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Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
GIRARDI KEESE,

Debtor.

Case No. 2:20-bk-21022-BR
Chapter 7

**REPLY TO OPPOSITION OF ERIKA
GIRARDI TO CHAPTER 7 TRUSTEE'S
APPLICATION TO EMPLOY THE LAW
OFFICES OF RONALD RICHARDS &
ASSOCIATES, A.P.C., AS SPECIAL
LITIGATION COUNSEL**

Date: June 8, 2021
Time: 10:00 a.m.
Ctrm.: 1668
255 E. Temple Street
Los Angeles, California 90012

TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE:

Elissa D. Miller, the chapter 7 trustee (the "Trustee") for the bankruptcy estate (the "Estate") of Girardi Keese (the "Debtor"), submits this reply to the Opposition [Docket No. 333] filed by Erika Girardi ("Erika") to the *Chapter 7 Trustee's Application to Employ the Law Offices of Ronald Richards & Associates, A.P.C., as Special Litigation Counsel* [Docket No. 318] (the "Application").

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1 **I. INTRODUCTION**

2 The Court should overrule the Opposition and grant the Trustee's Application to
3 employ the Law Offices of Ronald Richards & Associates, A.P.C. (the "Richards Firm"),
4 as special litigation counsel. The Application is non-controversial and straightforward; the
5 Trustee seeks to employ the Richards Firm to investigate and pursue possible fraudulent
6 transfer claims against Erika. The Trustee's application is fully transparent and makes
7 clear that the Richards Firm represents certain creditors of the Debtor.

8 Preliminarily, the Opposition is fatally defective and should not even be considered
9 as Erika does not have standing to oppose the Application. She makes no attempt to
10 explain why she should be heard on the Application. For this reason alone, the
11 Opposition should be overruled.

12 As to the Application itself, Erika asserts two bases for its denial. Both fail. First,
13 the creditors represented by the Richards Firm **are not** pursuing fraudulent transfer
14 claims that belong to the Estate. More specifically, the Trustee and the creditors
15 represented by the Richards Firm have agreed that **only** the Estate will pursue fraudulent
16 transfer claims. This agreement, stated on the record and recognized by this Court's
17 order, eliminates any actual conflict of interest. Second, the Trustee seeks to employ the
18 Richards Firm as special litigation counsel under section 327(e). Employing the Richards
19 Firm under section 327(e) limits the inquiry as to whether the Richards Firm holds an
20 adverse interest. Erika's disregard for the limitation in section 327(e)—namely, her failure
21 to argue how a possible claim objection presents an interest adverse to the Estate in an
22 unrelated potential fraudulent transfer action—warrants denial. There is no actual
23 conflict, and the Richards Firm does not hold an adverse interest with respect to the
24 matter for which they are employed.

25 Erika's request for a "gag order" is also not properly before the Court. Moreover, it
26 is irrelevant to the Application and should be summarily overruled. Accordingly, the Court
27 should grant the Application.

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1 **II. BACKGROUND**

2 **A. The Sheldon Litigation**

3 On December 9, 2020, the Law Offices of Philip R. Sheldon, APC, filed a
4 complaint against Thomas V. Girardi, the Debtor, and DOES 1-100 in the Los Angeles
5 Superior Court, commencing case number 20STCV47160 (the "Sheldon Litigation"). On
6 December 16, 2020, the Law Offices of Philip R. Sheldon, APC, Philip R. Sheldon, Law
7 of Robert P. Finn, and Robert P. Finn (collectively, the "Plaintiffs") filed a first amended
8 complaint (the "First Amended Complaint") in the Sheldon Litigation. In the First
9 Amended Complaint, the Plaintiffs assert a cause of action to recover fraudulent
10 transfers.

11 On January 29, 2021, the Richards Firm filed a Notice of Association of Counsel
12 on behalf of the Plaintiffs. As disclosed in the Trustee's Application, the Richards Firm is
13 currently counsel for the Plaintiffs who claim to be creditors of the Estate.

14 **B. The Removal and Remand of the Sheldon Litigation**

15 On March 5, 2021, David Lira filed a notice of removal to remove the Sheldon
16 Litigation to this Court. Subsequently, the Sheldon Litigation was assigned adversary
17 case number 2:21-ap-01039-BR. On March 9, 2021, the Court entered an order setting a
18 status conference and ordering the parties to show cause why the Court should not
19 abstain and remand the Sheldon Litigation. The Court also set a status conference on
20 the notice of removal for May 11, 2021.

21 On March 25, 2021, the Trustee entered into a *Stipulation for Voluntary Dismissal*
22 *of Debtor Pursuant to Federal Rule of Civil Procedure 41(a)* [Docket No. 15] (the
23 "Stipulation"). See Stipulation, Ex. "1."¹ Under the Stipulation, the Trustee and the
24 Plaintiffs agreed to a dismissal of the Debtor without prejudice. The parties further
25 stipulated that the dismissal of the Debtor would have no effect on the Plaintiffs' right to
26

27 ¹ Pursuant to Federal Rule of Evidence 201, the Trustee requests that the Court take judicial notice of
28 the Stipulation, attached as Ex. "1," the Order attached as Ex. "2," the Statement attached as Ex. "3," and
the Remand Order attached as Ex. "5."

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1 enforce any alleged claim they purport to hold against the Debtor by filing a proof of claim
2 in the Debtor's case. The parties also agreed that the dismissal would not affect the
3 Trustee's rights to dispute or object to any such claim. On March 26, 2021, the Court
4 entered an order approving the Stipulation [Docket No. 16]. See Order, Ex. "2."

5 On April 16, 2021, the Plaintiffs filed a *Motion for Remand* [Docket No. 20] (the
6 "Remand Motion") in response to Lira's notice of removal. A hearing on the Remand
7 Motion was scheduled for May 11, 2021. In response to the Remand Motion, the Trustee
8 filed the Chapter 7 Trustee's *Statement of Non-Opposition to Plaintiffs' Motion for*
9 Remand (the "Statement") [Docket No. 26] on April 27, 2021. In the Statement, the
10 Trustee informed the Court that based on the Plaintiffs' agreement "that they would not
11 pursue the fraudulent transfer claims," the Trustee did not oppose the Remand Motion.
12 See Statement, Ex. "3."

13 At the hearing on the Remand Motion, counsel for the Plaintiffs confirmed that the
14 fraudulent transfer claims asserted by the Plaintiffs in the Sheldon Litigation belonged to
15 the Estate in the following exchange:

16 Mr. Evanston [Trustee's Counsel]: ...Our only request is that Plaintiffs'
17 counsel confirm on the record that the fraudulent transfer claims will be
pursued by the estate.

18 Mr. Richards: That's correct, your Honor. ***We are not pursuing any of the***
19 ***fraudulent transfer claims. Those are just going to be pursued by the***
estate only.

20 See Transcript of May 11, 2021 Remand Motion Hearing at 12:17-23, Ex. "4." Following
21 this exchange, counsel for the Plaintiffs twice confirmed that the Plaintiffs would not
22 pursue the fraudulent transfer claims. See *id.* at 13:12-14 ("We're not going to pursue the
23 fraudulent conveyance claims that are pled in the complaint. Those belong to the
24 estate...") and *id.* at 13:21-22 ("We're not pursuing the fraudulent conveyance claims.").

25 On May 13, 2021, the Court entered an order granting the Remand Motion. The
26 Order also stated that "[c]ounsel for Plaintiffs also reaffirmed that Plaintiffs would not be
27 proceeding on any fraudulent transfer claims, including but not limited to the 6th Cause of
28

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1 Action in the First Amended Complaint, and that fraudulent transfer claims belong to the
2 bankruptcy estate of Girardi Keese." See Remand Order, Ex. "5."

3
4 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

5 Section 327(c) provides that "a person is not disqualified for employment under
6 this section solely because of such person's employment by or representation of a
7 creditor, unless there is an objection by another creditor or the United States trustee, in
8 which case the court shall disapprove such employment if there is an actual conflict of
9 interest." See 11 U.S.C. § 327(c). Although Section 327(c) "applies generally to all
10 employment under § 327...clearly the 'actual conflict of interest' that it references must be
11 analyzed in the narrower context of § 327(e)." See *In re Polaroid Corp*, 424 B.R. at 453
12 citing *Stoumbos*, 988 F.2d at 964. "[A] conflict of interest is actual and warrants
13 disqualification under § 327(c) if there is active competition between two interests, in
14 which one interest can only be served at the expense of the other." *In re Hummer*
15 *Transportation, Inc.*, 2013 WL 8013588 (Bankr. E.D. Cal. September 12, 2013) citing
16 *Johnson v. Richter, Miller & Finn (In re Johnson)*, 312 B.R. 810, 822 (E.D. Va. 2004).

17 Under Section 327(e), subject to court approval, a trustee may employ:

18 [F]or a specified special purpose, other than to represent the
19 trustee in conducting the case, an attorney that has
20 represented the debtor, if in the best interest of the estate,
21 and if such attorney does not represent or hold any interest
adverse to the debtor or the estate ***with respect to the
matter on which such attorney is to be employed.***

22 See 11 U.S.C. § 327(e) (emphasis added).

23 Courts have held that the "where the trustee seeks to appoint counsel only as
24 'special counsel' for a specific matter, there need only be no conflict between the trustee
25 and counsel's creditor client *with respect to the specific matter itself*. *Stoumbos v.*
26 *Kilimnik (In re Am. Alloy Metals)*, 988 F.2d 949, 964 (9th Cir. 1993) (emphasis added).
27 "Section 327(e) has a narrower focus than § 327(a), and imposes fewer restrictions on
28 the proposed attorney." See *In re Polaroid Corp.*, 424 B.R. 446, 452 (Bankr. D. Minn.

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2010). Courts have "defined what it means to hold an adverse interest as follows: (1) to possess or assert any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate." See *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 688 (B.A.P. 9th Cir. 2006).

A. Erika Has No Standing to Object to the Application

Erika does not have standing to object to the application. "A party's standing in a bankruptcy case is governed by the 'person aggrieved' standard. A 'person aggrieved' is one whose pecuniary interests are directly and adversely affected." *Sheen v. Diamond (In re Am. Comput. & Dig. Components, Inc.)*, 2005 WL 6960172 (B.A.P. 9th Cir. May 12, 2005); see also *In re Autosport Int'l, Inc.*, 2013 WL 3199826 at *3-4 (Bankr. C.D. Cal. June 24, 2013) (determining that opposition documents to motion could not be considered because the party lacked standing).

Erika has not made any showing of how she is a person aggrieved with standing. Here, Erika has not filed a proof of claim, or highlighted any pecuniary interests that would be adversely affected by an order granting the Trustee's application to employ the Richards Firm. Moreover, Erika cannot establish standing simply because she *might* be a defendant in a fraudulent transfer action. Courts have routinely held that status as a defendant in a fraudulent transfer case does not confer standing. See, e.g. *Abbott v. Daff (In re Abbott)*, 183 B.R. 198 (B.A.P. 9th Cir. 1995) (holding that the debtor's wife did not have standing as a potential defendant to appeal the order reopening case so that trustee could pursue fraudulent transfer claims against her); *Wigley v. Wigley (In re Wigley)*, 886 F.3d 681, 685 (8th Cir. 2018) (holding that debtor's wife did not have standing to appeal bankruptcy court's order granting the creditor relief from stay to prosecute fraudulent transfer action against her).

The Ninth Circuit's decision in *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441 (9th Cir. 1983) mirrors the facts here. In *Fondiller*, the chapter 7 trustee employed

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1 special litigation counsel to investigate and pursue fraudulent transfer claims against a
2 debtor and his wife, a non-debtor. The bankruptcy court approved the employment of
3 special litigation counsel, and the BAP affirmed. Subsequently, the wife appealed the
4 order, and the Ninth Circuit affirmed the BAP. In its holding, the Ninth Circuit noted that
5 the wife's only "demonstrable interest" was as a "potential party defendant in an
6 adversary proceeding[.]" *Id.* at 443. Thus, because the "order did not diminish her
7 property, increase her burdens, or detrimentally affect her rights," the wife lacked
8 standing to appeal the order. Similarly, an order granting the application to employ the
9 Richards firm has no direct impact on Erika. The order itself does not diminish her
10 property, increase any burdens, or detrimentally affect any rights. Indeed, Erika raises
11 none of these arguments in her opposition.

12 In sum, Erika, as a mere *potential* defendant, does not have standing to oppose
13 the Application. The Court can disregard the opposition on this basis alone.
14 Nonetheless, as set forth below, Erika's opposition also fails on the merits and provides
15 no grounds to deny the Application.

16 **B. The Fraudulent Transfer Claims Will Only Be Pursued by the Trustee**
17 **and Do Not Create an Actual Conflict or an Adverse Interest**

18 Erika argues at length that because the Richards Firm represents the Plaintiffs
19 (who previously asserted fraudulent transfer claims), there is an actual conflict because
20 fraudulent transfer claims belong to the Estate. It is true that fraudulent transfer claims
21 belong to the Estate. However, there is no actual conflict here. The Plaintiffs have
22 agreed that the fraudulent transfer claims belong to the Estate and will only be pursued
23 by the Estate. The Trustee acknowledged this agreement with the Plaintiffs in her
24 Statement to the Remand Motion filed with the Court. See Statement, Ex. "3."
25 Subsequently, counsel for the Plaintiffs repeatedly stated on the record at the hearing on
26 the Remand Motion that the Plaintiffs would not pursue the fraudulent transfer claims.
27 See Transcript, Ex. "4." In fact, the Court recognized the Plaintiffs' statements in its order
28 granting the Remand Motion. See Remand Order, Ex. "5." Because the Plaintiffs have

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1 agreed not to pursue the fraudulent transfer claims, there will be no overlap between the
2 Estate and the Plaintiffs. Simply put, there is no actual conflict.² Similarly, the Plaintiffs'
3 agreement not to pursue the fraudulent transfer claims also means that the Richards Firm
4 does not represent a party that holds an adverse interest. In sum, there is no basis to
5 deny the Application because of the fraudulent transfer claims.

6 **C. The Potential Claim Objection Does Not Constitute an Actual Conflict**
7 **or An Adverse Interest**

8 There is no actual conflict nor interest adverse to the Estate concerning the
9 Trustee's potential claim objection to the Plaintiffs' claim. Erika contends that the Trustee
10 may be required to object to the Plaintiffs' claim on the basis that the Plaintiffs' claim is
11 based on money allegedly owed pursuant to a purported oral fee-splitting agreement,
12 which Erika contends is impermissible under California law. See Opposition at 9:4-6.
13 Erika's assertions are based on a misapplication of the standard in section 327(e) by
14 disregarding its limiting language.

15 Section 327(e) provides that proposed counsel cannot represent an adverse
16 interest "with respect to the matter on which such attorney is to be employed." See 11
17 U.S.C. § 327(e). As made clear in the Application, the Richards Firm's employment is
18 limited to investigating and pursuing fraudulent transfer claims on behalf of the Estate.
19 As to this limited purpose, the interests of the Estate and the Plaintiffs are squarely
20 aligned—both parties are interested in maximizing recovery. In searching for a conflict,
21 Erika looks beyond the narrow confines of the scope of the Richards Firm's employment
22 and misapplies the standard under section 327(e) by expanding its express limitations.
23 Erika fails to explain how a potential claim objection, which would not be handled by the
24 Richards Firm, as it is outside the scope of the Richards Firm's employment, conflicts

25
26 ² Erika's contention that the Trustee has failed to make the requisite disclosures in her application to
27 employ the Richards Firm concerning the fraudulent transfer claims and potential claim objection is a red
28 herring. At the time the Trustee filed her Application, the Plaintiffs had already agreed that the fraudulent
transfers claims belonged to the Estate. Moreover, as discussed in more detail later, the potential claim
objection is a distinct issue and is not within the limited scope of the Richards Firm's employment.

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1 with recovery of fraudulent transfers or how these issues are even connected. The
2 Richards Firm's representation of the Plaintiffs is completely unrelated to its duties as
3 special litigation counsel, and does not preclude its employment as special litigation
4 counsel. There is no actual conflict or adverse interest.

5 The Bankruptcy Appellate Panel from the Ninth Circuit has rejected the line of
6 arguments Erika raises. In *Fondiller v. Robertson (In re Fondiller)*, 15 B.R. 890 (B.A.P.
7 9th Cir. 1981) (aff'd on other grounds), the chapter 7 trustee sought to employ a firm as
8 special litigation to pursue fraudulent transfer claims against the debtor and his wife, a
9 non-debtor. The debtor and his wife objected to the trustee's employment of the firm
10 because the firm was currently representing certain creditors. The B.A.P. did not find
11 these arguments persuasive. In affirming the bankruptcy court's order authorizing
12 employment of the firm, the B.A.P. noted that section 327(e) does not require special
13 litigation counsel to cease its current representation of certain creditors. Here, the
14 Richards Firm's representation of the Plaintiffs is not adverse, nor does it create an actual
15 conflict with respect to Richards Firm's limited scope of employment (investigating and
16 pursuing fraudulent transfer claims against Erika and any of her related entities).
17 Because the Richards Firm is representing the Trustee in a limited capacity, there is no
18 issue with the Richards Firm's representation of other creditors.

19 Further, if Erika's arguments are accepted, they would render section 327(c)
20 superfluous. It is not unusual for a trustee to retain special litigation counsel that also
21 represents a creditor. Indeed, it is expressly permitted by the Bankruptcy Code and Erika
22 acknowledges that in Thomas Girardi's individual case, she did not oppose the trustee's
23 application to employ special litigation counsel that represents certain creditors. See
24 Opposition at 1:17. However, Erika's contention that a potential objection to a proof of
25 claim precludes employment of special litigation counsel means that any time counsel
26 represents a creditor, proposed counsel could never be retained by a trustee. If this were
27 true, then section 327(c)'s language that provides that "a person is not disqualified for
28 employment...solely because of such person's...representation of a creditor" is

1 meaningless. On this point, Erika provides no case law or legal authority for a position
2 that contravenes section 327(c). In short, Erika's position is unsupported, in
3 contravention of the Bankruptcy Code and should be rejected.

4 **D. The Request for a Gag Order is Improper**

5 Erika's request that the Court issue a "gag order" limiting the speech of Mr.
6 Richards is improperly raised. This request is completely irrelevant to the standard for
7 employment set forth in the Application. Moreover, the issue is not currently before the
8 Court, and should not be raised in an opposition for the first time. "Courts in this and
9 other districts have concluded that a request for affirmative relief is not proper when
10 raised for the first time in an opposition." *Smith v. Premiere Valet Services, Inc.*, 2020
11 WL 7034346 at *14 (C.D. Cal. August 4, 2020) (citing decisions where courts have
12 rejected affirmative requests for relief first raised in oppositions). Thus, because the
13 issue is not before the Court and is irrelevant, the Court need not consider it and should
14 deny the request.

15
16 **IV. CONCLUSION**

17 For the foregoing reasons, the Trustee requests that the Court overrule the
18 Opposition and enter an order granting the Application.

19
20 DATED: June 1, 2021

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

23 By: /s/ Lei Lei Wang Ekvall

24 LEI LEI WANG EKVALL

25 Attorneys for Elissa D. Miller, Chapter 7
26 Trustee
27
28

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EXHIBIT "1"

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Attorneys for Elissa Miller, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re

GIRARDI KEESE,

Debtor.

LAW OFFICES OF PHILIP R. SHELDON,
APC, a California professional corporation;
PHILIP SHELDON, an individual; LAW
OFFICES OF ROBERT P. FINN; a
California Sole Proprietorship; and
ROBERT P. FINN, an individual,

Plaintiffs,

v.

THOMAS V. GIRARDI, an individual;
GIRARDI KEESE; a California law firm;
ERIKA GIRARDI a/k/a/ ERIKA JAYNE, an
individual; EJ GLOBAL, LLC, a California
limited liability company; 1126 WILSHIRE
PARTNERSHIP, a California general
partnership; GIRARDI FINANCIAL, INC., a
Nevada corporation; DAVID LIRA, an
individual; ROBERT FINNERTY, an
individual; and DOES 1-100, inclusive,

Defendants.

Case No. 2:20-bk-21022-BR

Chapter 7

Adv No. 2:21-ap-01039-BR

**STIPULATION FOR VOLUNTARY
DISMISSAL OF DEBTOR PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 41(a)**

[No Hearing Required]

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1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE:**

2 Elissa D. Miller, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of
3 Girardi Keese (the "Debtor"), and the Law Offices of Philip R. Sheldon, APC, Philip R.
4 Sheldon, Law Offices of Robert P. Finn, and Robert P. Finn (collectively, the "Plaintiffs"),
5 by and through their respective counsel, hereby stipulate as follows:

6 **RECITALS**

7 A. On December 9, 2020, the Law Offices of Philip R. Sheldon, APC, filed a
8 complaint against Thomas V. Girardi, the Debtor, and DOES 1-100, in the Los Angeles
9 Superior Court, commencing Case No. 20STCV47160 (the "State Court Action").

10 B. On December 16, 2020, the Plaintiffs filed a First Amended Complaint
11 against Thomas V. Girardi, the Debtor, as well as Erika Girardi, EJ Global, LLC, 1126
12 Wilshire Partnership, Girardi Financial, Inc., David Lira, and Robert Finnerty.

13 C. On December 18, 2020, petitioning creditors Jill O'Callahan, as success in
14 interest to James O'Callahan, Robert M. Keese, John Abassian, Erika Saldana, Virginia
15 Antonio, and Kimberly Archie (collectively, the "Petitioning Creditors") filed an involuntary
16 chapter 7 bankruptcy petition against the Debtor. This same day, the Petitioning
17 Creditors also filed an involuntary chapter 7 bankruptcy case against Thomas Girardi,
18 which is currently pending as Bankruptcy Case No. 2:20-bk-21020-BR.

19 D. On March 5, 2021, Defendant David Lira filed a Notice of Removal,
20 removing the State Court Action to this Court and commencing adversary case 2:21-ap-
21 1039-BR (the "Adversary Case").

22 E. On March 9, 2021, the Court entered an order setting a status conference
23 and ordering the parties to show cause why the Court should not abstain and remand the
24 State Court Action.

25 F. A status conference is currently scheduled for May 11, 2021.

26 G. The Trustee and the Plaintiffs have agreed to a dismissal of the Debtor
27 without prejudice.
28

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STIPULATION

In light of the foregoing recitals, the Trustee and the Plaintiffs stipulate to the following:

1. The Debtor is dismissed from the Adversary Case and the State Court Action without prejudice;

2. The voluntary dismissal of the Debtor shall have no effect on the Plaintiffs' right to enforce any alleged claim they purport to hold against the Debtor by filing a proof of claim in the Debtor's bankruptcy case or the rights of the Trustee to dispute or object to any such claim filed; and

3. The Trustee/Debtor's estate and the Plaintiffs shall bear their own fees and costs.


DATED: March 25, 2021

SMILEY WANG-EKVALL, LLP

By: /s/ Lei Lei Wang Ekvall
LEI LEI WANG EKVALL
Attorneys for Elissa Miller, Chapter 7 Trustee

DATED: March 24, 2021

SPERTUS, LANDES & UMHOFFER, LLP

By: 
JAMES SPERTUS
Attorneys for Plaintiffs Law Offices of Philip R. Sheldon, APC; Philip R. Sheldon; Law Offices of Robert P. Finn; and Robert P. Finn

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

A true and correct copy of the foregoing document entitled (*specify*): **STIPULATION FOR VOLUNTARY DISMISSAL OF DEBTOR PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(a)** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) March 25, 2021 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Lei Lei Wang Ekvall lekval@swelawfirm.com, lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- Edith R. Matthai ematthai@romalaw.com, lrobie@romalaw.com
- Elissa Miller (TR) CA71@ecfcbis.com, MillerTrustee@Sulmeyerlaw.com;C124@ecfcbis.com;ccaldwell@sulmeyerlaw.com
- Ronald N Richards ron@ronaldrichards.com, morani@ronaldrichards.com
- United States Trustee (LA) ustprejion16.la.ecf@usdoj.gov
- Timothy J Yoo tjy@lnbyb.com

☐ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) March 25, 2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

James W Spertus
Spertus Landes & Umhoffer LLP
1990 South Bundy Dr Ste 705
Los Angeles, CA 90025

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 25, 2021	Gabriela Gomez-Cruz	/s/ Gabriela Gomez-Cruz
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

EXHIBIT "2"

1 **SMILEY WANG-EKVALL, LLP**
Lei Lei Wang Ekvall, State Bar No. 163047
2 *lekvall@swelawfirm.com*
Philip E. Strok, State Bar No. 169296
3 *pstrok@swelawfirm.com*
Timothy W. Evanston, State Bar No. 319342
4 *tevanston@swelawfirm.com*
3200 Park Center Drive, Suite 250
5 Costa Mesa, California 92626
Telephone: 714 445-1000
6 Facsimile: 714 445-1002



7 Attorneys for Elissa Miller, Chapter 7 Trustee

8 **UNITED STATES BANKRUPTCY COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **LOS ANGELES DIVISION**

11 In re

12 GIRARDI KEESE,

13 Debtor.

14 LAW OFFICES OF PHILIP R. SHELDON,
15 APC, a California professional corporation;
16 PHILIP SHELDON, an individual; LAW
17 OFFICES OF ROBERT P. FINN; a
California Sole Proprietorship; and
ROBERT P. FINN, an individual,

18 Plaintiffs,

19 v.

20 THOMAS V. GIRARDI, an individual;
21 GIRARDI KEESE; a California law firm;
22 ERIKA GIRARDI a/k/a/ ERIKA JAYNE, an
individual; EJ GLOBAL, LLC, a California
23 limited liability company; 1126 WILSHIRE
PARTNERSHIP, a California general
partnership; GIRARDI FINANCIAL, INC., a
24 Nevada corporation; DAVID LIRA, an
individual; ROBERT FINNERTY, an
individual; and DOES 1-100, inclusive,

25 Defendants.
26
27
28

Case No. 2:20-bk-21022-BR

Chapter 7

Adv No. 2:21-ap-01039-BR

**ORDER APPROVING STIPULATION
FOR VOLUNTARY DISMISSAL OF
DEBTOR PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 41(a)**

[No Hearing Required]

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

1 The Court having reviewed the *Stipulation for Voluntary Dismissal of Debtor*
2 *Pursuant to Federal Rule of Civil Procedure 41(a)* (the "Stipulation")¹, which was filed as
3 docket number 15, and good cause appearing,

4 IT IS HEREBY ORDERED AS FOLLOWS:

- 5 1. The Stipulation is approved;
- 6 2. The Debtor is dismissed from the Adversary Case and the State Court
7 Action without prejudice;
- 8 3. The voluntary dismissal of the Debtor shall have no effect on the Plaintiffs'
9 right to enforce any alleged claim they purport to hold against the Debtor by filing a proof
10 of claim in the Debtor's bankruptcy case or the rights of the Trustee to dispute or object to
11 any such claim filed; and
- 12 4. The Trustee/Debtor's estate and the Plaintiffs shall bear their own fees and
13 costs.

14 ###

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23
24 Date: March 26, 2021



Barry Russell
United States Bankruptcy Judge

25
26
27 ¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the
28 Stipulation.

EXHIBIT "3"

SMILEY WANG-EKVALL, LLP
Lei Lei Wang Ekvall, State Bar No. 163047
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Attorneys for Elissa D. Miller, the Chapter 7
Trustee for the bankruptcy estate of Girardi
Keese

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re
GIRARDI KEESE,
Debtor.

Case No. 2:20-bk-21022-BR

Chapter 7

Adv No. 2:21-ap-01039-BR

LAW OFFICES OF PHILIP R. SHELDON,
APC, a California professional corporation;
PHILIP SHELDON, an individual; LAW
OFFICES OF ROBERT P. FINN, a
California sole proprietorship; and
ROBERT P. FINN, an individual,

**CHAPTER 7 TRUSTEE'S STATEMENT
OF NON-OPPOSITION TO PLAINTIFFS'
MOTION FOR REMAND**

Date: May 11, 2021
Time: 2:00 P.m.
Ctrm.: 1668 via ZoomGov
255 E. Temple Street
Los Angeles, CA 90012

Plaintiffs,

v.

Web Address: <https://cacb.zoomgov.com>
Meeting ID: 161 713 6367
Password: 123456
Telephone: (669) 254-5252 (San Jose)
(646) 828-7666 (New York)

THOMAS V. GIRARDI, an individual;
GIRARDI & KEESE, a California law firm;
ERIKA GIRARDI a/k/a ERIKA JAYNE, an
individual; EJ GLOBAL, LLC, a California
limited liability company; 1126 WILSHIRE
PARTNERSHIP, a California general
partnership; GIRARDI FINANCIAL, INC., a
Nevada corporation; DAVID LIRA, an
individual; ROBERT FINNERTY; an
individual; and DOES 1-100, inclusive,

Defendants.

SMILEY WANG-EKVALL, LLP
3200 Park Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714 445-1000 • Fax 714 445-1002

1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE:**

2 Elissa D. Miller, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of
3 Girardi Keese (the "Estate"), submits this statement of non-opposition to the *Motion for*
4 *Remand* (the "Motion") [Docket No. 20] filed by the Law Offices of Philip R. Sheldon,
5 APC, Philip R. Sheldon, Law Offices of Robert P. Finn, and Robert P. Finn (collectively,
6 the "Plaintiffs").

7 On March 25, 2021, the Trustee and Plaintiffs entered into a *Stipulation for*
8 *Voluntary Dismissal of Debtor Pursuant to Federal Rule of Civil Procedure 41(a)* [Docket
9 No. 15] (the "Stipulation"). Pursuant to the Stipulation, the Plaintiffs agreed to dismiss
10 Girardi Keese as a defendant from the action without prejudice. On March 26, 2021, the
11 Court entered an order approving the Stipulation.

12 The sixth cause of action in the operative complaint is for fraudulent transfer.
13 Fraudulent transfer claims belong to the Estate. After the Trustee informed the Plaintiffs
14 of this, the Plaintiffs agreed that they would not pursue the fraudulent transfer claims.
15 Based on the Plaintiffs' agreement and representation, the Trustee does not oppose the
16 Motion.

17
18 DATED: April 27, 2021

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

21 By: /s/ Timothy W. Evanston

22 TIMOTHY W. EVANSTON

23 Attorneys for Elissa D. Miller, the Chapter 7
24 Trustee for the bankruptcy estate of Girardi
25 Keese
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626

A true and correct copy of the foregoing document entitled (*specify*): **Chapter 7 Trustee's Statement of Non-Opposition to Plaintiffs' Motion for Remand** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **4/27/2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Lei Lei Wang Ekvall** lekvall@swelawfirm.com,
lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- **Edith R. Matthai** ematthai@romalaw.com, lrobie@romalaw.com
- **Elissa Miller (TR)** CA71@ecfbis.com,
MillerTrustee@Sulmeyerlaw.com;C124@ecfbis.com;ccaldwell@sulmeyerlaw.com
- **Ronald N Richards** ron@ronaldrichards.com, morani@ronaldrichards.com
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov
- **Timothy J Yoo** tjy@lnbyb.com
-

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **4/27/2021**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

4/27/2021
Date

Lynnette Garrett
Printed Name

/s/ Lynnette Garrett
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

EXHIBIT "4"

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 --oOo--

4 In Re:) Case No. 2:20-bk-21022-BR
5 GIRARDI KEESE,) Chapter 7
6 Debtor.) Los Angeles, California
7 Tuesday, May 11, 2021
8 LAW OFFICES OF PHILIP R.) 2:00 p.m.
9 SHELDON, et al.,) Adv. No. 2:21-ap-01039-BR
10 Plaintiffs,)
11 v.)
12 GIRARDI, et al.,)
13 Defendants.)

14 HEARING RE NOTICE OF REMOVAL

15 HEARING RE MOTION FOR REMAND

16 TRANSCRIPT OF TELEPHONIC PROCEEDINGS
17 BEFORE THE HONORABLE BARRY RUSSELL
18 UNITED STATES BANKRUPTCY JUDGE

19 APPEARANCES:

20 For the Plaintiffs: RONALD RICHARDS, ESQ.
21 Law Offices of Ronald Richards
22 & Associates, APC
23 Post Office Box 11480
24 Beverly Hills, California
25 90213
(310) 556-1001

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES: (Cont'd.)

2 For Defendant Lira:

KYLE KVETON, ESQ.
Robie & Matthai
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Suite 3950
Los Angeles, California 90071

5 For Elissa Miller:

TIM EVANSTON, ESQ.
Smiley, Wang-Ekvall, LLP
3200 Park Center Drive
Suite 250
Costa Mesa, California 92626
(714) 445-1000

8 Court Recorder:

Wanda Toliver
United States Bankruptcy Court
Edward R. Roybal Federal
Building
255 East Temple Street
Los Angeles, California 90012

12 Transcriber:

Jordan Keilty
Echo Reporting, Inc.
2160 Fletcher Parkway
Suite 209
El Cajon, California 92020
(858) 453-7590

1 LOS ANGELES, CALIFORNIA TUESDAY, MAY 11, 2021 2:00 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Number three and four, Girardi Keese.
5 Please state your name for the record.

6 MR. KVETON (telephonic): Good afternoon, your
7 Honor. On behalf of Defendant David Lira, Kyle Kveton, K-V-
8 E-T-O-N.

9 THE COURT: All right.

10 MR. RICHARDS (telephonic): Good afternoon, your
11 Honor. Ronald Richards on behalf of Plaintiffs.

12 THE COURT: Okay. You want -- it's your motion to
13 remand this, right?

14 MR. RICHARDS: Yes, your Honor.

15 THE COURT: Okay. And do you wish to -- I've read
16 -- by the way, I've read all your -- all your papers. Do
17 you wish to -- and you sort of -- you had the last word as
18 far as the papers. I know what the argument -- why don't I
19 hear from the other side. Then you can reply. How's that?

20 MR. RICHARDS: Great.

21 THE COURT: One thing, Mr. -- how do you pronounce
22 -- is it --

23 MR. KVETON: It's pronounced Kveton, your Honor.

24 THE COURT: That's right. Got you. Kveton, okay.
25 Mr. Kveton, what I -- what I -- what I don't understand is

1 -- I mean, I understand what's going on, but my strong
2 inclination is to remand this for a couple of reasons.

3 Number one, I -- why would -- two things. One is,
4 again, I have no -- just so you understand, I have no -- I
5 have no opinion on the merits of this, but I know what the
6 issues are. Why -- why -- what you're saying essentially
7 that ultimately -- and, again, I don't know if you're
8 correct or not, but the other side said maybe it's true,
9 maybe it isn't. Basically you're saying, well, ultimately,
10 that if they -- if they do get a judgment against you, as I
11 understand, the allegation is that -- that you'll receive
12 basically moneys that the -- that the firm improperly
13 diverted funds, and part of your salary payment you got was
14 part of the funds. I mean, I'm saying it in very simplistic
15 terms, but that's more or less what they're alleging, right?

16 MR. KVETON: That's one of their allegations, yes,
17 your Honor.

18 THE COURT: Yeah, one of them, but the -- that's
19 -- and -- and then you're saying that, well, even if --
20 you're saying obviously that you can do it, but assuming
21 that -- that you get a judgment, you're saying, well, the
22 estate would have to indemnify me anyway.

23 Is that the essence of really what your argument
24 is, why I should hear it?

25 MR. KVETON: Only -- it's only part, your Honor.

1 You've correctly articulated one of our arguments, but I
2 think the Court is -- did not look at and did not address
3 the one that I think is the problem here with moving us
4 anywhere as --

5 THE COURT: Well, I looked at everything. I may
6 not have said it right now, but I have. I'm trying to
7 summarize best I could.

8 MR. KVETON: Sure.

9 THE COURT: So why else would you --

10 MR. KVETON: I understand.

11 THE COURT: -- think that --

12 MR. KVETON: And no offense intended to the Court.

13 THE COURT: -- I should hear this?

14 MR. KVETON: It's -- the simple answer I think can
15 be found in one other place, in paragraph 59 of the first
16 amended complaint --

17 THE COURT: All right.

18 MR. KVETON: -- where the Plaintiffs admit that
19 the amount of money that they are owed cannot be ascertained
20 without a full accounting from the Girardi Defendant, that
21 is, with the two estates in bankruptcy here, because
22 everything -- assuming they have a right to any payment
23 whatsoever, that right starts with did the Girardi Firm and
24 Tom Girardi have money, control money, and not disburse it.
25 They can't even tell us how much they are owed unless and

1 until that preliminary foundational fact is determined.
2 That's got to happen in this Court. And any defenses to
3 their entitlement, for example, a lack of contract, a lack
4 of standing on the part of Mr. Sheldon who did not identify
5 this claim in bankruptcy years ago, et cetera, all have to
6 be determined preliminarily, and those are identical
7 defenses that the Trustee is going to have to raise to the
8 proof of claim file by the Sheldon and Finn Plaintiffs here.

9 If we go to State Court, we're going to end up
10 with another -- another judicial officer or tribunal making
11 the very same precondition foundational fact determinations
12 this Court has to make as to the two Girardi estate
13 Defendants, whether they're a party to this case or not.
14 You don't get to Dave Lira until you first get to Girardi
15 and Girardi Keese, who got the money. Until that happens,
16 you can't get to Mr. Lira, regardless of Plaintiffs' theory.
17 Plaintiffs admit that. That -- that is a core -- a core
18 fundamental precept in their complaint. You must get an
19 accounting of the Girardi Defendants first and how much the
20 Plaintiffs are owed in the first instance before you can
21 figure out whether there was transfer that was fraudulent, a
22 conversion or abuse of any elder. And, therefore, we should
23 not be litigating this case in two separate forums because
24 you have to -- this Court has to make those determinations
25 as to the key Defendants, where the tentacles all emanate

1 from, that is, Girardi and Girardi Keese.

2 THE COURT: Okay. Thank you. All right. And
3 thank you for adding that. I did read that, but -- okay.
4 Mr. Richards?

5 MR. RICHARDS: Yeah, that -- that's incorrect,
6 your Honor, because the accounting we can get through
7 discovery. There -- we don't need to sue somebody to ge4t
8 accounting. And, second of all, the claims against Lira are
9 independent tort claims. He doesn't get indemnity for any
10 tortious conduct under Labor Code 2802, and the Girardi
11 Keese Defendant's not a part of this action anymore, and
12 we're not pursuing any of the state claims. There's no
13 claim objection process. If there's a -- if there's an
14 omitted claim from Sheldon's bankruptcy filing, the State
15 Court will apply the Code, and they'll win on a motion for
16 judgment on the pleadings or demur. I mean, it happens all
17 the time in State Court. They argue -- they use the word
18 "judicial estoppel" even though that's not technically
19 correct. That's what every State Court practitioner does,
20 and say, "Oh, it's not on the bankruptcy form. So they're
21 barred." So we just want to proceed against -- that's how
22 we resolve the case with the Trustee. We just want to
23 proceed against the non-Debtor parties, and I don't think
24 this Court needs to be the bookkeeper for the Girardi Keese
25 estate. We can get that information from either the

1 Defendant directly through discovery or by discovery against
2 the --

3 THE COURT: Well, as --

4 MR. RICHARDS: -- Trustee.

5 THE COURT: -- I understand it, you have to show,
6 I gather -- and, again, thank you. You've been a little
7 more explicit. I was trying to cut through, and I didn't do
8 a very good job in cutting through the issues. But I guess
9 they have to show, and it -- it would be, I guess, the way I
10 -- just reviewing the transcripts of what happened in
11 Chicago -- I haven't had the trials here, but just taking
12 you -- the -- which of the -- what I'm trying to figure out
13 is -- I think I know the answer -- as far as the -- but
14 essentially you're saying that these would be -- I use that
15 as an example, the \$2,000,000 that apparently is missing
16 from the aircraft, the crash in Indonesia I think it was.
17 Is that part of this?

18 MR. RICHARDS: No.

19 THE COURT: Okay. Well, that's where I wanted to
20 make sure.

21 MR. RICHARDS: We have written fee agreements with
22 all these clients. I know the complaint says oral, but on
23 some allegations --

24 THE COURT: I wanted to make it clear for me at
25 this point exactly which -- because the essence of it is

1 that the firm improperly got the money and then -- then --
2 and then these -- these salary, whatever you call it, paid
3 to -- with Lira were part of that. Is that in essence what
4 this is about?

5 MR. RICHARDS: Yes, and also --

6 THE COURT: Yeah. So my question is which --
7 which of those --

8 MR. RICHARDS: -- these were direct checks.

9 THE COURT: -- lawsuits were the ones that were
10 part of that -- the improper action by the firm, by the
11 Debtor?

12 MR. RICHARDS: Well, these were other lawsuits,
13 your Honor, not just the Chicago lawsuit.

14 THE COURT: Okay. Well, that's where I went off.

15 MR. RICHARDS: And many players -- yeah, there's
16 many -- I was on the phone for those contempt hearings.
17 There's many joint client agreements for Girardi and Keese
18 and the Plaintiffs, like many other lawyers in Southern
19 California, have joint fee agreements with the clients.

20 THE COURT: Right.

21 MR. RICHARDS: Girardi was the lawyer, and the
22 Plaintiffs were the lawyer. And so Girardi got the fees but
23 never turned them over to the --

24 THE COURT: Right.

25 MR. RICHARDS: -- Plaintiff and paid Lira.

1 THE COURT: Right. So all -- so all you need to
2 show, again, I'm -- I wanted to get it straight. I -- as
3 far as the particular fees that are involved, that all you
4 have to show -- and you obviously as the Plaintiff is that
5 -- that the moneys were paid to Girardi Keese, right?
6 That's basically what you have to show, right?

7 MR. RICHARDS: That's correct. Also, there were
8 direct statements by Lira we've alleged in the complaint,
9 and there was direct conduct. Lira's not some outsider.
10 He's been a signer on the trust account, and he's Girardi's
11 son-in-law. He's not like somebody out of left field here.
12 I mean, he's a principal lieutenant in the Girardi
13 organization. He's a higher up for sure.

14 THE COURT: Okay. So -- and so again, so what --
15 what my question to you is -- is what -- what determination
16 that the -- the State Court would make because that --
17 that's fairly -- would not possibly be inconsistent with
18 anything I would do, namely, what was owed, you know.

19 MR. RICHARDS: The State Court and you don't even
20 come into close contact on this one.

21 THE COURT: All right. Mr. Kveton, what about
22 that? I don't think that -- I don't have to make a full
23 determination, do I?

24 MR. KVETON: Well, you have to make -- first of
25 all, leaving aside from the inaccuracies from that

1 recitation of Mr. Richards, which I'll just categorically
2 say he's wrong on the characterizations to Lira and his
3 conduct --

4 THE COURT: Okay. And, again, I --

5 MR. KVETON: -- but the bottom line is --

6 THE COURT: -- figured you would disagree.

7 MR. KVETON: -- they don't get a dime. They don't
8 get a dime. They don't get a dime unless and until they can
9 prove, (a), there was a valid fee split or fee agreement
10 with Girardi Keese. Lira was not a party to any of those
11 alleged contracts. Not even Mr. Richards can say that with
12 a straight face.

13 Secondly, they have to prove the amount given the
14 settlement they are owed from the Girardi Firm, that is, how
15 much money went to the Girardi Firm and how much should have
16 gone to them.

17 Our -- our status, according to the complaint is
18 that the recipient of funds that should have been given to
19 the -- Mr. Sheldon and Mr. Finn, not that we were the
20 recipient and had some obligation on the initial funds to
21 disburse but that we got money that should have gone to
22 them. Until they can prove and get a determination as to
23 (a) entitlement and (b) amount, the amount and extent any
24 liability that might ever be asserted against Mr. Lira is
25 purely speculative, which is the foundational fact that has

1 to be determine is is the Sheldon and Finn firms entitled to
2 money in the first place. That is a decision you're going
3 to have to make in any event separately on the proofs of
4 claim and should not be made by a State Court where you have
5 competing -- two competing judges doing the same
6 determination. And how a judge might apply the doctrines of
7 judicial estoppel or any other if you fail to disclose it in
8 your bankruptcy filing theory, should be done in one court.
9 Quite frankly, it should be done by you.

10 THE COURT: Of course, the problem with that is --
11 I'm very familiar with judicial estoppel, with that area.
12 The only problem is in this case, this was an involuntary
13 case, and there's the -- the -- that doesn't work, you know,
14 when you're dealing with involuntary. It worked quite well
15 -- but, anyway, let me hear very briefly, Mr. Richards --

16 MR. KVETON: That was Sheldon filing, your Honor.
17 The filing we're talking about failing to disclose was
18 Sheldon's, not the Girardi involuntary --

19 THE COURT: Okay. Okay. All right. Thank you.

20 All right. Mr. --

21 MR. KVETON: Just for clarification. Thank you,
22 your Honor.

23 THE COURT: -- Richards?

24 MR. RICHARDS: We haven't filed any claims. We
25 may never file claims in this case depending on the outcome

1 of the money trail to Lira. We don't have to lay out -- we
2 don't have to prove that Lira received an exact amount to
3 allege a claim against him. I mean, he's trying to create
4 this mix where there's -- where -- this is just a complaint
5 against a non-Debtor that -- that -- it's all conjecture
6 that you're even going to have to adjudicate a claim. That
7 assumes there won't be a resolution with Mr. Spertus who's
8 representing the Plaintiffs and the Trustee. I mean, that
9 just isn't --

10 THE COURT: Okay. I'm going to grant the motion
11 to remand. I tend to agree with you. I'm not as worried
12 about the possibility that the State Court judge might make
13 a ruling inconsistent. And also, what I'm certainly not
14 ever going to want to do is deal with Mr. Lira's conduct.
15 That -- that -- and if he does, if the -- I don't have any -
16 - again, I have no opinion how this is all going to play
17 out. I'm not particularly worried about the State Court
18 making any -- any determination that may conflict with my
19 views.

20 And, in any case, either -- one of two things is
21 going to happen. Again, I'm repeating myself ad nauseam.
22 Either Mr. Lira's going to win or he's going to lose, and if
23 he -- if he -- if he wins, then it's a moot -- everything
24 you were talking about is really a moot point. And if he
25 loses, then he can turn around and he can file his claim for

1 indemnification and then we'll go to that. And, again, I
2 have, again, no -- no opinion whatsoever on that.

3 So I think the better part of valor in this case
4 is let it all play out in the State Court. So I will -- if
5 you'll -- Mr. Richards, if you'll prepare an order remanding
6 that -- that complaint to the State Court, and that -- I
7 don't think -- that doesn't leave anything for me to do, is
8 it not?

9 MR. RICHARDS: Your Honor?

10 MR. KVETON: That's correct.

11 MR. EVANSTON (telephonic): Your Honor, I'm sorry.
12 This is Tim Evanston for the Chapter 7 Trustee, Elissa
13 Miller.

14 THE COURT: I'm sorry I -- I saw you there, but I
15 wasn't sure if you wanted to speak. I'm assume you agree
16 with what the -- what I've just done?

17 MR. EVANSTON: We do. We have no opposition. Our
18 only request is that Plaintiffs' counsel confirm on the
19 record that the fraudulent transfer claims will be pursued
20 by the estate.

21 MR. RICHARDS: That's correct, your Honor. We are
22 not pursuing any of the fraudulent transfer claims. Those
23 are just going to be pursued by the estate only. We are not
24 -- even though the complaint had been in there, we made an
25 agreement before the -- before the non-opposition by the

1 Trustee. They raised that issue, and we filed a stip with
2 them that we would not pursue the fraudulent conveyance of
3 claims at all. So try to remember that this may come up in
4 a future hearing, so when they raise that --

5 THE COURT: Well, this is --

6 MR. KVETON: May I ask one clarification, your
7 Honor?

8 THE COURT: Sure. Sure.

9 MR. KVETON: Pardon me for directing this to
10 counsel, but will we get a similar representation with the
11 State Court on remand?

12 MR. RICHARDS: We're not going to pursue the
13 fraudulent conveyance claims that are pled in the complaint.
14 Those belong to the estate, and I'll -- I mean, I'm -- I'll
15 send you a copy of the stipulation I made with the Trustee's
16 counsel.

17 THE COURT: Well, and I assume they're not
18 suicidal. I assume the same statement will be made to the
19 State Court, right? And that's -- that's a rhetorical
20 question, but it's a fair one, right?

21 MR. RICHARDS: That's correct. We're not pursuing
22 the fraudulent conveyance claims.

23 THE COURT: Yeah, I -- okay. That's certainly a
24 fair -- it's a fair question. Anyway, this whole case is a
25 fascinating case and no doubt will be -- who knows what

1 other things will come up, but this particular one, I think
2 this one does belong in -- in the State Court. And so thank
3 you, Gentlemen. Thank you very much, and if you'll prepare
4 that order, I will sign that, and that concludes this
5 hearing. Thank you very much.

6 ALL: Thank you, your Honor.

7 THE COURT: You're welcome.

8 (Proceedings concluded.)
9
10

11 I certify that the foregoing is a correct
12 transcript from the electronic sound recording of the
13 proceedings in the above-entitled matter.
14

15 /s/Jordan Keilty 5/11/2021
16 Transcriber Dates

17 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:
18

19 /s/L.L. Francisco
20 L.L. Francisco, President
21 Echo Reporting, Inc.
22
23
24
25

EXHIBIT "5"

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Attorneys for Plaintiffs

UNITED STATES BANKRUPTCY COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:

GIRARDI KEESE,

Debtor.

LAW OFFICES OF PHILIP R. SHELDON,
APC, a California professional corporation,
PHILIP R. SHELDON, an individual, LAW
OFFICES OF ROBERT P. FINN, a California
sole proprietorship, and ROBERT P. FINN, an
individual,

Plaintiffs,

v.

THOMAS V. GIRARDI, an individual;
GIRARDI & KEESE, a California law firm;
ERIKA GIRARDI a/k/a ERIKA JAYNE, an
individual, EJ GLOBAL, LLC, a California
limited liability company, 1126 WILSHIRE
PARTNERSHIP, a California general
partnership, GIRARDI FINANCIAL, INC., a
Nevada corporation, DAVID LIRA, an
individual, ROBERT FINNERTY, an
individual, and DOES 1-100, inclusive,

Defendants.

FILED & ENTERED

MAY 13 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY fortier DEPUTY CLERK

CHAPTER 7

Hon. Barry Russell

CASE NO.: 2:20-bk-21022-BR

ADV. NO.: 2:21-ap-01039-BR

**ORDER GRANTING PLAINTIFFS'
MOTION FOR REMAND**

DATE: May 11, 2021

TIME: 2:00 p.m.

CTRM: by zoomgov.com

MEETING ID: 161 713 6367

PASSWORD: 123456

ORDER GRANTING PLAINTIFFS' MOTION FOR REMAND

1 The Court, having considered Plaintiffs Law Offices of Philip R. Sheldon, Philip R.
2 Sheldon, Law Offices of Robert P. Finn, and Robert P. Finn's (collectively, "Plaintiffs")
3 motion for an order remanding to state court the action entitled *Law Offices of Philip R.*
4 *Sheldon, et al. v. Girardi, et al.*, Los Angeles Superior Court Case No. 20STCV47160 (the
5 "Removed Action"), any opposition regarding the same, for the reasons stated on the record
6 and for good cause appearing, hereby orders that Plaintiffs' Motion is GRANTED.

7 Counsel for Plaintiff also reaffirmed that Plaintiffs would not be proceeding on any
8 fraudulent transfer claims, including but not limited to the 6th Cause of Action in the First
9 Amended Complaint, and that fraudulent transfer claims belong to the bankruptcy estate of
10 Girardi Keese.

11 The Removed Action is hereby REMANDED to the Superior Court of the State of
12 California, County of Los Angeles forthwith.

13 **IT IS SO ORDERED.**

14 ###

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24 Date: May 13, 2021



Barry Russell
United States Bankruptcy Judge

1 All parties hereby agree to the foregoing order.

2 Dated: May 12, 2021

SMILEY WANG-EKVALL

3

4

/s Tim Evanston

5

6

Tim Evanston
Attorney for the Trustee

7

8 Dated: May 12, 2021

SPERTUS, LANDES & UMHOFFER LLP

9

10

/s Ezra Landes

11

12

Ezra Landes
Attorney for Plaintiffs

13

14 Dated: May 12, 2021

ROBIE & MATTHAI

15

16

/s Kyle Kveton

17

18

Kyle Kveton
Attorney for Defendant David Lira

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

A true and correct copy of the foregoing document entitled (*specify*): **REPLY TO OPPOSITION OF ERIKA GIRARDI TO CHAPTER 7 TRUSTEE'S APPLICATION TO EMPLOY THE LAW OFFICES OF RONALD RICHARDS & ASSOCIATES, A.P.C., AS SPECIAL LITIGATION COUNSEL** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) June 1, 2021 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) June 1, 2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell U.S. Bankruptcy Court Roybal Federal Building 255 E. Temple Street, Suite 1660 Los Angeles, CA 90012
--

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

June 1, 2021

Date

Gabriela Gomez-Cruz

Printed Name

/s/ Gabriela Gomez-Cruz

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

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