

FILED

October 26, 2022

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

PAR 5 PROPERTY INVESTMENTS, LLC,

Debtor.

Case No. 21-22404-A-11

MF-2, UST-2

**MEMORANDUM**

Argued and submitted on October 3, 2022  
at Sacramento, California  
Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances: Iain A. Macdonald, Macdonald Fernandez LLP  
for Par 5 Property Investments, LLC; Loris  
L. Bakken for Tracy Hope Davis, United  
States Trustee for Region 17

Chapter 11 debtors may employ lawyers at the expense of the estate, provided they do not hold adverse interests. Debtor hired a law firm to file a Subchapter V, Chapter 11 bankruptcy; a security retainer was paid and was deposited into the firm's trust account. Post-petition and without court approval, the firm paid its own pre-petition fees from the trust account. That transaction is avoidable. Does the firm hold an interest adverse to the estate?

## **I. FACTS**

### **A. Par 5 Investments Files Bankruptcy**

Par 5 Property Investments, LLC ("Par 5 Investments") is a limited liability company. Its members are Joseph Francis Prach ("Prach") and by Jane Sluse. Statement of Financial Affairs Item No. 28, ECF No. 36. Par 5 Investments did business as Auburn Valley Golf and Event Center in Auburn, California. It offered paying guests the use of a 17-acre golf course, club house, pro-shop, and event center.

Par 5 Investments was under financial pressure. Its most vocal and largest creditor was Sutherland Grantor Trust, Series IV (the "Sutherland trust"). As is frequently the case, distrust between Par 5 Investments and Sutherland trust overshadowed Par 5 Investments financial problems.

Par 5 Investments sought the assistance of Macdonald Fernandez LLP and one of its partners, Iain Macdonald ("Macdonald"). Macdonald is a named partner in Macdonald Fernandez LLP, which "specializes in bankruptcy and related litigation." Macdonald has upwards of 50 years in practice experience and has represented debtors and creditors in "large and complex bankruptcy cases." First Interim Application for Compensation 3:1-4, 7:21-26, ECF No. 224. In late June 2021, Par 5 Investments retained Macdonald Fernandez LLP for the purposes of

1 filing a Subchapter V Chapter 11 bankruptcy and the parties signed a  
2 fee agreement. As pertinent here, that agreement provided:

3 1. IDENTIFICATION OF PARTIES. This Legal Services  
4 Agreement (this "Agreement") is made between MACDONALD  
5 FERNANDEZ LLP, a California limited liability partnership  
6 ("we," "us," the "firm" and similar terms) and PAR 5  
PROPERTY INVESTMENTS, LLC., a California Limited Liability  
Company (individually and collectively "you," the "Client"  
and similar terms...

7 2. LEGAL SERVICES TO BE PROVIDED. We will provide  
8 representation in a Subchapter V Chapter 11 bankruptcy to  
9 be filed in the United States Bankruptcy Court for the  
Eastern District of California...

10 ...

11 5. SECURITY RETAINER; LIEN. You have agreed to provide a  
12 retainer of \$35,000.00 as an advance payment for attorney's  
13 fee as well as costs and expenses, as well as the court's  
14 filing fee of \$1,738.00 for a total retainer of \$36,738.00.  
15 *You have agreed to wire \$10,000 to us today, June 25, 2021,*  
16 *and the balance in the amount of \$26,738.00 on Tuesday,*  
17 *June 29, 2021.* We expect to file the case by the close of  
18 business on that day. You hereby grant the firm a lien  
19 against all funds held as a retainer to secure the payment  
20 of attorney's fees, costs and expenses. The firm's fees,  
21 costs and expenses will be charged against this retainer.  
22 *The retainer, as well as any future deposit, will be held*  
23 *in a trust account.* You authorize us to use that fund to  
24 pay fees and other charges as they are incurred. You  
25 acknowledge that the initial retainer is not an estimate of  
26 total fees and charges, but rather an advance for security.  
27 If any funds remain on deposit at the conclusion of the  
28 matter, the deposit will be applied to any unpaid fees and  
charges, and you will be responsible for any amount due  
over and above the deposit or be entitled to a refund of  
any amount remaining.

...  
22

23 8. BILLING AND PAYMENT. *Unless a bankruptcy case is*  
24 *pending and active,* the following terms apply: Our bills  
are due upon receipt and are past due ten (10) calendar  
days after mailing...

25 WHEREFORE, by signing below, the parties agree to the  
26 foregoing terms and conditions.

27 Dated: June 25, 2021

PAR 5 PROPERTY INVESTMENTS, LLC  
A California Limited Liability  
Company

By: \_\_\_\_\_/s/\_\_\_\_\_  
Joseph Frank Prach, Managing  
Member

Dated: June 28, 2021                      MACDONALD FERNANDEZ LLP

By: \_\_\_\_\_/s/\_\_\_\_\_  
Iain Macdonald, Partner

PERSONAL GUARANTEE

JOSEPH FRANK PRACH (the "Guarantor") hereby guarantees the indebtedness of PAR 5 PROPERTY INVESTMENTS, LLC, referred to in this Legal Services Agreement, above. Guarantor agrees to be liable for said indebtedness and all amounts due under the Agreement, including but not limited to attorney's fees, costs, expenses and interest. Guarantor waives notice of demand and presentment prior to enforcing this Personal Guarantee.

Dated: June 25, 2021                      \_\_\_\_\_/s/\_\_\_\_\_  
Joseph Frank Prach

Legal Services Agreement, Exh. 1 to Macdonald Decl., ECF No. 275  
(emphasis original and added).

On June 28, 2021, Par 5 Investments paid the firm \$10,000 and Prach paid the firm \$27,538. Ex. To Macdonald Decl., Trust Account Ledger p. 3, ECF No. 313. Those funds were deposited into Macdonald Fernandez LLP's trust account.

On June 29, 2021, Par 5 Investments filed a Subchapter V, Chapter 11 bankruptcy. Vol. Pet., ECF No. 1. It did so by skeletal petition. On the date of the petition, Macdonald Fernandez LLP held \$37,538.00 in its trust account.

On the same day, Macdonald Fernandez LLP sent Par 5 Investments an invoice for services rendered during the four days prior to filing its Chapter 11 petition. Ex. 3 pp. 11-13 to Reply by Macdonald Fernandez LLP, ECF No. 267. The amount of that invoice was \$7,866.50. No costs (including the filing fee) were included.

1 Walter Dahl was appointed, and remains, the Subchapter V trustee.  
2 Notice, ECF No. 7.

3 On July 9, 2021, without seeking court approval, Macdonald  
4 Fernandez LLP paid itself \$7,866.50 from the trust account in full  
5 satisfaction of the June 21, 2021, invoice. Ex. to Macdonald Decl.,  
6 Trust Account Ledger p. 3, ECF No. 313. After the payment, Macdonald  
7 Fernandez LLP held \$29,671.50 in trust for Par 5 Investments.

8 **B. Macdonald Fernandez Seeks Employment**

9 On July 14, 2021, Macdonald Fernandez LLP sought approval to be  
10 employed as counsel for the debtor. Appl. to Employ, ECF No. 24.

11 That application stated:

12 Other than as described herein, neither I, nor Macdonald  
13 Fernandez LLP, nor any member or employee of the Firm, has  
14 any connection with the Debtor in Possession; its known  
15 employees, creditors, attorneys or accountants; the United  
16 States Trustee, or any person employed with the Office of  
the United States Trustee; nor holds an interest adverse to  
the estate, and is a "disinterested person" within the  
meaning of Bankruptcy Code Section 101(14) and as required  
by Bankruptcy Code Section 327(a).

17 *Id.* at 2:16.

18 The application was supported by Macdonald's declaration. In  
19 support of the application, Macdonald stated, "The Firm does not have  
20 a prepetition claim against the estate." Macdonald decl. 1:25, ECF  
21 No. 25. Macdonald represented: "The firm received the sum of \$35,000<sup>1</sup>  
22 from the Debtor's principal, Joseph Francis Prach, as an advance  
23 against fees incurred by the firm, and the firm, upon applying to the  
24

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25 <sup>1</sup> Both the source of payment and the amount are incorrect. As to the source  
26 of payment, the most reliable evidence is MacDonald Fernandez LLP's Client  
27 Ledger. Ex. A, Trust Account Ledger p. 3 to Macdonald Decl., ECF No. 313.  
28 That shows \$10,000 paid by the debtor and \$27,538.00 paid by Prach. The  
amount is also incorrect. The amount paid was \$37,538.00, not \$35,000. The  
difference appears to be \$1,738 collected for the filing fee and \$800  
collected for a LawPay fee.

1 court for compensation, will request authority to reimburse the  
2 principal from amounts received from the Debtor's estate." *Id.* at  
3 2:3-5. Neither the application, nor the declaration, mention a  
4 personal guarantee of Macdonald Fernandez LLP's fees and/or costs.  
5 Moreover, Macdonald's fee agreement was not filed with the court.  
6 Neither the application, nor the declaration in support, mention that  
7 post-petition and immediately prior to filing the application for  
8 employment Macdonald Fernandez LLP paid itself \$7,866.50. Ex. to  
9 Macdonald Decl., Trust Account Ledger p. 3, ECF No. 313.

10 On July 22, 2021, the court approved Macdonald Fernandez LLP's  
11 employment. In the pertinent part, the order stated:

12 2. No compensation is permitted except upon court order  
13 following application pursuant to Bankruptcy Code Section  
14 330(a).

15 ...

16 4. *All funds received in connection with this matter for*  
17 *post-petition services, regardless or whether denominated*  
*as a retainer or as a non-refundable flat fee, are deemed*  
*to be an advance payment of fees and to be property of the*  
*estate.*

18 5. *Funds that are deemed to constitute an advance payment*  
19 *of fees shall be maintained in a trust account with an*  
20 *authorized depository, which account may be either a*  
21 *separate interest[-]bearing account or a trust account*  
22 *containing commingled funds. Withdrawals are permitted only*  
*after approval of an application for compensation and after*  
*the Court issues an order authorizing disbursement of a*  
*specific amount.*

23 Order, ECF No. 32 (emphasis added).

24 **C. Par 5 Investments Stipulates to Its Removal from Possession**

25 On July 16, 2021, between the date Macdonald Fernandez LLP filed  
26 its application to be employed and the date the court approved that  
27 employment, Macdonald made a strategic move to increase trust, and  
28 reduce hostilities, between the debtor and Sutherland trust; he

1 engineered an emergency stipulation to remove debtor from possession  
2 of the estate and allow trustee Dahl to assume the expanded trustee  
3 duties described in Subchapter V of Chapter 11. Stip., ECF No. 29 (11  
4 U.S.C. § 1183(b)(5) describing the expanded powers of the trustee).  
5 That stipulation was approved first on an emergency and, later, on a  
6 final basis. Orders, ECF Nos. 30, 58.

7       On July 27, 2021, with Macdonald Fernandez LLP's assistance, Par  
8 5 Investments filed the remainder of the schedules and statements  
9 required. Those schedules revealed that Prach was a co-debtor for no  
10 fewer than 24 of Par 5 Investment's scheduled debts. Schedule H, ECF  
11 No. 36. Consistent with the employment application, those filings show  
12 that Macdonald Fernandez LLP received \$35,000. Statement of Financial  
13 Affairs, Item No. 11, ECF No. 36; Disclosure of Compensation, ECF No.  
14 36. But the representations are inconsistent as to the source of  
15 those payments. Compare Statement of Financial Affairs, Item No. 11,  
16 ECF No. 36 (\$35,000 paid by Prach) with Disclosure of Compensation,  
17 ECF No. 36 (\$35,000 paid by the debtor).

18       On August 9, 2021, Macdonald Fernandez LLP generated another  
19 invoice for services rendered and costs incurred, this time in the  
20 amount of \$30,156.50 (including the \$1,738.00 filing fees). Ex.3 pp.  
21 14-23 to Reply by Macdonald Fernandez LLP, ECF No. 267. On the same  
22 day and without court approval, Macdonald Fernandez LLP paid itself  
23 \$29,671.50 from the trust account for services rendered. After  
24 deducting that amount, Macdonald Fernandez LLP held no funds in trust  
25 for Par 5 Investments and Par 5 Investments owed the firm an  
26 additional \$485.00. Ex. A, Trust Account Ledger p. 3 to Macdonald  
27 Decl., ECF No. 313.

28       On September 9, 2021, Macdonald Fernandez LLP generated another

1 invoice for services rendered and costs incurred, this time in the  
2 amount of \$7,423.00. Ex. 3 pp. 134-23 to Reply by Macdonald Fernandez  
3 LLP, ECF No. 267. The firm requested no costs.<sup>2</sup>

4 On September 16, 2021, Prach, personally, paid Macdonald  
5 Fernandez LLP \$7,423.00. Reply by Macdonald Fernandez LLP 2:23, 4:5-  
6 10, ECF No. 267. Those funds were not deposited into Macdonald  
7 Fernandez's trust account but were applied directly to the firm's  
8 outstanding invoice. See Ex. A, Trust Account Ledger p. 3, to  
9 Macdonald Decl., ECF No. 313 (no activity after August 10, 2021).

10 On September 24, 2021, Macdonald Fernandez LLP, filed its first  
11 supplemental disclosure indicating that Prach, personally, paid it an  
12 additional \$7,423.00 for fees and costs. Disclosure of Compensation,  
13 ECF No. 105.

14 Between November 2021, and January 2022, Macdonald Fernandez  
15 generated three more invoices, aggregating \$11,711.30. Ex. 3 pp. 28-  
16 35 to Reply by Macdonald Fernandez LLP, ECF No. 267.

17 On January 11, 2022, Prach paid Macdonald Fernandez LLP  
18 \$12,196.30.<sup>3</sup> Second Supplemental Disclosure of Compensation, ECF No.  
19 171. That amount was not deposited into Macdonald Fernandez's trust  
20 account but applied directly to outstanding invoices.

21 On January 14, 2022, Par 5 Investments, acting through Macdonald  
22 Fernandez LLP, filed its Second Supplemental Disclosure of  
23 Compensation indicating that Prach, personally, paid it an additional  
24 \$12,196.30 for fees and costs. Disclosure of Compensation, ECF No.  
25 171.

26 Between February and June 2022, Macdonald Fernandez LLP generated  
27

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28 <sup>2</sup> The \$485 unpaid from the August 2021, invoice carried forward unpaid.

<sup>3</sup> That amount included the \$485 carried forward from the August 2021, invoice.



1 five invoices to Par 5 Investments, aggregating \$43,437.49. Ex. 3 pp.  
2 37-54 to Reply by Macdonald Fernandez LLP, ECF No. 267. That amount  
3 remains unpaid.

4 **D. MacDonald Fernandez LLP Applies for Fees and Costs**

5 In April 2022, Macdonald Fernandez LLP filed its First Interim  
6 Application for Compensation and Reimbursement of Expenses. First  
7 Interim Appl. Comp., ECF No. 224. The application sought \$40,202.50  
8 in fees and \$1,738.00 in costs for an aggregate of \$41,940.50. *Id.* at  
9 2:11-17. The firm sought compensation for 94.4 hours by three  
10 different billers. *Id.* at 6:20. Timekeepers who worked on the case  
11 were: (1) Iain A. Macdonald, partner: \$690/hour; (2) Daniel Vaknin,  
12 associate: \$335/hour; and (3) Brenda Johnson, paralegal: \$175/hour.  
13 *Id.* at 5:5-8. The application did not specify the period for which  
14 fees were sought, Application, ECF No. 224, but time records submitted  
15 in support of the application show time expended from June 29, 2021  
16 (the day the petition was filed) through August 4, 2021 (the date the  
17 court gave final approval for removal of the debtor from possession).  
18 Order, ECF No. 58.<sup>4</sup> The application stated:

19 Prior Compensation. There have been no prior requests or  
20 awards for compensation or reimbursement of expenses. The  
21 Firm [Macdonald Fernandez LLP] held unapplied fees of  
\$29,648.50, much of which was from the Debtor's principals  
or other entities on the petition date." *Id.* at 2:8-10.<sup>5</sup>

22 Neither the application, nor supporting documentation, mentioned: (1)  
23

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24 <sup>4</sup> Apparently, counsel for the debtor believes that it may not collected fees  
25 after the debtor is removed from possession in a Subchapter V Chapter 11  
26 case. Mem. P.& A. 3:15-19, ECF No. 311. Debtor's counsel citing *Lamie v.*  
27 *U.S. Trustee (In re Lamie)*, 540 U.S. 526 (2004) (Chapter 7 case). Some  
28 courts have so ruled. *In re NIR W. Coast, Inc.*, 638 B.R. 441 (Bankr. E.D.  
Cal. 2022). This court need not reach that question.

<sup>5</sup> The court is unclear as to the meaning of "unapplied fees of \$29,648.50. It  
does not match the fee request, \$41,940.50, less the two payments: \$7,866.50  
and \$29,671.50. That amount would be \$4,402.50.

1 the balance of Macdonald Fernandez LLP's trust account; (2) the firm's  
2 post-petition payment of pre-petition fees \$7,866.50 from trust  
3 account funds; or (3) the firm's payment of August 9, 2021, invoice  
4 (covering June 30, 2021, to July 30, 2021) in the amount of \$29,671.50  
5 from trust account funds. Neither the application, nor supporting  
6 documents, disclose Prach's personal guarantee of Macdonald Fernandez  
7 LLP's fees; additionally, those documents do not disclose the amount  
8 Macdonald Fernandez LLP is holding in trust.

9 In response, trustee Dahl raised concerns about the impact of  
10 Macdonald Fernandez LLP's fees on performance of the plan, as well as  
11 the amount of the fees and the period of time for which compensation  
12 was sought. Resp., ECF No. 235. At the hearing on the motion,  
13 trustee Dahl augmented his concerns about Macdonald Fernandez LLP's  
14 fees, informing the court that: (1) Prach had personally guaranteed  
15 fees due Macdonald Fernandez LLP in arising from the Par 5  
16 Investment's bankruptcy and that the personal guarantee had not been  
17 appropriately disclosed in the employment application; (2) that Prach  
18 paid Macdonald Fernandez LLP for Par 5 Investment's post-petition  
19 services without court approval; and (3) accounting discrepancies  
20 existed in the Macdonald Fernandez LLP's representations. Tr. Hr'g.  
21 on Appl. Compensation at 6:17-7:9, 8:2-9:3, 10:2-12:8, 22:23-23:6, May  
22 23, 2022, ECF No. 330. The colloquy between the court and trustee  
23 Dahl proceeded as follows:

24 THE COURT: Thank you. Was that the additional problem, Mr.  
25 Dahl?

26 MR. DAHL: Yes, Your Honor. and I -

27 THE COURT: Has this-

28 MR. DAHL: --there's a - there's this -there's a relatively  
minor-minor -minor other issue-

1 THE COURT: Oh.

2 MR. DAHL: -- which is, well, actually it may not be minor.  
3 But it's hard to understand how much money the Macdonald  
4 Fernandez firm has or had upon the filing. The Rule 2016  
5 statement that came with the schedules, it's the last page  
6 of the schedules, docket 36, indicates the firm was paid  
7 \$35,000. The application to employee [sic] the firm  
8 indicates that the firm had on deposit \$26,843, and that's  
9 docket 25. The statement of financial affairs docket, item  
10 number 36 at question 11, discloses that the firm got a  
11 payment of \$10,000, which followed by a payment of \$25,000  
12 for a total of [\$]35[,000], which matches the Rule 2016(b)  
13 statement.

14 The - this application, the first [sic] application states  
15 that the firm has or had, \$29,648.50 and --

16 ...

17 MR. DAHL: Oh, and finally, the firm's most recent statement  
18 issued to Frank Prock [sic], which I have a copy of, is  
19 dated May 22, 2022, and it shows a trust balance of zero  
20 dollars.

21 *Id.* at 10:2-11:3.

22 Based on the concerns raised by the Subchapter V trustee the court  
23 denied the Application for Compensation without prejudice. Order, ECF  
24 No. 252.

25 **E. Macdonald Fernandez LLP Withdraws the Denied Fee**  
26 **Application**

27 Almost two weeks after the court denied the application for  
28 compensation, Macdonald Fernandez LLP filed a "Notice of Withdrawal of  
29 First Interim Application for Approval of Compensation." Notice, ECF  
30 No. 255.

31 In response, trustee Dahl outlined areas of concern arising  
32 related to Macdonald Fernandez LLP's receipt and handling of retainers  
33 in this case: (1) the amount of the pre-petition retainer; (2) source  
34 of the pre-petition retainer; (3) post-petition invoices; (4) post-  
35 petition payments; (5) supplement Rule 2016(b) statements; and (6)  
36 trust accountant balance as of May 9, 2022. Reply, ECF No. 261.

1 Macdonald Fernandez LLP filed a reply to trustee Dahl's concerns.  
2 Reply, ECF No. 267. The reply answered some of Dahl's questions and,  
3 in other areas, admitted accounting errors. Resp., ECF No. 267. It  
4 stated that payments to Macdonald Fernandez LLP by, or on behalf of,  
5 Par 5 Investments aggregated \$57,157.30, pre-petition and post-  
6 petition. Of that amount \$37,538.00 (\$10,000 by Par 5 Investments and  
7 \$27,538 by Frank Prach) was paid pre-petition. *Id.* at 2:21-24. The  
8 remainder, \$19,619.30, was paid post-petition by Prach. *Id.*  
9 Macdonald Fernandez LLP explained that it sent Par 5 Investments  
10 and/or Prach 1 pre-petition invoice and 10 post-petition invoices.  
11 *Id.* at 3:21-25. Most telling was Macdonald Fernandez LLP's response  
12 to a zero trust account balance. Dahl's Reply raised the following  
13 concern: "Trust Account. According to the invoice dated 9-May-2022,  
14 no monies are currently held in a trust account which apparently  
15 conflicts with the Order authorizing employment [Docket # 32]." Reply  
16 2:16-17, ECF No. 261. Macdonald Fernandez LLP responded: "This is  
17 correct. The invoices do not show monies held in a trust account  
18 because no funds received for post-petition services were property of  
19 the estate, having been paid by Mr. Prach." *Id.* at 4:13-19.

20 **F. Chapter 11 Plan**

21 Prior to plan confirmation, trustee Dahl sold most of the  
22 debtor's real and personal property, e.g., 17-acre golf course,  
23 resolving most of the claims of secured creditors.

24 Consistent with the mandates of Subchapter V of Chapter 11, Par 5  
25 Investments--acting through Macdonald Fernandez LLP--proposed, and  
26 this court confirmed, a plan of reorganization. Plan, ECF Nos. 233,  
27  
28

302.<sup>6</sup> As of the date of confirmation, trustee Dahl held approximately \$306,000 and hoped to recover additional funds by sale of a Type 57 liquor license and avoidance of preferential transfers. The plan provided: (1) assets of the estate would remain under the supervision and control of trustee Dahl, and not revest in the debtor, Plan § 7.01, ECF No. 233; (2) Dahl would continue to liquidate Par 5 Investment's assets, *id.*; and (3) that it would pay administrative claimants and, to the extent of available funds, priority creditors. *Id.* at 2.01-4.01.

**G. PROCEDURE**

Troubled by the information received at the hearing on Macdonald Fernandez' first interim fee application, this court issued two orders to show cause to Macdonald Fernandez LLP for revocation of the employment order. The first Order to Show Cause for failure to disclose Frank Prach's personal guarantee of Par 5 Investment's legal fees arising from its bankruptcy. Order to Show Cause, ECF No. 271. The second Order to Show Cause for failure to obtain leave of court prior to withdrawing funds from Macdonald Fernandez LLP's trust account.

Thereafter, the U.S. Trustee filed a motion to "review and return" attorney's fees paid by the debtor and by Prach. Mot. to Review and Return Attorney's Fees, ECF No. 327. The United States Trustee cited three bases for its motion: (1) failure to disclose Prach's personal guarantee; (2) Macdonald Fernandez LLP's application of trust funds to outstanding invoices without leave of court; and (3) violation of ethical standards.

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<sup>6</sup> In Subchapter V of Chapter 11, only the debtor may propose a plan. 11 U.S.C. § 1189(a).

1   **II.   JURISDICTION**

2           This court has jurisdiction, 28 U.S.C. §§ 1334, 157(a), (b)(1);  
3   General Order No. 182 of the U.S. District Court for the Eastern  
4   District of California; this is a core proceeding in which this court  
5   may enter final orders and judgment, 28 U.S.C. § 157(b)(2)(A)-(B); *In*  
6   *re Castellucci*, 2007 WL 7540955 \* 5 (9th Cir. BAP July 26, 2007); *In*  
7   *re Miller*, 620 B.R. 637, 640 (Bankr. E.D. Cal. 2020) (employment and  
8   compensation of professionals).

9   **III.   LAW**

10          **A.    Employment**

11          Professionals employed to assist the debtor in possession and/or  
12   trustee are regulated by the bankruptcy code and rules.

13          Section 327 of the code describes who is eligible to be employed  
14   to assist the debtor and/or trustee in bankruptcy.

15          Except as otherwise provided in this section, the trustee,  
16   with the court's approval, may employ one or more  
17   attorneys, accountants, appraisers, auctioneers, or other  
18   professional persons, that do not hold or represent an  
19   interest adverse to the estate, and that are disinterested  
20   persons, to represent or assist the trustee in carrying out  
21   the trustee's duties under this title.  
22   11 U.S.C. § 327(a).

23          "[D]isinterested" is a defined term.

24          The term "disinterested person" means a person that--

25          (A) is not a creditor, an equity security holder, or an  
26   insider;

27          (B) is not and was not, within 2 years before the date of  
28   the filing of the petition, a director, officer, or  
  employee of the debtor; and

        (C) does not have an interest materially adverse to the  
interest of the estate or of any class of creditors or  
equity security holders, by reason of any direct or  
indirect relationship to, connection with, or interest in,  
the debtor, or for any other reason.

1 11 U.S.C. § 101(14).

2 Adverse interest is not a defined term but has a well-accepted  
3 meaning.

4 A generally accepted definition of "adverse interest" is  
5 the (1) possession or assertion of an economic interest  
6 that would tend to lessen the value of the bankruptcy  
7 estate; or (2) possession or assertion of an economic  
8 interest that would create either an actual or potential  
9 dispute in which the estate is a rival claimant; or (3)  
10 possession of a predisposition under circumstances that  
11 create a bias against the estate.

12 *In re Sundance Self Storage-El Dorado LP*, 482 B.R. 613, 625-26 (Bankr.  
13 E.D. Cal. 2012), citing *Dye v. Brown (In re AFI Holding, Inc.) (AFI*  
14 *Holding I)*, 355 B.R. 139, 148-49 (9th Cir. BAP 2006).

15 Section 327 is implemented by Rule 2014, which governs  
16 applications for employment; in the pertinent part, that rule  
17 provides:

18 *The application shall state the specific facts showing the*  
19 *necessity for the employment, the name of the person to be*  
20 *employed, the reasons for the selection, the professional*  
21 *services to be rendered, any proposed arrangement for*  
22 *compensation, and, to the best of the applicant's*  
23 *knowledge, all of the person's connections with the debtor,*  
24 *creditors, any other party in interest, their respective*  
25 *attorneys and accountants, the United States trustee, or*  
26 *any person employed in the office of the United States*  
27 *trustee. The application shall be accompanied by a verified*  
28 *statement of the person to be employed setting forth the*  
*person's connections with the debtor, creditors, any other*  
*party in interest, their respective attorneys and*  
*accountants, the United States trustee, or any person*  
*employed in the office of the United States trustee.*

29 Fed. R. Bankr. P. 2014(a) (emphasis added).

30 As one court thoughtfully articulated the standards in Rule  
31 2014(a):

32 The disclosure requirements of Bankruptcy Rule 2014(a) are  
33 strictly applied with the burden on the applicant to come  
34 forward and make full, candid, and complete disclosure of  
35 all connections with the debtor, debtor in possession,  
36 insiders, creditors, and parties in interest regardless of  
37 how old or trivial the connections may be. (citations

omitted). 'It is the bankruptcy court that determines whether a professional's connections render him or her unemployable under § 327(a)— not the other way around.'

*In re NIR W. Coast, Inc.*, 638 B.R. 441, 449 (Bankr. E.D. Cal. 2022).

"[T]he need for professional self-scrutiny and avoidance of conflicts of interest does not end upon appointment." *Rome v. Braunstein*, 19 F.3d 54, 57-58 (1st Cir. 1994); *In re Sundance Self Storage-El Dorado LP*, 482 B.R. 613, 625, fn. 32 (Bankr. E.D. Cal. 2012).

#### **B. Compensation**

Like employment, compensation of estate professionals is also regulated by the bankruptcy code.

*After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103--*

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1) (emphasis added).

Section 330 is implemented by Rule 2016, which governs applications for compensation; in the pertinent part that rule provides:

*An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised...*

Fed. R. Bankr. P. 2016(a) (emphasis added).

Court approval is mandatory for professionals seeking



1 compensation from the estate. 11 U.S.C. § 330(a); Fed. R. Bankr. P.  
2 2016(a); *In re Knudsen Corp.*, 84 B.R. 668, 672 (B.A.P. 9th Cir. 1988)  
3 (“professionals must file applications for compensation which are  
4 subject to a noticed hearing prior to allowance or payment of fees”).

### 5 **C. Remedies for Noncompliance**

6 This court has discretion to determine an appropriate remedy as  
7 it considers: (1) counsel’s failure to disclose connections with the  
8 debtor, creditors, and/or parties in interest under Rule 2014(a); (2)  
9 counsel’s failure to seek an order approving employment in a timely  
10 fashion; (3) counsel’s inaccurate representations with respect to the  
11 application for employment; and (4) counsel’s failure to seek leave of  
12 court before applying funds held in trust. *Compare* *In re Park-Helena*  
13 *Corp.*, 63 F.3d 877, 880-882 (9th Cir. 1995) (failure to disclose all  
14 connections is, itself, a basis to deny all compensation) *with In re*  
15 *Film Ventures Intern, Inc.*, 75 B.R. 250, 253 (9th Cir. BAP 1987)  
16 (bankruptcy court may excuse original failure to disclose  
17 connections); *see also, In re Atkins*, 69 F.3d 970, 975-976 (9th Cir.  
18 1995) (exceptional circumstances justifying retroactive employment);  
19 *In re Lewis*, 113 F.3d 1040 (9th Cir. 1997) (failure to seek timely  
20 employment and failure to seek approval of fees).

21 The court’s authority to award or deny compensation is inherent  
22 to the court’s role in employing and compensating professionals  
23 employed by the estate. *In re Lewis*, 113 F.3d 1040 (9th Cir. 1997);  
24 *In re Park-Helena Corp.*, 63 F.3d 877, 882 (9th Cir. 1995) (court had  
25 discretion to deny all fees where the attorney failed to disclose a  
26 \$150,000 pre-petition retainer from the debtor’s principal  
27 shareholder).

28 Among the remedies, the court may employ is disgorgement of any

monies paid to an attorney in connection with representation of the debtor. *In re Lewis*, 113 F.3d 1040 (9th Cir. 1997). The court need not review fees for reasonableness, 11 U.S.C. § 329. That authority exists without regard to the source of the payment. *Id.*; *In re Walters*, 868 F.2d 665, 668 (4th Cir. 1989) (“[A]ny payment made to an attorney for representing a debtor in connection with a bankruptcy proceeding is reviewable by the bankruptcy court notwithstanding the source of payment”); *In re Land*, 943 F.2d 1265, 1267 (10th Cir. 1991); *In re 38-36 Greenville Ave LLC*, No. 21-2164, 2022 WL 1153123, at \* 4 (3d Cir. Apr. 19, 2022), cert. denied sub nom. *Kevin Kervang Tung, P.C. v. Forman*, No. 21-1605, 2022 WL 4652203 (U.S. Oct. 3, 2022).

#### **IV. DISCUSSION**

##### **A. Violations of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure**

###### **1. Failure to make full and accurate disclosures**

At least three flavors of disclosure errors exist. At the outset, the application fails to mention the third-party guarantee by Frank Prach. Rule 2014 specifically requires that the application describe “any proposed arrangement for compensation.” Third-party guarantees are not necessarily disqualifying interests under § 327 but must be disclosed. *In re Sundance Self Storage-El Dorado LP*, 482 B.R. 613, 632 (Bankr. E.D. Cal. 2012) (“Thus, apparently [debtor’s counsel] was relying solely on [the guarantor], and not on the debtor, for any compensation over and above the amount of his retainer”). Since the fee agreement was not appended to the application, the court was deprived of the opportunity of confirming Macdonald Fernandez’s representations.

Additionally, the declaration offered in support of the

1 application states that "[Macdonald Fernandez] does not have a pre-  
2 petition claim against the estate." Macdonald decl. 1:25-28, ECF No.  
3 25. This is not true; the firm was owed \$7,886.50 on the petition  
4 date. Ex. 3 pp. 11-13 to Reply by Macdonald Fernandez LLP, ECF No.  
5 267. Historically, a debt owed by the bankrupt debtor to proposed  
6 counsel is a disqualifying interest. *In re Sundance Self Storage-El*  
7 *Dorado LP*, 482 B.R. 613, 631 (Bankr. E.D. Cal. 2012). The Small  
8 Business Reorganization Act ("SBRA") carved out a small exception to  
9 this rule. "Notwithstanding section 327(a) of this title, a person is  
10 not disqualified for employment under section 327 of this title, by a  
11 debtor solely because that person holds a claim of less than \$10,000  
12 that arose prior to commencement of the case." 11 U.S.C. § 1195. But  
13 the SBRA did not alter Rule 2014(a)'s duty of disclosure as to "all of  
14 the person's connections with the debtor." Moreover, even if  
15 disclosed, the existence of a prepetition debt between the bankrupt  
16 debtor and proposed counsel aggregated with other connections may be a  
17 disqualifying interest. 11 U.S.C. § 1195 (an applicant is not  
18 disqualified "solely" by virtue of a prepetition debt).

19 Finally, the source and amount of the retainer on the date of the  
20 petition was inaccurate. As to the source of payment, the application  
21 represents that \$35,000 was paid by Frank Prach. Macdonald decl. 2:3-  
22 5, ECF No. 25. In reality, \$10,000.00 of the retainer was paid by the  
23 debtor and \$27,538.00 by Prach. Ex. A, Trust Account Ledger p. 3 to  
24 Macddonald Decl., ECF No. 313. The amount of the retainer was also  
25 inaccurate. Macdonald Fernandez represented that it held \$26,843.00  
26 at filing. Macdonald decl. 1:25-27, ECF No. 25. Actually, the firm  
27 held \$37,538.00 on the date of the petition. Ex. A, Trust Account  
28

Ledger p. 3 to Macdonald Decl., ECF No. 313.<sup>7</sup>

## 2. Adverse interest

Macdonald Fernandez held an interest adverse to the estate by virtue of its post-petition payment of Par 5 Investments prepetition debt (\$7,866.50) to it. Because the law firm had not drawn down the retainer prior to the filing of the Par 5 Investment bankruptcy petition, the entire \$37,538.00 was property of the estate.<sup>8</sup> *In re Woodcraft Studios, Inc.*, 464 B.R. 1, 14 (N.D. Cal. 2011); *Barron v. Countryman*, 432 F.3d 590, 595-596 (5th Cir. 2005). Section 549 provides:

(a) Except as provided in subsection (b) or (c) of this section, *the trustee may avoid a transfer of property of the estate--*

(1) *that occurs after the commencement of the case; and*

(2) (A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) *that is not authorized under this title or by the court.*

11 U.S.C. § 549(a) (emphasis added).

Moreover, since § 1195 excepted Macdonald Fernandez LLP's pre-petition debt as a disqualifying interest, 11 U.S.C. § 327, the firm could merely have sought leave of court to withdraw funds from its

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<sup>7</sup> There are two layers of errors here. First, the applicant appears to represent that the pre-petition amounts due the firm had been deducted from its trust account prior to filing the petition. That is not true. The pre-petition fees (\$7,866.50) were paid from the applicant's trust account on July 9, 2021, the filing fees (\$1,738.00) were deducted from the applicant's trust account on August 10, 2021. It is unclear when the LawPay fee (\$800.00) was paid. Second, even if those amounts had been deducted from the trust account before the petition was filed, the applicant's math is incorrect; the amount in trust would have been \$27,133.50 (\$37,538.00 less pre-petition fees \$7,866.00 less filing fees \$1,738.00 less LawPay fee \$800). Reply by Macdonald Fernandez LLP 2:7-10, 267.

<sup>8</sup> Macdonald Fernandez could have sought court authority for payment of the prepetition fees under 11 U.S.C. § 330. *In re Busetta-Silvia*, 314 B.R. 218 (10th Cir. BAP 2004).

1 trust account. 11 U.S.C. § 330; *In re Busetta-Silvia*, 314 B.R. 218  
2 (10th Cir. BAP 2004) (Chapter 13). Had it done so, the firm would  
3 have avoided the jaws of 11 U.S.C. § 549. But it did not do so and,  
4 as a result, created an adverse interest in the form of a plausible,  
5 unresolved avoidance action.

6 Unresolved avoidance actions preclude employment of the involved  
7 professional. *In re Dexter Distrib. Corp.*, No. BAP AZ-09-1386MKKIJU,  
8 2010 WL 6466583, at \* 7 (B.A.P. 9th Cir. Oct. 21, 2010) (preference  
9 action); *In re Triple Star Welding, Inc.*, 324 B.R. 778, 783 (B.A.P.  
10 9th Cir. 2005), abrogated by *In re AFI Holding, Inc.*, 530 F.3d 832  
11 (9th Cir. 2008).

12 Here, between the date of the petition and the application for  
13 employment Macdonald Fernandez deducted prepetition fees from its  
14 trust account. It did so without authorization; that payment was not  
15 disclosed and would be avoidable.

16 Any argument that advanced court approval was unnecessary for  
17 trust monies paid by a third-party, i.e., Frank Prach, is foreclosed.  
18 Not less than \$10,000 was paid to Macdonald Fernandez by Par 5  
19 Investments. Moreover, longstanding circuit law applies the approval  
20 of court requirement of § 330 trust funds paid by a third-party on  
21 behalf of the debtor. *In re Lewis*, 113 F.3d 1040 (9th Cir. 1997).

### 22 **3. Payment without court approval**

23 On four occasions post-petition Macdonald Fernandez affirmatively  
24 paid itself from the trust account or received funds from Prach  
25 without court approval. A professional must obtain court approval  
26 prior to accepting payment. 11 U.S.C. § 330 (after notice "the court  
27 may award" compensation and expenses); *In re Woodcraft Studios, Inc.*,  
28 464 B.R. 1, 12 (N.D. Cal. 2011); *In re Knudsen Corp.*, 84 B.R. 668, 672

1 (B.A.P. 9th Cir. 1988). Circuit law authorizes the court to deny  
2 compensation for violation of the employment or compensation statutes.

3 The Bankruptcy Code contains a number of provisions (e.g.,  
4 §§ 327, 329, 330, 331) designed to protect the debtor from  
5 the debtor's attorney. See, e.g., *In re Walters*, 868 F.2d  
6 665, 668 (4th Cir.1989) (noting that § 329 and Rule 2017  
7 are designed to protect the creditors and the debtor  
8 against overreaching by attorney). *As a result, several  
9 courts have recognized that the bankruptcy court has broad  
10 and inherent authority to deny any and all compensation  
11 when an attorney fails to meet the requirements of these  
12 provisions...*

13 *We agree with these courts, and so we have little  
14 difficulty in rejecting [debtor's counsel's] argument that  
15 the bankruptcy court's disgorgement order must be reversed  
16 because the court made no findings of excessiveness under §  
17 329.*

18 *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997) (emphasis  
19 added).

20 Moreover, insofar as Macdonald Fernandez removed the \$37,538.00  
21 from its own trust account, the firm violated Rule of Professional  
22 Conduct 1.15. In the pertinent part, that rule provides:

23 (a) All funds received or held by a lawyer or law firm for  
24 the benefit of a client, or other person to whom the lawyer  
25 owes a contractual, statutory, or other legal duty,  
26 including advances for fees, costs and expenses, shall be  
27 deposited in one or more identifiable bank accounts labeled  
28 "Trust Account" or words of similar import, maintained in  
the State of California, or, with written consent of the  
client, in any other jurisdiction where there is a  
substantial relationship between the client or the client's  
business and the other jurisdiction.

...

(c) Funds belonging to the lawyer or the law firm shall not  
be deposited or otherwise commingled with funds held in a  
trust account except:

...

(2) *funds belonging in part to a client or other person  
and in part presently or potentially to the lawyer or  
the law firm, in which case the portion belonging to  
the lawyer or law firm must be withdrawn at the  
earliest reasonable time after the lawyer or law firm's  
interest in that portion becomes fixed. However, if a*

1 client or other person disputes the lawyer or law  
2 firm's right to receive a portion of trust funds, the  
3 disputed portion shall not be withdrawn until the  
4 dispute is finally resolved.

5 Cal. Rule Prof. Conduct 1.15(a), (c) (emphasis added).

6 While Rule 1.15(c) does not specifically define the word "fixed,"  
7 commentators make the issue clear:

8 When attorney's interest "becomes fixed": No legal criteria  
9 have been established to determine when an attorney's  
10 interest in funds held in a trust account becomes "fixed."

11 Comment: *An attorney's interest in trust account funds may  
12 be earned (after performing the legal services and having  
13 sent a billing), but not yet "fixed," because CRPC  
14 1.15(c) (2) (formerly CRPC 4-100(A) (2)) requires the lawyer  
15 to maintain any fees not yet approved by the client or  
16 disputed on deposit until they are "fixed."*

17 By implication, an attorney's interest in trust account  
18 funds is "fixed" when:

19 [1] the client expressly approves the attorney's  
20 interest in a certain amount of the trust funds (e.g.,  
21 by expressly approving a billing or an accounting of  
22 the funds setting forth the amount of fees earned by  
23 the attorney) (see Cal. State Bar Form.Opn. 2006-171);  
24 or

25 [2] the attorney and client agree to the amount of the  
26 attorney's interest following a dispute; or

27 [3] *the amount of the attorney's interest has been set  
28 forth in a civil judgment, court order or binding  
arbitration award.*

Mark L. Tuft et al., *California Practice Guide: Professional*

*Responsibility* § 9:162.1-.2 (Rutter Group 2021) (emphasis added).

That source continues:

Definition by agreement: *In the absence of a statute  
specifically providing for attorney fees, attorney and  
client are free to agree to the "measure and mode" of  
attorney compensation. Consequently, the attorney and  
client may prescribe when the attorney's interest in earned  
fees will "become fixed" for purposes of CRPC 1.15(c) (2)  
(formerly CRPC 4-100). [See CCP § 1021].*

*Id.* at § 9:162.3 (emphasis added).

1           Moreover, 11 U.S.C. § 330 is such a statute defining when  
2           Macdonald Fernandez' fees were "fixed" within the meaning of Rule  
3           1.15(c).

4           Here, on four separate occasions Macdonald Fernandez LLP received  
5           payment without court approval: (1) July 9, 2021: \$7,866.50 (monies  
6           withdrawn from trust account); (2) August 10, 2021: \$29,671.50 (monies  
7           withdrawn from trust account); (3) September 16, 2021: \$7,423.00  
8           (application of monies received from Frank Prach without deposit into  
9           the trust account); and (4) January 14, 2022: \$12,196.30 (application  
10          of monies received from Frank Prach without deposit into the trust  
11          account).

12           **B.     Remedy**

13          In this case, the facts require complete disgorgement of all  
14          funds received. First, the existence of a facially plausible  
15          avoidance action, 11 U.S.C. § 549, results in a per se  
16          disqualification. *In re Dexter Distrib. Corp.*, No. BAP AZ-09-  
17          1386MKKIJU, 2010 WL 6466583, at \* 8 (B.A.P. 9th Cir. Oct. 21, 2010)  
18          (preference action).

19          Second, even if the court had discretion in this case, it would  
20          not exercise it in favor of a lesser remedy. From the applicant's  
21          long years before the bar and sophistication, the court infers  
22          knowledge of the impropriety of his actions and, in turn, willfulness.  
23          Willful disregard of fiduciary obligations weighs in favor of the most  
24          severe remedy. *In re Downs*, 103 F.3d 472, 479 (6th Cir. 1996).  
25          Moreover, the number and seriousness of the violations require an  
26          unbending response by this court. As a result, the order of  
27          employment will be revoked and the full amount of funds Macdonald  
28          Fernandez LLP received, i.e., \$57,157.30, will be disgorged.



1        Since this court believes that both Par 5 Investments' and  
2 Prach's interest in these funds appear to have been extinguished,  
3 disgorgement will be made to Walter Dahl, Subchapter V trustee. *In re*  
4 *Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997) (approving deposit of  
5 disgorged funds pending resolution of ownership). Property rights are  
6 determined by state law. *Butner v. United States*, 440 U.S. 48, 54  
7 (1979); *In re Coupon Clearing Service, Inc.*, 113 F.3d 1091, 1099 (9th  
8 Cir. 1997). California law provides that a security retainer "remains  
9 property of the client (in this case, the estate) until the attorney  
10 applies to it charges actually rendered." *In re Dick Cepak, Inc.*, 339  
11 B.R. 730, 736 (9th Cir. BAP 2006); *In re Montgomery Drilling Co.*, 121  
12 B.R. 32, 37 (Bankr. E.D. Cal. 199)); *In re GOCO Realty Fund I*, 151  
13 B.R. 241, 251 n. 11 (Bankr. N.D. Cal. 1993). That rule has been  
14 extended to retainers paid by third parties:

15        In other words, notwithstanding an ultimate third[-]party  
16 owner of the funds, the retainer is held in trust for  
17 Debtor's estate to the extent it is utilized to compensate  
18 the estate's attorney. The estate, therefore, has an  
equitable interest in the trust funds. Property of the  
estate includes any legal or equitable interests of the  
debtor in property as of the commencement of the case.

19 *In re Stevenson*, No. 0-10-BK-30556-JMM, 2011 WL 2413172, at \* 5  
20 (Bankr. D. Ariz. June 9, 2011); *In re Miller Automotive Group, Inc.*,  
21 521 B.R. 323, 333 (Bankr. W.D. Mo. 2014). Because all funds received  
22 from the debtor and/or Prach, whether paid from the trust account or  
23 post-petition directly, had been applied to outstanding invoices for  
24 services rendered and costs incurred, the court believes that all  
25 funds Macdonald Fernandez LLP received were property of the estate.  
26 Notwithstanding that belief, the court is aware that Frank Prach is  
27 not a party to the present proceedings and should be given the  
28 opportunity to be heard as to the disposition of the funds that he

1 personally paid on behalf of Par 5 Investments. And the court will  
2 craft an order allowing Frank Prach to be heard, should he so elect.

3 **V. CONCLUSION**

4 For each of these reasons, the orders to show cause are sustained  
5 and the motion to disgorge granted. The order approving Macdonald  
6 Fernandez LLP's employment will be revoked. Subject to Frank Prach's  
7 right to recover some--or all--of the funds that he individually paid,  
8 Macdonald Fernandez LLP shall disgorge \$57,157.30 to Subchapter V  
9 trustee Walter Dahl. The court will issue an order from chambers.

10 Dated: October 26, 2022

11  
12  
13 /s/  
Fredrick E. Clement  
14 United States Bankruptcy Judge  
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# Instructions to Clerk of Court

## Service List - Not Part of Order/Judgment

**The Clerk of Court is instructed to** send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

Debtor(s)	Attorney for the Debtor(s) (if any)
<b>Bankruptcy Trustee</b> (if appointed in the case)	<b>Office of the U.S. Trustee</b> Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
<b>J. Francis Prach</b> 100 Harrison Ave, #817 Auburn, CA 95604	<b>Walter R. Dahl</b> 2304 N St Sacramento, CA 95816-5716
<b>Placer County Office of the Treasurer - Tax Collector</b> Robert Kannigiesser Deputy Tax Collector 2976 Richardson Dr Auburn, CA 95603	<b>Tracy Davis</b> Attn: Justin C. Valencia 2500 Tulare St #1401 Fresno, CA 93721
<b>Sutherland Grantor Trust, Series IV</b> Attn: Reed S. Waddell 1000 Wilshire Blvd 19th Fl Los Angeles, CA 90017	<b>Tri Counties Bank</b> c/o Bruce L. Belton PO Box 992570 Redding, CA 96099-2570
<b>Harvego Real Estate, LLC</b> Attn: Jason L. Hoffman 700 University Ave #100 Sacramento, CA 95825	<b>AmTrust North America, Inc.</b> Maurice Wutscher LLP 23611 Chagrin Blvd #207 Beachwood, OH 44122