement with Ms. Lesemann. Respondent's attempt to contact Ms. Lesemann constituted an unlawful solicitation. It is compounded by the fact that Ms. Lesemann is a vulnerable, incapacitated adult currently under the protection of the Superior Court.
- xii. On March 23, 2011, a person named "Mark" attempted to gain access to Ms. Lesemann.
- xiii. The care home personnel called Ms. Shepherd's office and spoke to Ms. Shepherd's employee. They were able to determine the man was Mark McCain and he told the care home personnel that Ms. Lesemann was a "key" witness and he needed to talk to her. McCain eventually left.
- xiv. Later that night, Ms. Shepherd's employee received another call from the care home personnel advising that a Tucson Police Officer was at the home to do a welfare check on Ms.

Lesemann. Mr. McCain was outside taking pictures and videotaping.

xv. The police officer advised that they had come to the care home to talk to Ms. Lesemann at Respondent's request. They were also advised that there was a group of nine people who were suing Ms. Shepherd. McCain asked the police if he could enter the care home, but he was denied access.

xvi. Ms. Shepherd has notified the Probate Court that Respondent was trying to unduly influence and exploit her incapacitated ward for his own personal benefit.

E. File no. 11-0653:

a. Summary of Complaint: Complainant is James Everett ("Mr. Everett") and he paid Respondent \$20,000.00 to represent him. When Respondent failed to do anything on the case, Mr. Everett fired him and demanded an accounting and a refund. Respondent failed to provide either. Respondent asked for additional time to respond to the bar charge, but when he did respond he still did not have an accounting for Mr. Everett. Respondent instead indicated it would take him another ten days to provide bar counsel with "billings and back up data."

b. Summary of Factual Findings of Investigation:

i. Mr. Everett needed representation for mortgage fraud and malpractice regarding another attorney.

ii. Mr. Everett gave Respondent his file and \$20,000.00 in June 2010. There was no fee agreement and the scope of the

representation and basis for the fee was not communicated to Mr. Everett in writing.

- iii. After several months, Mr. Everett called Respondent regarding the status and Respondent told him that he needed \$100,000.00 because of the amount of work involved. On October 25, 2010, Mr. Everett told Respondent that he could not pay him that much money and asked him to return the \$20,000.00.
- iv. Mr. Everett followed up this request with a letter to Respondent dated October 28, 2010.
- v. Mr. Everett sent Respondent another letter on November 2, 2010, asking respondent when the refund would be made. Respondent failed to respond to Mr. Everett.
- vi. Mr. Everett sent Respondent another letter on November 9, 2010, giving Respondent a deadline of November 11, 2010, to refund the \$20,000.00.
- vii. Respondent finally told Mr. Everett he would provide the accounting by mid-December 2010. Respondent failed to give him an accounting or return any of the unearned fees.
- viii. Mr. Everett reported Respondent's conduct to the State Bar and on December 3, 2010, Respondent was told to provide Mr. Everett with an accounting.
- ix. On January 13, 2011, bar counsel left a detailed message for Respondent, again telling him he needed to provide Mr. Everett with an accounting. On February 2, 2011, bar counsel

talked to Respondent and again emphasized the need for Respondent to provide an accounting.

- x. Respondent said he would have the accounting to Mr. Everett by February 4, 2011. Respondent failed to provide the accounting and the matter was referred for a screening investigation.
- xi. A charging letter was sent to Respondent on March 16, 2011. He was given 20 days to respond. Respondent called the State Bar on April 5, 2011, and asked for an extension of time to file his response.
- xii. Respondent provided a response on May 11, 2011, but failed to include an accounting of his time, and instead indicated it would take him another ten days to gather the information.
- xiii. Respondent has failed to provide an accounting of the amount of time he spent working on Mr. Everett's matter or refund any of Mr. Everett's \$20,000.00.

F. File no. 11-1023.

- a. Summary of Complaint: Complainant is the State Bar based on a judicial referral. Respondent was found to have made misrepresentations to the court in his briefs and during oral argument. The court found that Respondent's conduct was an "improper effort to mislead both the Court and opposing counsel." Respondent's actions constitute bad faith.
- b. Summary of Factual Findings of Investigation supported by Judge Murguia's affidavit attached as Exhibit D.

- i. This matter was referred to the State Bar by U.S. District Court Judge Mary Murguia.
- ii. Respondent filed the underlying federal case on behalf of Summit Builders ("Summit") on November 23, 2009, against 27 defendants, alleging that Summit was owed more than \$9 million in construction contracts unpaid when lender Mortgages Ltd. went bankrupt.
- iii. On August 30, 2010, Judge Murguia presided at a three-hour hearing on motions to dismiss the case.
- iv. A day after the hearing and before the judge ruled, Respondent abruptly and voluntarily dismissed the complaint in violation of Rule 41(a)(1), Fed. R. Civ. Proc.
- v. In her March 21, 2011, order, Judge Murguia found that:

[Respondent's] repeated misrepresentations concerning the facts and law in his briefing and during oral argument, despite warning by the Court, coupled with [Respondent's] continued misrepresentations in his responses to the Court's OSC, cannot be attributed to mere carelessness but rather constitute an improper effort to mislead both the Court and opposing counsel. [Respondent's] actions in this regard, as well as his improper removal of [a] probate case and voluntary dismissal at the eleventh hour, constitutes conduct tantamount to bad faith and, as such, is sanctionable under the Court's inherent power.
- vi. Judge Murguia granted all defendant's their attorney's fees and referred this matter to the State Bar.
- vii. On April 4, 2011, Respondent was sent a copy of the submission with a request to respond within 20 days.

- viii. Respondent had until April 24, 2011, to file a response. On May 11, 2011, Respondent provided bar counsel with a pleading authored by Respondent in Case No.:2:09-cv-02454-MHM, entitled "[OSC] MOTION FOR NEW TRIAL and MOTION TO VACATE ORDER," and "GOODMAN, P.A. REPLY ON RESPONDENT'S MOTION FOR NEW OSC TRIAL Fed.R.Civ.P. 11, 29, 60, COURT'S INHERENT AUTHORITY."
- ix. The above listed documents were submitted with information provided by Respondent in file no. 11-0653, but that appear to belong in file no. 11-1023. No explanatory letter was provided to bar counsel with these pleadings.

II. Pattern of Misconduct

Respondent is engaging in a pattern of misconduct involving fraudulent misrepresentations to the court in violation of the Rules of Professional Conduct. Respondent's multiple instances of misconduct has wasted precious court time and resources and continues to place an unnecessary burden on the court, its staff, and unwilling litigant's. The continuation of this misconduct will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice.

The State Bar is in the process of obtaining probable cause orders on the files listed above, but the State Bar's recommendation to issue probable cause orders will not be reviewed by the Attorney Discipline Probable Cause Committee until July 8, 2011. Due to the period of time it will take these matters to proceed through the discipline system, the State Bar believes that the public and the legal profession

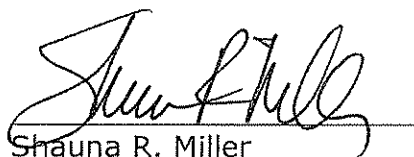
need to be protected from Respondent immediately. The State Bar moves the PDJ to promptly rule on the motion and enter an order of interim suspension.

III. Conclusion

Rule 61, Ariz. R. Sup. Ct., authorizes a suspension for an indeterminate interim period not to exceed five (5) years pending further order of this court. The State Bar respectfully requests that the PDJ enter an order suspending Respondent until the disciplinary proceedings currently pending against Respondent have been resolved.

RESPECTFULLY SUBMITTED this 14th day of June 2011.

STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel

Original filed with the
Disciplinary Clerk of the
Presiding Disciplinary Judge of the
Supreme Court of Arizona
this 14th day of June 2011.

Copy emailed this 14th day
of June 2011, to:

Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy hand-delivered this 14th day
of June 2011, to:

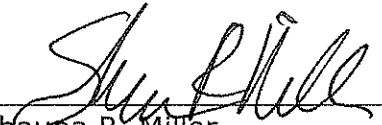
Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 200
Phoenix, Arizona 85016-6288

by: Rose Riley
SRM/rr

VERIFICATION

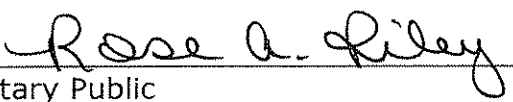
State of Arizona)
) ss.
County of Maricopa)

Upon my sworn oath, I, Shauna R. Miller, senior bar counsel for the State Bar of Arizona, have been assigned to investigate file numbers 10-0598, 10-0703, 10-0742, 10-1930, 11-0653 and 11-1023. I have prepared and read the foregoing motion for interim suspension, and to the best of my knowledge and/or upon information and belief, I believe that the facts stated herein are true and correct.



Shauna R. Miller
Senior Bar Counsel

SUBSCRIBED AND SWORN TO before me
this 14th day of June, 2011.



Notary Public



ROSE A. RILEY
Notary Public - Arizona
Maricopa County
Expires 07/15/2013

My Commission expires 7/15/13

EXHIBIT A

STATE OF ARIZONA
GILA COUNTY

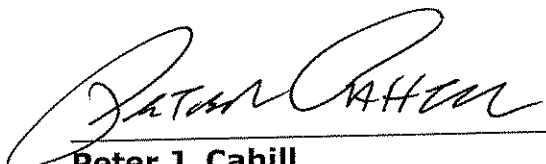
)
) ss. **AFFIDAVIT OF:**
) **Peter J. Cahill, Judge of the**
Superior Court, Gila County

I, Peter J. Cahill, Gila County Superior Court judge, Globe, Arizona, being duly sworn, depose and say:

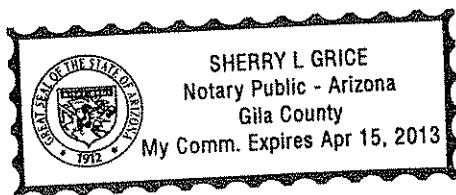
1. I am a Superior Court Judge and have been since January 2003.
2. By assignment of the Presiding Judge of the Superior Court of Maricopa County, I am the judge assigned to CV2010-011840 *Mallet v. The Sun Valley Group et. al.*; CV2010-011828 *Ravenscroft v. The Sun Valley Group et. al.*; and CV2010-011839 *Raynak The Sun Valley Group et. al.*
3. On May 12, 2011, I authored and caused to be sent to the State Bar of Arizona a document entitled Minute Entry Orders Granting Attorney-Sanctions and Other Relief. A true and correct copy of the Minute Entry is attached as Exhibit 1 and incorporated herein.
4. I was contacted by Senior Bar Counsel Shauna R. Miller and asked if I would provide an affidavit in support of a Motion for Interim Suspension the State Bar is planning on filing against Grant E. Goodman, and the attorney involved in the lawsuits identified in paragraph two.
5. I am providing the State Bar with this affidavit as I believe that attorney Grant E. Goodman is engaging in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice, as further set forth in the attached Minute Entry.

Upon my sworn oath, I, **Peter J. Cahill**, have read the foregoing affidavit and to the best of my knowledge, state that the facts set forth herein are true and correct.

DATED June 8, 2011.


Peter J. Cahill
Superior Court Judge, Gila County

SUBSCRIBED AND SWORN TO before me by the Peter J. Cahill, June 8, 2011.



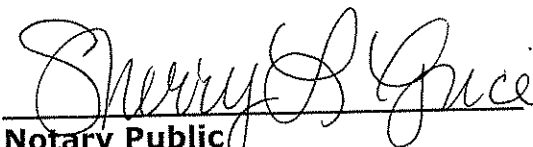

Notary Public
My Commission Expires:
April 15, 2013

EXHIBIT 1

IN THE SUPERIOR COURT

Maricopa County, State of Arizona

FILED in Court Record

FILED

5/13/11 2:00 pm

MICHAEL K. JEANES, Clerk

By T. Mellus, Deputy

5/12/2011

PETER J. CAHILL, JUDGE

Visiting Judge

G CURRY

Judicial Assistant

HELGA MALLET, an adult individual,

Plaintiff,

v.

THE SUN VALLEY GROUP, INC., et al.,

Defendants.

EDWARD ABBOTT RAVENSCROFT,
III, an adult individual,

Plaintiff,

v.

THE SUN VALLEY GROUP, INC., et al.,

Defendants.

KIM RAYNAK, as Guardian of
Marie J. Long,

Plaintiff,

v.

GENEVIEVE OLEN and GARY
OLEN, wife and husband;
THE SUN VALLEY GROUP, INC., et al.,

Defendants.

CV2010-011840 ✓
CV2010-011828
CV2010-011839

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MINUTE ENTRY ORDERS
GRANTING ATTORNEY-
SANCTIONS AND OTHER RELIEF

**ORDERS GRANTING SANCTION APPLICATIONS,
REFERRAL TO THE STATE BAR OF ARIZONA
and
RECOMMENDATION TO THE PRESIDING JUDGE**
(Re "Vexatious Litigant" OSC)

Defendants Sun Valley Group, Inc. and Peter Frenette and Heather Frenette (*referred to here as "Sun Valley"*) (*in the Long*, CV2010-011839, *Mallet*, CV2010-011840, and *Ravenscroft*, CV2010-011828 *matters*); Warner Angle Hallam Jackson & Formanek PLC and Jerome Elwell (*"Warner Angle"*) (*Long, Mallet and Ravenscroft matters*); Genevieve and Gary Olen (*"Olen"*) (*Long matter*); the Maricopa County Superior Court and Karen L. O'Connor (*"Judicial Defendants"*) (*Long matter*); Lawrence F. Scaringelli and Becker & House (*"Scaringelli"*) (*Ravenscroft matter*); Southwest Fiduciary, Inc. and Gregory Dovico and Peggy Dovico (*"Southwest"*) (*Mallet matter*) and Lindsay B. Ellis (*"Ellis"*) (*Long matter*) seek orders imposing sanctions upon Plaintiffs' counsel, Mr. Grant Goodman.¹

Another defendant, Wedbush Morgan Securities, Inc., (*Long matter*) has also prevailed on a motion to dismiss. Wedbush says it will apply for sanctions. However, because the dismissal was just recently granted, its application is, of course, not ready for disposition. When filed, it will be addressed by further order.

Applicants, with one exception, do not seek any such relief against the individual plaintiffs themselves, Ms. Long (*or her Guardian, Ms. Raynak*), Ms. Mallet or Mr. Ravenscroft. (*Scaringelli does suggest— and not without some justification— that an evidentiary hearing "may" be appropriate in order to determine the level of Plaintiff Ravenscroft's complicity.*)

1. THE SANCTION APPLICATIONS.

a. Procedural Background.

The several applications for sanctions, the exhibits attached to the applications, the supplemental affidavits filed in support of the applications, the findings of fact and conclusions of law that have been proposed by the applicants, the court files, the arguments made by counsel at a hearing held April 7, 2011, and the law were considered.

¹ While not "consolidated," these three cases have been considered together because the issues presented by the motions to dismiss and then the applications for sanctions are similar. Separate minute entry orders granting dismissal were issued. Separate findings and conclusions are entered on the sanction applications.

Mr. Goodman did not file a timely response to the fee applications. As a result, the Court began consideration of the applications. It was only at this point that Mr. Goodman filed his responses. Although tardy, Mr. Goodman's responses were nevertheless considered by the Court.

At Mr. Goodman's request, a hearing on the applications was held in Phoenix on April 7, 2011. After the hearing, and in response to the Court's request, Sun Valley supplemented its application with information supporting its claim for specific amounts of fees and costs sought. There was no objection made by Mr. Goodman to Sun Valley's supplemental submission.

For the reasons that are more fully set out in findings and conclusions that are separately entered this date on each pending application, the Defendants' applications for sanctions will be granted.

Mr. Goodman's conduct deserves imposition of the sanctions requested by the applicants. His disregard of the professional obligations imposed upon attorneys and his violations of the rules of litigation justify the imposition of significant sanctions under Rule 11, Arizona Rules of Civil Procedure, and A.R.S. § 12-349. And because there is reason to believe that these sanctions will not in any way deter future misconduct, additional orders are necessary.

b. Legal Background.

The context in which these cases arose is important.

Each case involves a ward in Arizona's probate system. Each case involves a guardianship or conservatorship that is supervised by the probate court. The wards, Ms. Long, Ms. Mallet and Mr. Ravenscroft (*and their assets*), were, as a result of their involvement with the probate court, entitled to adequate protection and careful supervision. The wards and their property were also entitled to effective and cost-efficient fiduciary services. Claims that Ms. Long, Ms. Mallet and Mr. Ravenscroft did not receive what they deserved—that, instead, scoundrels ("*Racketeers*," as Mr. Goodman calls them) took advantage of them and stole all their property are serious. Indeed, no other claim before this Court is more worthy of capable and professional advocacy.

However, the reason why these claims could not proceed here is because Mr. Goodman did not—and would not—file a "statement of the claim showing that the pleader is entitled to relief" as is required by Rule 8, A.R.Civ.P. Alfred Dreyfus surely would have died on Devil's Island had Mr. Goodman been his "*Zola*." See *L'Aurore*, 1/13/1898,

"l'Accuse" by Émile Zola (*detailed, well-substantiated accusations of collusion and cover-up of judicial errors then resulted in positive change*).

c. Impact of Possible Future Rulings in Related Cases.

The rulings made here—the orders made in 2010 granting Defendants' motions to dismiss and the orders made now that impose sanctions—are not dependent on the ultimate finality of any orders made in other cases. These "other cases" are the "underlying" guardianship cases in the Maricopa Probate Court. Orders made by the Probate Court in those cases were repeatedly referred to by Mr. Goodman's in his complaints filed in the matters that are before this Court. Of course, trial or appellate courts may set aside probate court orders that are not yet final.

If orders in the probate cases are set aside, this would not, by itself, justify any necessary change in any rulings made here. That is, the dismissals that were entered here and the sanction imposed now are not dependent on the finality of those other rulings. In fact, any such appellate action would, at most, make claims against these defendants "ripe." Instead of undercutting the rulings made here, the "ripening" of such claims would only confirm rulings made here that the complaints in *Long Mallet* and *Ravenscroft* were premature and improper "collateral appeals" of decisions made by the Probate Court in the Long, Mallet and Ravenscroft guardianship cases.

d. Attorney Conduct.

Mr. Goodman's conduct—the manner in which he has handled these important matters—has brought discredit to the profession and the courts. In addition, his conduct caused significant harm to the litigants.

As counsel for the Olen Defendants put it well, Mr. Goodman's conduct demonstrates an "on-going pattern of abuse of the judicial process, designed ... to harass and intimidate" This pattern is shown not only by Mr. Goodman's actions in these cases, *Long Mallet* and *Ravenscroft*, but also in other cases in state, federal and bankruptcy courts both at the trial and appellate level. *See below*

Mr. Goodman's conduct caused the parties in this litigation (*and their carriers*) to suffer significant "direct" consequences: attorneys fees and costs, all as set forth in the applications. There is, however, more. So much more that it is too much to list all of the many consequences. Some, however, do deserve mention.

The Court is particularly concerned with the credible evidence presented by the affidavit of *Warner Angle* attorney, James K. Kloss. Mr. Kloss quotes Mr. Goodman as

saying words to the effect that his intention is to "shut down" Warner Angle. "Harass and intimidate" indeed.

Even more troubling are the allegations made in the *Long* case against Defendant Ellis.

Judge Ellis presided over the underlying *Long* probate matter. She entered an order in that guardianship case resolving many issues including approving accountings and compensation requests. This order appears to in large part have prompted the allegations made by Mr. Goodman here in *Long*. (*Judge Ellis' order in the Long matter was attached as an exhibit to an earlier pleading here.*)

Judge Ellis' order is without a doubt a decision written in painstaking detail by a judge intent on carefully explaining her findings and reasoning. Whether or not her findings are supported by the evidence and whether her conclusions are correct is, of course, not for this Court to decide—or even comment on. However, here in this case and upon Judge Ellis' sanction application, Mr. Goodman's tactics and his actions indeed are at issue. Based even on Mr. Goodman's inability to properly plead a case against Judge Ellis and as shown by the fact that she is not named in the amended complaint, it is clear that the accusations made against Judge Ellis by Mr. Goodman in the first complaint are groundless. Naming the Judge in the *Long* complaint—only to the drop her as a defendant in the amended complaint—was a cheap, cruel trick.

There also are other consequences that result from Mr. Goodman's actions.

Reckless, unsubstantiated allegations such as those made here (*even though they are described as "paltry"*) can and likely have had a significant impact on a financial, securities firm such as the Wedbush Defendant.

Finally, Mr. Goodman's actions preempted a tremendous amount of judicial time that properly could have been used to consider the meritorious claims of other litigants.

"Indirect" harm however, is not susceptible to quantification. Thus, it cannot be included in any financial sanctions. But, it should not be ignored.

e. The Court's Authority to Impose Sanctions.

Sanctions are awarded here pursuant to A.R.S. § 12-349 and Rule 11, Arizona Rules of Civil Procedure. Because "racketeering allegations" were made in both the original and the amended complaints, there is further authority for a sanction award. A.R.S. § 13-2314.04 N (*a pleading brought in bad faith, vexatiously, wantonly or for an improper or oppressive reason.*)

f. The Sanctions Imposed.

Accordingly, and for good cause shown as addressed in the individual Findings of Fact and Conclusions of Law entered separately on each application,

IT IS HEREBY ORDERED GRANTING the Applications for Sanctions against Mr. Grant Goodman individually and, without limitation, GOODMAN, P.A., as follows:

In the *Long* CV2010-011839, *Mallet*, CV2010-011840, and *Rauerscroft*, CV2010-011828 matters, in favor of:

Warner Angle Hallam Jackson & Formanek PLC and Jerome Elwell in the amount of: \$75,597.61.

In the *Long* matter, in favor of:

Defendants Sun Valley Group, Inc. and Peter and Heather Frenette in the amount of \$19,366.50 in fees and \$1,305.59 in nontaxable costs; and

Lindsay B. Ellis in the amount of: \$71,450.00; and

Maricopa County Superior Court and Karen L. O'Connor in the amount of: \$ 14,590.00; and

Genevieve and Gary Olen. The Olen's are entitled to an award. However, their counsel stated at oral argument that no specific award amount was requested.

In the *Rauerscroft* matter, in favor of:

Defendants Sun Valley Group, Inc. and Peter and Heather Frenette in the amount of \$20,755.50 in fees and \$1,546.36 in nontaxable costs; and

Lawrence F. Scaringelli and Becker & House in the amount of: \$15,766.00, plus, as requested by *Scaringelli*, any additional fees and expenses justified by the circumstances and as may be approved by the Court by further order.

Scaringelli's request for an evidentiary hearing is DENIED.

////

In the *Mallet* matter, in favor of:

Defendants Sun Valley Group, Inc. and Peter and Heather Frenette in the amount of \$16,540.00 in fees and \$1,166.77 in nontaxable costs; and

Southwest Fiduciary, Inc., Gregory Dovico and Peggy Dovico in the amount of: \$22,192.00, plus additional fees and expenses justified by the circumstances and as may be approved by the Court by further order.

Applicants will lodge formal orders of judgment.

2. STATE BAR REFERRAL.

Mr. Goodman violated the following Rules of Professional Responsibility: ER 1.1 (*competent representation*); ER 3.1 (*maintaining frivolous action*); ER 8.4(d) (*conduct prejudicial to the administration of justice*); Supreme Court Rule 41(g) (*avoid unprofessional conduct*) and Rule 32(2)(E) (*"substantial, repeated unprofessional conduct"*) all as more fully set forth in the *Findings of Fact and Conclusions of Law* entered herein.

Rule 2.15, *Code of Judicial Conduct*, Rule 81, provides that a judge who receives information indicating a substantial likelihood that a lawyer has committed violations of the Rules of Professional Conduct will take appropriate action. Here, the "likelihood" of ethical violations indeed is "substantial"—and more.

Accordingly,

IT IS FURTHER ORDERED that this matter, including the several Findings and Conclusions entered herein on the sanctions applications, as well as this minute entry order, are referred to the *Chief Bar Counsel* of the State Bar of Arizona for further action as she deems appropriate.

3. RECOMMENDATION TO THE PRESIDING JUDGE.

a. Circumstances That Require Further Action.

These orders, the financial sanctions imposed here and this order for a State Bar discipline referral, are entered in an attempt to provide a remedy for the harm done by Mr. Goodman. There are, however, particular reasons why financial sanctions, even in a significant amounts ordered above, are not likely to be effective. *[From the text in which Mr. Goodman responded to these sanctions applications as well as his demeanor during the 4/7/11 hearing, the*

Court believes it is quite likely that these financial sanctions will mean nothing to Mr. Goodman.] The lawyer discipline system does allow for the imposition of a lawyer's interim suspension. Supreme Court Rule 61 (suspension possible were misconduct "will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice..."). However, because of the difficulty in obtaining the interim suspension of an attorney's right to practice, other important and immediate concerns ought to be addressed.

As shown below, a substantial number of awards and judgments totaling a staggering amount (*over \$24 Million, as far as this Court can tell*) have already been ordered against Mr. Goodman. This fact greatly reduces the likelihood that the sanctions entered here will have any impact. The dollar sanctions ordered here, though substantial, will not likely give Mr. Goodman any incentive to comply with the rules of professional conduct in the future. It is reasonably likely—actually, it is a certainty, that Mr. Goodman will victimize others.

Mr. Goodman's unethical and damaging use of legal process needs to stop. Accordingly, the "appropriate action" required by Rule 2.15 compels more than just a State Bar referral. It is therefore suggested that the Presiding Judge give consideration to entering, after a hearing, what is commonly referred to as a "vexatious litigant order."

To assist the Presiding Judge in his consideration whether an order to show cause to Mr. Goodman should issue, the following findings are submitted:

b. Preliminary Findings.

1. Other courts have previously found—and sanctioned—misconduct by Mr. Goodman as follows:

A. *Stone/Summit Builders v. Greenberg Traurig*
No. CV 09-2454-PHX-MHM,
U.S. Dist. Court, District of Arizona. 3/21/11.

U.S. District Judge (*now Circuit Judge*) Mary H. Murguia ordered Mr. Goodman to show cause why he should not be sanctioned for filing a "meritless action," (*requiring multiple motions to dismiss*) and for "lack of candor with the Court both in (his) pleadings and during oral argument." (*Similar to what happened here, in the Stone/Summit case that was before Judge Murguia, Mr. Goodman filed a notice of voluntary dismissal only after extensive briefing.*) In her March 21, 2011 order, Judge Murguia found that Mr. Goodman made "misstatements of both fact and law..." And, just as was observed here, Judge Murguia found that Mr. Goodman's pleadings are at times "incomprehensible, assert intemperate and unsupported allegations ... and contain ... misstatements of law and fact." Judge Murguia concluded that Mr. Goodman's

"continued misrepresentations" constituted an "improper effort to mislead both the Court and opposing counsel," conduct Judge Murguia described as "tantamount to bad faith..." As a result, Judge Murguia imposed substantial fees (*in excess of \$40,000.00, plus additional fee award requests that are still pending*) as sanctions against Mr. Goodman and his client in favor of more than 20 individuals and law firms. A referral to the State Bar of Arizona was ordered.

B. *Grant H. Goodman, et. al. v. California Portland Cement Co.*
420 B.R. 1 (2009)
United States Bankruptcy Court, District of Arizona.

Bankruptcy Judge Sarah S. Curley found that the record before her was "replete with state and federal court decisions which discuss the frivolous nature" of Mr. Goodman's conduct as follows:

- In *Grant H. Goodman, et. al v. Cornerica Bank and Greenberg Traurig*, Maricopa Superior Court, No. CV2008-031668, the court found that Mr. Goodman (and his wife) "brought [their] claim solely or primarily for delay or harassment" and dismissed Mr. Goodman's claims. It awarded attorneys' fees and sanctions.
- In Arizona District Court Case No. CV-07-00163, "Goodman-related entities" but represented by Mr. Goodman, attempted to re-litigate matters previously litigated. District Judge David C. Bury held that Mr. Goodman had (*just as occurred here*) "repeated numerous allegations ... that have been litigated or are continuing to be litigated at least once and generally numerous times as the state court level." The Ninth Circuit affirmed. On its own motion, the Circuit Court ordered Mr. Goodman to show cause why sanctions should not be assessed against him for: (1) conduct unbecoming a member of the bar and abuse of the judicial process—to wit, making frivolous claims against judges, prior opposing counsel and their spouses, and refile suit involving already fully litigated claims; (2) filing a frivolous appeal that included unsupported "aspersions" on the integrity of members of the state and federal judiciary; and (3) disregarding federal and court rules regarding the form of pleadings.
- In Bankruptcy Case No. 08-ap-00464, the court awarded attorney fees as a sanction against Mr. Goodman as a result of his "abuse of the discovery process." The court referred to an earlier denial of an injunction and expressed hope that Mr. Goodman would "rethink (his) actions and cease (his) vexatious behavior."

C. *California Portland Cement Co. v. Grant H. Goodman, et al*
Superior Court in Maricopa County; Cause No. CV2004-000669
Division One, Court of Appeals, CA-CV 060149; Aug. 28, 2007.

Jury verdict against Mr. Goodman for \$5.2 million; affirmed on appeal.
Attorney fees (*amount not specified*) awarded by the appellate court.

- D. *Stirling Bridge and Grant Goodman v. Cementos de Amigos, et al*
Maricopa County, No. CV 2005-002890
Division One, Court of Appeals, No. 1 CA-CV 06-0103; July 12, 2007.

Affirmed summary judgment against Mr. Goodman; ordered Mr. Goodman to pay defendant's attorney fees.

- E. *G.H. Goodman Investment Cos., et al v. Comerica Bank;*
Comerica Bank v. G.H. Goodman Investment Cos., et al; and
Comerica Bank v. Grant H. Goodman, et al
Maricopa County Nos. CV 2003-005802, CV 2003-006484, CV 2003-007563
and CV 2005-003271 (*consolidated*),
Division One, Court of Appeals, No. 1 CA-CV 07-0264; Feb. 21, 2008.

Fee award against Mr. Goodman of \$319,935.25 and \$24,091.90 costs; final judgment against Mr. Goodman: \$17,885,187.00; affirmed.

- F. *Bombardier Capital v. Grant H. and Teri Goodman*
Maricopa County No. CV2005-010579,
Division One, Court of Appeals, No. 1 CA-CV 08-0355; March 31, 2009.

Damage award against Mr. Goodman for \$700,496.61 plus \$49,476.84 (*attorneys' fees*) affirmed.

- G. *Empire Southwest v. Grant H. Goodman, et al*
Maricopa County No. CV2004-092589,
Division One, Court of Appeals, No. 1 CA-CV 08-0350; April 30, 2009.

Affirmed award against Mr. Goodman for \$211,845.99 (*promissory note*),
\$71,443.35 (*open account*), \$54,493.75 (*attorneys' fees*).

- H. *Grant Goodman, et al. v. Quarles & Brady Streich Lang*
Maricopa County No. CV 2005-003271,
Division One, Court of Appeals, No. 1 CA-CV 08-0255; Dec. 10, 2009.

The cost award in excess of \$30,000.00 against Mr. Goodman was affirmed.

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2. The cases before this Court, together with the other cases that are set forth above, demonstrate a clear pattern where Mr. Goodman will:

- Make collateral, improper attacks upon court decisions in an attempt to re-litigate matters already litigated and decided;
- State incomprehensible claims that make intemperate, unsupported allegations;
and
- State frivolous claims, often alleging outlandish conspiracies and racketeering operations, including such claims against judges.

3. Monetary sanctions (*even in extraordinary amounts*) appear to have little or no impact upon Mr. Goodman; they do nothing to alter his behavior.

4. The imposition of monetary sanctions upon Mr. Goodman does not provide any protection whatsoever to the public.

5. Despite the sanctions ordered above, Mr. Goodman has continued, without restriction, to obtain issuance of legal process. Parties then have had no choice but to respond to Mr. Goodman's summonses. Parties may not, of course, ignore even Mr. Goodman's "incomprehensible ... intemperate and unsupported allegations ... and ... misstatements of law and fact" that assert "frivolous claims against judges, prior opposing counsel and their spouses" even when his complaints "involve(e) already fully litigated claims." *Stone/Summit Builders v Greenberg Traurig*, No. CV 09-2454-PHX-MHM, Judge Murguia.

6. Suggestions by judges that Mr. Goodman "rethink (his) actions and cease (his) vexatious behavior" have had, it appears, no effect whatsoever, at least that this Court can determine. See *Grant H. Goodman, et. al. v California Portland Cement Co.*, 420 B.R. 1 (2009), Judge Curley, referring to Bankruptcy Case No. 08-ap-00464.

7. There is reason to believe that past sanction awards in the millions of dollars actually serve to Mr. Goodman's benefit when issues of further misconduct arise. These humongous sanction awards actually serve to, in effect, insulate Mr. Goodman from the consequences of future awards. This is shown here. The Defendants in these three cases at bar must in effect, "get in line" to collect the sanctions imposed today. Very likely—actually in absolute certainty—the wait for Applicants to recover their sanction awards made here will likely be futile—thereby adding even further insult to injury. This perhaps explains the relatively casual attitude by counsel in response to these applications against him.

8. Mr. Goodman's disregard for sanction orders makes a mockery of the Superior Court's inherent power to supervise conduct through the imposition of financial sanctions.

Clearly, sanction orders mean little or nothing to Mr. Goodman. This is best illustrated by the Olen's rather prudent decision to forego any specific award of sanctions. It may also be shown by the fact that several other litigants, whose claims for sanctions are just as meritorious as those made here, did not even bother to file sanctions applications.

9. Mr. Goodman's unrestrained ability to obtain and serve legal process is a danger to the public.

10. In the *Long* and *Mallet* cases, Mr. Goodman showed that he will file suit—and obtain issuance of legal process—even where he does not properly represent his “client.”

11. In addition to causing harm to opposing parties, Mr. Goodman puts his own clients at risk for imposition of sanctions. See *Stone/Summit Builders v Greenberg Traurig* No. CV 09-2454-PHX-MHM, Judge Murguia.

12. Legal process obtained by Mr. Goodman, and resultant litigation, has cost these and other litigants a staggering amount of legal fees. Although their coverage surely provided some relief, service of process surely caused some amount of anxiety. The targets of Mr. Goodman's claims (*and their carriers*) must spend a fortune just to request dismissal of outrageous claims against them—often to have Mr. Goodman then dismiss those claims just before or just after their motion is heard. At best, the claims are later dropped. (*See the dropped allegations against the “Judicial Defendants” here.*) At worst, Mr. Goodman merely repeats his claims in an amended complaint thereby requiring opposing parties to spend even more money. (*While fees and sanctions have been awarded by many courts, there is no evidence in this record that any have been paid. Regardless, the result is the same: sanctions, even if paid, do not deter Mr. Goodman.*) Then, once the claim is dismissed and when sanctions are sought and imposed—the sanctions do not have any effect.

13. The Court is concerned that in the future some unfortunate target of Mr. Goodman's litigation tactics will not have litigation-expense coverage.

c. Recommendation.

IT IS THEREFORE RECOMMENDED to the Presiding Judge that Mr. Goodman be ordered to show cause why the Superior Court, Maricopa County, should not find, based on the preliminary findings set forth above, that he has repeatedly filed vexatious and harassing litigation and, that as a result, a prospective injunction will issue.

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Consideration should be given to issuance of an injunction that includes, at least, imposition of the following requirements upon Mr. Goodman:

- a. He must file any proposed complaint first with the Presiding Judge, or his designee;
- b. No named-defendant need initially respond to the complaint or summons;
- c. The complaint will be reviewed to determine whether it should be summarily denied, or allowed to proceed and legal process issue;
- d. The complaint—and Mr. Goodman's response to any inquiry made in order to determine whether the complaint should be allowed to proceed—will be reviewed to determine, among other things, whether:
 1. Mr. Goodman has the lawful authority to represent his "client";
 2. The complaint states a claim where the pleader is entitled to relief, in compliance with Rule 8, A.R.Civ.P.; *and*
 3. The complaint makes improper, collateral attacks upon decisions of a court of competent jurisdiction previously made in an attempt by Mr. Goodman to re-litigate matters previously litigated and decided.
- e. If the court summarily denies the relief requested and dismisses the complaint, the summary denial and dismissal order and the complaint will be placed in the Clerk's file; *and*
- f. If the court allows the complaint to proceed, the Clerk of Court will open a proceeding, assign a case number, and Mr. Goodman may proceed according to the Rules of Civil Procedure or by other appropriate means, all subject to any special orders needed under the circumstances.

cc:

Ms. Maret Vessella,
CHIEF BAR COUNSEL
State Bar of Arizona
4201 N. 24th Street, Suite 200
Phoenix, Arizona 85016-6288

HON. NORMAN J. DAVIS
MARICOPA COUNTY SUPERIOR COURT
125 W. WASHINGTON, 5TH FLOOR
PHOENIX, AZ 85003

GRANT H. GOODMAN
GOODMAN P.A.
5108 N. 40th Street, Suite 3
Phoenix, Arizona 85018

HOWARD M. SHANKER

Office Distribution:

COURT ADMINISTRATOR - GILA
DIVISION I COPY - GILA

TAMARA C. SHANKER
THE SHANKER LAW FIRM, PLC
700 E. BASELINE RD., BUILDING B
TEMPE, AZ 85283

JAMES R. BROENING
M. BRENT PEUGNET
BROENING OBERG WOODS & WILSON PC
P.O. BOX 20527
PHOENIX, AZ 85036-0527

KRAIG J. MARTON
JABURG & WILK PC
GREAT AMERICAN TOWER
3200 N. CENTAL AVE., STE. 2000
PHOENIX, AZ 85012

JON DAVIS WEISS
SHANE ERIC OLAFSON
LEWIS & ROCA LLP
40 N. CENTRAL AVE.
PHOENIX, AZ 85004-4429

D. REID GARREY
GARREY, WONER, HOFFMASTER & PESHECK
THE GILBRALTAR BUILDING
6611 N. SCOTTSDALE RD.
SCOTTSDALE, AZ 85250

KENT E. TURLEY
TURLEY, SWAN, CHILDERS & TORRENS, PC
3101 N. CENTRAL AVE., STE. 1300
PHOENIX, AZ 85012-2656

EDWARD G. HOCHULI
RUSSELL R. YURK
JONES SKELTON & HOCHULI PLC
2901 N. CENTRAL AVE., STE. 800
PHOENIX, AZ 85012

WILLIAM J. MALEDON
GEOFFREY M.T. STURR
CHRISTINA RUBALCAVA
OSBORN MALEDON, P.A.
2929 N. CENTRAL AVE., STE. 2100
PHOENIX, AZ 85012-2793

WILLIAM G. FAIRBOURN
BENNETT FAIRBOURN FRIEDMAN & BALINT
2901 N. CENTRAL AVE., STE. 1000
PHOENIX, AZ 85012-3311

TIMOTHY J. THOMASON
MARISCAL WEEKS MCINTYRE &
FRIEDLANDER PA
2901 N. CENTRAL AVE., STE. 200
PHOENIX, AZ 85012-2705

CHARLES J. MUCHMORE
BURCH & CRACCHIOLO, P.A.
702 E. OSBORN RD., STE. 200
PHOENIX, AZ 85014

R. COREY HILL
GINETTE HILL
HILL & HILL
3131 E. CLARENDON AVE., SUITE 107
PHOENIX, AZ 85016

MICHAEL L. PARRISH
RODRICK J. COFFEY
STINSON MORRISON HECKER LLP
1850 N CENTRAL AVENUE, SUITE 2100
PHOENIX, AZ 85004-4584

KEVIN O'MALLEY
PAUL K. CHARLTON
KIERSTEN A. MURPHY
GALLAGHER & KENNEDY
2575 E. CAMELBACK RD.
PHOENIX, AZ 85016-9225

FRANK FOX
THE CAVANAUGH LAW FIRM, P.A.
1850 NORTH CENTRAL AVENUE, STE. 2400
PHOENIX, AZ 85004

EXHIBIT B

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5 IN THE UNITED STATES BANKRUPTCY COURT
6 FOR THE DISTRICT OF ARIZONA
7

8 In Re

9 GTI CAPITAL HOLDINGS, LLC, an
10 Arizona Limited Liability Company, dba
11 ROCKLAND MATERIALS,

12 Debtor.

13 In Re:

14 G.H. GOODMAN INVESTMENT
15 COMPANIES, LLC,

16 Debtor.

17 GRANT H. GOODMAN and TERI B.
18 GOODMAN, husband and wife (as
19 Guarantors-Sureties for GTI Capital
20 Holdings, LLC, and G.H. Goodman Invest.
21 Co. LLC; GHG Inc., (managing agent for
22 Stirling Bridge, LLC, a Delaware limited
23 liability company); STIRLING BRIDGE
24 LLC (a Delaware limited liability company);
25 NORTHERN HIGHLANDS I, II (Arizona
26 limited liability companies),

27 Plaintiffs,

28 v.

29 CALIFORNIA PORTLAND CEMENT
30 COMPANY, (a California corporation, dba
31 Arizona Portland Cement Company);
32 BOMBARDIER CAPITAL INC., EMPIRE
33 SOUTHWEST LLC (a Delaware Limited
34 Liability Company); BURCH &
35 CRACCHIOLO, P.A., NORLING,

Chapter 7

Case Nos. 2:03-bk-07923-SSC and
2:03-bk-07924-SSC

Adv. No. 2:09-ap-00006-SSC

**ORDER INCORPORATING
MEMORANDUM DECISION DATED
SEPTEMBER 15, 2009**

1 KOLSRUD, SIFFERMAN, & DAVIS, PLC;
2 MARISCAL, WEEKS, MCINTYRE &
3 FRIEDLANDER, P.A.,

4 Defendants.

5
6 Based upon this Court's Memorandum Decision dated September 15, 2009,
7 which is herein incorporated by reference,

8 IT IS ORDERED that the Plaintiffs' Motion to Remand is DENIED.

9 IT IS FURTHER ORDERED that the Defendants' Motion to Dismiss is
10 GRANTED. This Adversary is dismissed with prejudice, pursuant to Fed.R.Civ.P. 12(b)(6), as
11 incorporated herein by Fed.R.Bankr.P. 7012(b).

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 28
13 U.S.C. § 1651(a), the All Writs Act, this Court enjoins Mr. Grant Goodman, whether acting pro
14 se or on behalf of any other person or entity, Ms. Teri B. Goodman, any of the entities related to
15 or affiliated with the Goodmans, from filing any complaint or pleading with a state or federal
16 court, concerning any claim that they, individually, or collectively, may have against any person
17 or entity related or pursuant to the Settlement Agreement¹, the Order Approving Settlement
18 Agreement², or any other decision or order of the Court in the above-captioned Debtors' cases
19 and whether said documents or proceedings in this Court somehow released, extinguished or
20 affected the liability of Mr. Goodman, Ms. Goodman, or the Goodman-related entities or any
21 guarantee that they provided of the Debtors' liabilities without first following the procedures in
22 this Order.

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24
25 1. As said term is defined in the Memorandum Decision dated March 17, 2008 in
26 Adversary No. 07-ap-00031, at Docket Entry No. 51.

27 2. See Adversary No. 07-ap-00031, Docket Entry No. 52.

1 IT IS FURTHER ORDERED as follows: Mr. Goodman, Ms. Goodman, or any of
2 the Goodman-related entities shall first file the proposed complaint with this Court. The
3 complaint will not be placed initially on the Court's docket. No defendant need initially respond
4 to the complaint. The Court shall review the complaint and determine whether the complaint
5 should be summarily denied, or whether it should proceed. If the Court summarily denies the
6 relief requested and dismisses the complaint, the summary denial and dismissal order and
7 complaint shall be placed on the docket. If the Court allows the complaint to proceed, the Court
8 will direct the clerk of Court to open a proceeding, assign a case number, and Mr. Goodman may
9 proceed according to the Federal Rules of Bankruptcy Procedure or by other appropriate means.

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13 Dated this 17th day of September, 2009.

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16 The Honorable Sarah Sharer Curley

17 United States Bankruptcy Judge
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19 BNC to notice.
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5 IN THE UNITED STATES BANKRUPTCY COURT
6 FOR THE DISTRICT OF ARIZONA
7

8 In Re

9 GTI CAPITAL HOLDINGS, LLC, an
10 Arizona Limited Liability Company, dba
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12 Debtor.

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17 GRANT H. GOODMAN and TERI B.
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24 LLC (a Delaware limited liability company);
25 NORTHERN HIGHLANDS I, II (Arizona
26 limited liability companies),

27 Plaintiffs,

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29 CALIFORNIA PORTLAND CEMENT
30 COMPANY, (a California corporation, dba
31 Arizona Portland Cement Company);
32 BOMBARDIER CAPITAL INC., EMPIRE
33 SOUTHWEST LLC (a Delaware Limited
34 Liability Company); BURCH &
35 CRACCHIOLO, P.A., NORLING,

Chapter 7

Case Nos. 2:03-bk-07923-SSC and
2:03-bk-07924-SSC

Adv. No. 2:09-ap-00006-SSC

**MEMORANDUM DECISION
DISMISSING THIS ADVERSARY AND
GRANTING CPCC'S MOTION FOR
STAY PURSUANT TO THE ALL WRITS
ACT**

1 KOLSRUD, SIFFERMAN, & DAVIS, PLC;
2 MARISCAL, WEEKS, MCINTYRE &
3 FRIEDLANDER, P.A.,

4 Defendants.

5
6 I. INTRODUCTION

7 On January 5, 2009, California Portland Cement Company ("CPCC") and
8 Mariscal, Weeks, McIntyre & Friedlander, P.A. ("MWMF") filed a Notice of Removal with this
9 Court. On January 9, 2009, Bombardier Capital Inc. and Norling, Kolsrud, Sifferman & Davis,
10 PLLC filed a Motion to Join Notice of Removal. The Notice of Removal sought the removal of
11 an action ("Removed Action") filed by the Goodman Parties in the Maricopa County Superior
12 Court ("State Court").¹ The Complaint, in the Removed Action, contained the following five
13 potential claims for relief: (1) Arizona Racketeering, (2) Arizona Securities Fraud, (3) Arizona
14 Rule of Civil Procedure 60 to set aside a judgment or order, (4) Civil Rights Violations, and (5)
15 Aiding-and-Abetting Fraud. On January 7, 2009, the Goodman Parties filed an Omnibus Motion
16 to Remand ("Motion to Remand"). On January 9, 2009, Empire Southwest LLC ("Empire
17 Southwest") filed a Motion to Dismiss Complaint. A second Motion to Dismiss Complaint was
18 filed by CPCC and MWMF on January 12, 2009. CPCC and MWMF also filed a "Motion for
19 Stay [Injunctive Relief Pursuant to 28 U.S.C. § 1651 (All Writs Act)]" ("Motion for Stay under
20 the All Writs Act") on January 12, 2009.

21 The Court entered an order on January 20, 2009, in which it granted the Goodman
22 Parties, the Plaintiffs in the Removed Action, thirty days to amend their Complaint ("Order to
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24
25 1. Grant H. Goodman, Teri B. Goodman, GHG Inc., Stirling Bridge, LLC, and Northern
26 Highlands I, II (the "Goodman Parties" or "Plaintiffs") filed a complaint ("Complaint") in the
27 Maricopa County Superior Court on December 15, 2008, which was assigned Case No. CV2008-
28 031667. This Complaint is part of the Removed Action now pending in this Court.

1 Amend Complaint”), and denied all pending motions.² Because of the incoherent allegations set
2 forth in the Complaint, the Court was unable to understand the Plaintiffs’ arguments and render a
3 decision for jurisdictional and issue preclusion purposes. However, instead of amending the
4 Complaint, the Plaintiffs, through Grant H. Goodman (“Mr. Goodman”) filed a “Writ of
5 Supervisory Mandamus to Bankruptcy Court” (“Writ of Mandamus”) on February 10, 2009 with
6 the Federal District Court of Arizona (“District Court”). The Writ of Mandamus sought an order
7 from the District Court directing this Court to remand the case back to the State Court. On
8 March 20, 2009, the Honorable Susan R. Bolton dismissed the Plaintiffs’ Writ of Mandamus.³

9 As a result of the Plaintiffs’ failure to amend their Complaint, this Court set a
10 Bankruptcy Rule 7016 Scheduling Conference for March 31, 2009. The Court stated in its Order
11 Setting Scheduling Conference that the purpose of the conference was to determine whether one
12 or more of the parties to the Removed Action wished to reinstate their motions previously denied
13 by the Court without prejudice.

14 Prior to the Scheduling Conference, on March 11, 2009, CPCC and MWMF filed
15 a “Motion for Reconsideration (to Reinstate and Renew) Motion to Dismiss and Motion for
16 Injunctive Relief” (“Motion to Reinstate”). At the Scheduling Conference, the Court granted the
17 Motion to Reinstate the Motions, and also reinstated the Plaintiffs’ Motion to Remand as well as
18 Empire Southwest’s Motion to Dismiss Complaint. An Omnibus Response was filed by the
19 Goodman Parties on April 17, 2009. The Court set oral argument on the matters for May 14,
20 2009.

21 Taking into account the arguments of the parties, the documents filed, and the
22 entire record before the Court, the Court has set forth in this decision its findings of fact and
23 conclusions of law pursuant to Fed.R.Civ.P. 52, Bankruptcy Rule 7052. As set forth below, the
24 Court has jurisdiction to determine the discrete issues presented in the various Motions.

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26 2. See Docket Entry No. 14.

27 3. See U.S. District Court (Ariz.), No. CV 09-0262.

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II. FACTUAL BACKGROUND

On May 8, 2003, GTI Capital Holdings, LLC, an Arizona Limited Liability Company dba Rockland Materials ("GTI"), and G.H. Goodman Investment Companies, LLC, ("G.H. Goodman") an Arizona Limited Liability Company, (together known as the "Debtors") filed petitions for relief under Chapter 11 of the Bankruptcy Code. Grant and Teri Goodman each individually owned a 49.5% interest in GTI Capital and a 50% interest in G.H. Goodman Investment.⁴ On June 18, 2003, the Court entered an order for joint administration of the two cases.

During the early stages of the Chapter 11 proceedings, GTI and G.H. Goodman acted as debtors in possession. However, on July 3, 2003, after deciding a contested matter brought by the Debtors' principal creditor, the Court appointed an examiner, Edward M. McDonough, to handle and control all funds, bank accounts, and disbursements of the Debtors. Finally, on or about January 23, 2004, the Debtors ceased their business operations, and a sale of the Debtors' assets occurred. The subsequent proceedings involved a number of disputes, and subsequent appeals, among a number of parties as to how to divide the limited funds obtained from the liquidation of the Debtors' assets. Ultimately the Examiner determined that he had accomplished as much as he could with the limited resources. The United States Trustee, based upon the inactivity in the case, lack of operations and employees, and with the only remaining assets consisting of case being held in the Court registry and legal claims, filed a Motion to Convert to Chapter 7, which was noticed to all creditors and interested parties. The relief requested was set for hearing on April 26, 2007. At the hearing, the request for conversion was unopposed. On May 1, 2007, the cases were converted to Chapter 7, and David M. Reaves was appointed the Trustee of the Debtors' estates.⁵

4. See Case No. 03-bk-07923, Docket Entry No. 55, pg. 191 and Case No. 03-bk-07924, Docket Entry No. 15, pg. 33.

5. See Case No. 03-bk-07923, Docket Entry No. 1461.

The Debtors have been involved in lengthy and protracted litigation over numerous issues since the inception of the bankruptcy cases. Of importance in determining the issues presently before the Court is an analysis of the adversary proceeding originally commenced by the Debtors in 2007.⁶ The Debtors named Comerica Bank-California (“Comerica”) as the defendant therein (“Comerica Adversary Proceeding”). The Comerica Adversary Proceeding sought the equitable subordination of the Comerica claim to the claims of all other creditors in the Debtors’ bankruptcy proceedings because of Comerica’s conduct. Specifically, the Debtors alleged that Comerica had withheld critical information from the Debtors, the other creditors of these estates, and the Court as to the perfection of Comerica’s security interests on certain items of equipment and vehicles owned by the Debtors at the inception of the cases. The Debtors alleged that the Examiner, on behalf of the bankruptcy estates, was forced to pursue Comerica on the perfection issue in this Court and in various appellate courts, and was forced to litigate against Comerica on the propriety of various distributions to creditors, at a time when Comerica knew that it had improperly perfected security interests. The costs to the bankruptcy estates as a result of such litigation increased exponentially. The Debtors’ estates are now administratively insolvent. Although the Debtors initially commenced the Comerica Adversary Proceeding, the Trustee, once appointed, determined to proceed with the litigation against Comerica.

Ultimately, the Trustee and Comerica entered into a settlement agreement (“Settlement Agreement”) which provided for a general release of the claims between the Trustee, on behalf of the bankruptcy estates and Comerica. The Court set the approval of the Settlement Agreement for a hearing; however, on the day of the hearing, an untimely Objection was filed by Triad Commercial Captive, Stirling Bridge LLC, New York-Newport, and Teri and Grant Goodman (the “Objecting Parties”).⁷ The Objecting Parties alleged that the Settlement

6. See Adversary Proceeding No. 07-ap-00031.

7. See Adversary Proceeding No. 07-ap-00031, Docket Entry No. 45. Mr. Goodman acted as counsel of record for the numerous entities. Teri and/or Grant Goodman may be the

1 Agreement was not in the best interest of the creditors of the estate and that the release of
2 Comerica from third-party claims was overly broad. The Trustee presented evidence on the
3 various factors under Ninth Circuit law to approve the settlement.⁸

4 At the conclusion of the hearing on the settlement, counsel for the Objecting
5 Parties and counsel for Comerica agreed, on the record, to a modification of the proposed order
6 approving the Settlement Agreement. The modified language made it clear that the claims of
7 third parties against Comerica were not released by the Settlement Agreement. Accordingly, the
8 Court entered an Order Granting Motion to Approve Compromise/Settlement ("Order Approving
9 Settlement Agreement"), which incorporated the Settlement Agreement and provided that the
10 Settlement Agreement did not release any claims asserted by non-debtor parties.⁹

11 Despite the clear language, the Objecting Parties nevertheless appealed the validity
12 of the release language, among other issues, to the Bankruptcy Appellate Panel ("BAP") of the
13 Ninth Circuit. The BAP affirmed this Court's approval of the release language, stating that the
14 language only effectuated a release of claims as between the parties to the Settlement Agreement;
15 namely, the bankruptcy estates and Comerica. Accordingly, any third-party claims against
16 Comerica were unaffected by the release language.¹⁰

17 After the Debtors ceased their operations, the Debtors' creditors began to seek
18 collection on the personal guarantees which the Goodmans had executed and which served as an
19 additional basis for the Debtors' creditors to be paid in full. When voluntary collection efforts did
20 not succeed, the creditors commenced actions on the guarantees in the Arizona State Court
21 principal of one or more of the entities.

22 8. The Trustee relied on the Ninth Circuit decision of In re Woodson, 839 F.2d 610 (9th
23 Cir. 1988) as to the various factors that must be shown to approve a settlement as being in the
24 best interest of creditors.

25 9. See Adversary Proceeding No. 07-ap-00031, Docket Entry No. 52.

26 10. See Ninth Circuit Bankruptcy Appellate Panel Case No. AZ-08-1079-MkEMo. The
27 BAP's Memorandum can also be found at Docket Entry No. 97 in Adversary Proceeding No.
28 07-ap-00031.

1 against the Goodmans (the "Guarantee Action or Actions"). In one such Guarantee Action,
2 CPCC obtained a \$5 million State Court judgment against the Goodmans on November 8, 2005.¹¹

3 Despite these judgments, the Goodmans have waged a war of attrition to avoid
4 payment on their guarantees. For example, the Goodmans have filed a variety of lawsuits, special
5 actions, motions, and independent actions, which have named their judgment creditors, counsel
6 for those creditors, and even state court judges as defendants.¹² In some of these actions, the
7 Goodmans continually argue that the judgment creditors are precluded from collecting upon their
8 judgments because the Settlement Agreement, approved by this Court in the Comerica Action,
9 has released them from their guarantee obligations. Although this argument has been rejected
10 multiple times, by multiple Courts, the Goodmans continue to file pleading after pleading, in
11 various Courts in which they advance the same argument.¹³ Copies of the decisions from various
12 Courts assessing sanctions against the Goodmans and their related entities have been filed with
13 this Court.

14 15 III. DISCUSSION

16 The Court is presented with three separate issues. First, the Plaintiffs have filed a
17 Motion for Remand in which they argue that this Court lacks jurisdiction to hear and determine
18 any motions in this Removed Action. For purposes of this decision, the Court assumes that the

19 ¹¹. See Maricopa County Superior Court Case No. CV2004-000669. The Judgment can
20 also be found at Docket Entry No. 6 in this Adversary Proceeding attached to CPPCC's Motion
21 to Dismiss as Exhibit A.

22 ¹². See Maricopa County Superior Court Case Nos. CV2003-005802, CV2005-002890,
23 CV2005-003271, CV2006-013031, CV2008-14790, CV2008-14791, CV2008-031667, CV2008-
24 31668, CV2008-033330. Also See, U.S. District Court (Ariz.), No. CV 07-0163; Ninth Circuit
Court of Appeals Docket No. 08-70698; Arizona Supreme Court, Court of Appeals No. 1 CA-
CV-06-0149; U.S. District Court (Ariz.), No. CV 09-0262 (Writ of Mandamus).

25 ¹³. See Maricopa County Superior Court Case Nos. CV2008-14790, CV2008-14791,
26 CV2008-031668, CV2008-031667, CV2008-033330. Also See See Ninth Circuit Bankruptcy
27 Appellate Panel Case No. AZ-08-1079-MkEMo, BAP Memorandum appealed to Ninth Circuit
Court of Appeals Case No. 09-60003.

1 Plaintiffs are arguing that this Court lacks subject matter jurisdiction to decide any issue
2 presented by any party, and must remand the Removed Action to the State Court. Second, the
3 Defendants Empire Southwest, CPCC and MWMF have filed Motions to Dismiss, in which they
4 argue that the Plaintiffs' Complaint should be dismissed due to their failure to state a claim on
5 which relief may be granted. Finally, CPCC and MWMF have filed a Motion for Stay under the
6 All Writs Act, in which CPCC and MWMF request that this Court enter an injunction to prevent
7 the Goodmans and Goodman-related entities from filing any further actions which rely on the
8 same operative facts used in this and similar cases, without first filing the complaint with this
9 Court and obtaining this Court's permission to proceed.

10
11 A. This Court has Inherent or Ancillary Jurisdiction

12 Courts have an interest in ensuring that their orders are executed in the manner
13 intended. Accordingly, a bankruptcy court has the authority to assert ancillary jurisdiction when
14 another court is requested to interpret its order. In re Fibermark, Inc., 369 B.R. 761 (Bankr.D.Vt.
15 2007). Ancillary jurisdiction may be asserted for two purposes:

16 (1) to permit disposition by a single court of claims that are, in
17 varying respects and degrees, factually interdependent, and (2) to
18 enable a court to function successfully, that is, to manage its
proceedings, vindicate its authority, and effectuate its decrees[.]

19 Kokkonen v. Guardian Life Ins. Co. Of America, 511 U.S. 375, 380-81, 114 S.Ct. 1673, 128
20 L.Ed.2d 391 (1994). Thus, "bankruptcy courts have inherent or ancillary jurisdiction to interpret
21 and enforce their own orders wholly independent of the statutory grant under 28 U.S.C. § 1334."
22 In re Chateaugay Corp., 201 B.R. 48, 62 (Bankr.S.D.N.Y.1996), *aff'd* 213 B.R. 633
(S.D.N.Y.1997).

23 Relevant to this Court's analysis of its jurisdiction to hear and determine the
24 Motions now presented in this Adversary is the United States Supreme Court's analysis in
25 Kokkonen. Although the Supreme Court determined that the district court, in that case, did not
26 have ancillary jurisdiction to enforce a settlement agreement, it stated:

1 [t]he situation would be quite different if the parties' obligation to
2 comply with the terms of the settlement agreement had been made
3 part of the order of dismissal – either by separate provision. . . or
4 by incorporating the terms of the settlement agreement in the
5 order. In that event, a breach of the agreement would be a
6 violation of the order, and ancillary jurisdiction to enforce the
7 agreement would exist. . . . The judge's mere awareness and
8 approval of the terms of the settlement agreement do not suffice to
9 make them part of his order.

10 Kokkonen at 381, 114 S.Ct. at 1677.

11 As part of their Complaint in the Removed Action, the Plaintiffs request that
12 another Court interpret this Court's Order Approving Settlement Agreement between the Chapter
13 7 Trustee and Comerica. Albeit in disjointed and confusing language, the Plaintiffs allege that
14 certain language in the Settlement Agreement approved by this Court somehow releases them, as
15 guarantors, on their liability to the Defendants in this Removed Action.¹⁴ At an initial hearing in
16 this Removed Action, counsel for the Plaintiffs indeed stated, on the record, that the Plaintiffs'
17 theories relied on this Court's Memorandum Decision of August 30, 2007 and the Settlement
18 Agreement approved by this Court between the Trustee and Comerica. The Plaintiffs contend
19 that because these Defendants had previously acted in a "joint defense" against the Debtors in
20 the underlying bankruptcy proceedings, these creditors, as a group, are now bound by the actions
21 of each individual creditor. Accordingly, under the Plaintiffs' legal theory, since one creditor,
22 Comerica, entered into a Settlement Agreement with the Trustee, the release between Comerica
23 and the bankruptcy estates is a release of the Plaintiffs' obligations owed on any guarantee to any
24 creditor of these bankruptcy estates.¹⁵

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26 **14.** Both this Court and the Arizona District Court, in its decision on the Writ of
27 Mandamus, focused on the obdurate and obfuscating allegations contained in the Complaint.
28 However, the Plaintiffs refused this Court's invitation to amend their Complaint.

15. At the hearing approving the Settlement Agreement between the Trustee and
Comerica, it was specifically stated on the record that the release between those parties had no
effect on any non-debtor parties. See Adversary Proceeding No. 07-ap-00031, Docket Entry No.
49; Minute Entry of hearing held on March 11, 2008 as well as Memorandum Decision at
Docket Entry No. 51. On appeal, the BAP also commented on the release only affecting the
bankruptcy estates and Comerica. See Bankruptcy Appellate Panel Case No. AZ-08-1079-

1 Without determining the validity of any of these arguments, the above analysis
2 provides a clear example of the Plaintiffs' reliance on prior decisions or orders of this Court.
3 Such reliance, which can only be predicated on this Court's rulings concerning core bankruptcy
4 proceedings, such as a settlement between the Trustee and a creditor, provides this Court with
5 the requisite discretion in asserting ancillary jurisdiction over this Removed Action. In
6 considering whether to assert such inherent or ancillary jurisdiction, the Court notes that the
7 Settlement Agreement and Order Approving Settlement Agreement are the product of complex
8 bankruptcy proceedings which have occurred over the last six years and involve numerous
9 creditors, contested matters and adversary proceedings. Furthermore, given the Plaintiffs'
10 incomprehensible and incoherent arguments in their Complaint in the Removed Action, as well
11 as the Goodmans' status as creditors in the administrative bankruptcy cases, this Court has
12 concerns that the Plaintiffs may be attempting to adjudicate issues which are core bankruptcy
13 matters in other forums.¹⁶ Based upon the foregoing, the Court finds that it has, at a minimum,
14 inherent or ancillary jurisdiction over this matter. As a result, the Plaintiffs' argument that this
15 Court must remand this matter to the State Court is without merit. The Plaintiffs' Motion to
16 Remand is denied.

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18 B. The Motions to Dismiss Shall be Granted

19 Defendants Empire Southwest, CPCC, and MWMF move to dismiss the
20 Complaint in the Removed Action, pursuant to Fed.R.Civ.P. 12(b)(6), which is incorporated

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MkEMO. The BAP's Memorandum can also be found at Docket Entry No. 97 in Adversary
23 Proceeding No. 07-ap-00031. See pp. 16-17 of BAP Memorandum.

24 16. As part of Adversary Case 07-ap-00031, counsel for the Trustee was seeking to
25 subordinate Comerica's claim. However, as discussed previously, the matter was ultimately
26 settled, and Comerica's claim was not subordinated. Nevertheless, the Goodmans appear to
27 argue in the Complaint, separate from the allegations of the other Plaintiffs, that as a result of
28 this subordination litigation, their \$4 million unsecured claim should have been paid. Thus, the
Goodmans are attempting to litigate matters that are core jurisdictional matters of this Court in
this Removed Action.

1 herein by Fed.R.Bankr.P. 7012(b)(6). In considering a motion to dismiss under Rule 12(b)(6),
2 all allegations of material fact in the complaint must be taken as true and must be construed in
3 the light most favorable to the non-moving party. DeGrassi v. City of Glendora, 207 F.3d 636
4 (9th Cir. 2000); Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar, 179 F.3d 1244 (9th
5 Cir. 1999); Eneso Corp. v. Price/Costco Inc., 146 F.3d 1083 (9th Cir. 1998); Cahill v. Liberty
6 Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996); In re Fresher, 846 F.2d 45, 46 (9th Cir.
7 1988). While a Rule 12(b)(6) motion to dismiss does not require “detailed factual allegations,”
8 the plaintiff must provide “more than labels and conclusions and a formulaic recitation of the
9 elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1555, 1564-65
10 (2007). Dismissal of a complaint is appropriate if it appears beyond doubt that the claimant can
11 prove no set of facts in support of the claim that would entitle him or her to relief. ARC Ecology
12 v. U.S. Dept. Of Air Forces, 411 F.3d 1092, 1096 (9th Cir. 2005); Walleri v. Federal Home Loan
13 Bank of Seattle, 83 F.3d 1575 (9th Cir. 1996); Strother v. Southern California Permanente
14 Medical Group, 79 F.3d 859 (9th Cir. 1996); Arcade Water Dist. v. United States, 940 F.2d
15 1265, 1267 (9th Cir. 1991).

16 In considering a motion to dismiss, courts do not necessarily assume the truth of
17 legal conclusions cast in the form of factual allegations. Warren v. Fox Family Worldwide, Inc.,
18 328 F.3d 1136, 1139 (9th Cir. 2003); Western Mining Council v. Watt, 643 F.3d 618, 624 (9th
19 Cir. 1981). A complaint may be dismissed for failure to state a claim “based on the lack of a
20 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
21 theory.” Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). A complaint that
22 contains a “hodgepodge of vague and conclusory allegations” is insufficient to support claims
23 for relief. Powell v. Jarvis, 460 F.2d 551, 553 (2nd Cir. 1972).

24 This Removed Action was commenced by the Plaintiffs’ filing a sixty-two page
25 Complaint in the Arizona State Court, which action was subsequently removed to this Court.
26 Upon reviewing the Complaint, this Court was unable to determine the basis upon which the
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1 Plaintiffs sought relief. Accordingly, the Court entered an Order to Amend Complaint, which
2 granted the Plaintiffs thirty days to amend their Complaint for the purpose of clarifying the facts
3 upon which they were relying to support their claims.¹⁷ The Order to Amend Complaint
4 provided the Plaintiffs with the Court's concerns about the Complaint. For example, the Order
5 to Amend Complaint stated that because of the lack of factual allegations and a mere recitation
6 of unrelated or contradictory statutory citations, the Court could not determine the nature of the
7 relief that the Plaintiffs were requesting. However, the Plaintiffs' Complaint appeared to rely on
8 the Settlement Agreement approved by this Court.¹⁸

9 The Plaintiffs chose not to amend their Complaint and instead filed a
10 Supplemental Response which failed to correct the defects articulated by the Court in its Order
11 to Amend Complaint. Given the Plaintiffs' failure to amend their Complaint, the Court was left
12 with an incomprehensible document containing numerous pages of recitations of legal principles,
13 cases, and statutes, at times couched as factual allegations.

14 In an effort to provide clarity regarding the basis of the Plaintiffs' Complaint, the
15 Court had the following exchange with Mr. Goodman, counsel for the Plaintiffs, at the March 31,
16 2009 Fed .R .Bankr. P. 7016 Scheduling Conference:

17 THE COURT: . . . you're focusing on my decision and the
18 settlement agreement in the bankruptcy court?

19 MR. GOODMAN: Actually your binding findings of fact and law
20 are a part of the issue -- but the defendants' conduct in resolving
21 their claims with court approval and a judgment that as a matter of
22 law can't be reinterpreted at this late date -- are all part of the
23 motion for summary judgment.

24 THE COURT: Again, you're focusing on my decision and the
25 settlement agreement in the bankruptcy court. Do I understand
26 you correctly?

27 MR. GOODMAN: You understand it correctly to the extent I'm
28 taking the express wording in the settlement. It doesn't need any

17. See Docket Entry No. 14.

18. Id.

1 interpretation. That's why it's not a fact issue; that's why it's ripe
2 for summary judgment, Your Honor.

3 Based upon this exchange, and the Court's analysis above, the Court concludes that the
4 Plaintiffs' Complaint relies exclusively upon the Settlement Agreement. Since the Settlement
5 Agreement and Order Approving Settlement Agreement bind only the bankruptcy estates and
6 Comerica, the parties to the Settlement Agreement, the Court finds that the Plaintiffs have failed
7 to state a claim upon which relief may be granted. The Settlement Agreement does not pertain to
8 the release of any guarantee that the Plaintiffs may have entered into with any creditor of these
9 estates or any other party. Therefore, the Plaintiffs are unable to rely on the Settlement
10 Agreement for any proposed affirmative relief that they may have set forth in the Complaint.

11 As a matter of law, the Court finds that the Plaintiffs' Complaint must be
12 dismissed pursuant to Rule 12(b)(6). This dismissal is with prejudice. The Plaintiffs may not
13 assert any claim for relief in any other court which relies on the Settlement Agreement, and the
14 releases contained therein. All matters concerning the Settlement Agreement have been
15 adjudicated by this Court, and are not open to interpretation, in another court, on some theory
16 that the Plaintiffs may invent.

17
18 C. Relief Pursuant to the All Writs Act (28 U.S.C. § 1651(a)) is Appropriate

19 Pursuant to 28 U.S.C. § 1651(a), referred to as the "All Writs Act," "[t]he
20 Supreme Court and all courts established by Act of Congress may issue all writs necessary or
21 appropriate in aid of their respective jurisdiction and agreeable usages and principles of law."
22 Bankruptcy courts, being courts established by Act of Congress, "have the power to regulate
23 vexatious litigation pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1651." Lakusta v. Evans (In re
24 Lakusta), 2007 WL 2255230, at *3 (N.D.Cal. Aug. 3, 2007); In re International Power Sec.
25 Corp., 170 F.2d 399, 402 (3d Cir. 1948).

1 The All Writs Act itself does not “afford independent grounds” for a court’s
2 jurisdiction. Newby v. Enron Corp., 302 F.3d 295, 300 (5th Cir. 2002), *cert. denied*, 123 S.Ct.
3 1270, 154 L.Ed.2d 1024 (2003). Thus, in order for a federal court to have the power to apply the
4 All Writs Act, it must have a jurisdictional basis for hearing a case. In this Removed Action, as
5 discussed previously, this Court has inherent or ancillary jurisdiction to hear this matter. In re
6 Chateaugay Corp., 201 B.R. 48, 62 (Bankr. S.D.N.Y. 1996), *aff’d* 213 B.R. 633 (S.D.N.Y.1997).
7 Accordingly, this Court has an independent basis for its jurisdiction outside of the All Writs Act,
8 so it may consider whether relief is appropriate under the All Writs Act.¹⁹

9 It is well settled that the application of the All Writs Act is “an extreme remedy
10 that should rarely be used.” Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir.
11 2007) *quoting* De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990); Newby, at 302.
12 However, “[f]lagrant abuse of the judicial process cannot be tolerated because it enables one
13 person to preempt the use of judicial time that properly could be used to consider the meritorious
14 claims of other litigants.” Molski, at 1057 *quoting* De Long v. Hennessey, 912 F.2d 1144, 1148
15 (9th Cir. 1990). The broad scope of the All Writs Act allows a court to issue an order restricting
16 the filing of meritless cases by a litigant whose pleadings raise claims identical or similar to
17 those that have already been adjudicated. In re Oliver, 682 F.2d 443 (3rd Cir. 1982). The Ninth
18 Circuit has established the following four factors for courts to consider in applying the All Writs
19 Act:

- 20 1.) The litigant must be given notice and a chance to be heard before the order is
21 entered;

22 19. Federal courts must consider the Anti-Injunction Act when making a determination
23 under the All Writs Act. The Anti-Injunction Act acts as an “absolute bar to any federal court
24 action that has the effect of staying a pending state court proceeding unless the action falls within
25 a designated exception.” One of these exceptions allows for federal injunctions of ongoing state
26 court proceedings, where such injunction is a necessary aid to the federal court’s jurisdiction.
27 Furthermore, the Anti-Injunction Act “does not preclude injunctions against a lawyer’s filing of
prospective state court actions.” Newby, 302 F.3d at 301. Thus, this Court will analyze the
relief requested by the Defendants as a request that this Court control any prospective actions to
be filed by the Plaintiffs on these issues.

- 2.) The court must compile an adequate record for review;
- 3.) The court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation;
- 4.) The vexatious litigant order must be narrowly tailored to closely fit the specific vice encountered.

De Long, 912 F.2d at 1147 - 48.

1. The Court must find that the Plaintiffs were given appropriate notice and an opportunity to be heard. CPCC and MWMF filed their Motion for Stay under the All Writs Act on January 12, 2009. Counsel for the Plaintiffs filed an Omnibus Response on April 17, 2009, which purported to include a response to the Motion for Stay under the All Writs Act. Furthermore, the Court held oral argument on May 14, 2009 which provided the Plaintiffs with an opportunity to be heard on the matter. Given the Motion for Stay under the All Writs Act, the Omnibus Response, and the oral argument, the Court finds that the Plaintiffs were given ample notice of the request for an injunction under the All Writs Act, as well as an opportunity to be heard on the matter. Accordingly, the first element of the four-part All Writs Act test is met.

2. The Court must establish an adequate record for review. Throughout this and other proceedings, the record is replete with state and federal court decisions which discuss the frivolous nature of the Goodmans' and the other Plaintiffs'²⁰ efforts to forestall the collection efforts of those creditors which have obtained judgments on the Goodmans' guarantees. The following discussion focuses on a number, but certainly not all, of these cases.

A. In State Court Case No. CV2008-031668, the plaintiffs, which included the Goodmans, argued that the Settlement Agreement and Order Approving Settlement Agreement, effectuated a release of the Goodmans from their guarantees. The Court found that the Settlement Agreement and Order Approving Settlement Agreement had not released the

²⁰. Although the entities are not identical in all of the lawsuits, Mr. Goodman has consistently served as the attorney for the parties asserting the claims. Moreover, the entities involved in the numerous actions are related to the Goodmans in that the Goodmans apparently control or manage the entities.

1 plaintiffs. The Court also found that the plaintiffs had “brought [their] claim solely or primarily
2 for delay or harassment.” Minute Entry, page 2, March 25, 2009.²¹ Furthermore, the Court held
3 that since Mr. Goodman, counsel for the parties, is an attorney, “he is in a better position tha[n] a
4 non-lawyer to understand the prior rulings of this and other courts and to determine the propriety
5 of making such claims.” *Id.* The Court concluded its decision by dismissing the plaintiffs’
6 claims, and awarding one of the defendants, Comerica, its request for attorneys’ fees and
7 sanctions.

8 B. In Arizona District Court Case No. CV-07-00163, the plaintiffs Northern
9 Highlands I and II, which are Goodman-related entities and were represented by Mr. Goodman,
10 attempted to relitigate matters in the federal district court that had previously been litigated in
11 state court. In a order authored by the Honorable David C. Bury, the Court held that the
12 Goodman-related entities had “repeated numerous allegations . . . that have been litigated or are
13 continuing to be litigated at least once and generally numerous times as the state court level.”²²
14 Judge Bury’s order was subsequently appealed, and the Ninth Circuit Court of Appeals, in
15 affirming the order, stated that the Goodman-related entities had violated the *Rooker-Feldman*
16 doctrine by “using the federal forum to attack the validity of the state court outcome.”
17 Furthermore, the decision stated that “the issues raised before the district court were the same
18 that [the Goodman-controlled entities had] raised in the state court and bankruptcy litigation.”²³
19 The Ninth Circuit Court of Appeals, acting *sua sponte*, also took the additional step of issuing an
20 order to show cause why sanctions should not be assessed against Mr. Goodman for: (1) conduct
21 unbecoming a member of the bar and abuse of the judicial process—to wit, making frivolous
22

23 21. See Adversary Proceeding 09-ap-00009, Docket Entry No. 29; Defendant Greenberg
24 Taurig, LLP’s Notice of Position as to Dismissal or Remand, Exhibit 1.

25 22. A copy of the Arizona District Court Order authored by Judge Bury was filed at
Docket Entry No. 32.

26 23. A copy of the Ninth Circuit Memorandum Decision affirming Judge Bury’s decision
27 was provided to this Court at the May 14, 2009 hearing.

1 claims against judges, prior opposing counsel and their spouses, and refiling suit involving
2 already fully litigated claims; (2) filing a frivolous appeal that included, inter alia, unsupported
3 aspersions on the integrity of members of the state and federal judiciary; and (3) disregarding
4 federal and court rules regarding the form of pleadings.²⁴

5 C. In yet another case, Arizona Court of Appeals Case No. CA-CV 08-0350, the
6 Court rejected the Goodmans' appeal of a trial court judgment which awarded Empire Southwest
7 those amounts claimed as due and owing on the Goodmans' personal guarantees. The decision
8 stressed that the discharge of a principal's debt [the Debtors in this case] did not affect the non-
9 debtor's [the Goodmans'] liability under a guarantee. Furthermore, the decision considered, but
10 summarily dismissed, any arguments that the Goodmans' guarantees were somehow discharged
11 as a result of the proceedings in this Court.²⁵

12 D. In Arizona Court of Appeals Case No. CA-CV 08-0355, the Court issued a
13 Memorandum Decision on March 31, 2009 in an action between the Goodmans and Bombardier
14 Capital. The Goodmans had made similar claims to those already discussed, alleging that their
15 liability had been discharged in this Court against Bombardier Capital. The Court rejected the
16 argument, stating that the bankruptcy court had made no mention of any guarantees or the
17 Goodmans, as guarantors, in its decisions. Furthermore, because the bankruptcy court had not
18 addressed such a guaranty issue, the Goodmans remained liable.²⁶

19 E. In Bankruptcy Case No. 08-ap-00464, jointly administered with Bankruptcy
20 Case No. 08-ap-0047²⁷, the Goodmans and Goodman-related entities filed complaints in the
21

22 24. The Ninth Circuit Order to Show Cause was provided to this Court at the May 14,
23 2009 hearing.

24 25. A copy of the Arizona Court of Appeals Case was filed at Docket Entry No. 33.

25 26. See Docket Entry No. 33; Supplemental Reply in Support of Motion to Dismiss and
26 Motion for Injunctive Relief; Memorandum attached as Exhibit B.

27 27. See Maricopa County Superior Court Case Nos. CV2008-14790 and CV2008-14791,
28 removed to the Bankruptcy Court as Case Nos. 08-ap-00464 and 08-ap-00471.

1 State Court similar to the Complaint considered in this decision, which actions were removed to
2 this Court. The Goodmans and Goodman-related entities relied on the Settlement Agreement
3 and Order Approving Settlement Agreement to argue that they had been released on their
4 personal guarantees. Although the Goodmans and Goodman-related entities withdrew their
5 complaints, the Court still issued a Memorandum Decision in which it stated that the plaintiffs'
6 reliance on the Settlement Agreement gave this Court jurisdiction over the matter. Additionally,
7 this Court awarded attorneys' fees, as a sanction against the Goodmans, as a result of their abuse
8 of the discovery process.²⁸ In these prior actions in this Court, the Defendants had asked for an
9 injunction to be issued under the All Writs Act. This Court denied that relief, hoping that the
10 withdrawal of the complaints would cause the Goodmans to rethink their actions and cease their
11 vexatious behavior. Unfortunately, that did not occur and has led to the Goodmans filing this
12 Removed Action and taking further action in the state and federal courts.

13 F. The Defendants have filed a document with this Court setting forth the
14 numerous actions or proceedings pending in the state and federal courts.²⁹ That the Goodmans
15 and Goodman-related entities have filed such actions, over and over again, focusing on the
16 Settlement Agreement and whether the Goodmans have been released on their personal
17 guarantees is clear from the above discussion and the decisions issued by other courts.

18 Based upon the foregoing, the Court finds that the record created in these actions,
19 filed in the state and federal courts, reflects a pattern by the Goodmans and the Goodman-related
20 entities to file the same pleading, or repetitively argue the same matters on appeal, as to the
21 effect of the Settlement Agreement and the decisions of this Court. Monetary sanctions awarded
22 by the state court and this Court have not deterred the Goodmans or the Goodman-related
23 entities.

25 ²⁸. See Adversary Proceeding No. 08-ap-00464, Memorandum Decision, Docket Entry
26 No. 109 and Order Granting Attorneys' Fees, Docket Entry No. 120.

27 ²⁹. See Docket Entry No. 8, Motion for Stay under the All Writs Act, Exhibit A.

3. As noted above, state and federal courts, at the trial and appellate level, have repeatedly reviewed the substantive issues raised by the Goodmans and the Goodman-related entities concerning the ability of the Settlement Agreement, approved by this Court, to release the liability of the Goodmans or Goodman-related entities on their guarantees. The courts have found these substantive issues to be without merit. The Settlement Agreement approved by this Court, with the accompanying releases between specific parties, does not release the Goodmans or the Goodman-related entities from their independent obligations on their guarantees to creditors. Nevertheless, the Goodmans and the Goodman-related entities have continued to assert the same frivolous matters in this and other courts. In fact, Mr. Goodman has been sanctioned and warned several times in the past to cease the assertion of claims that have been resolved by this Court. However, despite the efforts of numerous courts to use traditional means to send the Goodmans the message that such vexatious or harassing litigation tactics are unacceptable, the Goodmans still continue to bring frivolous actions and file an inordinate number of pleadings in an apparent effort to delay collection by their judgment creditors. Accordingly, although an extreme measure, the Court finds that based upon the Goodmans' and Goodman related entities' record of vexatious and harassing litigation, an injunction under the All Writs Act is the only way to curtail such behavior.

4. The final element requires a narrowly tailored order to address the behavior encountered. In fashioning such an order, the Court finds that the disregard shown by the Plaintiffs for the legal system is offensive and should not be tolerated. The legal system is not an avenue for parties to inhibit or impede justice. Mr. Goodman has turned the legal process into a perverse game in which the Defendants, and many others, have been forced to participate with no effective recourse. Yet, as an attorney, Mr. Goodman is in a better position than most to understand the procedural and ethical rules of the courts and the impact of a decision on his future actions and those of his clients. The Goodmans and the Goodman-related entities have allowed Mr. Goodman to pursue frivolous and vexatious litigation, unfettered, on their behalf.

1 No effort by this Court, or any other state or federal court, has stopped the abusive filings by Mr.
2 Goodman on behalf of the Goodmans and the Goodman-related entities.

3 The Tenth Circuit, in analyzing a situation in which an attorney, after being
4 disbarred, continued to file pleadings, as a pro se litigant, in the federal district and circuit court
5 of appeals, stated:

6 Mr. Smith raises a host of overlapping, repetitious, and conclusory
7 objections. Whether or not each has been expressly included in the
8 above discussion, we have considered all of the issues raised. . . .
and have concluded that Mr. Smith is not entitled to any relief.³⁰

9 And later:

10 Evidently, neither professional discipline nor personal sanctions has
11 impressed upon Mr. Smith the essential underlying problem. Initially
as counsel, and now as a pro se litigant, he has 'engaged in a pattern
of litigation activity which is manifestly abusive' and thereby 'strained
the resources of this court. [citations omitted].

12 In re Mail-Well Envelope Co., et als. v. Regional Transportation Dist., 150 F.3d 1227, 1232
13 (10th Cir. 1998). The Tenth Circuit then set forth the terms and conditions of a prospective
14 injunction which prohibited Mr. Smith from filing an "original proceeding" unless he first
15 obtained the permission of the Court to proceed pro se.³¹ Given the facts of this case, the Court
16 concludes that some type of prospective injunction is warranted on this record. If Mr. Goodman,
17 acting pro se or on behalf of Ms. Goodman or any of the Goodman-related entities, wishes to
18

19 ^{30.} In re Mail-Well Envelope Co., et als. v. Regional Transportation Dist., 150 F.3d 1227,
1231 (10th Cir. 1998).

20 ^{31.} The injunction required Mr Smith to file a petition with the clerk of the Tenth Circuit
21 Court of Appeals requesting leave to file a proceeding. The petition had to include (1) a list of
22 currently pending proceedings, indicating his involvement in any proceeding, and the current
23 status and disposition of the proceedings; (2) a list of all assessments of attorneys' fees, costs, or
24 other monetary sanctions against him arising out of any federal court matter and information
25 about whether and when each assessment had been paid; and (3) a list of all outstanding
26 injunctions, contempt orders, or other "judicial directions limiting his access to any state or
27 federal court. . . ." Mr. Smith was also required to file, at the same time, a notarized affidavit
setting forth the issues he sought to present in the proceeding he proposed to file, with "a short
statement of the legal basis asserted for the challenge." The affidavit was also to contain an
appropriate statement that the proceeding to be filed was consistent with the duties and
obligations of a litigant under Fed.R.Civ.P. 11. Id. at 1232.

1 proceed, in any state or federal court, with any litigation involving any claim related to their
2 guarantees of the Debtors' obligations which relies in whole, or in part, on a position or
3 argument that the Settlement Agreement, the Order Approving the Settlement Agreement, or any
4 memorandum decision or order of this Court in the Debtors' cases somehow releases,
5 extinguishes, or in any manner affects their liability on their guarantees of the Debtors'
6 obligations, Mr. Goodman must first file the proposed complaint with this Court, with an
7 appropriate certification under Bankruptcy Rule 9011. The proposed complaint will not initially
8 be placed on the docket, and any party named as a defendant in the proposed complaint need not
9 initially respond. If the Court determines that the proposed complaint is in contravention of this
10 memorandum decision, and related injunction to be entered separately, the Court will summarily
11 deny any affirmative relief therein, dismiss the complaint, and place the Court's summary
12 denial, dismissal, and Mr. Goodman's proposed complaint on the docket of this Court.³² If the
13 Court approves the filing of the proposed complaint, the Court will direct that the clerk of the
14 Court open an appropriate proceeding and assign an electronic docket entry number to the
15 proceeding. At that point, Mr. Goodman may request that a summons be issued, and the
16 proceeding will move forward, according to the Federal Rules of Bankruptcy Procedure or by
17 other appropriate means.

18 19 IV. CONCLUSION

20 Based upon the foregoing, the Court finds that the Plaintiffs' reliance on prior
21 orders of this Court provides this Court with the ability to assert ancillary jurisdiction over this
22 matter. As a result, the Plaintiffs' Motion to Remand is denied. The Court also finds that the
23 Plaintiffs are unable to rely on the Settlement Agreement and Order Approving Settlement
24 Agreement to release their independent obligations on their guarantees of the Debtors'
25 obligations to creditors. The Complaint is devoid of any facts to support their claims.

26
27 ³². In the absence of this judge being able to review a proposed complaint, the Chief
Judge of the Bankruptcy Court may so act in her stead.

1 Accordingly, the Plaintiffs have failed to state a claim upon which relief may be granted, and this
2 Adversary is dismissed with prejudice, pursuant to Fed.R.Civ.P. 12(b)(6), as incorporated herein
3 by Fed.R.Bankr.P. 7012(b).

4 Finally, the Court finds that the Plaintiffs have proceeded with vexatious and
5 harassing litigation in an effort to evade their guarantee of the Debtors' obligations.
6 Accordingly, this Court will issue a prospective injunction, under the All Writs Act, which
7 requires Mr. Goodman, acting pro se or on behalf of Ms. Goodman or the Goodman-related
8 entities, whether he wishes to file the complaint in the state or federal court, to file a proposed
9 complaint with this Court concerning any claim that the Settlement Agreement, the Order
10 Approving Settlement Agreement, or any decision or order of this Court in the Debtors' cases
11 somehow released, extinguished, or in any manner affected their liability on any guarantee of the
12 Debtors' obligations. The complaint will not be placed initially on the Court's docket. No
13 defendant need initially respond to the complaint. The Court shall review the complaint and
14 determine whether the complaint should be summarily denied, or whether it should proceed. If
15 the Court summarily denies the relief requested and dismisses the complaint, the summary denial
16 and dismissal order and complaint shall be placed on the docket. If the Court allows the
17 complaint to proceed, the Court will direct the clerk of Court to open a proceeding, assign a case
18 number, and Mr. Goodman may proceed according to the Federal Rules of Bankruptcy
19 Procedure or by other appropriate means.

20
21 DATED this 15th day of September, 2009.

22 

23 Honorable Sarah Sharer Curley
24 U. S. Bankruptcy Judge
25
26
27
28

EXHIBIT C

Shauna Miller

From: Grant H Goodman [ggoodman@goodmanattorneys.com]
Sent: Monday, June 13, 2011 6:27 PM
To: Maret Vessella; stricklg@mcao.maricopa.gov; stacey@sjelderlaw.com; Shauna Miller
Cc: 'Grant Goodman'; 'Grant Goodman'; 'Grant H Goodman'
Subject: FW: File(s) Return Mallet-Long/Raynak-Hall-Ravenscroft

GRANT H. GOODMAN

GOODMAN

5108 N. 40th Street, Suite 2
Phoenix, Arizona 85018
602-955-0208
602-538-4357 fax

www.GoodmanAttorneys.com

ggoodman@GoodmanAttorneys.com

ghgoodman@hotmail.com

granthgoodman@msn.com

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From: Grant H Goodman [mailto:ggoodman@goodmanattorneys.com]

Sent: Monday, June 13, 2011 6:09 PM

To: Tim.thomason@mwmf.com; ehochuli@jshfirm.com; 'Maledon, William'; 'Sturr, Geoff'; ghgoodman@hotmail.com; 'Sullivan, Carolyn S.'; 'Keller, Jennifer L.'; 'mailto:maret.vessella@staff.azbar.org'; 'Murphy, Kiersten A.'; 'Schuler, Pat'; 'Murphy, Kiersten A.'

Cc: howard@shankerlaw.net; tcs@shankerlaw.net; jrb@bowwlaw.com; mbp@bowwlaw.com; amf@bowwlaw.com; kjm@jaburgwilk.com; jweiss@lrlaw.com; solafson@lrlaw.com; Reid.garrey@gwhplaw.com; kturley@TSC-law.com; ryurk@jshfirm.com; ehochuli@jshfirm.com; 'Maledon, William'; 'Sturr, Geoff'; 'Rubalcava, Christina'; gfairbourn@bffb.com; Tim.thomason@mwmf.com; cmuchmore@bcattorneys.com; granthgoodman@msn.com; mparrish@stinson.com; Corey@azhilllaw.com; Ginette@azhilllaw.com; 'Donna'; rcoffey@stinson.com; LHamilton@stinson.com; 'O'Malley, Kevin E.'; 'Charlton, Paul K.'; ffox@cavanaghlaw.com; 'Davis, Michelle'; 'Grant Goodman'; 'Grant Goodman'; 'Grant H Goodman'

Subject: File(s) Return

Counsel:

Please provide, within 48 hours, a complete copy of Ms. Long/Raynak; Mr. Hall; and Mr. Ravenscroft's files, which relate to, or which may relate to, the preceding [pre, during, or post probate] as well as all documents related to or which may relate to Long/Hall/Ravenscroft consisting of her or his file related documents, defined below, related to, or which may relate to, or pertaining to, OR IN ANY MANNER ASSOCIATED WITH, documents and the files consisting of

Long/Raynak/Hall/Ravenscroft/Mallet litigation in any of the consolidated *Cahill matters, involving Ms. Mallet, Ms. Long/Raynak, Mr. Hall, Ms. Mallet, or Mr. Ravenscroft.*

The "file" is defined as: all documents; consisting of email; electronic communications; fax transmittals; transmittal or receipt of hard-copy documents; work-product, attorney notes, which relate to, or which may relate to, an attorney-client or fiduciary relationship [*See, Fickett*]; an implied duty at law requiring candid and full disclosure to one not the attorney's client [*Cf. Fickett, Kremser v. Quarles & Brady, LLP; Chalpin v. Snyder* (citations omitted)] in which the attorney or his/her "client" must act, at all times, and in all circumstances, in a fiduciary capacity to the ward and/or the protected person, with a duty to disclose, conserving and protecting the ward and the estate assets from depletion from acts which are not in the ward's best financial or liberty interests, as a matter of law; evidence of all pre or post deprivation notices, hearings, court findings, and evidence of compliance with well-established rights under the Fourteenth Amendment Procedural and Substantive Due Process Clause, accorded the ward and/or protected person immediately before or immediately after a "taking" of the ward's or protected person's private property and/or liberty interests, and specific Court authorized sanction of the "takings" comporting with U.S. Constitutional law and U.S. Supreme Court authority. Provide file materials, including, but not limited to: litigation documents which relate to, or which may relate to, including, but not limited to: attorney notes, legal research, work-product, filings, court filings of record, all billing statements whether paid, or to be paid, from the ward's or protected person's assets; documents evidencing payment and deposit into trust accounts, or any account, into which the payment(s) for services rendered were deposited, the date of payment invoicing and request, and to whom and from whom the payment invoice was made, together with the date or dates on which payment was issued and from which account or accounts payment was made, and under whose authority; together with documents, orders, minute entries, decrees, or other documents of record, from the Court, approving the transfers of the ward's estate assets, and a date stamped record of such "approval" in relation to the date of "billed" or receipt of the invoiced amounts; motions, notices, investigation, email transmissions or records of email to or from any lawyer, fiduciary, guardian, guardian *ad litem*, personal representative, court-appointed counsel, court-appointed expert, court-appointed attorney, court-appointed fiduciary, court-appointments from the Office of General Litigation Services, court-appointments for the Office of the Public Fiduciary, court-appointments for the Maricopa County Attorney's Office, or appointed medical/psychiatric/psychological/psychiatric nurse, expert "consults"-investigation-reports-assessments-testing-notes-diagnosis-prognosis-DSM IV analytics, for use in proceedings related to "competence-incompetence", the degree and severity of the "incompetence" by clear and convincing evidence of record, "temporary guardianship(s)", "temporary conservatorship(s)", emergency proceedings, guardianship(s), conservatorship(s), and the ward's or "protected person's" cognitive deficits and medical necessity purporting to assess or prove by clear and convincing evidence that the ward or protected person was not able to take care of the daily necessities of life-individually or with the help of family or friends, together with clear and convincing evidence demonstrating that the ward/protected person was a danger to him or herself or others; fax transmissions, PDA "smart phone" transmissions received by or from any attorney, fiduciary, attorney required to act in a fiduciary capacity under *Fickett*, to the ward, whether court appointed or not. All of the above requested file related email, communications, electronic transmissions, mailings, transmittals, and documents, as defined herein, of any kind or nature, sent to or from any third-party lawyer, court appointee, to or from a lawyer for a fiduciary, to or from a fiduciary (or staff), to or from any medical "expert", to or from any investigator, to or from the Court not copied the ward/protected person directly, and to or from any governmental or non-governmental entity [Public Fiduciary/Office of General Litigation Services/Maricopa County Board of Supervisors/the State/Maricopa County Attorney's Office/Attorney General/*New Times*/NASGA/*Arizona Republic*/Arizona State Bar/any judge or judicial officer-state-wide] is requested for immediate provision to this office. A "privilege", if any, is, and has been waived, but in the event that withholding of germane evidence in prosecution of the above matters is withheld, provide a privilege log, specifying the privilege, authority (case law) allowing invocation of the privilege, the date received or sent, and the nature of the communication, in sufficient detail to contest the withholding *in camera*, or otherwise.

This ongoing request, includes, but is not limited to prior requests for release of the files, which were refused, without reason, and, apparently abstained from by the Cahill Court. This is NOT a "discovery request", and is not to be treated as such. Unless somebody or entity from whom the files are requested has authority overruling

the Arizona Supreme Court in *National Sales & Serv. Co. v. Superior Court*, 136 Ariz. 544, 547-48, 667 P.2d 738, 741-42 (1983) (Feldman, J., specially concurring), my humble suggestion is to provide the files, now:

“FELDMAN, Justice specially concurring; For instance, both the opinion of the court and the dissent express concerns that the lien should not be used for the purpose of forcing the client to settle a disputed obligation in order to obtain books, papers or documents belonging to the client and for which the client has an urgent need.... However, the better reasoned cases hold that where the assertion of the lien would have such an improper result, courts need not give it effect. *See Miller v. Paul*, 615 P.2d 615 (Alaska 1980); *Academy of California Optometrists*, *supra*; *People v. Radinsky*, 182 Colo. 259, 512 P.2d 627 (1973) (improper use of the claim of an attorney's retaining lien in order to extort fees despite prejudice to the client's cause is an ethical violation justifying disbarment).... Other principles established by case law solve many if not all of the problems which may be imagined. For instance, case law holds that the lien is "defeated or lost when the attorney unjustifiably terminates his relationship with the client, or when the attorney is justifiably discharged by the client." 7 Am.Jur.2d *Attorneys at Law* § 321, at 334 (1980); *Miller v. Paul*, *supra*; *see also* cases collected in Annot., 3 A.L.R.2d, *supra*, § 5, at 159-60.... Further, as the opinion of the court indicates, ***the lien should not and does not attach to items which come into the attorney's hands for purposes inconsistent with the attachment of a possessory lien. Trial exhibits, such as those involved in the case at bench, are an example. Other examples are where the attorney comes into the possession of funds or other property as a trustee, Akers v. Akers***, 233 Minn. 133, 46 N.W.2d 87 (1951) (emphasis supplied), or pursuant to court order, *Severdia v. Alaimo*, 41 Cal. App.3d 881, 116 Cal. Rptr. 405 (1974). It has also been held that even though the lien attaches, a court may order the attorney to produce the material for inspection where the interests of judicial administration so require. *Browy v. Brannon*, 527 F.2d 799 (7th Cir. 1976).... In summary, the law recognizes that the lien does not attach whenever the recognition of the possessory right is ***inconsistent with public policy, with the attorney's obligations to the client, or the attorney's duties to the court*** (emphasis supplied).... ***Since the practice of law requires that the interests of the client be considered before those of the lawyer***, I would hold that the lien will not be recognized or allowed to attach in situations where its recognition or attachment is contrary to the ethical duties which the lawyer owes a client or in the other situations recognized by case law and discussed above.... Nor, under the circumstances of this case, would I recognize attachment of the lien with respect to any documents necessary for the efficient presentation of the client's cause at trial (emphasis supplied).”

“CAMERON, Justice, dissenting; ... Even if the command to deliver all papers and property to which the client is "entitled" may not be self-defining, the mandate to "avoid foreseeable prejudice to the rights of the client" implies that an attorney may not withhold the file to enforce the payment of the attorney's fees. Withholding documents which a client needs to conduct imminent litigation contravenes the public policy stated in this rule. ***Such action by former counsel actively produces, rather than avoids, prejudice to the client.... in the untenable position of insisting upon the * * * right to damage his client's cause (the same cause which he hitherto espoused and which generated fees to him, both disputed and undisputed)***, unless the client pays him the disputed fees in full and foregoes his right to honestly litigate the dispute. The client's cause, sacred as it is to a member of the legal profession, may not be so abused. *Id.* at 1005, 124 Cal. Rptr. at 672. (emphasis supplied).... The record discloses that the files contain not only pleadings, depositions and correspondence, but also the client's original corporate record books and documents evidencing the sale of property at issue in the underlying litigation.... I submit that this is an extreme case, in which a client's legal interests have actually been imperiled, and not an equivocal case as suggested by the majority.... ***What I do suggest, however, is now that we have had the opportunity to consider the subject, similar conduct should not be condoned. In the litigation context, not only the client's legal interests are at stake, but also the state's interest in orderly and timely litigation*** (emphasis supplied). GORDON, Vice Chief Justice, concurring; I concur in the dissent of Justice Cameron.”

There were, and are, no charging or retaining liens in these or other matters in any event, and even were there, under *National Sales & Serv. Co. v. Superior Court* the files are required for reunion with the client, for the

client's benefit. Whether claimants win or lose on appeal----they paid for the files, they paid for the fiduciaries, they paid for all the lawyers and medical experts in every conceivable context, and the claimants were not, and are not, insurers for payment (although used as such). The files and all related documents, or documents which may relate to the files are in fact and law, owned by the clients. Please accept my apologies for the truncated time frame for re-possession of the client files, but the demand here was in material respects the same as those made in the First Amended Complaints, and in separate letter and notices served on your firms, individual lawyers, entities and individuals.

Presumably, with passage of the last several months, including the Sanctions Hearing of record (Court adoption, without foundation, inquiry, or verifiable corroboration over Goodman objection that Kloss' attribution to Goodman, of gangsta-rap, courtesy of the Jimmy Cagney era, such as, "I'm gonna get ya, see, see, you dirty rat..." placed into the record by Osborn Maledon, P.A., will [must] show up in Mr. Kloss' **mandatory contemporaneous record relayed through status report(s) to the carrier providing by date, time, and contents, the exact offending-harassing-vexatious evidence of objective bad faith verbiage** used by Goodman as part of the file materials, owned by the clients, whether directly, or through third-party duty to disclose, or in the context as a fiduciary, or as a "statement" in which a party seeking such materials must show that the "mental impressions are directly at issue in a case and the need for the material is compelling."; "[S]trategy, mental impressions and opinion of the [insurer's] agents concerning the handling of the claim are directly at issue." *Holmgren v. State Farm Mutual Automobile Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992); [t]he processing of a claim by an insurer is almost entirely an internal operation and its claims file reflects a unique, contemporaneous record of the handling of the claim. The need for such information "is not only substantial but overwhelming." *Brown v. Superior Court*, 137 Ariz. 327, 670 P.2d 725, 734 (1983)); *See also, State Farm Mut. Auto. Ins. Co. v. Lee*, 199 Ariz. 52, 67, 13 P.3d 1169, 1184 (2000) ("[The complainant] is not permitted to thrust his . . . knowledge into the litigation as a foundation . . . to sustain his claim . . . while simultaneously retaining the lawyer-client privilege to frustrate proof . . . negating . . . the claim asserted. Such [a] tactic would repudiate the sword-shield maxim." (quoting *Ulibarri v. Superior Ct. in and for Cnty. of Coconino*, 184 Ariz. 382, 385, 909 P.2d 449, 453 (Ct. App. 1995))).

Enough time has elapsed so that production should be fairly immediate. Thank you for your expected cooperation and anticipated professionalism.

GRANT H. GOODMAN

GOODMAN.

5108 N. 40th Street, Suite 2
Phoenix, Arizona 85018
602-955-0208
602-538-4357 fax

www.GoodmanAttorneys.com

ggoodman@GoodmanAttorneys.com

ghgoodman@hotmail.com

granthgoodman@msn.com

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EXHIBIT D

STATE OF ARIZONA
MARICOPA COUNTY

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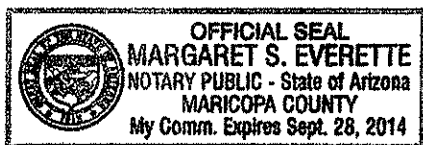
AFFIDAVIT OF
ss. The Honorable Mary H. Murguia
Court of Appeals for the Ninth Circuit

I, Mary H. Murguia, being duly sworn, depose and say:

1. I am a Judge for the U.S. Court of Appeals for the Ninth Circuit and have been since January 4, 2011.
2. Prior to being elevated to the U. S. Court of Appeals, I was a United States District Court Judge for the District of Arizona. I was the judge assigned to *Jeffrey C. Stone Inc., d/b/a Summit Builders Construction Corporation ("Summit") vs. Greenberg Traurig, LLP et al.*, No. CV 09-2454-PHX-MHM from November 23, 2009 until the present.
3. On March 21, 2011, I authored and caused to be sent to the State Bar of Arizona an Order, Document 253 in the Summit litigation. A true and correct copy of the Order is attached as Exhibit 1 and incorporated herein.
4. I was contacted by Senior Bar Counsel Shauna R. Miller and asked if I would provide an affidavit in support of a Motion for Interim Suspension the State Bar will be filing against Grant E. Goodman, Summit's attorney in the lawsuit identified in paragraph two.
5. I am providing the State Bar with this affidavit as I submit that attorney Grant E. Goodman is engaging in conduct the continuation of which will result in substantial harm, loss or damage to the public, the legal profession or the administration of justice, as further set forth in the attached Order dated March 21, 2011, *Jeffrey C. Stone Inc., d/b/a Summit Builders Construction Corporation ("Summit") vs. Greenberg Traurig, LLP et al.*

Upon my sworn oath, I, **Mary H. Murguia**, have read the foregoing affidavit and to the best of my knowledge, state that the facts set forth herein are true and correct.

DATED this 9th day of June 2011.




Mary H. Murguia
Court of Appeals for the Ninth Circuit

SUBSCRIBED AND SWORN TO before me by the Mary H. Murguia, this

9th day of June, 2011.

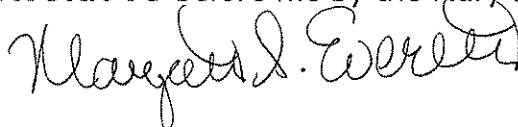


EXHIBIT 1

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Jeffrey C. Stone, Inc. d/b/a/ Summit)
10 Builders Construction Corporation,

11 Plaintiff,

12 vs.

13 Greenberg Traurig, LLP, et al.,

14 Defendants.
15

No. CV 09-2454-PHX-MHM

ORDER

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17 On September 22, 2010, the Court issued Plaintiff an order to show cause ("OSC")
18 in writing why the Court should not impose sanctions against Plaintiff and its counsel, Grant
19 H. Goodman, based on its "concerns regarding Summit's meritless action, that produced a
20 record containing over 2300 pages, [requiring multiple] Defendants to file multiple motions
21 to dismiss, as well as Summit's lack of candor with the Court both in its pleadings and during
22 oral argument." (Doc. 218)

23 Prior to the Court's issuance of the OSC, Defendants had filed motions for sanctions
24 pursuant to, among other bases, Rule 11 of the Federal Rules of Civil Procedure (Doc. 206),
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1 the Court's inherent power (Doc. 212),¹ and 28 U. S. C. 1927 (Doc. 213).²

2 **I. Background**

3 Plaintiff Jeffrey C. Stone, Inc. d/b/a Summit Builders Construction Company
4 ("Summit") filed its original Complaint on November 23, 2009 against twenty-seven
5 Defendants. Thereafter, Defendants filed motions to dismiss the Complaint. (Docs. 11, 19,
6 20, 22, 29, 32, 63, 74) Summit did not file responses to these motions but instead, on
7 January 18, 2010, filed an Amended Complaint. (Doc. 68). In its Amended Complaint,
8 Summit alleged violations of Federal RICO (18 U.S.C. § 1961 *et seq.*) and the Arizona
9 Racketeering Act (A.R.S. § 13-2314.04) statutes; Securities Fraud under Federal law (28
10 U.S.C. § 1658(b)) and the National Securities Markets Improvement Act (§ 18(b)(4)(d));
11 Tortious Interference with Contract; Civil Rights Violations (42 U.S.C. § 1983); Breach of
12 the Uniform Fraudulent Transfer Act (A.R.S. § 44-1001 *et. seq.*); and Legal
13 Malpractice/Accounting Malpractice/Breach of Fiduciary Duty. (Doc. 68) Summit alleged
14 that it was owed more than \$9 million under two construction contracts that went unpaid
15 when lender Mortgages Ltd. went bankrupt. Summit contended that Defendants caused
16 Mortgages Ltd. to go bankrupt and that Defendants were therefore liable for this debt.

17 More specifically, Summit alleged that it contracted with Osborn III Partners, LLC
18 and Central and Monroe, LLC to serve as the general contractor for two construction
19 projects, Ten Lofts and Hotel Monroe (the "Projects"). (Doc. 68 ¶ 2 and Ex. 2, 3)
20 Mortgages Ltd. provided the funding for the Projects. (Doc. 68 ¶ 3) According to Summit,
21 Osborn III Partners and Central and Monroe were controlled by Defendants Jonathan and
22 Lori Vento and Donald and Shirley Zeleznak, who were directors or officers of the now-
23 bankrupt owner of the Projects, Grace Communities. (Doc. 68 ¶¶ 2 n.2, 49, 51)

24 Summit alleged that the Ventos and Zeleznaks, as well as former Mortgages Ltd.

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26 ¹ Joinders at Docs. 214, 219, 221, 222, 224, 225, 226.

27 ² Joinders at Docs. 217, 219, 221, 222, 224, 226.

1 officers and directors, and certain attorneys, accountants, financial advisors, and auditors
2 retained by Mortgages Ltd. over the years “colluded for the common benefit of a single
3 group,” which Summit referred to as the “Enterprise” or “Syndicate.” (Doc. 68 ¶1)

4 Comparing the Enterprise to Bernie Madoff and Worldcom, Summit alleged that the
5 Enterprise “built a classic *Ponzi* scheme,” driving “the primary obligors ML and RB [Radical
6 Bunny] into insolvency.” (Doc. 68 ¶¶ 1, 4) Summit further alleged that “[o]nce Defendants
7 . . . had exhausted the financial resources of ML and RB, they moved lock-step to be
8 ‘appointed’ financial caretakers for the same entities in bankruptcy.” (Doc. 68 ¶ 4)
9 Thereafter, according to Summit, the “professional” Defendants “would compete for even
10 more cash . . . by diverting the only assets available from the liquidation” of the entities’
11 assets in the bankruptcies as “‘professional priority administrative claimants.’” (*Id.*)

12 Summit alleged that the Enterprise “made contractual warranties of financial solvency
13 to Summit,” however, “[r]ather than paying Summit for work performed,” the Enterprise
14 “devised a scheme to siphon assets away,” and as a result, Summit “was denied payment
15 exceeding \$9,000,000.00.” (Doc. 68 ¶¶ 2, 4)

16 Thereafter, Defendants filed motions to dismiss the Amended Complaint. (Docs. 79,
17 81, 84, 89, 91, 94, 100, 115, 199, 202) Defendants argued that with respect to the RICO
18 claims, Summit lacked standing to pursue such claims, and in addition, failed to adequately
19 allege proximate cause. Defendants also argued that Summit did not have standing to bring
20 a claim for securities fraud because it failed to plead facts showing that it was a purchaser
21 or seller of securities. With respect to Summit’s tortious interference with contract claim,
22 Defendants argued, among other things, that Summit failed to meet even the first element of
23 such a claim because it had not alleged that it had a direct contractual relationship with
24 Mortgages Ltd., the alleged subject of the tortious interference. Further, Defendants argued
25 that because Summit failed to allege that any of the Defendants acted under color of state
26 law, it failed to state a claim under 42 U.S.C. § 1983. As to Summit’s claim of breach of the
27 Uniform Fraudulent Transfer Act, Defendants argued that even if Summit was a creditor of

1 Mortgages Ltd., it would nevertheless lack standing to bring such a claim because only the
2 bankruptcy trustee has standing to pursue fraudulent transfer and fraudulent conveyance
3 actions for the benefit of all creditors, and that such claims had been transferred to the
4 Liquidating Trustee appointed under the confirmed bankruptcy plan.

5 With respect to Summit's legal malpractice claim, Defendant attorneys argued that
6 Summit failed to allege facts to demonstrate that it had an attorney-client relationship with
7 them or, in the alternative, that they owed a duty of care to non-client Summit. Defendants
8 further contended that Summit's breach of fiduciary duty claim failed because such a claim
9 requires proof of an actual attorney-client relationship, which Summit failed to allege.
10 Finally, with respect to Summit's accounting/auditing malpractice claim, the
11 accountant/auditor Defendants argued that Summit failed to allege the necessary element that
12 it is "one of a limited group of persons for whose benefit and guidance" Defendants provided
13 information. Defendants further argue that Summit failed to identify the alleged
14 "misrepresentations" on which it supposedly relied.

15 Thereafter, Summit filed responses to the motions to dismiss, and Defendants filed
16 replies thereto. The Court granted Summit's request for oral argument, and on August 30,
17 2010, the Court held a three-hour hearing on the motions. One day later, on August 31,
18 2010, Plaintiff filed a Notice of Voluntary Dismissal pursuant to Federal Rule of Civil
19 Procedure 41(a)(1)(A)(i).³

20 **II. Discussion**

21 **Sanctions Under the Court's Inherent Power**

22 Federal courts have the inherent power to assess attorney's fees against counsel in
23 response to abusive litigation practices. Roadway Express, Inc. v. Piper, 447 U.S. 752, 765
24 (1980); Chambers v. PASCO, Inc., 501 U.S. 32, 45, 46 (1991) (courts have the inherent

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26 ³ Rule 41(a)(1)(A)(i) provides that a "plaintiff may dismiss an action without a court order
27 by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for
28 summary judgment." Such dismissal is "without prejudice." Fed. R. Civ. P. 41(a)(1)(B).

1 power to assess attorney's fees against counsel who has acted in bad faith, wantonly,
2 vexatiously, or for oppressive reasons). A district court may impose sanctions if it
3 "specifically finds bad faith or conduct tantamount to bad faith." Fink v. Gomez, 239 F.3d
4 989, 994 (9th Cir. 2001). "Sanctions are available for a variety of types of willful actions,
5 including recklessness when combined with an additional factor such as frivolousness,
6 harassment, or an improper purpose." Id. In Fink, the Ninth Circuit held that "an attorney's
7 reckless misstatements of law and fact, when coupled with an improper purpose . . . are
8 sanctionable under a court's inherent power." Id.

9 Here, Summit's actions, as well as its misstatements of both fact and law in its briefs
10 and at oral argument, which continue unabated in its Responses to this OSC, evidence bad
11 faith. Some illustrative examples follow.

12 On January 14, 2010, during the pendency of this case, Summit improperly removed
13 probate case PB2008-001651, In the Matter of the Estate of Scott M. Coles, from the probate
14 court to the district court. In Summit's Response (Doc. 108) to Defendant Coles Estate's
15 Motion to Remand, Summit not only failed to cite any authority to support removal, but
16 blatantly mischaracterized the holding of Marshall v. Marshall, 547 U.S. 293 (2006), as
17 having "entirely done away with" the probate exception.⁴ In its July 29, 2010 remand order,
18 the Court warned Summit that further misrepresentation of the law could result in the
19 imposition of sanctions. (Doc. 191)

20 Summit represented to this Court both in briefing and at oral argument that in Bridge
21 v. Phoenix Bond & Indem. Co., 128 S. Ct. 2131 (2008), the Supreme Court had dispensed
22 with a direct injury requirement in the context of RICO claims. (Doc. 187 at 5; Tr. at 42)
23 Bridge says only that a RICO plaintiff claiming mail fraud as a predicate act need not have
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25 ⁴ "[T]he probate exception[] is a practical doctrine designed to promote legal certainty
26 and judicial economy by providing a single forum of litigation, and to tap the expertise of
27 probate judges by conferring exclusive jurisdiction on the probate court." Wisecarver v. Moore, 489
28 F.3d 747, 749 (6th Cir. 2007) (quoting Markham v. Allen, 326 U.S. 490, 494 (1946)).

1 been the party to directly rely on the misstatement sent through the mail, but must still have
2 been directly injured by the sending of the false statement.

3 Summit misrepresented the holding of SEC v. Zandford, 535 U.S. 813 (2002), to try
4 to avoid the holding of Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975), that
5 only a purchaser or seller of securities may pursue a claim for securities fraud. (Doc. 107 at
6 17) At the hearing, counsel for Summit conceded—after requiring Defendants to brief the
7 issue and prepare to argue it at the hearing—that Summit could not pursue a claim for
8 securities fraud and withdrew that count. (Tr. at 65: “And they are correct, in the purchase
9 or sale, that’s not [what] we are doing here.”).

10 Summit cited United States v. Warneke, 310 F.3d 542 (7th Cir. 2002), to support the
11 proposition that bankruptcy fraud and fraudulent transfers can be predicate acts. (Doc. 187
12 at 10). Warneke is a criminal RICO case about a motorcycle gang, addressing guns,
13 shootings, and drugs, not bankruptcy or fraudulent transfers.

14 Summit cited Natomoas Gardens v. Sinadinos, 2009 LEXIS 110063 (E.D. Cal. 2009),
15 for the proposition that there could be RICO standing for an individual injury apart from a
16 corporation. (Doc. 119 at 13-14). That case does not mention the word “RICO” and does
17 not address RICO standing issues. Instead it deals with a motion to substitute counsel.

18 In Summit’s Response to Greenberg Traurig’s Motion to Dismiss Amended
19 Complaint and Response to Estate of Scott M. Coles’ Joinder, Summit cited Qantel Corp. v.
20 Niemuller, 771 F. Supp. 1372 (S.D.N.Y. 1999) to support its allegation that it has RICO
21 standing. (Doc. 119 at 16). Summit stated that the court in Qantel “analyzed the question
22 of whether a shareholder had standing to bring a racketeering suit against defendants who
23 had manipulated equipment leases and their receivables arising from those leases.” The cited
24 case, however, concerns an action in which the director of a corporation sought an order
25 requiring the corporation to pay his attorney’s fees during the pendency of the action.

26 Summit’s Response to Francine Coles’ Motion to Dismiss contains an eight-line block
27 quotation which cannot be found in either of the two cited cases. (Doc. 114 at 4) These
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1 examples are but a few of Summit's many erroneous or incomplete citations.

2 Summit requested oral argument, which the Court granted. Despite several attempts
3 by the Court to accommodate counsel's request to familiarize himself with the courtroom
4 audio-visual system, counsel failed to take advantage of these opportunities and was woefully
5 unprepared for the hearing.

6 During oral argument, in response to the Court's questioning, counsel stated that
7 Summit had filed a proof of claim in the Mortgages Ltd. bankruptcy proceeding, which the
8 bankruptcy record demonstrates otherwise. Counsel also stated that Summit contracted with
9 Mortgages Ltd., which the record demonstrates to the contrary. As discussed above, Summit
10 made other misstatements during the hearing about the holdings of certain cases.

11 Less than twenty-four hours after the conclusion of the hearing, Summit filed a
12 voluntary notice of dismissal. Although the plain language of Rule 41(a)(1)(A)(i) allows a
13 plaintiff to dismiss an action without prejudice before the opposing party serves either an
14 answer or a motion for summary judgment, Summit's eleventh-hour dismissal—after multiple
15 Defendants were required to brief two rounds of motions to dismiss and prepare for an oral
16 argument requested solely by Summit—violates the purpose of the rule. Rule 41(a)(1) was
17 designed to “allow[] a plaintiff to dismiss an action without the permission of the adverse
18 party or the court only during the brief period before the defendant [has] made a significant
19 commitment of time and money.” Cooter and Gell v. Hartmarx, 496 U.S. 384, 397 (1990).

20 Summit and Summit's counsel, Grant Goodman, filed separate responses to the
21 Court's subsequent OSC. Counsel's responses (Docs. 243 and 248)⁵ are at times
22 incomprehensible, assert intemperate and unsupported allegations about certain Defendants,
23 and contain further misstatements of law and fact. For example, although the language is
24 difficult to decipher, counsel appears to assert that the Court is without authority to issue
25 sanctions, including sanctions under its inherent authority: “Due to framing, or lack thereof,

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27 ⁵ Identical documents were filed at 244 and 249.

1 of the Order to Show Cause a reroute to the ‘inherent authority’ train and 28 U.S.C. § 1927
 2 and the apparition of ‘bad faith’ left the station, ironically, within 5 days of the issuance of
 3 the following opinion’s issuance. *Cf. Lawrence vs. Richman Group of CT LLC, et al.*, (2nd
 4 Cir. September 16, 2010).” (Doc. 248 at 5) First, counsel fails to include a complete citation
 5 to authority, as he does elsewhere in his brief. Next, Lawrence addresses sanctions imposed
 6 under Rule 11 and its safe harbor provision. 620 F.3d 153, 159. Here, Summit’s dismissal
 7 did not deprive the Court of jurisdiction to impose sanctions. “[A]ttorney fees and sanctions
 8 are by nature collateral to the merits [of a case] and therefore properly within a district court’s
 9 jurisdiction even after a dismissal under Rule 41(a).” Building Innovation Indus., L.L.C. v.
 10 Onken, 473 F. Supp.2d 978, 983 (D. Ariz. 2007) (citing Moore v. Permanente Med. Group,
 11 Inc., 981 F.2d 443, 445 (9th Cir. 1992), and Cooter & Gell, 496 U.S. at 396). Further, the
 12 safe harbor provision is incorporated in Rule 11(c)(2); the provision does not apply to
 13 sanctions imposed under a court’s inherent power.

14 Counsel also misrepresents proceedings in the bankruptcy court that occurred
 15 subsequent to the dismissal of this case. Counsel states that

16 Three weeks later....Summit in the ML bankruptcy ‘objects’ to sale of the
 17 Ten Lofts Project by ML “free and clear” arising out of ML inequitable
 18 conduct in the form of; (a) payment guarantee failure as a condition
 19 precedent contractually and by statute; (b) direct contact by ML executive
 20 officers to Summit (and its subcontractors) rendering payment “assurances”
 21 and ratification of the contractual warranties of payment; © failure to fund;
 22 (d) untimely contractual funding described as “erratic” and a legal
 23 proximate cause in anticipatory breach; (e) required application of non-
 bankruptcy law in favor of Summit as creditor; (f) and, title insurance
 indemnification as an intended beneficiary arising out of title insurance
 bought by ML. (See, Dkt. #2961, 9/21/2010, 2:08-bk-07465). One week
 later on September 28, 2010 through Court Order of October 1, 2010
 Summit unconditionally was paid as a super-priority “creditor”, and not as
 a general unsecured claimant, together with accruing interest on its amount
 of damages sustained for \$3,445,095.79. (See Dkt. #2976).

24 (Doc. 244 at 4-5)

25 Counsel’s statement that Summit was “unconditionally . . . paid . . . on its amount
 26 of damages sustained” distorts the facts. In its October 1, 2010 Order approving the sale
 27 of the property, the Bankruptcy Court ruled as follows:

1 To address the Summit Objection to the extent necessary to permit
2 the sale as provided in this Order, as a condition to the completion of the
3 sale of the Property and prior to any other distribution of Sale Proceeds
4 authorized in this Order, Sale Proceeds, in the sum of \$3,445,095.79 shall
5 be deposited and held in escrow (the "Escrowed Sale Proceeds") for the
6 sole benefit of Summit Builders and ML Manager, free from any other
7 claims or interests other than the undivided ownership interests of Osborn
8 III Loan LLC and the pass-through investors, with the alleged liens and
9 interests of Summit Builders and ML Manager to attach to the Escrowed
10 Sale Proceeds in the same manner, extent and priority that such liens and
11 interests held in the Property as they existed immediately prior to the sale of
12 the Property provided for in this Order. The Escrowed Sale Proceeds shall
13 be deposited in an interest-bearing account with the title company handling
14 the closing, or another escrow company mutually agreeable to ML Manager
15 and Summit Builders, and shall be disbursed only pursuant to further Order
16 of this Court, upon appropriate notice to parties asserting an interest in the
17 Escrowed Sale Proceeds. All disputes, arguments, claims, other lien
18 interests and defenses of and between Summit Builders and ML
19 Manager as the Manager and Agent are preserved.

20 In re Mortgages Ltd., 2:08-bk-07465-RJH (Doc. 2976). Pursuant to the bankruptcy
21 court's Order, the sum of \$3,445,095.79 was placed in an escrow account for the benefit
22 of both Summit and ML Manager, with disbursement by the bankruptcy court conditioned
23 upon a future state court determination regarding the contested issue of Summit's lien
24 priority. Id. (Doc. 2961) Thus, contrary to counsel's assertion, Summit was not
25 "unconditionally paid."

26 Summit filed a separate response to the Court's OSC (Doc. 230), in which it does
27 "not attempt to defend or otherwise justify the pleadings filed on its behalf . . . by its
28 former counsel Grant Goodman." Summit asserts that it "has essentially repudiated those
29 pleadings when—immediately following Mr. Goodman's performance at oral argument on
30 August 30, 2010—it dismissed the entire case" Moreover, Summit states that it "will
31 not dispute the reasonableness of the amount sought by Defendants" except to the extent
32 that the motions and applications for fees do not comply with Local Rule 54.2.

33 Summit maintains that "all of the objectionable conduct here lies at the feet of Mr.
34 Goodman" and that it was "affirmatively misled by Mr. Goodman." Summit alleges that
35 during oral argument it "realized that Mr. Goodman's responses to the Court . . . could
36 not be squared with Mr. Goodman's earlier representations to Summit regarding the good

1 faith basis for the allegations in the pleadings.”

2 According to Summit’s own description, Summit “is a large, sophisticated
3 contractor who possesses a high level of experience and expertise in the business
4 administration, construction management and superintendence” of complex and high-
5 quality projects. (Doc. 68, Ex. 3 “Standard Form of Agreement Between Owner and
6 Contractor”) Summit is also experienced in litigation, having been represented by firms
7 such as Fennemore Craig and Graif Barrett & Matura. (Doc. 230; 2:08-bk-07465-RJH,
8 Doc. 2976) In addition, Summit employs in-house counsel. Yet despite this level of
9 business and legal sophistication, Summit argues, incredibly, that it relied entirely upon
10 Mr. Goodman’s representations regarding the good faith basis for the allegations in the
11 pleadings and therefore should be held blameless.

12 Summit, however, cannot shift the blame for what it admits is “objectionable
13 conduct” entirely onto counsel. The Court finds that Summit had an obligation to make at
14 least a cursory inquiry into Mr. Goodman’s representations in the pleadings and its failure
15 to do so does not excuse it but rather suggests bad faith. Further, at oral argument,
16 Summit stood by and allowed its counsel to make blatant misrepresentations of both the
17 facts and the law. The Courts finds that Summit’s inactions described above, its eleventh-
18 hour dismissal, which violates the purpose of Rule 41(a)(1), as well as its improper
19 removal of the probate case, constitutes conduct that is tantamount to bad faith.
20 Accordingly, the Court will assess attorneys’ fees against Summit as well as its counsel.
21 See Leon v. IDX Sys. Corp., 464 F.3d 951, 961 (9th Cir. 2006) (explaining that a district
22 court may award sanctions under its inherent powers against a party or his counsel when
23 either acts in bad faith); accord Byrne v. Nezhat, M.D., 261 F.3d 1075, 1106 (11th Cir.
24 2001).

25 **III. Conclusion**

26 In sum, the Court finds that counsel’s repeated misrepresentations concerning the
27 facts and law in his briefing and during oral argument, despite warning by the Court,
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1 coupled with counsel's continued misrepresentations in his responses to the Court's OSC,
2 cannot be attributed to mere carelessness but rather constitute an improper effort to
3 mislead both the Court and opposing counsel. Counsel's actions in this regard, as well as
4 his improper removal of the probate case and voluntary dismissal at the eleventh hour,
5 constitutes conduct tantamount to bad faith and, as such, is sanctionable under the Court's
6 inherent power.

7 Further, the Court finds that Summit's failure to make a reasonable inquiry into
8 Mr. Goodman's representations, its silence in the face of counsel's misrepresentations to
9 the Court, its eleventh-hour dismissal, as well as its improper removal of the probate
10 case, is conduct tantamount to bad faith.

11 Accordingly, pursuant to its inherent power, the Court will award attorney's fees
12 as sanctions against both Summit and its counsel, Grant Goodman. In light of the award
13 of sanctions under this authority, the Court need not address the imposition of sanctions
14 under Rule 11 or 28 U. S. C. 1927.

15 Based on the foregoing,

16 **IT IS ORDERED** granting Defendant Greenberg Traurig LLP's Motion for
17 Attorney Fees Pursuant to the Court's Inherent Power in the amount of \$27,300. (Doc.
18 212)

19 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendants DeConcini
20 McDonald Yetwin & Lacy, P.C. in the amount of \$15,592.50.

21 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendant Francine
22 Coles in an amount to be determined upon compliance with the requirements of LR Civ.
23 54.2.

24 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendant Coles
25 Estate in an amount to be determined upon compliance with the requirements of LR Civ.
26 54.2.

27 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendants Ashley
28

1 Coles, Christopher Olson and Rachel Schwartz-Olson, George and Mary Jane Everette,
2 Mike and Donna Denning, Nechelle and John Doe Wimmer, Phillip Sollomi, Jr. and
3 Carolyn L. Sollomi in an amount to be determined upon compliance with the
4 requirements of LR Civ. 54.2.

5 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendant MCA
6 Financial Group, Ltd. in an amount to be determined upon compliance with the
7 requirements of LR Civ. 54.2.

8 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendants Mayer
9 Hoffman McCann P.C. and CBIZ Accounting, Tax & Advisory Services, LLC in an
10 amount to be determined upon compliance with the requirements of LR Civ. 54.2.

11 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendants Zeleznak
12 Family Trust, Vento Family Trust, Jonathan and Lori Vento, Donald and Shirley
13 Zeleznak, and Ryan Zeleznak in an amount to be determined upon compliance with the
14 requirements of LR Civ. 54.2.

15 **IT IS FURTHER ORDERED** awarding attorney's fees to Defendants Hirsch &
16 Shah, CPAs LLC in an amount to be determined upon compliance with the requirements
17 of LR Civ. 54.2.

18 On July 29, 2010, the Court granted the Coles Estate's Motion to Remand. (Doc.
19 191) At that time the Court also granted the Coles Estate's request under 28 U.S.C. §
20 1447(c) for attorney's fees and costs incurred as a result of the removal. (*Id.* at 4.) The
21 Coles Estate having submitting its fee application pursuant to LR Civ. 54.2, and the Court
22 having reviewed it for reasonableness,

23 **IT IS FURTHER ORDERED** awarding the Coles Estate attorney's fees and
24 costs in the amount of \$15,511.45, to be paid by Summit as originally ordered.

25 In light of the foregoing,

26 **IT IS FURTHER ORDERED** denying as moot MCA Financial Group, Ltd.'s
27 Motion for Rule 11 Sanctions. (Doc. 206)

1 **IT IS FURTHER ORDERED** denying as moot Defendants DeConcini
2 McDonald Yetwin & Lacy, P.C.'s Application for Award of Attorney's Fees. (Doc. 213)

3 In light of the award of attorney's fees to Defendant Francine Coles above, and in
4 the Court's discretion,

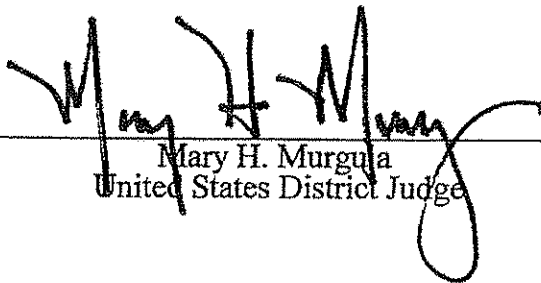
5 **IT IS FURTHER ORDERED** denying Defendant Francine Coles' Motion for
6 [Further] Sanctions Against Grant H. Goodman. (Doc. 250)

7 **IT IS FURTHER ORDERED** that Defendants shall submit their fee applications
8 pursuant to LR Civ. 54.2 within 14 days of the entry of this order.

9 **IT IS FURTHER ORDERED** that within 20 days of the service of this order,
10 Plaintiff's and Defendants' counsel shall jointly cause the delivery of a copy of this order
11 to the appropriate authority within the Arizona State Bar for whatever further
12 investigation, review, or action it may deem appropriate.

13 DATED this 21st day of March, 2011.

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Mary H. Murgula
United States District Judge