

**U.S. Department of Justice - Office of the United States Trustee  
Peter C. Anderson, U.S. Trustee - Region 16**



# THE WATCHDOG

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## Federal Government and State Attorneys General Reach \$25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses

On February 9, 2012, Attorney General Eric Holder announced that the federal government and 49 state attorneys general had reached a settlement agreement with the nation’s five largest mortgage servicers – Bank of America Corporation, JP Morgan Chase & Co., Wells Fargo & Company, Citigroup Inc., and Ally Financial Inc. (formerly GMAC) (collectively, “the servicers”) – to address mortgage servicing, foreclosure, and bankruptcy abuses. This is the largest federal-state civil settlement ever obtained, and the United States Trustee Program (“USTP” or “Program”) is pleased to have been involved. In the agreement, the USTP settled claims for the servicers’ violations of bankruptcy requirements that protect debtors and ensure the integrity of the bankruptcy process.

Under this comprehensive settlement, the servicers will pay \$25 billion in penalties and assistance to homeowners, adhere to a uniform and comprehensive set of mortgage servicing standards, and subject themselves to three and a half years of compliance review by an independent monitor. Importantly, the agreement addresses every type of servicer misconduct that was identified by the USTP, and includes provisions specifically addressing the servicing of loans of borrowers in bankruptcy. These provisions include:

- establishing processes to ensure the accuracy of proofs of claim and motions for relief from stay;

*The United States Trustee is charged with the oversight responsibility for supervising the administration of bankruptcy cases filed in the U.S. Bankruptcy Court for the Central District of California, as well as monitoring the performance of the individual trustees appointed in these cases.*

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- waiving “hidden fees” that were not disclosed during the bankruptcy case;
- waiving fees connected to the filing of proofs of claim and motions for relief from stay determined to contain a substantial misstatement of the amount due;
- taking corrective actions where deficiencies in claims are identified;
- providing remediation to debtors for inaccuracies in account information; and
- ensuring, at our insistence, that chapter 13 trustees have access to servicer employees who are specially training on the servicing of loans for borrowers in bankruptcy.

Once the settlement is effective, USTP will withdraw or dismiss pending actions against the servicers, including objections and discovery requests.

The comprehensive settlement reflects unprecedented cooperation among federal and state enforcement and regulatory agencies, and represents a critical step forward in addressing the problems that have plagued the mortgage servicing industry. In his announcement of the settlement, Attorney General Holder praised the work of the USTP, stating:

“In particular, I want to recognize the outstanding work of the Justice Department’s United States Trustees Program, and our United States Attorneys’ Offices.

The U.S. Trustees Program, which serves as the watchdog of all bankruptcy court operations, was one of the first federal agencies to investigate mortgage servicer abuse of homeowners in financial distress. As part of their investigation, Trustees reviewed more than 37,000 documents filed by major mortgage servicers in federal bankruptcy court – and took discovery in more than 175 cases across the country. These efforts were advanced by

several United States Attorneys, including U.S. Attorney Loretta Lynch from the Eastern District of New York. During a three-year investigation, her office issued multiple subpoenas, reviewed over two million documents, and interviewed numerous witnesses. They have worked tirelessly to seek justice for homeowners who were treated unfairly and taxpayers who footed the bill. And the information and evidence that these teams compiled – and the expertise they provided – was essential in reaching this historic settlement.”

The Department of Justice’s press release and the Attorney General’s press statement are available at the following links:

Press Release:

<http://www.justice.gov/opa/pr/2012/February/12-ag-186.html>

Press Statement:

<http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1202091.html>

Further information about the settlement is also available at:

[www.nationalmortgagesettlement.com](http://www.nationalmortgagesettlement.com).

The USTP is proud of the critical role it played in unraveling the mortgage servicers’ abuse of the law and in imposing a new set of uniform practices to be followed. The Program will continue to be vigilant in identifying violations by debtors and creditors alike.

*Peter C. Anderson*

United States Trustee

## U.S. Trustee Appoints Five New Chapter 7 Trustees

U.S. Trustee Peter C. Anderson appointed five new chapter 7 panel members in the past year. They are Peter J. Mastan, Esq., Wesley H. Avery, Esq., David M. Goodrich, Esq., Jeremy W. Faith, Esq., and Larry D. Simons, Esq. Trustees Mastan, Avery and Goodrich are assigned to the Los Angeles Division; Trustee Simons to the Riverside Division; and Trustee Faith is assigned to the Santa Barbara Division.

All of the appointees are experienced bankruptcy practitioners and join our trustee panel at a time when personal bankruptcies have hit an all time high in Southern California. New trustees were

required to prepare a business plan, undergo orientation and subjected to an office inspection in order to receive cases. Each of the new trustees have successfully completed their initial requirements and are receiving half of a rotation. The number of cases they receive will be increased after they undergo a second level of review in a few months.

The U.S. Trustee is also happy to report that the three panel members appointed in Riverside in 2010 are operating with full case rotations. They are Lynda T. Bui, Esq., Todd A. Frealy, Esq., and Howard Grobstein, C.P.A.



New Trustee Orientation was held in May 2011 following the panel trustee appointments. Faculty pictured here is Trustee Jeff Golden, Trustee David Hagen, AUST Abe Feuerstein and Trustee Carolyn Dye.

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## **New Trustees Appointed**



Pictured (left to right) are David Goodrich, Wes Avery, Peter Mastan and Larry Simons. Not pictured is Jeremy Faith.

## **U.S. Trustee Program Proposes New Fee Guidelines**

In 1996, in accordance with 28 U.S.C. § 586, the United States Trustee Program (“USTP”) promulgated Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 (“1996 guidelines”). The USTP is revising the 1996 guidelines in phases and has drafted new proposed guidelines for reviewing applications for attorney compensation in larger chapter 11 cases (more than \$50 million in combined assets and liabilities, aggregated for jointly administered cases) (“proposed guidelines”). The USTP invited public review of and comment on these proposed guidelines by

January 31, 2012. The 1996 guidelines remain in effect for the USTP review of applications for compensation in all cases. Only after the public comment period and upon publication of the proposed guidelines in final form in the Federal Register will applications for attorney compensation in larger chapter 11 cases be subject to review under the new guidelines. Until the USTP adopts other superseding guidelines, the 1996 guidelines will continue in effect for the review of applications filed under section 330 in (1) larger chapter 11 cases by those seeking compensation who

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are not attorneys, (2) all chapter 11 cases below the \$50 million threshold, and (3) cases under other chapters of the Bankruptcy Code. Among other goals, the USTP seeks to achieve the following with the proposed guidelines:

1. Ensure bankruptcy professional fees are subject to the same client-driven market forces, scrutiny, and accountability that apply in non-bankruptcy engagements.
2. Ensure adherence to the requirements of 11 U.S.C. § 330 so that all professional compensation is reasonable and necessary, particularly as compared to the market measured both by the professional's own billing practices for bankruptcy and non-bankruptcy engagements and those of its peers.
3. Increase disclosure and transparency in the billing practices of professionals seeking compensation from the estate.
4. Increase client and constituent accountability for overseeing the fees and billing practices of their professionals who are being paid by the estate.
5. Encourage the adoption of budgets and staffing plans developed between clients and their professionals to bring discipline, predictability, and client involvement and accountability to the bankruptcy process.
6. Increase the efficiency and decrease the administrative burden of review.
7. Maintain the burden of proof on the professional seeking compensation from the estate to establish that fees and expenses are reasonable and necessary even absent an objection.
8. Increase public confidence in the integrity of the bankruptcy compensation process.

Consistent with these objectives, the proposed guidelines implement six key changes:

1. **Electronic Data:** Fee applications should be submitted in an open electronic data

format. The use of electronic billing has become common, if not standard, with respect to most significant engagements outside of bankruptcy. This requirement would impose little or no additional burden on applicants.

2. **Categories and Tasks:** To more precisely capture key actions in a bankruptcy case, new project categories, as well as activity-based sub-categories, have been added. These additions are generally consistent with the Uniform Task-Based Management System ("UTBMS") Bankruptcy Code Set and other codes developed or ratified by the UTBMS governing bodies.
3. **Verified and Other Statements:** Clients should provide verified statements in connection with a fee application to disclose, among other matters, whether the client reviewed fees and compared them to its approved budget, whether the attorney and client discussed billing rates and terms compared to the attorney's other engagements, and whether the client gave prior approval for any rate increases. Further, attorneys should answer specific questions regarding, among other matters, billing rates for other engagements, whether the attorney offered and agreed to any variations from standard rates, and whether the application includes any entries for reviewing and redacting billing records for privileged information. Attorneys also should answer additional questions in conjunction with the retention application that could affect future applications for compensation, including whether the attorney informed the client how fees and terms for the engagement compare to the firm's other engagements and whether any firm client was charged lower or higher rates in the preceding 12 months.
4. **Budgets and Staffing Plans:** To bring predictability and accountability to the attorney-client relationship, and to pro-

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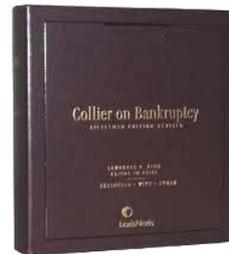
vide benchmark for evaluating fee applications, budgets and staffing plans will be encouraged.

**5. Additional Disclosures:** For all professionals included in a fee application, the United States Trustee will seek disclosure of the lowest, highest, and average rates billed for the preceding year for estate-paid bankruptcy work and for all other work combined. The United States Trustee will also seek disclosure of information by professional category (e.g., partner, associate, etc.) about a firm's lowest, highest, and average rates for the preceding year in its bankruptcy practice and all its other practices combined, if any. Applicants should also disclose the amount of fees attributable to any rate increases since the

inception of the case. Applicants representing debtors should estimate the fees sought that would have been incurred regardless of the bankruptcy.

**6. Special Fee Review Procedures:** The proposed guidelines set forth models and principles for the use of independent fee examiners, fee committees, and fee committees with independent chairs.

The proposed guidelines may be accessed at <http://www.justice.gov/ust/>.



**Important Links:**



<http://www.justice.gov/ust/r16/index.htm> provides a wealth of information on Region 16. There's a page devoted to each of the field offices; Los Angeles, Riverside, Santa Ana, Woodland Hills and its Santa Barbara satellite office. You can find maps to the office and meeting rooms, parking information, and a staff directory with phone numbers.

<http://www.cacb.uscourts.gov/> connects you to the United States Bankruptcy Court for the Central District of California.

<http://www.calbar.ca.gov/> will get you to the State Bar of California's website where you can search attorney names.

**2011 Filings for Central District**

January through December

	Chapter 7	Chapter 11	Chapter 12	Chapter 13	Grand Total
Opened	95,224	1,153	9	33,995	130,381
Reopened	4,146	18	0	166	4,330
<b>Total</b>	<b>99,370</b>	<b>1,171</b>	<b>9</b>	<b>34,161</b>	<b>134,711</b>
<b>Change from 2010</b>	<b>-9.2%</b>	<b>4.1%</b>	<b>-30.8%</b>	<b>6.2%</b>	<b>-5.7%</b>

## **CRIMINAL ENFORCEMENT NEWS**

### ***Foreclosure Rescue Schemer Sentenced to One Year in Prison, Payment of Restitution***

On April 4, 2011, in the Central District of California, Robin Phillips was sentenced to one year and a day in prison and ordered to pay restitution of more than \$135,000 for her role in a foreclosure rescue scheme. Phillips admitted to filing bankruptcies that delayed foreclosure on nearly 500 properties and affected more than \$200 million mortgages. According to documents filed in the case, Irving Cohen, Darwin Bowman and Phillips recruited homeowners whose properties were in danger of imminent foreclosure and promised to delay the foreclosures for as long as the homeowners could pay. After homeowners paid a fee, typically, \$1,500 per month, Cohen and Bowman, either directly or through salespersons, had the homeowner sign a deed granting a one-eighth interest in their home to a fictitious person. Without the knowledge of the homeowner, Phillips and others filed a bankruptcy petition in the name of the fictitious person. Armed with the fraudulent bankruptcy petition and the deed in the name of the fictitious person, Cohen and Bowman then contacted the

mortgage lender to stop foreclosure proceedings. Bowman was sentenced on May 9 in the Central District of California to three years of supervised release, including four months in a halfway house and four months under home confinement, for his role in the scheme. Cohen is awaiting sentencing. The U.S. Trustee's Los Angeles office assisted with the investigation.

### ***Debtor Escrow Company Operator Guilty of Grand Theft under State Law***

October 19, 2011 — A San Fernando Superior Court jury deliberated about an hour and a half today before convicting a Northridge real estate agent of stealing nearly \$1 million over a year-long period, the District Attorney's office announced. Neelam Bhatia, 50, who has been in custody on \$982,291.74 bail — the amount of the thefts — is scheduled to be sentenced at a future time by trial Judge Harvey Giss. She faces a maximum state prison term of 13 years and four months. The jury convicted Bhatia of six counts of grand theft and found true allegations that the losses to victims were more than \$200,000 and more than \$500,000. Deputy District Attorney Joseph A. Markus of the Major Fraud

Division said victims included the Porter Ranch Development Co, which lost more than \$573,000; Rodrigo Garcia-Alonso and Maria Martinez, who lost \$131,000; Fatemeh Houshmand and Amir Bidgoli, who lost more than \$238,000; and Ross Shelton, who lost \$39,000. The crimes occurred while Bhatia worked for the Click and List real estate agency and escrow company. The firm was licensed to 81-year-old Leroy Sennette of Woodland Hills, a co-defendant who earlier pleaded no contest to two counts of grand theft and was placed on three years supervised probation. Bhatia and her husband filed bankruptcy cases. The U.S. Trustee's Woodland Hills office obtained the appointments of chapter 11 trustees in the bankruptcy cases and assisted the district attorney's office in its investigation of the state criminal charges.

### ***Bel-Air Man Convicted of Bankruptcy Fraud and Assault Sentenced to Nearly Six Years in Federal Prison***

October 18, 2011 — A Bel-Air man was sentenced this afternoon to 70 months in federal prison for concealing assets in a bankruptcy proceeding and threatening a private investigator with a golf club. Milton Lee Vandevort, 50,

## **CRIMINAL ENFORCEMENT NEWS** (CONTINUED)

was sentenced by United States District Judge Phillip S. Gutierrez. In addition to the 70-month sentence, Judge Gutierrez ordered Vandevort to pay \$12,500 in fines. Vandevort has been in custody since July 14, 2010, when, after a two-week trial, a federal jury convicted him of seven counts: two counts of concealing assets in a bankruptcy case, making a false oath in a bankruptcy case, making a false declaration in a bankruptcy case, assaulting a process server, and two counts of money laundering. The jury determined that Vandevort, who filed chapter 7 bankruptcy in 2005, concealed his interests in his Bel-Air residence, a nursing registry business called Always There Nursing Care, and various pass-through entities that he created for income generated from his business. Vandevort also was convicted of assaulting a process server for brandishing a golf club at a private investigator the bankruptcy trustee had hired to serve subpoenas on Vandevort's wife. After the assault, Vandevort called 911 and falsely claimed, among other things, that his family was experiencing a home invasion robbery. The jury also convicted Vandevort of money laundering for using

income generated from the nursing registry business to pay his own expenses and using the proceeds of a 2004 refinance of the Bel-Air residence to buy undeveloped land in Wyoming in the name of his mother-in-law. Vandevort "withdrew the equity in his residence, hid it in an escrow company's bank account, purchased the Wyoming property with the equity money in his mother-in-law's name, opened bank accounts in the name of Always There Nursing Care Associated LLC and diverted the revenue from ATNC



to these accounts, used straw persons as signatories to the bank accounts and the officers of his business entities, transferred this interest in ATNC to [his wife], and filed his bankruptcy petition in Wyoming," prosecutors said in summarizing Vandevort's bankruptcy fraud scheme in a sentencing memo to the court. The jury that returned the guilty verdicts also determined that Vandevort's interest in

the properties he had concealed should be forfeited to the government. The case was investigated by the Federal Bureau of Investigation with assistance from the U.S. Trustee Program.

### ***Debtor Indicted for Concealing Assets in Bankruptcy, Defrauding Banks***

On November 2, a grand jury in the Central District of California indicted Peter Gregory Morris for concealing assets in his bankruptcy case, making false statements and submitting false documents relating to bank loan applications, aggravated identity theft, and wire fraud relating to the receipt of almost \$83,000 from two lending institutions. Morris allegedly lied to three banks when he provided fabricated earnings statements and false information about, among other things, his domestic support obligations and ownership of securities and cash. When he filed bankruptcy, Morris allegedly failed to disclose his ownership interest in a Texas company. The U.S. Trustee's offices in Los Angeles and Riverside assisted the U.S. Attorney's office and investigators from the Department of Housing and Urban Development.

## **CRIMINAL ENFORCEMENT NEWS** (CONTINUED)

### ***Five Defendants Charged in Bankruptcy-Related Foreclosure Rescue Scam in Eastern District***

December 1 in the Eastern District of California, United States Attorney Benjamin B. Wagner announced that five persons have been charged in a federal indictment in connection with a foreclosure rescue scheme. The five defendants, Jewel L. Hinkles aka Cydney Sanchez, 61, of Los Angeles; Bernadette Guidry, 43, of Irvine; Jesse Wheeler, 34, of Roseville; Cynthia Corn, 58, of Oakland; and Brent Medearis, 45, of Modesto; were charged in an indictment returned by a federal grand jury on December 1, 2011. Hinkles and Guidry are charged with eight counts of mail fraud. Each of the defendants except Guidry is charged with 16 counts of bankruptcy fraud. Hinkles was arrested in Los Angeles Friday morning by Special Agents with the FBI, the U.S. Postal Inspection Service, and the Federal Housing Finance Agency, Office of Inspector General. She made an initial appearance before a U.S. Magistrate Judge Friday in Los Angeles. Medearis was arrested by FBI Special Agents in Modesto on Friday and appeared before U.S. Magis-

trate Judge Gregory G. Hollow in Sacramento that afternoon. Wheeler, Corn were arraigned today in Sacramento and an arrest warrant has been issued for Guidry.

According to court documents, Hinkles was the founder and general manager of Horizon Property Holdings LC, located in Beverly Hills. From 2008 through 2010, Hinkles offered to the public a service called the "Save My Home" or "Homesaver" program that promised to rescue financially distressed homeowners from foreclosure and reduce the principal on homeowners' mortgages. Guidry was Horizon's office manager and assisted Hinkles with promoting the foreclosure and "principal reduction" program. Horizon offered its program directly to clients and also through several layers of "affiliates," who promoted and sold the program to clients, mostly in Northern California. These affiliates included Property Relief!, operated by defendant Cynthia Corn in South San Francisco, and JW Financial Solutions, operated by defendant Jesse Wheeler in Roseville. Defendant Brent Medearis sold the program out of Modesto as an affiliate of Property

Relief! The defendants allegedly told homeowners that for a substantial upfront payment and a monthly fee they would save the homeowners' residences from foreclosure by arranging for investors to purchase their existing mortgage at a discounted price, or would reduce the homeowners' monthly payment by negotiating a mortgage reduction with the lender. The indictment alleges that contrary to the defendants' representations, they failed to arrange for the purchase of clients' mortgages or to negotiate reductions in the mortgage debt owed by clients.

To prevent foreclosure and defraud the existing lenders, the indictment alleges that the defendants filed fraudulent deeds transferring an interest in the homeowner's property to a fictitious entity called Pacifica Group 49/II. In many instances, the defendants also filed fraudulent petitions in bankruptcy court, often naming both the homeowner and Pacifica Group 49/II as the debtor. The purpose of these petitions was to invoke the automatic provisions of federal bankruptcy law that bring to an immediate halt any foreclosure actions against a

## **CRIMINAL ENFORCEMENT NEWS (Continued)**

debtor's property. The fraudulent deeds and bankruptcy petitions delayed foreclosure proceedings, during which the defendants collected fees from defrauded homeowners. The indictment alleges that the defendants collected at least \$5 million in fees from more than 1,000 clients.

***Austin, Texas Man Charged with Fraud and Identity Theft in Nationwide Foreclosure-Rescue Scheme, Defendant Agrees to Plead Guilty; Collected \$1.6 million from 1,100 Distressed Homeowners***

12/9/11 LOS ANGELES – Federal authorities have charged an Austin, Texas man with having operated a foreclosure-rescue scam in Los Angeles and elsewhere that falsely promised the owners of more than a thousand distressed properties that they could indefinitely postpone foreclosure sales. Frederic Alan Gladle, of Austin, Texas, was charged late this morning in United States District Court with one count of bankruptcy fraud and one count of aggravated identity theft. He stated in court in Austin that he intends to plead guilty to the charges, as part of a plea agreement. The defendant used five ali-

ases to avoid detection in the scheme, including stealing the identity of at least one person and setting up a cell phone account in that victim's name. As a result of the four-year scheme, which continued through Gladle's arrest in October of 2011, Gladle and his associates collected more than \$1.6 million in fees from distressed homeowners. According to the charges, Gladle was involved in a scheme that recruited homeowners whose properties were in danger of imminent foreclosure and falsely promised to delay the foreclosures for homeowners for up to six months. Once a homeowner paid a fee of around \$750 per month, Gladle, either directly or through salespersons, had the homeowner sign a deed granting a 1/100th interest in the house to a debtor in a bankruptcy whose name Gladle had found by searching bankruptcy records. The debtors had no idea that their names and bankruptcy cases were being used by Gladle in his scheme. Gladle would print out the unsuspecting debtor's bankruptcy petition, attach the petition to the 1/100th deed in the debtor's name, and fax the two documents to a homeowner's lender to stop foreclosure proceedings. Because the

filing of a bankruptcy gives rise to an "automatic stay" that protects a debtor's property, the receipt of the bankruptcy petitions and 1/100th deeds in the debtor's name forced lenders to cancel foreclosure sales. The lenders – which included banks who received government funds under the Troubled Asset Relief Program (TARP) – could not move forward to collect money that was owed to them until getting permission from the bankruptcy court, thereby repeatedly delaying the lenders' recovery of their money. When homeowners wanted to void the 1/100th deeds to the unsuspecting debtors, Gladle would forge the debtors' signatures on papers voiding the 1/100th deeds. "Foreclosure-rescue schemes have reached epidemic levels in Southern California, where both homeowners and lenders have been victims of a wide variety of frauds," said United States Attorney André Birotte Jr. "Persons facing foreclosure need to exercise extreme caution when seeking assistance with their financial problems and the public needs to know that the Department of Justice will actively pursue those who seek to manipulate and victimize either homeowners or lenders." "This is the latest example of heartless

## **CRIMINAL ENFORCEMENT NEWS (Continued)**

criminal activity by an individual who sought to capitalize on the misfortune of those affected by hard economic times," said Steven Martinez, Assistant Director in Charge of the FBI's Los Angeles Field Office. "Mr. Gladle defrauded victims trying to save their homes, further exploited those in debt by stealing their identities, and wreaked havoc on both banks and the Bankruptcy Courts by manipulating the system. The FBI will continue to investigate criminal activity associated with the housing market and to encourage homeowners to beware of fraudulent of-

fers." Peter Anderson, United States Trustee for the Central District of California (Region 16), stated: "Criminal bankruptcy fraud and, in particular, foreclosure rescue fraud schemes threaten the integrity of the bankruptcy system, as well as public confidence in that system. We deeply appreciate the strong commitment of U.S. Attorney André Birotte Jr., the Federal Bureau of Investigation and SIGTARP to combating bankruptcy fraud and abuse, as demonstrated by this case." "American taxpayers became investors in hundreds of banks through TARP," said Christy

Romero, Deputy Special Inspector General for SIGTARP. "Gladle defrauded TARP recipient banks including Bank of America, U.S. Bank, and Wells Fargo, thereby defrauding taxpayers. SIGTARP will protect taxpayers' TARP investments and hold accountable those who put TARP investments at risk. "The case against Gladle is the result of an investigation by the Federal Bureau of Investigation and Special Inspector General for the Troubled Asset Relief Program, which received substantial assistance from the United States Trustee's Office.



## CIVIL ENFORCEMENT NEWS

### ***Sounds Like They Should Have Been in Chapter 13: Dismissal Cost Debtors \$2.8 Million in Unsecured Debt***

Ruling for the U.S. Trustee's Woodland Hills office, on March 18, the Bankruptcy Court for the Central District of California dismissed the case of husband and wife debtors, preventing the chapter 7 discharge of \$2,791,552 in unsecured debt. The debtors disclosed monthly income of over \$11,400, as well as excessive expenses for pension contributions. After subtracting the excessive contributions, they had nearly \$5,000 in excess monthly income available to repay creditors.

### ***What Happened to the Money? Waiver Prevents Chapter 7 Discharge of \$2.4 Million in Unsecured Debt***

The waiver of the chapter 7 discharge of \$2,450,500 in unsecured debt was approved on April 11 by the Bankruptcy Court for the Central District of California. An investigation by the U.S. Trustee's Santa Ana office undertaken pursuant to Bankruptcy Rule 2004 revealed that the debtor could not document or explain the dissipation of proceeds from numerous scheduled personal loans. In addition,

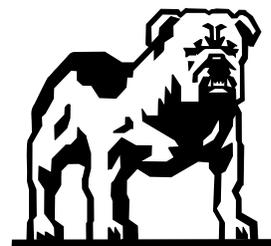
he could not adequately explain or produce information regarding his financial condition. The debtor stipulated to the waiver of discharge after the U.S. Trustee filed a complaint to deny discharge.

### ***No Explanation? No Discharge: Waiver Prevents Chapter 7 Discharge of \$656,455 in Unsecured Debt***

On May 18, the Bankruptcy Court for the Central District of California approved a waiver of the chapter 7 discharge of \$656,455 in unsecured debt. The debtor and her estranged husband received approximately \$2 million from the settlement of an eminent domain action. The debtor received the funds from 2005 through 2009, and she filed bankruptcy in 2010. Based on information from a creditor and the chapter 7 trustee, the U.S. Trustee's Riverside office investigated the disposition of the settlement funds. The debtor's financial records were inadequate to explain the expenditure of \$2 million. The U.S. Trustee informed the debtor that a complaint to deny discharge would be filed, and she entered a court-approved stipulation waiving discharge.

### ***Should Have Told Someone about the Settlement: Denial Prevents Chapter 7 Discharge of \$259,389 in Unsecured Debt***

On August 31, the Bankruptcy Court for the Central District of California denied these joint debtors their chapter 7 discharge of \$259,389 in unsecured debt. On their original schedules, the debtors stated they owned a note receivable worth approximately \$72,000 that generated \$4,000 in monthly income. The U.S. Trustee's Woodland Hills office learned that, while the bankruptcy case was pending, the debtors settled the note for \$72,000 without court approval and spent the money. In addition, the debtors had been receiving monthly payments of \$8,000 on the note and, post-petition, lost \$50,000 of those funds through gambling. The U.S. Trustee objected to discharge, alleging the debtors knowingly disposed of bankruptcy estate property and knowingly and fraudulently made false oaths. The debtors defaulted and the court entered judgment against them.



## CIVIL ENFORCEMENT NEWS (continued)

### ***New BMW and Credit: Dismissal Prevents Chapter 7 Discharge of \$157,647 in Unsecured Debt***

On November 8, the Bankruptcy Court for the Central District of California dismissed the case of married debtors, preventing the chapter 7 discharge of \$157,647 in unsecured debt, and barred the debtors from refiling bankruptcy for two years. In a motion to dismiss for abuse based upon bad faith, the U.S. Trustee's Los Angeles office alleged the debtors bought luxury items while they were unemployed, opened 13 credit accounts in a three-month period, engaged in credit kiting, and submitted false income information on credit applications. Leading up to their filing, the debtors purchased a BMW vehicle, electronics, appliances, and a diamond ring, and leased a new Toyota automobile.

### ***Denial Prevents Chapter 7 Discharge of Almost \$6 Million in Unsecured Debt***

Granting a summary judgment motion filed by the U.S. Trustee's Riverside office, on December 7, the Bankruptcy Court for the Central District of California denied these debtors' chapter 7 discharge of \$5,952,160 in unsecured debt. When they filed bank-

ruptcy, they failed to disclose assets including a 50 percent interest in real property, a bank account, a defamation action, and a \$300,000 claim for investment losses. They also failed to disclose transfers of two single family residences within one year pre-petition, and the dissipation of approximately \$670,000 in alleged proceeds of a real estate investment Ponzi scheme.

### ATTORNEY/PETITION



### PREPARER ACTIONS

#### ***Attorney Who Filed False Credit Counseling Certificate Must Disgorge Part of Fee***

The Bankruptcy Court for the Central District of California on October 7 granted a disgorgement motion filed by the U.S. Trustee's Riverside office against an attorney who filed a false credit counseling certificate for a client. When the client consulted the attorney in December 2010 about filing chapter 7 bankruptcy, she obtained a

certificate evidencing compliance with the pre-bankruptcy credit counseling requirement. The certificate was valid for 180 days. The attorney did not file her case until July 2011 and the certificate became stale. Instead of obtaining a new one, the attorney filed a false certificate representing that the debtor/client obtained credit counseling in June. The court ruled the attorney's \$1,000 fee was excessive and ordered him to refund \$700.

#### ***Attorney Who Abandoned Audited Debtor/Client Must Disgorge Fee***

On October 26, the Bankruptcy Court for the Central District of California ordered an attorney to disgorge \$1,860, based on a motion filed by the U.S. Trustee's Riverside office. The attorney represented a debtor who was selected by the U.S. Trustee Program for an independent audit. The auditors asked the debtor to explain discrepancies in her bankruptcy schedules. She provided documents to the attorney but he failed to respond to the auditors' inquiries or to the U.S. Trustee's discovery requests. The debtor hired new counsel, with whom the attorney failed to communicate. In addition to ordering the attorney to disgorge his full fee to the debtor, the court directed him to repay

## **Attorney/Petition Preparer Actions (continued)**

her the \$260 filing fee she incurred to reopen her case, after the attorney failed to file proof that she completed debtor education.

### ***Chapter 11 Debtor's Counsel Must Disgorge All Fees Collected***

Ruling for the U.S. Trustee's Los Angeles office, on November 3, the Bankruptcy Court for the Central District of California ordered an attorney to disgorge \$37,500 in fees – the total amount collected. The attorney served as counsel for the debtor husband and wife in an individual chapter 11 case that was dismissed with a 180-day bar against refiling. The attorney failed to obtain an order authorizing his employment during the seven-month pendency of the case. The court found the attorney's failure to obtain an order authorizing employment, disclose his prior representation of a party in interest, or provide services benefitting the estate precluded him from retaining any fees.

### ***Attorney Suspended for Five Years for Conduct in Multiple Cases***

On October 3, the Bankruptcy Court Disciplinary Panel for the Central District of California approved a settlement between the U.S. Trustee's Los Angeles office and an attorney under which the

attorney is suspended for five years from practice in the Bankruptcy Courts for the Central and Southern Districts of California. In the past four years, the attorney and his firm filed 40 chapter 11 bankruptcy cases and more than 400 chapter 7 and chapter 13 cases. In each chapter 11 case, the attorney performed few or no services, but obtained a retainer of \$20,000 to \$50,000. He failed to obtain court orders authorizing his employment, file fee applications, or supervise his employees, allowing them to use his electronic court filing password to file documents without attorney review. Previously, the U.S. Trustee obtained disgorgement orders for more than \$395,754 to debtors in 15 chapter 11 cases.

### ***Attorney Agrees to Fee Disgorgement, 30-Month Suspension***

On July 18, the Bankruptcy Court for the Central District of California approved a stipulation between the U.S. Trustee's Riverside office and an attorney, in which the attorney agreed to disgorge \$9,300 in two chapter 13 cases. The attorney also agreed that he would not accept new bankruptcy clients and would not file new bankruptcy cases in the district for 30 months, and that as a condition of returning to practice

he would complete continuing education in bankruptcy law and associate with a mentor.

### ***Bankruptcy Petition Preparer Must Pay \$15,650 in Damages, Fines***

A bankruptcy petition preparer was recently ordered by the Bankruptcy Court for the Central District to California to pay a total of \$15,650 in damages and fines in four cases in which the U.S. Trustee's Riverside office brought actions. On May 5, the court ordered the petition preparer to pay damages of \$2,550 to a debtor and fines of \$1,000 to the U.S. Trustee. In April, the court ordered the petition preparer to pay damages of \$8,600 and fines of \$3,500 in three other cases in which the U.S. Trustee filed actions.



# OUST Staff News

## *USTP Attorney Receives Bankruptcy Bar Award for Career Service with Distinction.*

*On December 13, trial attorney **Michael J. Hauser** of the U.S. Trustee's Santa Ana office received the Peter M. Elliott Award from the Orange County California Bankruptcy Forum and Orange County Bar Association, at an event attended by all sitting bankruptcy judges in the Central District's Santa Ana Division, court staff, and bar association members. Each year the award is given to an outstanding bankruptcy lawyer who best exemplifies the contributions made by Judge Peter M. Elliott and to honor those who have served the bankruptcy community with distinction during their careers. Mr. Hauser is the 11th recipient of the award, and the first government attorney ever to receive it. Former U.S. Trustee Steven Katzman, the incoming bar president, presented the award to Mr. Hauser.*

## *Arrivals*

*Honors Law Clerk **Brad Jones** started with the USTP on September 6, 2011. He has passed the California State Bar Examination, and was sworn in on January 13, 2012.*



Brad Jones with Judge Maureen Tighe

## *New Babies*

***Lily Arutyunyan** was recently welcomed by Jack Arutyunyan and his wife. Best wishes to them from the USTP staff!*

## *Awards*

*Analyst **Jack Arutyunyan** was certified as a CPA on August 24, 2011.*

# Departures

Analyst **Samson Lor** retired December 30, 2011 with over 26 years of service to the USTP.



Sam Lor with Peter Anderson, UST



*Congratulations, Sam!!*



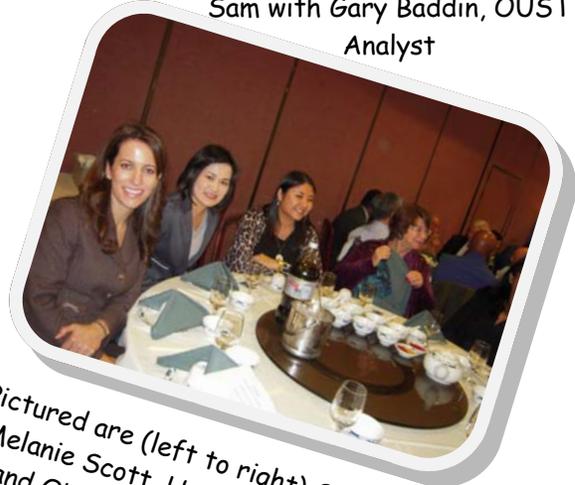
Pictured are (left to right) OUST staff Russell Clementson, Lester Crawford, LaTanya Davis, and Tracey Norfleet



Sam with Gary Baddin, OUST Analyst



Pictured are (left to right) Trustee Ed Wolkowitz, OUST retiree Dennis Strayhan, and Trustee John Menchaca



Pictured are (left to right) OUST staff Melanie Scott, Hatty Yip, Queenie Ng, and OUST retiree Marjorie Gibson.

U.S. Department of Justice Office of the U.S. Trustee  
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Please contact us with suggestions and topics. To make sure you are included our "subscriber" data base, please e-mail your address to the address above and put "WATCHDOG" in your subject line.

U.S. Trustee Mission Statement

The USTP Mission is to promote integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence.