UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	CHAPTER 7 CASE NO.: 11-29988-RG
FARIDA HADAD, Debtor.	Hearing Date: June 18, 2012

BRIEF IN RESPONSE TO SUPPLEMENTAL OBJECTION BY EVAN ALAN, INC. TO PROPOSED SETTLEMENT WITH TRUSTEE

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Farida Hadad (the "Debtor"), by and through her attorneys, LoFaro & Reiser, L.L.P., submits this Reply Brief to address the supplemental Objection filed by Evan Alan, Inc. ("Evan Alan") in opposition to the proffered settlement that would relinquish the Trustee's claims against Debtor's claimed exemption of her corporate stock in the closely-held business Farrah Sophia Corp. – a hair salon located in Ridgewood, New Jersey where the Debtor works full-time – for the sum of $15,000. In addition to this Reply Brief, the Debtor submits the Supplemental Declaration of Farida Hadad (the "Suppl. Hadad Decl."), the Supplemental Declaration of Glenn R. Reiser (the "Suppl. Reiser Decl."), and the Declaration of Lawrence Kleiner (the "Kleiner Decl.").

PRELIMINARY STATEMENT

The Debtor incorporates by reference herein all of her prior statements contained in her initial Declaration, her counsel's initial Declaration and Letter Memorandum previously docketed with the Court. For the Court's convenience, the Debtor will not repeat the same legal arguments in the context of this Reply Brief. Instead, this Reply Brief is limited to addressing the most recent objection filed by creditor Evan Alan on June 4, 2012. (Docket entry # 42).

As the Debtor will demonstrate herein, the objecting creditor Evan Alan does not hold a perfected security interest in the Debtor's stock in Farrah Sophia Corp. and cannot sustain his Objection to the settlement because:

(1) The Bergen County Sheriff's attempted levy on the Debtor's stock in Farrah Sophia Corp. is defective because the Sheriff did not personally serve the Debtor with the Writ of Execution – instead leaving the Writ with a receptionist of the hair salon. This attempted levy does not satisfy the requirements to perfect a lien

against the stock pursuant to N.J.S.A. 12A:8-112(a) which mandates actual seizure of the stock certificate;

(2) The Bergen County Sheriff's levy was done at the instructions of Mr. Perlman, who was acting *pro se* on behalf of his company Evan Alan in violation of New Jersey Court Rule 1:21-1(c) prohibiting corporations from appearing in litigation unless represented by an attorney licensed to practice law in New Jersey. Because Mr. Perlman was engaged in the unauthorized practice of law, any actions taken by the Bergen County Sheriff in response to his instructions are void *ab initio*;

(3) The Bergen County Sheriff did not issue proper notice to the Debtor of the stock levy, in violation of New Jersey Court Rule 4:59-1(g);

(4) The Trustee's interest and claims against the stock take priority over Evan Alan's unsecured judgment lien because the Trustee is considered as a hypothetical perfected judgment lien creditor as of the bankruptcy petition filing date pursuant to 11. U.S.C. § 544; and

(5) Evan Alan did not file an objection to the Debtor's claimed exemption in the stock pursuant to the 30-day time period imposed by Fed. R. Bankr. P. 4003(b)(1), or file a proof of claim in response to the claims bar date. Consequently, this creditor is prohibited from making a claim against the stock.

The Debtor respectfully submits that as a matter of law the Court should find that Evan Alan does not hold a perfected security interest against the Debtor's stock in Farrah Sophia Corp., and approve the settlement with the Trustee. The whole house of cards raised by Evan Alan's principal Mr. Perlman – that the stock cannot be sold free and clear of his company's lien claim under Section 363 of the Bankruptcy Code, and

his 11th hour attempt to submit a competing bid premised upon his company releasing a lien that doesn't exist, and assuming a debt to the former seller of the hair salon who took back a security interest in the business but which the Debtor has since satisfied in full – comes tumbling down. Mr. Perlman's last minute assertion of a lien against the $15,000 settlement proceeds should not hold up the Court's approval of the settlement and frustrate the Debtor's right to enjoy her bankruptcy fresh start.

A June 1, 2012 appraisal issued by Alan Atkins Appraisal Corporation reflects a mere $4,025 liquidation value for the salon's assets which is substantially less than the Debtor's $15,000 offer to purchase the Trustee's claims. This forced sale liquidation value further supports the Trustee's business judgment to release the bankruptcy estate's claims for $15,000.

PROCEDURAL HISTORY & FACTUAL BACKGROUND

The Debtor filed her voluntary Chapter 7 petition on June 30, 2011 (the "Petition Date"). Prior to the Petition Date, Evan Alan obtained a judgment against the Debtor for $62,963.27 in an action brought 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 filed divorce proceedings against her estranged husband Atta Hadad ("Atta") in the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No.: FM-02-112-11-F (the "Matrimonial Case"). The Matrimonial Case remains pending with issues of equitable distribution unresolved.

As set forth in the Suppl. Reiser Decl., David Perlman substituted himself *pro se* for his company in the Chancery Case on June 16, 2010. (See Exhibit F to Supp. Reiser Decl.). From that point on, Mr. Perlman, acting *pro se*, began instructing the

Bergen County Sheriff to levy on various assets of the Debtor, including her stock ownership in Farrah Sophia Corp. (See Exhibits G, N and O to Suppl. Reiser Decl.). The Sheriff's Affidavit of Service dated June 23, 2010 obtained by Debtor's counsel from the Bergen County Sheriff's Office, which Mr. Perlman also relies upon, confirms that on June 25, 2010 the Sheriff served the Writ of Execution for the stock levy on a receptionist of the hair salon. (See Exhibit I to Suppl. Reiser Decl.).[1] Only 10 minutes later, the same Deputy Sheriff appeared at the Debtor's house in Paramus and served her with the same Writ limited to levying on her real estate interest. (See Exhibit J to Suppl. Reiser Decl."). Mr. Perlman made no efforts to secure an actual levy of the Debtor's stock certificates, nor applied for injunctive relief in the Chancery Case seeking to compel the Debtor's surrender of the stock certificates (also known as a charging order).

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 the stock as fully exempt in Schedule C of her bankruptcy petition with an "unknown" value.

In Schedule D of her bankruptcy petition, the Debtor identified Village East, Inc. – the former owner of the hair salon - as holding a secured claim in the amount of $18,631.76 against the salon's equipment.

[1] The Sheriff dated the Affidavit of Service on June 23, 2010, yet the document reflects that the actual date of service occurred on June 25, 2010.

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. In fact, Mr. Perlman's former attorney has submitted his own Declaration confirming that he separately mailed Mr. Perlman all bankruptcy court notices that he received from the Court.[2]

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 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

[2] The Debtor had subpoenaed Mr. Kleiner compelling him to produce documents by June 8, 2012, and appear to testify in Court on June 18, 2012. Mr. Kleiner agreed to submit a Declaration in lieu of his appearing in Court. Mr. Perlman, through his counsel, initially objected to Debtor's counsel's attempt to serve the Subpoena directly on Mr. Perlman, resulting in the Debtor having to unnecessary expend additional funds to have Guaranteed Subpoena personally serve Mr. Kleiner with the Subpoena.

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 which he later withdrew 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). Thus, Mr. Perlman received notice of the claims bar date.

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 failed to file a proof of claim.

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 whereby the Debtor agreed to pay the Trustee $15,000 in release of any and all claims that he could assert on behalf of the bankruptcy estate

against the 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). No creditors filed complaints objecting to discharge or dischargeability.

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). In response, on April 12, 2012, the Debtor submitted the Declaration of Glenn R. Reiser. (Docket entry # 32). Pursuant to the updated NOS (docket entry # 28) and Clerk's Certificate of Mailing with respect to same (docket entry #29), a hearing date was scheduled and conducted on April 17, 2012. At that time, Atta and Mr. Perlman appeared in Court to voice their 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 hearing 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. A Scheduling Order was entered memorializing same on April 25, 2012. (Docket entry # 35).

On April 26, 2012, Atta filed a supplemental response. (Docket entry # 36). Thereafter, on April 30, 2012 Mr. Perlman filed his supplemental *pro se* 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).

At the May 21, 2012 continued hearing, 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 its client holds a perfected lien against the Debtor's stock in the hair salon by virtue of a pre-petition Sheriff's levy. Evan Alan's counsel handed the Trustee's counsel a copy of a Sheriff's Affidavit of Service which he had 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 chance to submit responses.

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. (See Exhibit A to Supp. Reiser Decl.).

On June 4, 2012, Evan Alan, through its newly retained bankruptcy counsel, 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 holding an alleged security interest. (Docket entry # 42). In Evan Alan's Objection, its principal Mr. Perlman also accuses the Debtor of deliberately misleading the Court and her creditors as to the value of her hair salon as well as other discrepancies that he claims exist in her bankruptcy petition and schedules. The Debtor has addressed these allegations in the Suppl. Hadad Decl. submitted herewith.

SUPPLEMENTAL LEGAL ARGUMENT

POINT I

PURSUANT TO NEW JERSEY LAW THE PRE-PETITION JUDGMENT CREDITOR EVAN ALAN SHOULD BE DEEMED AN UNSECURED CREDITOR WHOSE LIEN CLAIM IS INFERIOR TO THE TRUSTEE'S LIEN CLAIM AGAINST THE DEBTOR'S STOCK OWNERSHIP IN HER CLOSELY-HELD BUSINESS

A. The Trustee as Hypothetical Perfected Judgment Creditor

As stated in In The Matter of Samuel Braen, Jr., 72 B.R. 56, 60 (Bankr. D.N.J. 1987), ". . . it is a well settled principle that a bankruptcy trustee is considered a hypothetical lien creditor as of the date of the filing of the bankruptcy petition." Id., citing Matter of Blease, 605 F.2d 97 (3rd Cir. 1979). This long-standing principle of law is codified in 11 U.S.C. § 544. For Evan Alan to defeat the Trustee's perfected lien status, this creditor must demonstrate that its lien against the stock was perfected pre-petition.

As will be demonstrated herein, as a matter of law Evan Alan cannot satisfy its burden. Consequently, its remaining arguments advanced under Section 363 of the Bankruptcy Code fail.

B. The Requirements Under New Jersey Law for a Judgment Creditor to Perfect a Levy in Stock owned by the Judgment Debtor in a Closely-Held Corporation

New Jersey Court Rule 4:59 governs the procedure for creditors to enforce judgments obtained in the Superior Court of New Jersey. Subsection (a) of the Rule explains the process of enforcement through a writ of execution, its entry by the court, delivery to the sheriff, and service upon the judgment debtor both after the sheriff has made a levy and before turnover of the judgment debtor's property. Rule 4:59-1(a). Subsection (c) of the Rule sets forth the order of property that is subject to execution – first personal property, then real estate. Rule 4:59-1(c). Subsection (e) of the Rule provides for supplementary proceedings to aid in the judgment or its execution, such as taking of depositions, serving information subpoenas, and a warrant of civil arrest. Rule. 4:59-1(e). And subsection (g) of the Rule requires that the court officer deliver specific written notice to the judgment debtor of any assets that have been levied. Rule 4:59-1(g).[3]

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[3] Specifically, Rule 4:59-1(g) states:

(g) Notice to Debtor. Every court officer or other person levying on a debtor's property shall, on the day the levy is made, mail a notice to the last known address of the person or business entity whose assets are to be levied on stating that a levy has been made and describing exemptions from levy and how such exemptions may be claimed by qualified persons. The notice shall be in the form prescribed by Appendix VI to these rules and copies thereof shall be promptly filed by the levying officer with the clerk of the court and mailed to the person who requested the levy. If the clerk or the court receives a claim of exemption, whether formal or informal, it shall hold a hearing thereon within 7 days after the claim is made. If an exemption claim is made to the levying officer, it shall

The manner in which a judgment creditor is required to levy upon stock in a privately held corporation under New Jersey law was discussed at length by the Honorable William F. Tuohey in Braen, supra. As Judge Tuohey explained:

> Tangible personal property, money, rights, and credits, and real estate of the judgment debtor are subject to levy under a writ of execution. (N.J.S.A. 2A:17-15; N.J.S.A. 2A:17-17 and N.J.S.A. 2A:17-18). Shares of stock are likewise subject to execution but only in conformity with the statutory provisions protecting their negotiability. No levy is valid upon shares of stock unless the certificate or document is actually seized by the sheriff or surrendered to the issuing corporation, or its transfer enjoined. (N.J.S.A. 2A:17-16 and N.J.S.A. 12A:8-317).

72 B.R. at 59 (emphasis added).

Since the Braen decision was rendered in 1987, the New Jersey legislature repealed N.J.S.A. 12A:8-317 and replaced it with N.J.S.A. 12A:8-112. The former statute N.J.S.A. 12A:8-317 read, in part, as follows:

> (1) Subject to the exceptions in subsections (3) and (4), no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.
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> (2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

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be forthwith forwarded to the clerk of the court and no further action shall be taken with respect to the levy pending the outcome of the exemption hearing. No turnover of funds or sale of assets may be made, in any case, until 20 days after the date of the levy and the court has received a copy of the properly completed notice to debtor.

Rule 4:59-1(g) (emphasis added).

N.J.S.A. 12A:8-317 (emphasis added). Thus, under the former statute the levying officer acting on behalf of the judgment debtor was required to make an actual seizure of the judgment debtor's "certificated security".

The "actual seizure" requirement to perfect a judgment creditor's levy on stock in a closely-held corporation was continued under the current statute, N.J.S.A. 12A:8-112, which reads as follows:

> a. The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection d. of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.
>
> b. The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection d. of this section.
>
> c. The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection d. of this section.
>
> d. The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.
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> e. A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

N.J.S.A. 12A:8-112 (emphasis added).[4]

[4] New Jersey has a long history of requiring judgment creditors to perfect a stock levy through actual seizure of the share certificates, surrender, or other injunctive relief. See

N.J.S.A. 12A:8-102(4) defines the term "certificated security" as "a security that is represented by a certificate." And N.J.S.A. 12A:8-102(18) defines the term "uncertified security" as "a security that is not represented by a certificate."

In his Objection Mr. Perlman fails to cite the Braen decision or any of the aforesaid controlling New Jersey UCC Article 8 provisions. Instead, he relies strictly on N.J.S.A. 2A:17-16, which states:

> Shares of stock in any corporation, incorporated under authority of this state, another state, the United States or another country, belonging to an execution defendant, may be taken and sold by virtue of an execution in the same manner as goods and chattels, except that a levy upon such shares shall be made subject to the provisions of section 14:8-39 of the title Corporations, General, of the Revised Statutes.

Id. (emphasis added). Interestingly, this statute cites a repealed section of the New Jersey Business Corporation Act; i.e., section 14:8-39. The New Jersey Business

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Elgart v. Mintz, 123 N.J.Eq. 404 (1938)(citing that under the former Uniform Stock Transfer act in the absence of actual seizure or surrender of the stock certificate an effective injunction prohibiting the transfer of the certificate by the holder is required); Johnson v. Wood, 15 N.J.Misc. 150 (1936)(same); Warren v. New Jersey Zinc Co., 116 N.J.Eq. 315 (1934)(in the context of judgment creditor's request for an injunction to prevent bank in voluntary possession of judgment debtor's stock certificates to sell certificates to a purchaser, the court ordered the bank to sell the certificates in order to satisfy the judgment debtor's indebtedness to the bank but required the bank to deposit the excess proceeds into court pending further application by the judgment creditor); Luks v. Luks, 106 N.J.Eq. 160 (1930)(requiring actual seizure or surrender of the stock certificate, or injunctive relief, but decided under an earlier statute enacted in 1916); Wallach v. Stein, 102 N.J.L. 517 (1926)(court affirmed judgment for defendant based on invalid levy under the 1916 act because it did not result in actual seizure or surrender of stock certificates); Mulock v. Ulizio, 102 N.J.L. 251 (1925)(comparing parting from pre-existing common law permitting valid levy on stock without actual seizure of the certificate to the new statute enacted in 1916 requiring actual seizure or surrender of the certificate); Voorhis v. Terhune, 50 N.J.L. 147 (E. & A. 1887)(Court invalidated Essex County Sheriff's levy on judgment debtor's corporate shares in railroad because judgment debtor resided in Bergen County, and thus the shares could only be levied and sold in Bergen County).

Corporation Act is now contained in N.J.S.A. 14A:1-1, et seq. There does not seem to be a parallel provision of the former section 14:8-39 in the updated New Jersey Business Corporation Act. Apparently, the New Jersey legislature did not update N.J.S.A. 2A:17-16 after amending the New Jersey Business Corporation Act.[5] Nevertheless, in Braen Judge Tuohey opined that actual seizure of the stock certificate is required under N.J.S.A. 2A:17-16. "No levy is valid upon shares of stock unless the certificate or document is actually seized by the sheriff or surrendered to the issuing corporation, or its transfer enjoined. (*N.J.S.A. 2A:17-16* and *N.J.S.A. 12A:8-317*)." Braen, 72 B.R. at 59.

It is undisputed that a judgment creditor must conform with N.J.S.A. 12A:8-112(a) which requires the levying officer to effect an actual seizure of "certificated shares" of stock in a closely held corporation in order to perfect the judgment creditor's lien against the stock, or pursue injunctive relief under N.J.S.A. 12A:8-112(e). As confirmed by the State of New Jersey's 2007 annual business report for Farrah Sophia Corp., the company was registered with 1000 shares. (See Exhibit B to Suppl. Hadad Decl.). Accordingly, the Debtor's stock ownership in Farrah Sophia Corp. is considered a "certificated security" within the meaning of N.J.S.A. 12A:8-102(4). Thus, absent seeking injunctive relief, in order for Evan Alan to perfect its judgment lien against the Debtor's stock in Farrah Sophia Corp. the Bergen County Sheriff was required to effect an actual seizure of the Debtor's share certificates. The Sheriff did not do so, however. Instead, the Sheriff merely left the Writ with a receptionist at the salon. This does not

[5] Debtor's counsel attempted to obtain a copy of the former section 14:8-39 from the law library in Trenton, however counsel was unsuccessful. Counsel will make additional attempts to obtain the text of the former section 14:8-39 prior to the June 18, 2012 hearing date.

constitute a valid levy necessary to have created a pre-petition perfected security interest in favor of Evan Alan under N.J.S.A. 12A:8-112(a).

Furthermore, as previously mentioned, all actions taken by the Bergen County Sheriff in attempting to levy on the Debtor's stock interest in Farrah Sophia Corp. are void because same were done at the behest of Mr. Perlman who was inappropriately acting *pro se* for his company in direct violation of New Jersey Court Rule 1:21-1(c) which prohibits corporations from appearing in actions without a licensed New Jersey attorney. This Rule states as follows:

> (c) Prohibition on Entities. Except as otherwise provided by paragraph (d) of this rule and by R. 1:21-1A (professional corporations), R. 1:21-1B (limited liability companies), R. 1:21-1C (limited liability partnerships), R. 6:10 (appearances in landlord-tenant actions), R. 6:11 (appearances in small claims actions), R. 7:6-2(a) (pleas in municipal court), R. 7:8-7(a) (presence of defendant in municipal court) and by R. 7:12-4(d) (municipal court violations bureau), an entity, however formed and for whatever purpose, other than a sole proprietorship shall neither appear nor file any paper in any action in any court of this State except through an attorney authorized to practice in this State.

Rule 1:21-1(c) (emphasis added).[6] This Rule "generally prohibits corporations from practicing law in this State." In re Educational Law Center, 86 *N.J.* 124, 129 (1981).

The practice of law in New Jersey is not limited to litigation. . . . One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required." In re Jackman, 165 N.J. 580, 586 (2000). See also Stack v. P.G. Garage, Inc., 7 N.J. 118, 120-121 (1951(same); Committee on the Unauthorized Practice of Law Opinion

[6] Knowingly engaging in the unauthorized practice of law is considered a crime of the fourth degree pursuant to N.J.S.A. 2C:21-22(1)(a). If the violator derives a benefit from knowingly engaging in the unauthorized practice of law or causes injury to another, the offense is elevated to a crime of the third degree. N.J.S.A. 2C:21-22(1)(b).

22, 203 N.J.L.J. 246 (March 22, 1979("the practice of law relates to the rendition of services for others that calls for the professional judgment of a lawyer"). The Supreme Court of New Jersey held in New Jersey Bar Ass'n v. Northern N.J. Mortgage Associates, 22 N.J. 184, 197 (1956), modified 34 N.J. 301 (1961), that "[c]orporations may act for themselves through their own attorney-employees, but they cannot perform acts for others in this capacity which amounts to the practice of law.

It is undisputed that Mr. Perlman was practicing law without a license in violation of New Jersey Court Rule 1:21-1(c) when he: (i) substituted himself *pro se* as his company's legal representative in the Chancery Case, thus engaging in pending litigation filed by his corporation; (ii) repeatedly instructed the Bergen County Sheriff to levy on the Debtor's assets in aid of his company's judgment; (iii) sent the Debtor a post-judgment Information Subpoena; (iv) filed a motion to enforce litigant's rights when the Debtor didn't initially answer the Information Subpoena; (v) appeared before the Bankruptcy Court on April 17, 2012; and (iv) filed pleadings in the Bankruptcy Court on behalf of his company in opposition to the proposed settlement on April 26, 2012.

Assuming arguendo that this Court would excuse the defective nature of the Sheriff's attempted levy by serving the Writ of Execution on the salon's receptionist, the levy is nevertheless void because Mr. Perlman had no legal authority to be dispensing instructions to the Bergen County Sheriff in the first place. See e.g., In re Italiano, 66 B.R. 468, 478-480 (Bankr.D.N.J.1986)(bankruptcy court held that lien against debtor's real estate was not properly perfected pursuant to N.J.S.A. 2A:17-1 because the creditor had failed to give the sheriff a listing of personalty to be levied on); Raniere v. I & M Investments Inc., 159 N.J.Super. 329 (Ch. Div. 1978), aff'd, 172 N.J. Super. 206

(App. Div.), cert. denied, 84 N.J. 473 (1980)(holding that judgment execution, as well as a sale, made prior to a good faith attempt to locate and levy upon a debtor's personalty as per N.J.S.A. 2A:17-1 renders execution void); In In re Silverman, 6 B.R. 991 (D.N.J.1980 (bankruptcy court, applying Raniere, held the trustee's lien against the debtors' real estate was superior to the judgment creditor's lien because the judgment creditor's execution and sale of the real estate was void for failure to comply with the order of priority of N.J.S.A. 2A:17-1).

Furthermore, the Debtor never received proper notice from the Bergen County Sheriff that the judgment creditor Evan Alan had levied on her stock interest in Farrah Sophia Corp., as required by New Jersey Court Rule 4:59-1(g). First of all, the Bergen County Sheriff failed to serve the notice on the date of the levy – a mandatory requirement under Rule 4:59-1(g). Instead, the Sheriff served the notice on the Debtor more than 2 weeks after the attempted levy. The Sheriff's Affidavit of Service specifies a levy date of June 25, 2010 (see Exhibit I to Suppl. Reiser Decl.), but the notice wasn't sent until July 8, 2010 (see Exhibit K to Suppl. Reiser Decl.). Second, the notice is inherently confusing because it doesn't reference the Debtor's stock as an asset that was levied and identifies Mr. Perlman as the levying judgment creditor, to wit:

> Your personal property, real property, or bank account has been levied upon at the instruction of:
>
> DAVID PERLMAN, PRO SE
> 19 WINDING WAY
> SADDLE RIVER, NJ 07458
> (201) 934-1984

See Exhibit K to Supp. Reiser Decl.

With the status of Mr. Perlman's company being an unsecured creditor having been firmly established, his company's lien claim is inferior to the Trustee's status as a

perfected lien creditor under Bankruptcy Code Section 544. Consequently, this creditor's reliance on Section 363 of the Bankruptcy Code is entirely misplaced and irrelevant.

POINT II

THE VALUATION OF THE DEBTOR'S INTEREST IN THE STOCK OF HER CLOSELY HELD CORPORATION IS A MATTER OF STATE LAW

This Chapter 7 bankruptcy proceeding involves ownership interests in property and thus the Court is required to apply state law. Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.").

As the New Jersey Supreme Court observed in Balsamides v. Protameen Chemicals, Inc., 160 N.J. 352, 368 (1999) ("Balsamides"), and Lawson Mardon Wheaton, Inc. v. Smith, 160 N.J. 383, 397 (1999) ("Lawson"), valuation of a closely-held business is not an exact science. See also Bowen v. Bowen, 96 N.J. 36, 44 (1984) (quoting Lavene v. Lavene, 162 N.J. Super. 187, 193 (Ch. Div. 1978) (on remand) (Lavene II)); John R. MacKay, II, 2 New Jersey Business Corporations § 14-6(d)(1) (2d ed. 1996) ("MacKay"). Careful analysis on a case by case basis is required, with sensitivity and adjustment for the particular circumstances and the flexibility to deal with extraordinary circumstances. In Lavene v. Lavene, 148 N.J. Super. 267 (App. Div.), certif. denied, 75 N.J. 28 (1977) (Lavene I), where the Appellate Division held that the husband's 43% interest in a closely-held corporation "constitute[d] a distributable asset" and remanded for valuation, Judge Pressler remarked:

> There are probably few assets whose valuation imposes as difficult, intricate and sophisticated a task as interests in close corporations. They cannot be realistically evaluated by a simplistic approach which is based solely on book value, which fails to deal with the realities of the good will concept, which does not consider investment value of a business in terms of actual profit, and which does not deal with the question of discounting the value of a minority interest.

Id. at 275.

The valuation of a closely-held corporation is particularly difficult because the corporation's stock is not available on the public market. Bowen, supra. The valuation is fact sensitive and "depends upon the experience of the appraiser and the completeness of the information upon which his conclusions are based." Bowen, supra, 96 N.J. at 44 (quoting Lavene II, supra, 162 N.J Super. at 193). Thus, a court looks at the reasonableness of the valuation method in determining whether the valuation is adequate. Steneken v. Steneken, 183 N.J. 290, 297 (2005).

To compute the value of a closely-held corporation, most experts and courts have used the IRS's Revenue Ruling 59-60 as the guide. The goal is to arrive at a fair market value for a stock for which there is no market. To do this, the IRS recommends that "all available financial data, as well as all relevant factors affecting the fair market value, should be considered." Rev. Rul. 59-60, 1959-1 C.B. 237, § 4.01

> Among the factors listed in the Ruling as "fundamental and requir[ing] careful analysis" are the history of the firm, the nature of the company, the outlook for the industry, the book value of the stock, the size of the block to be valued, the earning and dividend-paying capacities of the company, and the existence of goodwill or other intangible assets. Ibid. Generally, greater weight will be given to earnings factors for those companies that sell products or services, and to asset values for investment or holding companies. Ibid. In addition, earnings factors must be capitalized. Choosing the appropriate capitalization rate is "one of the most difficult

> problems in valuation." Id. at § 6. Among the considerations that go into a capitalization rate are the nature of the business, the risk involved, and the stability of earnings. Id.

Bowen, supra, 96 N.J. at 44 (quoting Rev. Rul. 59-60, 1959-1 C.B. 237, § 4.01).

Generally, in determining fair value, the judge should consider " 'proof of value by any techniques or methods which are generally acceptable in the financial community and otherwise admissible in court.' " Balsamides, supra, 160 N.J. at 375 (citations omitted). The judge may use any acceptable method to calculate the value, but he must determine that the chosen method yields the fair value of the shares. Hughes v. Sego International Ltd., 192 N.J. Super. 60, 68 (App.Div.1983); Hamilton, Johnston, & Co., Inc. v. Johnston, 256 N.J. Super. 657, 672 (App. Div.), certif. denied, 130 N.J. 595 (1992).

In Balsamides, the New Jersey Supreme Court held that 35% marketability discount was appropriate in valuing the shares of an oppressed shareholder of a closely held corporation in the context of a court ordered sale. The extraordinary circumstance that warranted use of a marketability discount in Balsamides was that it was the oppressing 50% shareholder who was to acquire the shares of the oppressed 50% shareholder, and equity demanded that the oppressor not be rewarded for his conduct by allowing a buy-out at a discounted price. In Lawson, supra, the Supreme Court found no comparably extraordinary circumstance and rejected use of the discounts where discounting would have allowed the oppressive majority shareholder to buy out minority owners at less than full value.

As the foregoing published decisions issued by the New Jersey Appellate Court and New Jersey Supreme Court demonstrate, ascribing a value on a closely held

business is a complex process filled with many variables. In the instant case, the objecting creditor Perlman relies on a 2009 valuation report issued by a court appointed forensic accountant in the Matrimonial Case that valued the Debtor's 55% combined stock ownership with her estranged husband at $126,500. (See Exhibit C to Perlman Objection). However, the report is captioned as a "PRELIMINARY REPORT" and clearly indicates the value was given as of December 31, 2009, approximately 2 ½ years ago!

This Court is well aware of the economic downturn of the US economy over the past several years. The Debtor, operating a small personal services corporation, has suffered the consequences of the slow economy just as the majority of most other small business owners have experienced. In fact, in the Suppl. Hadad Decl. the Debtor explains that her business has fallen off substantially (30%) in the past year due to a combination of factors, including several new hair salons that have opened within 5 minutes walking distance from her salon, and the loss of a key hairdresser.

Further, the Debtor has explained why she listed the value of the business at $200,000 in her CIS Statement filed in the Matrimonial Case – which was an estimate premised on her continuing to work full time along with the continued patronage of several hundred customers that she has developed over a 19-year career. The Debtor respectfully submits that the stock in her hair salon is currently worth nothing more than the good will that she has established with her clientele. If the Debtor were to cease employment in her personal services corporation, there would be no business left because the Debtor's clients would likely follow her to her next place of employment.

By the same token, the Debtor is currently able to earn an income from her full-time efforts from the business to support herself and her 17-year old daughter.

Finally, but most importantly, the Debtor has secured a forced liquidation sale appraisal from Alan Atkins, perhaps considered to be the most well-respected business appraiser in New Jersey, that values the business assets at only $4,025. If the Court previously had any concerns about the value of the Debtor's business or the Trustee's business judgment, the Atkins appraisal should undoubtedly resolve both.

POINT III

EVAN ALAN FAILED TO OBJECT TO THE DEBTOR'S CLAIMED EXEMPTION IN THE STOCK OF HER PERSONAL SERVICES CORPORATION

Upon filing of a Chapter 7 bankruptcy petition all of a debtor's property becomes part of his or her estate in bankruptcy. 11 U.S.C. § 541. However, the Bankruptcy Code permits the debtor to prevent certain assets from becoming part of the bankruptcy estate by exempting those assets on Schedule C of the petition. 11 U.S.C. § 522(1) states that a "debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(1).

Fed. R. Bankr. P. 4003 provides the time limitation for interposing objections to any such claimed exemptions. It states in pertinent part:

> (b) Objecting to a Claim of Exemptions.
>
> (1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time

> for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Fed. R. Bankr. P. 4003(b) (emphasis added).[7] Debtor previously touched upon this issue in her May 9, 2012 Letter Memorandum.

In Taylor v. Freeland & Kronz, 503 U.S. 638, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992), the Supreme Court held that a trustee's failure to object to a debtor's claimed exemption within the 30-day period of Fed. R. Bankr. P. 4003(b) precluded a challenge, even if there was no colorable or good faith basis for the objection in the first place.

Subsequently, in Schwab v. Reilly, 560 U.S. ___, 30 S.Ct. 2652, 117 L.Ed.2d 234 (2010),the Supreme Court clarified its holding in Taylor as requiring the trustee to file an objection to a claimed exemption if the amount the debtor lists as the "value claimed exempt" is not within the statutory limit. Taylor addressed "the consequences of a trustee's failure to object to a claimed exemption within Rule 4003's time period." Schwab, 130 S.Ct. at 2655. However, in Schwab the Supreme Court discussed the limited issue of what happens when the trustee's failure to object timely to a debtor's claimed exemptions is the result of his/her reliance on the debtor's facially valid description of his/her claimed exemptions on Schedule C. In Schwab, the Supreme Court explained that Taylor simply "establishes and applies the straightforward

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[7] Fed. R. Bankr. P. 4003(b)(2) gives the trustee a limited extension of time to file an objection to an exemption if the debtor's assertion of the exemption is predicated on fraud. This subsection states:

(2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney.

proposition that an interested party must object to a claimed exemption if the amount the debtor lists as the 'value claimed exempt' is not within statutory limits, a test the value ($*unknown*) in Taylor failed. . . ." Id. at 2666 (emphasis in the original).

In Schwab, the Supreme Court suggested that the impact of its decision in Schwab was limited, stating: "[T]he only burdens our conclusion imposes are burdens the Code itself prescribes, specifically, the burdens the Code places on debtors to state their claimed exemptions accurately and to conform such claims to statutory limits." Id. at 2667 n. 17. Where the Code provisions cited in support of a debtor's claimed exemptions are not at issue, the trustee's duty to object "turns solely on whether the value of the property claimed as exempt exceeds statutory limits . . ." Id..

As previously mentioned, in Schedule C of her petition the Debtor listed her stock in Farrah Sophia Corp. as exempt with an "unknown" value. Pursuant to Fed. R. Bankr. P. 4003(b), the Notice of Commencement informed all creditors, including Evan Alan, that objections to exemptions must be filed within 30 days of the conclusion of the creditors' meeting. (See docket entry # 3). The creditors' meeting concluded on August 5, 2011, and thus Evan Alan had until September 4, 2011 in which to file an objection to the Debtor's claimed exemption of her stock listed in Schedule C. Having failed to do so, Evan Alan is barred as a matter of law from challenging the exemption 9 months past the September 4, 2011 deadline established by the Notice of Commencement.

In fact, the Supreme Court's decision in Taylor is controlling in this regard because in Schedule C the Debtor listed "unknown" as the value for her exemption of stock interest in Farrah Sophia Corp. Arguably then, in the absence of reaching a

settlement with the Trustee the Debtor could have asserted that the Trustee's 30-day period to object to her claimed in exemption in the stock pursuant to Rule 4003(b) expired under the Supreme Court's decision in Taylor. In line with Taylor, the First Circuit Court of Appeals has held that a debtor's use of terms like "unknown" when claiming an exemption in Schedule C triggers the Rule 4003(b) clock. See Barroso-Herrans v. Lugo Mender, 524 F.3d 341 (1st Cir. 2008). Thus, here both the Trustee and Evan Alan were on notice of Rule 4003(b)'s 30-day triggering requirement based on the Debtor's listing her exemption of the stock as "unknown". Evan Alan cannot be heard to complain about the valuation of the Debtor's claimed exemption in her business stock 9 months past Rule 4003(b)'s 30-day deadline, especially considering that Evan Alan also failed to file a proof of claim in response to the Asset Notice. Basically, Evan Alan deliberately ignored every single Court deadline in this case.

The Debtor opted to settle with the Trustee for the purpose of avoiding the uncertainty and cost of litigation. Evan Alan's somnolence combined with its 11th hour objection has caused the Debtor to expend unnecessary legal fees that she otherwise expected to avoid by settling with the Trustee.

CONCLUSION

For the foregoing reasons and authorities cited, the Court should approve the settlement between the Debtor and the Chapter 7 Trustee over the objections filed by the Debtor's estranged husband and the pre-petition judgment creditor Evan Alan. The estranged husband's claim against the stock will be preserved for, and determined by, equitable distribution in the context of the Matrimonial Case. Evan Alan has not carried its burden of demonstrating to hold a perfected lien against the

Debtor's stock in her closely-held corporation, and consequently this creditor must be deemed to hold an unsecured judgment which is inferior to the Trustee's status as the hypothetical perfected judgment creditor.

Further, the Debtor has amply supported the Trustee's exercise of sound business judgment by procuring a forced sale liquidation value of the business assets at $4,025, substantially less than the $15,000 settlement amount.

Lastly, the objecting creditor Evan Alan failed to exercise any of its remedies available throughout this bankruptcy case such as objecting to discharge and/or dischargeability, filing an objection to the Debtor's claimed exemption in the stock, or filing a proof of claim in response to the Asset Notice. For reasons only known to Mr. Perlman, his company blatantly sat on its rights since first appearing at the August 5, 2011 creditors' meeting. Having waited until the May 21, 2012 hearing date to assert a secured claim against the stock, the Court should not give any credence to Mr. Perlman's last ditch vindictive effort to drive a stake in the Debtor's heart by frustrating her right to enjoy her bankruptcy fresh start. Thus, the Debtor urges this Court to approve the settlement.

Respectfully submitted,

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

Dated: June 11, 2012