UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	CHAPTER 7 CASE NO.: 11-29988-RG
FARIDA HADAD, Debtor.	

BRIEF IN SUPPORT OF DEBTOR'S MOTION TO QUASH SUBPOENAS, FOR ATTORNEYS' FEES, AND FOR A PROTECTIVE ORDER

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PRELIMINARY STATEMENT

For the purpose of clarifying the scope of a hearing to be conducted on July 26, 2012 regarding objections to a proposed settlement between the Debtor and the Chapter 7 Trustee, the Debtor moves to quash two (2) Subpoenas issued by creditor Evan Alan, Inc. ("Evan Alan") and its principal David Perlman seeking to compel the attendance of the Debtor and her business partner Sonia Galante at this hearing to testify and produce documents. In addition to this Brief, the Debtor relies upon the Declaration of Farida Hadad ("Hadad Decl."), and Declaration of Glenn R. Reiser ("Reiser Decl.").

The Subpoenas have yet to be personally served, though a process server has made several unwarranted intrusions into the Debtor's place of business resulting in intimidating the Debtor and her staff and necessitating the Debtor's reporting the incidents to the Ridgewood Police Department. It is particularly troublesome why Mr. Perlman would attempt to subpoena the Debtor at the hair salon instead of at her private residence. The only logical conclusion to be drawn is that he chose the salon so he could embarrass and humiliate the Debtor in front of her employees and staff.

In addition to quashing the Subpoenas, the Debtor respectfully requests the Court to issue a protective order prospectively barring this discovery altogether. The Debtor also requests reasonable attorneys' fees based upon this creditor's continued attempts to expand the scope of the July 26, 2012 hearing, filing papers at the 11th hour, advancing frivolous arguments and otherwise engaging in vexatious litigation intended to harass the Debtor and cause her to expend unnecessary legal fees.

The Chapter 7 Trustee is expected to testify at the July 26, 2012 hearing regarding the exercise of his business judgment. No other witnesses are expected to

testify, except for the fact that now Mr. Perlman seeks to expand the scope of this hearing by trying to procure testimony from the Debtor that would be more appropriately reserved for an action objecting to discharge or to determine dischargeability. However, the claims bar date for both causes of action expired back on October 4, 2011 and Mr. Perlman's company did not file any such objection. Accordingly, his attempt to compel the Debtor and her business partner to testify at this hearing and produce documents is nothing more than a blatant attempt to harass and intimidate the Debtor.

PROCEDURAL HISTORY & RELEVANT FACTS

The Debtor filed her voluntary Chapter 7 petition on June 30, 2011 (the "Petition Date"). Prior to the Petition Date, a judgment in the amount of $62,963.27 was entered against the Debtor in a matter filed by Evan Alan in the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No.: C-172-05 (the "Chancery Case"). Also, prior to the Petition Date the Debtor commenced divorce proceedings against her estranged husband Atta Hadad ("Atta"). The matrimonial action is pending in the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No.: FM-02-112-11-F (the "Matrimonial Case").

After obtaining a default judgment against the Debtor in the Chancery Case, David Perlman, the principal of Evan Alan, began representing his company *pro se* and attempted to cause the Bergen County Sheriff to levy on various assets of the Debtor, including her stock ownership in Farrah Sophia Corp. The validity of Mr. Perlman's attempted levy on the Debtor's stock is disputed in the context of the hearing presently scheduled on July 26, 2012.

In Schedule B of her bankruptcy petition, the Debtor disclosed her joint 55% ownership interest with her estranged husband Atta in Farrah Sophia Corp. which

operates a hair salon in Ridgewood, New Jersey under the trade name “Village East”. The Debtor listed her stock ownership interest with a value of “unknown”. The Debtor listed the stock as fully exempt in Schedule C of her bankruptcy petition.

In Schedule F of her bankruptcy petition, the Debtor listed Evan Alan as an unsecured creditor c/o the company’s state court attorney Lawrence Kleiner and its principal David Perlman. In other words, both the attorney and Mr. Perlman were separately listed in Schedule F to ensure that this creditor received proper notices of the bankruptcy filing.

On July 5, 2011, Joseph Newman was appointed as the Chapter 7 Trustee. On the same date, the Clerk’s Office issued a Notice of Commencement which, among other things, noticed the creditors’ meeting for August 5, 2011, established October 4, 2011 as the deadline for all creditors to oppose discharge or dischargeability, and also established the deadline for creditors to file objections to the Debtor’s claimed exemptions - within 30 days of the conclusion of the creditors’ meeting - which computed to September 4, 2011. (Docket entry # 3). The Clerk mailed the notices to all creditors listed on the creditor matrix appended to the Debtor’s petition and schedules, including Mr. Perlman himself and his company’s former attorney Lawrence Kleiner. This is reflected in the Clerk’s Certificate of Mailing filed on July 8, 2011. (Docket entry # 4).

The creditors’ meeting was conducted and concluded on August 5, 2011. Mr. Perlman appeared at the creditors’ meeting with an attorney, and the Trustee afforded his attorney the opportunity to question the Debtor at length. As the record undisputedly reflects, Mr. Perlman would not heard from again in this bankruptcy case until 7 months later on April 17, 2012 when he appeared in Court acting *pro se* for his company.

On August 9, 2011, the Trustee filed a no asset report. The Trustee withdrew the report on August 11, 2011. (Docket entry #9). After retaining counsel, on August 14, 2011 the Trustee filed a Notice of Assets and Request for Notice of Creditors (the "Asset Notice"). (Docket entry # 12). Pursuant to the Asset Notice, the Clerk set a claims bar deadline of November 14, 2011.

On August 17, 2011, the Clerk mailed the Asset Notice to all creditors appearing on the Debtor's creditor matrix, including Mr. Perlman and his former state court counsel Lawrence Kleiner. This mailing is confirmed by the Clerk's Certificate of Mailing filed on August 17, 2011. (Docket entry # 13).

In response to the Trustee's Asset Notice, only 2 creditors filed proofs of claim; namely, American Express in the amount of $7,975.22, and Capital Retail Bank in the amount of $538.69. Thus, the total claims on file are $8,513.91. Thus, despite being afforded actual notice of the claims bar date, Mr. Perlman elected not to file a proof of claim within the claims bar deadline. (Although within the last 2 weeks Mr. Perlman submitted a *pro se* claim for filing, which has yet be docketed by the Clerk.)

After the Asset Notice was filed, the Debtor, through her counsel, and the Trustee, through his counsel, were involved in discussions and negotiations regarding the Debtor's stock ownership interest in the Ridgewood hair salon. Ultimately, the parties reached an agreement for the Debtor to pay the Trustee $15,000 in release of any and all claims that he could assert on behalf of the bankruptcy estate against her stock which she had listed as fully exempt in Schedule C of her bankruptcy petition. This agreement was the product of several months of negotiations.

On November 4, 2011, the Court issued an Order discharging the Debtor. (Docket entry # 25).

On March 15, 2012, the Debtor tendered her signature on the settlement agreement to the Trustee. On March 19, 2012, the Trustee then filed a Notice of Information for Private Sale ("NOS") detailing the principal terms of the proposed settlement. (Docket entry # 27). A new NOS was filed on March 21, 2012 to correct a typographical error in the date specified in the original NOS for filing objections. (Docket entry #28). This updated NOS specified an objection deadline of April 10, 2012, and a hearing date of April 17, 2012 if objections were filed. On March 23, 2012, the Clerk filed a Certificate of Mailing to creditors regarding the updated NOS filed on March 21, 2012, which reflects that Mr. Perlman and his company's former state court counsel Mr. Kleiner were served with the updated NOS. (Docket entry #29).

On April 9, 2012, the Debtor's estranged husband Atta filed an objection to the proposed settlement. (Docket entry # 30). Pursuant to the updated NOS (docket entry # 28) and Clerk's Certificate of Mailing with respect to same (docket entry #29), an initial hearing date was scheduled and conducted on April 17, 2012 at which both Atta and Mr. Perlman appeared to voice objections to the settlement; at that time Mr. Perlman had not filed a written objection. In the Court's presence, Mr. Perlman conceded that he was appearing *pro* se on behalf of his company. The Court specifically instructed Mr. Perlman to obtain a lawyer. At the conclusion of the April 17, 2012 hearing, the Court agreed to continue the matter until May 21, 2012, gave the opposing parties until May 1, 2012 to file any further objections, and gave the Trustee and the Debtor until May 15, 2012 to supplement their initial papers.

On April 26, 2012, Atta filed a supplemental response. (Docket entry # 36). Thereafter, on April 30, 2012 Mr. Perlman filed his supplemental response. (Docket entry # 38). Despite the Court having instructed Mr. Perlman at the April 17th hearing to

retain an attorney, he thumbed his nose at the Court's directive by continuing to act *pro se*.

In response to the supplemental objections of Atta and Mr. Perlman, on May 9, 2012 the Debtor filed her Declaration and a Letter Brief. (Docket entry # 39), and on May 16, 2012 the Trustee filed his response. (Docket entry #41).

The Court conducted the continued hearing on May 21, 2012, and at that time the law firm of Nowell Amoroso Klein Bierman P.A (David Edelberg, Esq., appearing) entered its appearance on behalf of Mr. Perlman's company and advocated that Mr. Perlman's company holds a perfected lien against the Debtor's stock in the hair salon by virtue of a pre-petition Sheriff's levy. Mr. Edelberg presented the Trustee with a copy of a Sheriff's Affidavit of Service which was not yet docketed on the ECF. The Court elected to further postpone the hearing until June 18, 2012 to give Mr. Perlman's company the opportunity to further supplement its objection, with the Debtor and Trustee also being given the right to file responses. The hearing was adjourned again to June 28, 2012.

On June 1, 2012, the Debtor secured an appraisal from A. Atkins Appraisal Corporation valuing the forced sale value of the fixtures and equipment of the hair salon at only $4,025, substantially less than the $15,000 settlement amount that she agreed to pay the Trustee.

On June 4, 2012, Evan Alan, through Mr. Edelberg's law firm, filed a supplemental Objection claiming to hold a perfected security interest in the Debtor's stock by virtue of a pre-petition levy by the Bergen County Sheriff, and offering a competing bid premised on his alleged security interest. (Docket entry # 42). Shortly thereafter, Mr. Perlman objected to paying Mr. Edelberg's law firm additional fees which

prompted Mr. Edelberg to file a motion on short notice seeking to be relieved as Evan Alan's counsel. The Court granted the motion by Order entered on June 25, 2012.

Mr. Perlman then requested a further postponement of the June 28th hearing so that his company could retain new bankruptcy counsel. The Court accommodated Mr. Perlman's request by adjourning the hearing to July 13, 2012 which was intended to be a peremptory date; an Order to that effect was entered on June 27, 2012.

At approximately 11:45 pm on July 11, 2012, Debtor's counsel received an e-mail from Evan Alan's new bankruptcy counsel enclosing a Subpoena Ad Testficandum and Duces Tecum seeking to compel the Debtor to appear in Court on July 13, 2012 and to produce the following documents:

1. The original weekly revenue and commission ledger for the period from January 1, 2011, to date, which shows revenue for each employee, including but not limited to Farida Hadad, weekly revenue totals, and commission and check payments to each employee, including but not limited to Farida Hadad, as more particularly shown in Exhibit "A", attached hereto.

2. Any and all stock certificates issued by the Farrah Sophia Corporation, and any other affiliated corporation.[1]

See Exhibit A to Reiser Decl.

The financial information requested in paragraph 1 of the Subpoena is not relevant to the outcome of the hearing on the proposed settlement – the hearing has now been adjourned to July 26, 2012. Evan Alan operates its own hair salon in the neighboring town of Paramus, New Jersey, and thus is a competitor of the Debtor's hair salon. In addition, this financial information is confidential to the Debtor's business and

[1] Perhaps Mr. Perlman's true motive in requesting production of the actual share certificates at the July 26, 2012 hearing before the Bankruptcy Court is so that he can make arrangements to have the Bergen County Sheriff appear in the Bankruptcy Courtroom and levy on the shares in violation of the automatic stay.

thus constitutes protected trade secrets. As regarding the request to produce the actual stock certificates, the Debtor now believes same to be in the possession of her estranged husband Atta who continues residing at the former marital residence which the Debtor abandoned. Regardless, the Debtor already has sworn under oath that her corporation was formed with 1000 shares and she produced proof in the form of a July 13, 2007 status report issued by the State of New Jersey Department of Treasury. (Docket entry #45, Exhibit B). Thus, the amount of shares issued is not in dispute.

As set forth in Hadad Decl., on two (2) consecutive days, July 13th and July 14th, an obnoxious and overly aggressive process server appeared at her business and attempted to serve both her and her business partner Sonia Galante with Subpoenas. As the Debtor explains:

* * *

4. Over the past few days Mr. Perlman has began an incessant campaign of harassment by instructing a process server by the name of Jim Reep to appear at my salon attempting to serve subpoenas on me and my partner Sonia Galante. This process server is nasty and obnoxious, and his unwarranted entrances into my salon have greatly embarrassed my staff in the presence of customers. On Friday, July 13, 2012, my employees told me that Mr. Reep entered the salon yelled out my name and Sonia's name in front of the entire salon and our customers. Specifically, he spoke my receptionist Jackie who told him that I wasn't there at the time. He then told Jackie to call me on my cell phone and that he would be returning to the salon every day.

5. When I opened up the salon approximately 9 a.m. on Saturday morning, July 14, 2012, I was met by this Mr. Reep who asked me to confirm that I am Farida Hadad. This is the first time that I had ever met this man. When I responded “yes”, Mr. Reep aggressively moved toward me and attempted to shove papers in my hands. When I refused his advance he told me I had no choice, and for a second time aggressively moved toward me and attempted to shove the papers in my hands. I then told him that I was calling the Ridgewood Police to file harassment charges unless he immediately left the salon. He responded by threatening to file an assault claim against me. At that point he walked outside the salon and remained on the sidewalk in front of the store, and I called the Police.

6. Shortly thereafter, two uniformed policeman came and spoke to Mr. Reep. Before leaving the area, Mr. Reep left the papers on the sidewalk. Fortunately, no customers of the salon had arrived yet to witness this horrific scene. I am in the process of obtaining a report of this incident from the Ridgewood Police Department, and upon my receipt I will provide it to my bankruptcy counsel.

7. My staff doesn’t understand why this strange man keeps appearing at the salon asking for me and Sonia and attempting to serve us with papers. These incidents are extremely embarrassing, and if they continue I am very concerned that I will either lose staff, customers or both. I cannot effectively operate my business under the fear of this strange man (or another goon dispatched by Mr. Perlman) possibly returning to my salon and continuing to harass my partner and me.

Hadad Decl. at ¶¶4-7.

Additional inappropriate activity on Mr. Perlman's part includes his most recent attempt to file a *pro se* proof of claim on behalf of his company. Not only does this act confirm Mr. Perlman's quest to engage in the unauthorized practice of law, but the deadline to file proofs of claim has long since passed. This just represents another example of Mr. Perlman thumbing his nose at the Court. He simply doesn't care whether deadlines have passed or whether his company has an attorney – he simply continues filing *pro se* papers without a conscience.

LEGAL ARGUMENT

POINT I

ASSUMING THE SUBPOENAS WERE ACTUALLY SERVED, THE COURT SHOULD QUASH THEM BECAUSE NEITHER THE TESTIMONY NOR FINANCIAL RECORDS SOUGHT IS RELEVANT TO THE SCOPE OF THE HEARING ON THE PROPOSED SETTLEMENT BETWEEN THE DEBTOR AND CHAPTER 7 TRUSTEE

Under Fed. R. Civ. P. 26(b), which is made applicable to this Chapter 7 proceeding by Fed. R. Bankr. P. 7026, a court may compel discovery of any matter relevant to a party's claims, defenses or the subject matter involved in the action, provided that the Court finds good cause. In determining good cause, courts in this District interpret Federal Rule of Civil Procedure 26(b) liberally, tending to create a broad vista for discovery. Tele-Radio Sys. Ltd. v. De Forest Elecs., Inc., 92 F.R.D. 371, 375 (D.N.J. 1981) (citing Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L.Ed.2d 253 (1978)).

Evan Alan, as the party seeking the discovery, bears the burden of "showing that the information sought is relevant to the subject matter of the action and may lead to [the production of] admissible evidence." Caver v. City of Trenton, 192 F.R.D. 154, 159 (D.N.J. 1990); see also Nestle Foods Corp. v. Aetna Cas. & Sur. Co., 135 F.R.D. 101,

105 (D.N.J. 1990). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Indeed, discovery may encompass "any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." Kopacz v. Del. River & Bay Auth., 225 F.R.D. 494, 496 (D.N.J. 2004) (citing Caver, 192 F.R.D. at 159).

Fed. R. Civ. P. 45, made applicable by Fed. R. Bankr. P. 9016, governs the issuance, service, and enforcement of subpoenas as well as the procedures for objecting to them. See also In re Summit Global Logistics, No. 08-11566 (DHS), 2008 WL 1446722, at *3-5 (Bankr. D.NJ. Apr. 9, 2008) (quashing subpoena issued pursuant to Rule 2004, in part under Rule 45's "undue burden" standard). Under Rule 45, courts are required to quash or modify subpoenas that impose an undue burden or require the disclosure of privileged or otherwise protected information. See Fed. R. Civ. P. 45(c)(3)(A). This is particularly so where compliance with a subpoena would result in undue expense or inconvenience for a non-party, such as the Debtor's partner Ms. Galante. See, e.g., MGM Studios, Inc. v. Grokster, Ltd., 218 F.R.D. 423, 424 (D. DeL. 2003) (quashing subpoena where relevant evidence was otherwise available without forcing non-party to transport witnesses from outside court's jurisdiction); Concord Boat Corp. v. Brunswick Corp., 169 F.R.D. 44, 49-50 (S.D.N.Y. 1996) (quashing subpoena given expense and inconvenience to non-party).

Rule 45 bestows "broad enforcement powers upon the court to ensure compliance with subpoenas, while avoiding unfair prejudice to persons who are the subject of a subpoena's commands." Lefta Assocs. v. Hurley, No. 1:09-cv-2487, 2011 WL 1793265, *2 (M.D. Pa. May 11, 2011). The court issuing the subpoena may impose

appropriate sanctions, including attorney's fees, on parties or attorneys who fail to comply with the Rule's directives. See Fed. F. Civ. P. 45(c)(1).

Once a motion to quash a subpoena is filed, the subpoena's issuer must show good cause for the examination. See Summit Global Logistics, supra, 2008 WL 1446722, at *3.

> Importantly, on a motion to quash a subpoena that demands both the production of documents and a person's attendance at a deposition, as in this matter, a court may judge "the propriety of the production subpoena . . . independently" if it first "quashe[s] the deposition subpoena pursuant to Rule 45(a)(2)(C)." *W. Coast Life Ins. Co. v. Life Brokerage Partners, LLC*, No. 08-80897, 2010 U.S. Dist. LEXIS 3774, at *7 (D. Del. Jan. 19, 2010).

Bd. of Trs. of the Trucking Emples. of N. Jersey Welfare Fund, Inc. v. Caliber Auto Transfer, Inc., 2011 U.S. Dist. LEXIS 71268 at *5 (D.N.J. June 30, 2011).

Evan Alan's attempt to subpoena the Debtor and her business partner to appear and testify at the July 26, 2012 hearing, and to produce documents – including trade secrets of the Debtor's hair salon business that could otherwise be used to this creditor's advantage – is a desperate attempt to expand this hearing well beyond its intended scope. As previously mentioned, the Chapter 7 Trustee is the only witness whose testimony is relevant because his business judgment is the standard by which the Court will either approve or reject the proposed settlement. The Debtor has provided numerous sworn statements that support the Trustee's business judgment, including a business appraisal by Alan Atkins that values the assets at only $4,025.

Further, the central issues raised by Evan Alan in its several filed objections are purely legal issues, such as the validity of the attempted levy on the Debtor's stock, and challenging the priority of the Trustee's status as hypothetical lien creditor. Simply put, neither the Debtor's nor her partner's testimony will have any bearing whatsoever on

these legal issues. The same is true concerning the Debtor's claimed exemption in her stock interest. In fact, the Chapter 7 Trustee has not raised a single objection about any disclosures set forth in the Debtor's bankruptcy petition and schedules. Accordingly, it is not necessary for the Court to hear testimony from the Debtor or her business partner. Thus, the burdensome and irrelevant Subpoenas, intended by Evan Alan to harass the Debtor at her place of employment, should be quashed.

POINT II

THE COURT SHOULD ISSUE A PROTECTIVE ORDER PROSPECTIVELY BARRING THE TESTIMONY AND DISCOVERY SOUGHT BY EVAN ALAN

While the scope of discovery may be broad, it is not boundless. When the burden of a discovery request is likely to outweigh the benefits, Fed. R. Civ. P. 26(b)(2)(C) which is made applicable by Fed. R. Bankr. P. 7026 vests the Court with the authority to limit a party's pursuit of otherwise discoverable information. Yet another method that this Court may undertake in order to limit the scope of discovery is to issue a protective order pursuant to Fed. R. Civ. P. 26)(c). Upon a finding of good cause, this Court may issue a protective order for purposes of "protect[ing] a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1).

A protective order may include instructions "(A) forbidding the disclosure or discovery; (B) specifying terms, including time and place, for the disclosure; [and/or] . . . (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters." Id. To determine whether there is good cause, courts may consider, among other factors, "whether disclosure will violate any privacy interests." Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3rd Cir. 1995). Upon demonstration that good cause exists, this Court must undertake a balancing test

between the requesting party's need for the information against the injury that may result if uncontrolled disclosure is granted. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786-87 (3rd Cir. 1994).

Good cause exists for the Court should issue a protective order limiting the scope of the upcoming July 26, 2012 hearing on the settlement by barring this creditor Evan Alan from perpetuating the testimony of the Debtor and her business partner, and from obtaining discovery of confidential financial information/trade secrets of the Debtor's corporation. As previously mentioned, the Chapter 7 Trustee is the only witness whose testimony is relevant to the outcome of the hearing about the proposed settlement. The reason is simple: The Trustee's business judgment is the standard by which the Court will either approve or disprove the settlement. Neither the Debtor nor her business partner is competent to testify about the various factors that persuaded the Trustee to settle with the Debtor.

Further, the parties have extensively briefed all legal issues. All that remains is for the Trustee to testify and for the parties to be given the opportunity to supplement their respective positions at oral argument. The Debtor's business judgment is not on trial. The Court will either conclude that the settlement meets the standards of Fed. R. Bankr. P. 9019 or that it does not. Perpetuating testimony from additional witnesses will only serve to prolong the hearing well beyond its intended scope resulting in a waste of the Court's judicial resources and causing the Debtor and Trustee to expend unnecessary legal fees.

Also, asking the Debtor to produce confidential financial information, including the commission checks from her employees, goes well beyond the scope of the settlement hearing. In point of fact, this information is entirely irrelevant to the

evaluation of the Trustee's business judgment. The Debtor certifies that she does not possess the stock certificates of her business; rather, she believes her estranged husband possesses the share certificates. In any event, it is undisputed that the Debtor's corporation was formed with 1000 shares.

Evan Alan operates its own hair salon in Paramus, a neighboring town to Ridgewood. This makes Evan Alan a competitor of the Debtor's hair salon. If Evan Alan and its principal Perlman were to come into possession of confidential information about how the Debtor compensates her employees the Debtor fears that Perlman may try to solicit her employees by offering them higher commissions. Perlman has demonstrated a complete and utter disregard of the law by engaging himself as his company's lawyer even though he's not licensed to practice law and by submitting frivolous arguments at the 11th hour claiming to be a secured creditor. From the Debtor's point of view Perlman is on a campaign to destroy her; giving him access to the Debtor's business records will only enable him to accomplish his goal. Accordingly, a protective order barring this discovery altogether is necessary and appropriate.

POINT III

THE COURT SHOULD AWARD REASONABLE ATTORNEYS' FEES TO THE DEBTOR

When this creditor's actions are viewed under the totality of the circumstances the Court should exercise its inherent power to impose sanctions against Evan Alan and its principal David Perlman for engaging in bad faith litigation resulting in causing the Debtor to incur unnecessary and substantial legal fees at each and every step. If the Court grants the motion, Debtor's counsel will submit an Affidavit of Services. The totally of the circumstances include:

- Mr. Perlman's appearing without an attorney back on April 17, 2012 despite having previously appeared with an attorney eight (8) months earlier when he attended the creditors' meeting on August 5, 2011;
- Mr. Perlman's filing a *pro se* objection after the Court instructed him to obtain an attorney for his corporation;
- Mr. Perlman hiring a second lawyer (David Edelberg) to appear on the return date of the hearing on May 21, 2012 and instructing Mr. Edelberg to present a Sheriff's Affidavit of Service that he claimed elevated his company to secured creditor status with respect to the Debtor's stock in her corporation despite the fact that Mr. Perlman engaged in the unauthorized practice of law by delivering the underlying Writ of Execution to the Bergen County Sheriff while acting in a *pro se* capacity;
- Refusing pay Mr. Edelberg's law firm after Mr. Edelberg advised him that the Debtor was "not backing down", thus prompting Mr. Edelberg to withdraw from the case just a few days before the June 28, 2012 hearing date;
- Mr. Perlman submitting a *pro se* proof of claim for his company notwithstanding the Court's prior instructions that his company appear only through licensed counsel, and the claims bar date having expired – a point raised by the Debtor in one of her responding briefs;
- Mr. Perlman's hiring of a third lawyer just two (2) days before the July 13, 2012 hearing date; and
- Mr. Perlman's actins in harassing the Debtor at her place of business by sending a process server to intimidate the Debtor and her business partner,

and by attempting to expand the scope of the settlement hearing to suit his own agenda.

In the context of employing the Court's subpoena powers, attorney fees are generally awarded "only in the most egregious of situations involving persistent or repeat offenders who abuse the court's subpoena power." Lefta Assocs. v. Hurley, No. 1:09-cv-2487, 2011 WL 1793265, *4 (M.D. Pa. May 11, 2011). See also SAJ Distributors, Inc. v. Sandoz, Inc., No. 08-1866 (JAP), 2008 WL 2668953, at *3 (D.N.J. June 27, 2008) (explaining that attorney's fees are only awarded in egregious circumstances, "such as when a party has clearly breached Rule 45"). The court issuing the subpoena may impose appropriate sanctions, including attorney's fees, on parties or attorneys who fail to comply with the Rule's directives. See Fed. F. Civ. P. 45(c)(1).

Independent of any rule or Bankruptcy Code section, it is generally recognized that a "bankruptcy court has the inherent power to award sanctions for bad-faith conduct in a bankruptcy court proceeding." Citizens Bank & Trust Co. v. Case (In re Case), 937 F.2d 1014, 1023 (5th Cir.1991). Federal courts have an inherent power to sanction a party or an attorney who has " 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.' " Chambers v. NASCO, 501 U.S. 32, 111 S.Ct. 2123, 2133, 115 L.Ed.2d 27 (1991) (quoting Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 258-59, 95 S.Ct. 1612, 1622, 44 L.Ed.2d 141 (1975)); see Quiroga v. Hasbro, Inc., 934 F.2d 497, 504 (3rd Cir.1991), cert. denied, 502 U.S. 940, 112 S.Ct. 376, 116 L.Ed.2d 327 (1991) ("[I]t is well established that courts have the power to impose sanctions on both litigants and attorneys to regulate their docket, to promote judicial efficiency, and to deter abuse of judicial process"). This power supplements other

mechanisms that permit courts to impose sanctions and serves at least "to fill in the interstices" left between statutory sanctioning provisions and rules. See Chambers, 111 S.Ct. at 2134.

Based on the totality of the circumstances outlined above, the Debtor respectfully Mr. Perlman and his company are deserving of sanctions for engaging in bad faith litigation and unreasonably multiplying these proceedings. Not only has this creditor's actions punished the Debtor but same has also placed a heavy burden on this Court's time and resources. Mr. Perlman's persistent *pro se* applications, constant shuffling of lawyers and 11th hour filings has caused unnecessary delays and burdens on the Debtor. But for Mr. Perlman's injecting himself into this case on April 17, 2012 - the first time he had come to the surface since the August 5, 2011 creditors' meeting – the hearing on the proposed settlement with the Trustee would have concluded without fanfare and the Debtor could have proceeded to finalize her equitable distribution claims with her estranged husband in the matrimonial case. Instead, here we are four (4) months later with mounds of additional pleadings and briefs filed and thousands of dollars in legal fees incurred by the Debtor who, thanks to Mr. Perlman's self-serving crusade, finds herself in the position of being worse off than she was when she first agreed to the settlement with the Trustee back in March 2012. Accordingly, Mr. Perlman and his company deserve to be sanctioned.

CONCLUSION

For the foregoing reasons and authorities cited, the Court should quash the Subpoenas issued by creditor Evan Alan and its principal David Perlman seeking to compel the attendance of the Debtor and her business partner Sonia Galante to testify and produce documents at the upcoming July 26, 2012 hearing. In addition, the Court

should issue a protective order barring this discovery altogether. Lastly, the Court should impose sanctions against Evan Alan and Perlman for engaging in bad faith litigation and unreasonably multiplying these proceedings.

Respectfully submitted,

LOFARO & REISER, L.L.P.
Attorneys for Debtor

By: /s/Glenn R. Reiser
Glenn R. Reiser

Dated: July 16, 2012