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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

<p>14 In re</p> <p>15 JANA W. OLSON,</p> <p>16 Debtor.</p>	<p>17 District Court Case Number</p> <p>18 8:17-cv-01697-DSF</p> <p>19 Bankruptcy Court Case Number</p> <p>20 8:15-bk-12496-TA</p> <p>21 Adversary Case No.</p> <p>22 N/A</p>
<p>23 PASSPORT MANAGEMENT, LLC,</p> <p>24 Appellant,</p> <p>25 v.</p> <p>26 RICHARD A. MARSHACK,</p> <p>27 Chapter 7 Trustee,</p> <p>28 Appellee.</p>	<p><b>BRIEF OF APPELLANT PASSPORT MANAGEMENT, LLC</b></p>

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**CORPORATE DISCLOSURE STATEMENT**

Appellant Passport Management, LLC is a limited liability company that is wholly owned by Passport Capital, LLC, a limited liability company of whose membership interests no publicly held corporation owns 10% or more.

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1 **INTRODUCTION<sup>1</sup>**

2 The Debtor in this case, Jana Olson, has fraudulently – but with some  
3 significant success to date – scattered millions of dollars of her assets around the  
4 globe in order to hide them from her creditors, in particular the Appellant,  
5 Passport. She has also refused to comply with orders of the Bankruptcy Court and  
6 the California state court regarding the turnover of assets and information relating  
7 to her adjudged debts to Passport, and was jailed for contempt by both as a result.  
8 Under the appealed compromise agreement, Debtor managed to convince the  
9 Chapter 7 Trustee to allow her to carve off another \$1 million in fraudulently  
10 transferred assets for her children, and the Bankruptcy Court to approve it,  
11 essentially by driving the Bankruptcy Court and the Trustee to exasperation.  
12

13 But the Trustee had no legal authority to gift Debtor’s children with funds  
14 that are part of the bankruptcy estate, subject to Passport’s first-in-priority lien.  
15 Moreover, the deal struck with Debtor and her family undermines the objectives of  
16 the Bankruptcy Code by rewarding fraud and contempt. The Bankruptcy Court  
17 approved the Compromise in significant part because the Debtor had already  
18 caused the funds to be repatriated before the court’s approval was ever sought –

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19  
20 <sup>1</sup> Record citations herein refer to the documents comprising the Record on Appeal,  
21 which are included in the attached Appendix (Volumes I (REC\_001-REC\_399)  
22 & II (REC\_400-REC\_767). In addition to the documents required under the  
23 Federal Rules of Bankruptcy Procedure and those designated by Passport, three  
24 additional documents have been included in the Appendix pursuant to the  
25 stipulation of the parties and Fed. R. Bankr. P. 8009(e) and filed in the  
26 Bankruptcy Court on December 4, 2017. *See* attached Declaration of Thomas V.  
27 Loran III Regarding Supplementation of Record on Appeal and attached as-filed  
28 stipulation.

1 but in the name of avoiding any perceived “duplicity” by the court – based on a  
2 deal that the court never made and Passport never approved – the Bankruptcy  
3 Court has instead effectively sanctioned fraud.

#### 4 5 **STATEMENT OF JURISDICTION**

6 The United States Bankruptcy Court for the Central District of California  
7 (Albert, J.) (“Bankruptcy Court”) has jurisdiction over the core Chapter 7  
8 bankruptcy proceedings in this matter under 28 U.S.C. §§ 157(b) and 1334, and  
9 General Order 242-A of the United States District Court, Central District of  
10 California. The Bankruptcy Court has authority under Federal Rule of Bankruptcy  
11 Procedure (“FRBP”) 9019(a) to approve a compromise or settlement. An order of  
12 a bankruptcy court approving a settlement or compromise is a final, appealable  
13 order. *In re Lazar*, 237 F.3d 967, 985 (9th Cir. 2001) (“bankruptcy court order is  
14 final and thus appealable where it 1) resolves and seriously affects substantive  
15 rights and 2) finally determines the discrete issue to which it is addressed.”)  
16 (citations omitted); *see also In re Merle’s, Inc.*, 481 F.2d 1016, 1018 (9th Cir.  
17 1973) (“An order approving a compromise ... is final because it finally determines  
18 the rights of the parties. An order disapproving a compromise, however, is not  
19 final. It determines no rights and settles no issues.”).

20 Appellate jurisdiction is proper here under 28 U.S.C. § 158(a)(1), which  
21 provides that a federal district court has jurisdiction over a bankruptcy appeal from  
22 final judgments, orders, or decrees. An appellant may elect at the time of the filing  
23 of the notice of appeal to have an appeal from a bankruptcy court heard by the  
24 district court instead of the bankruptcy appellate panel. FRBP 8001(e)(1); 28  
25 U.S.C. § 158(c)(1)(A). Pursuant to FRBP 8001(a), “[a]n appeal from a judgment,  
26 order, or decree of a bankruptcy judge to a district court or bankruptcy appellate  
27 panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a  
28

1 notice of appeal with the clerk within the time allowed by Rule 8002.” Rule  
2 8002(a) provides that, “[t]he notice of appeal shall be filed with the clerk within 14  
3 days of the date of the entry of judgment, order, or decree appealed from.”

4 Passport’s appeal concerns the Bankruptcy Court’s September 18, 2017,  
5 order approving a compromise agreement between the Trustee and the Olson  
6 Children’s Irrevocable Trust, a non-party to this action benefitting the Debtor’s  
7 children (the “Compromise”). (REC\_169-REC\_177). Appellant timely filed its  
8 Notice of Appeal and statement of election to have its appeal heard by the District  
9 Court on September 26, 2017. (REC\_154-REC\_168). FRBP 8002(a).

10  
11 **ISSUE PRESENTED FOR APPEAL**

12 Whether the Bankruptcy Court erred in gifting \$964,825.69 in property of  
13 the Debtor’s bankruptcy estate, over Appellant’s objection, to a post-petition trust  
14 established for the Debtor’s children (the “Children’s Trust”) even though the  
15 Bankruptcy Court had already determined that the Appellant had a first-priority,  
16 secured lien over all of the property in the Debtor’s estate and even though the  
17 Chapter 7 Trustee and the Children’s Trust had allegedly agreed that all of the fund  
18 transfers to the Debtor’s children, including all of the funds at issue in this appeal,  
19 “are avoided, recovered by, and preserved for the benefit of the [Debtor]’s  
20 bankruptcy estate.”

21  
22 **STANDARD OF REVIEW**

23 A bankruptcy court’s approval of a proposed compromise is reviewed for an  
24 abuse of discretion. *In re Debbie Reynolds Hotel & Casino, Inc.*, 255 F.3d 1061,  
25 1065 (9th Cir. 2001). A bankruptcy court’s interpretation of the Bankruptcy Code,  
26 however, is reviewed de novo, and, “[t]o the extent that the bankruptcy court’s  
27 approval of the settlement agreement rested on an erroneous interpretation of law,  
28

1 it was, per se, an abuse of discretion.” *Id.* (citing *Koon v. United States*, 518 U.S.  
2 81, 100 (1996)); *see also In re Arden*, 176 F.3d 1226, 1228 (9th Cir. 1999) (“An  
3 exercise of discretion based on an erroneous interpretation of the law ‘can be freely  
4 overturned.’”) (quoting *La Grand Steel Products Co. v. Goldberg (In re Poole,*  
5 *McGonigle & Dick, Inc.)*, 796 F.2d 318, 321 (9th Cir. 1986)).

## 6 7 STATEMENT OF THE CASE

8 This appeal challenges the Bankruptcy Court’s approval of a “compromise”  
9 agreement between the Appellee, Trustee Richard Marshack, and a post-petition  
10 trust specifically established for the benefit of non-parties to this action (the  
11 Debtor’s children) (the “Compromise”). The Compromise gifted approximately \$1  
12 million in bankruptcy estate funds to the Children’s Trust, ostensibly in exchange  
13 for the Debtor’s family’s assistance and Debtor’s cooperation in repatriating  
14 approximately \$4.3 million of the Debtor’s assets that Debtor had fraudulently  
15 transferred a Cook Islands trust in order to avoid debts to creditors, including  
16 Passport. The Trustee argued that the deal – although it regrettably allowed Debtor  
17 to gift a million dollars out of the bankruptcy estate to her children – was necessary  
18 to recover any funds at all from the Cook Islands trust vehicle.

19 The record demonstrates otherwise. As the Bankruptcy Court found in the  
20 contempt proceedings against the Debtor, she always had the ability to cause the  
21 Cook Islands Trust funds to be repatriated and turned over to the bankruptcy estate.  
22 Yet, despite her promise to the Bankruptcy Court to do just that, Debtor instead  
23 dissuaded the Cook Islands trustee from repatriating the funds, and was jailed for  
24 contempt as a result. Debtor continued to refuse to purge her contempt for a year,  
25 and ultimately used her continued refusal (and incarceration) as leverage to – so  
26 far, successfully – retain a substantial portion of the fraudulent transfers for the  
27 benefit of her children.

1 In approving the Compromise, the Bankruptcy Court cited practical  
2 administrative considerations (such as the length and expense of the proceedings to  
3 date), but also its concern that disapproving the Compromise after the funds had  
4 been repatriated would be “duplicitous.” This misperceives which action would  
5 dirty the court’s hands – and so instead of stopping a fraud, the Bankruptcy Court  
6 sanctioned one, all in order to avoid renegeing on a deal that the court never made.

7 In any event, the record – including the terms of the Compromise itself –  
8 establishes that the Cook Islands trust funds were at all times the property of  
9 Debtor’s bankruptcy estate and subject to Passport’s first-in-priority lien. The  
10 Trustee had no authority to agree to this priority-violating distribution, and the  
11 Bankruptcy Court had no discretion to approve it.

## 12 **I. Background and Relevant Procedural History**

### 13 **A. Passport’s State Court Action Resulted in Judgments Against** 14 **Debtor**

15 Passport’s claim against Debtor is based on certain judgments and sanctions  
16 issued against her (and/or her alter egos) in Passport’s favor by the Superior Court  
17 of and for Orange County, California (“Superior Court”). (*See* REC\_290-  
18 REC\_385 (Passport’s Proof of Claim)). These judgments and sanctions were  
19 issued in an action Passport filed in the Superior Court on February 22, 2010, to  
20 recover the amounts due on six promissory notes and for relief under California’s  
21 Uniform Fraudulent Transfer Act (“UFTA”) (Calif. Civ. Code §§ 3439, *et seq.*)  
22 (“State Court Action”)<sup>2</sup>. (REC\_293 ¶2).

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23  
24 <sup>2</sup> *Passport Management, LLC vs. Erlend Olson, an individual; Jana Olson, an*  
25 *individual; Horse Power Investments, LLC a/k/a Horse Power LLC; Vistas*  
26 *Infinitas, LLC; Sugurbere Enterprises, LLC, Charmoya Enterprises, LLC, et al.,*  
27 *Orange County Superior Court Case No. 30-2010-00346521. (Id.).*

1 Passport served the Debtor with the summons and complaint in the State  
2 Court Action on April 30, 2010. (REC\_696-REC\_698).

3 The Superior Court entered three final, unappealed judgments in the State  
4 Court Action in Passport's favor:

- 5 1. A May 11, 2012 judgment in favor of Passport and against Erlend Olson<sup>3</sup>  
6 in the principal amount of \$6,063,980.79, plus allowable costs and fees  
7 (the "May 2012 Judgment") (REC\_294 ¶3(a); REC\_299-REC\_301),  
8 based on Mr. Olson's liability to Passport as holder of a series of  
9 promissory notes;
- 10 2. A June 12, 2014 judgment in favor of Passport, jointly and severally  
11 enjoining Horse Power Investments, LLC a/k/a Horse Power LLC and  
12 Vistas Infinitas, LLC (collectively, the "Shell Companies") **as**  
13 **transferees of \$20,940,000 in fraudulently transferred funds, to**  
14 **satisfy the May 2012 Judgment**, plus Passport's recoverable costs (the  
15 "June 2014 Judgment") (REC\_294 ¶3(b) (emphasis added); (REC\_302-  
16 REC\_312 (June 2014 Judgment)); and
- 17 3. A October 23, 2014 judgment in favor of Passport that Debtor, as the  
18 alter ego of the Shell Companies (and thus the transferee of  
19 \$20,940,000.00 in fraudulently transferred funds), **"and any and all**  
20 **persons acting in concert with [Debtor], is hereby retained and**  
21 **enjoined to pay to [Passport] *all of the aforesaid fraudulently***  
22 ***transferred funds up to and including the entire amount of the***  
23 **unsatisfied and outstanding [May 2012 Judgment] ... including all**  
24 accrued post-judgment interest and all post-judgment costs claimed by  
25

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26 <sup>3</sup> Erlend Olson is Debtor's former spouse and the father of the beneficiaries of the  
27 Children's Trust.  
28

1 [Passport] to date” in the then-current amount of \$10,396,863.15 plus  
2 additional post-judgment interest and costs (the “October 2014  
3 Judgment”). (REC\_294 ¶3(c) (emphasis added); REC\_313-326 (October  
4 2014 Judgment, at ¶5).

5 The Debtor failed and refused to pay the October 2014 Judgment, in whole or in  
6 part. (REC\_294 ¶4).<sup>4</sup>

7 On November 10, 2014, Passport filed a Notice of Judgment Lien with the  
8 California Secretary of State in connection with the October 2014 Judgment, and  
9 with also with the Superior Court on December 2, 2014. (REC\_296 ¶9). On  
10 December 5, 2014, the Clerk of the Superior Court issued an Abstract of Judgment,  
11 which Passport duly recorded. (*Id.*).

12 A hearing to determine Debtor’s contempt of the Superior Court’s order to  
13 provide an accounting of assets in connection with the above judgment against her  
14 was scheduled for May 14, 2015. Immediately prior to the scheduled contempt  
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19 <sup>4</sup> The Superior Court also issued six monetary discovery sanctions against Debtor  
20 in favor of Passport; Debtor paid the first four of these (totaling \$17,460), but  
21 failed or refused to pay the last two, totaling \$7,370. (REC\_294-REC\_295 ¶¶5-6  
22 and n.6). The Superior Court also issued three monetary discovery sanctions  
23 against, inter alia, the Shell Companies totaling \$11,740. (REC\_295 ¶7). As the  
24 alter ego of the Shell Companies, in accordance with the October 2014  
25 Judgment, Debtor is liable to Passport for the monetary discovery sanctions  
26 against the Shell Companies, but failed or refused to do so. (REC\_296 ¶8).  
27  
28

1 hearing, however, the State Court Action was automatically stayed by the Debtor's  
2 bankruptcy petition.<sup>5</sup>

3 **B. Debtor Files Chapter 7 Petition to Avoid State Court Contempt**  
4 **Proceedings and Files False and Misleading Schedules**

5 Approximately three hours before the Superior Court contempt hearing was  
6 scheduled to begin, Debtor filed a Chapter 7 Voluntary Petition for Bankruptcy in  
7 the Bankruptcy Court on May 14, 2015. (REC\_215-REC\_221 (Petition); *see also*  
8 REC\_733, ln. 18-19). Appellee Richard A. Marshack ("Trustee" or "Appellee") is  
9

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10 <sup>5</sup> Debtor was later found in contempt of the Superior Court. On July 15, 2015, the  
11 Bankruptcy Court granted Passport's motion for relief from the automatic stay to  
12 continue its prosecution of the State Court Action against non-debtor parties and  
13 to compel the Debtor to comply with her obligation under the applicable  
14 Superior Court judgment to render an accounting. (*See* REC\_014 at No. 60).  
15 With the automatic stay lifted, the Superior Court contempt proceedings against  
16 Debtor resumed and, following hearings in September 2015, the Superior Court  
17 entered an order finding the Debtor in criminal and civil contempt of court, and  
18 sentencing her to five days in jail, as well as further and indefinite confinement if  
19 she did not meet her burden to demonstrate that she had purged her contempt.  
20 The Debtor served the initial five days in jail. Debtor subsequently filed papers  
21 that purported to – but did not – comply with the Superior Court's order in an  
22 attempt to purge her contempt. (REC\_742, ln. 3-21). She was re-incarcerated on  
23 December 6, 2015, and remained in jail in Santa Ana pursuant to a series of orders  
24 entered by the Superior Court and the Bankruptcy Court until January 26, 2016,  
25 when Judge Albert of the Bankruptcy Court ordered Debtor released. (*See*  
26 REC\_043-REC\_044, Nos. 211-212).  
27  
28



1 the duly appointed and acting Chapter 7 Trustee of Debtor's bankruptcy estate.  
2 (REC\_535, ln. 18-19).

3 Debtor later admitted that her bankruptcy petition had been nothing more  
4 than a ploy to avoid the State Court Action contempt proceedings. (*See* REC\_734,  
5 ln. 2-4 ("the whole bankruptcy was supposed to stop that whole contempt thing")  
6 (quoting transcript of Debtor's Sept. 9, 2015 341(a) Exam. at 321:19-20)).

7 Debtor filed the required schedules of assets and liabilities and statement of  
8 financial affairs<sup>6</sup> ("Schedules") in support of her petition on June 18, 2015,  
9 declaring under penalty of perjury that the information reported therein was true  
10 and correct. (*See* REC\_222-REC\_277). Debtor's subsequent conduct and  
11 testimony, however, made clear that her Schedules were – at best – deliberately  
12 misleading when filed, and included much inaccurate or incomplete information,  
13 as well as outright falsehoods. For example, among other omitted assets, Debtor's  
14 Schedules failed to disclose the assets of the Shell Companies, which the Superior  
15 Court had found to be Debtor's alter egos, or the assets of approximately 28 other  
16 juridicial entities established for and controlled by the Debtor, including offshore  
17 entities which were the ultimate owners/repositories of the fraudulently transferred  
18 funds that were the subject of Passport's UFTA cause of action in the State Court  
19 Action. (REC\_735, ln. 3-10). Debtor later admitted that she has assets in accounts  
20 "scattered everywhere" around the globe. (*See* REC\_405, ln. 13-18).

21 One of these accounts was a self-settled Cook Islands trust account called  
22 the Miyim 2009 Cook Islands Trust ("Cook Islands Trust"), settled by Debtor in  
23 July 2009. (*See* REC\_650, ln. 2-3; REC\_655-REC\_694). Pursuant to Schedule II  
24 of the Cook Islands Trust, Debtor named herself a beneficiary and member of the  
25 appointed class. (REC\_650, ln. 3-4; REC\_691). Article III(D) provides that  
26

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27 <sup>6</sup> *See* 11 U.S.C. § 521; FRBP 1007.  
28

1 “during the lifetime of the [Debtor], the Trustee shall distribute the Trust Fund or  
2 any part thereof to such one or more members of the Appointed Class on such  
3 terms and conditions, either outright or in trust, the Settlor may from time to time  
4 appoint by a signed written instrument...” (REC\_650, ln. 4-8; REC\_660).

5 Although Debtor’s Schedules acknowledged the existence of a “Miyim 2009  
6 Cook Islands Trust,” the Schedules identified Debtor only as the “Original settlor”  
7 and falsely stated that

8 upon information [*sic*] and belief Trustee and Trust Protector since  
9 made changes to trust structure. Trust is defunded and defunct. Jana  
10 Olson has no current right to information.

11 (*See* REC\_235). The trust was not “defunded” – Debtor later testified in 341(a)  
12 testimony the Trust was funded with approximately \$4.6 million. (*See* REC\_535  
13 ln. 20-21).

14 Debtor’s Schedules also did not disclose that, within days of being served  
15 with Passport’s lawsuit (on April 30, 2010), on May 18, 2010, Debtor executed a  
16 letter dated May 6, 2010, directing the trustee of the Cook Islands Trust to amend  
17 Schedule II to remove Debtor as a named beneficiary – which the trustee then did,  
18 thereby transferring her beneficial interest in the trust to her children for no  
19 consideration. (REC\_650, ln. 14-19; REC\_700-REC\_707; REC\_708-REC\_711).  
20 Trust records and other evidence show that Debtor had the continuing authority to  
21 direct the trustee to release Cook Islands Trust funds. (*See, e.g.*, 683 at Suppl.  
22 Loran. Decl., ¶¶ 3-5, Ex. A). Shortly before filing for bankruptcy, on January 14,  
23 2015, Debtor directed that the Cook Islands Trust be re-named the “Pink Panther  
24 Trust.” (REC\_650-REC\_651, REC\_712-REC\_713). There is no reference to a  
25 “Pink Panther Trust” in the Schedules.

26 In addition, Debtor’s Schedules falsely state, *inter alia*, that no property had  
27 been “transferred by the debtor within 10 years immediately preceding the  
28

1 commencement of this case to a self-settled trust or similar device of which debtor  
2 is a beneficiary” when in fact Debtor had made at least three transfers, including a  
3 transfer of \$12 million in or around July 2010 – within weeks after being served  
4 with Passport’s State Court Action – to the Cook Islands Trust, which as noted  
5 above, Debtor controls. (REC\_735, ln. 21-REC\_736, ln. 1-3, 15-19).

6 **C. Debtor Found In Contempt For Refusal to Comply with Statutory**  
7 **Disclosure, Cooperation, and Turnover Obligations**

8 Given Debtor’s continuing failure or refusal to comply with her legal  
9 obligations, on October 9, 2015, Trustee and Passport filed a joint motion  
10 requesting the court to compel her to do so. (*See* REC\_018 at No. 88). The  
11 Bankruptcy Court issued an Order Compelling Debtor’s Compliance with  
12 Statutory Disclosure, Cooperation, and Turnover Obligations Pursuant to 11  
13 U.S.C. §§ 521, 542, and 105(a) on October 16, 2015 (REC\_729-REC\_730)  
14 (“Turnover Order”), ordering Debtor to (1) turn over to the Trustee within 10 days  
15 all of items in the itemized lists attached to the order that were in her possession,  
16 custody, or control, and (2) if any such items were not in her possession, custody,  
17 or control, to file a sworn declaration within 10 days affirmatively stating so. (*Id.*).

18 When Debtor failed to produce the assets and documentation enumerated in  
19 the Turnover Order, including records relating to the Cook Islands Trust, the  
20 Trustee and Passport moved for an Order to Show Cause Why Debtor Jana Olson  
21 Should Not Be Held In Contempt. (*See* REC\_731-763). On December 8, 2015,  
22 the Bankruptcy Court issued an order finding Debtor in contempt (REC\_278-  
23 REC\_287) and, following a further evidentiary hearing on December 15, 2015, at  
24 which additional evidence showed that Debtor had still not purged her contempt,  
25 the Bankruptcy Court issued an Order of Civil Contempt and for Body Detention,  
26 and Debtor was taken into custody. (REC\_288-REC-289).

1 On January 26, 2016, having found that Debtor had sufficiently partially  
2 purged her contempt, the Bankruptcy Court issued an order releasing the Debtor  
3 from custody. (*See* REC\_043-REC\_044, No. 212). The order also set a further  
4 status conference on “remaining issues under the Court’s Contempt Order and/or  
5 cooperation between the Debtor and the Trustee for February 23, 2016, (*id.*; *see*  
6 *also* REC\_046 at No. 220), later continued to March 15, 2016 (*See* REC\_047, No.  
7 226, REC\_049, No. 240).

8 **D. Debtor Voluntarily Stipulates in Open Court that She Will Take**  
9 **All Actions Necessary to Turn Over All Assets to Trustee**

10 During the status conference hearing held before the Bankruptcy Court on  
11 March 15, 2016, Debtor voluntarily entered a stipulation with the Trustee on the  
12 record in open court (“Stipulation”) agreeing to take all actions necessary to have  
13 all assets, including all of the assets held by the Pink Panther Trust, formerly  
14 known as The Miyim 2009 Cook Islands Trust (the “Cook Islands Trust”), turned  
15 over to the Trustee pending further written agreement between the parties or  
16 further order of the court. (REC\_390-REC-396 (*Findings of Fact and Conclusions*  
17 *of Law in Support of Amended Order of Civil Contempt and for Body Detention*  
18 (“Findings of Fact and Conclusions of Law”)) at REC\_391 REC-392, Findings of  
19 Fact ¶1).

20 The court memorialized the Stipulation in an “Order Approving Debtor’s  
21 Stipulation to Turn Over Assets to Trustee” entered on March 29, 2016  
22 (“Stipulation Order”). (*Id.* (*ref.* (REC\_764-REC\_767))). Prior to approving the  
23 Stipulation as an order, the Bankruptcy Court examined Debtor and accepted  
24 Debtor’s representations that she was entering into the Stipulation voluntarily, of  
25 her own free will, and not under compulsion of any legal process or like authority.  
26 Those findings were incorporated into the Order Approving Stipulation.

1 (REC\_392-REC-393, Findings of Fact ¶5). The Order Approving Stipulation  
2 provides, in part:

3 After due consideration and acknowledging that she was making this  
4 agreement of her own free will and not under compulsion of any legal  
5 process or like authority, **Jana Olson voluntarily agreed to take all**  
6 **actions necessary to have all assets, including all assets held by the**  
7 **[Cook Islands] Trust, turned over to the [Trustee]** to be held in  
8 trust pending further written agreement between the parties or further  
9 order of the Court. In furtherance of Debtor's voluntary agreement,  
10 **Debtor also agreed to sign all documents, advise all trust**  
11 **protectors, and communicate the words known by the trustee of**  
12 **the [Cook Islands] Trust and the trust protectors that this**  
13 **decision is made of her own free will and without duress.** Lastly,  
14 this agreement is made without waiver of, and Debtor expressly  
15 reserves, all rights, claims, and defenses regarding whether the funds  
16 held by the Trust constitute property of her bankruptcy estate.  
17 Accordingly, based on the stipulation read on the record and  
18 summarized above ("Stipulation"), and after questioning Debtor, the  
19 Court finds that she entered into this agreement knowingly, on her  
20 own free will, and in the absence of any duress...

21 (REC\_392, Findings of Fact ¶1 (quoting REC\_765) (emphasis added)). This  
22 portion of the Stipulation is a specific and definite order of the Bankruptcy Court  
23 to turn over all assets including all assets in the Pink Panther Trust to the Trustee.  
24 (REC\_395, Conclusions of Law, ¶1).

1           **E. Further Contempt Proceedings Arising from Debtor's Failure to**  
2           **Comply with Stipulation Order and Attempt to Dissuade Cook**  
3           **Islands Trustee from Repatriating Trust Funds**

4           Debtor was the sole settlor of the Cook Islands Trust and is educated,  
5 sophisticated, and experienced in business. (REC\_392, Findings of Fact ¶2).  
6 Debtor had previously sent directions to the trustees of the Trust and had caused  
7 funds from the Trust to be withdrawn on approximately twenty separate occasions.  
8 (*Id.*, Findings of Fact ¶3). However, the Cook Islands Trust provides that the  
9 trustees are specifically instructed to ignore requests communicated to them by  
10 Debtor, the Trust's settlor, under circumstances of duress. (*Id.*, Findings of Fact  
11 ¶4).

12           On April 13, 2016, Debtor sent an email to several recipients including the  
13 trustees of the Cook Islands Trust, the trust protectors of the Trust, the Office of  
14 the United States Trustee, the Trustee, and the attorneys who represented Debtor  
15 regarding the Trust, among others. (REC\_393, Findings of Fact ¶6). In that email,  
16 Debtor said many things that unmistakably communicated that Debtor was acting  
17 under duress, including that she felt she had been "been taken advantage of," that  
18 she had "been cooperating for over a year with the BK Trustee, and look at where  
19 [she is] today. Worse off than one year ago. Far worse off. Anything I say or any  
20 move I make is used against me, and the baby is already covered in tar[.]" (*Id.*).  
21 Debtor also complained that "Passport wishes to steamroll forward, without due  
22 process for [Debtor] to have good representation..." but that she was "happy to rot  
23 in jail for something [she] has no control over[.]" (*Id.*). The Debtor further stated  
24 that she does "not respond well to bullying and condemnation and violations of the  
25 Sustainable Principle of Nonviolation of Self, Children and Property..." "So  
26 please proceed with the crucifixion." (*Id.*).  
27  
28

1 On June 7, 2016, the Bankruptcy Court held a further hearing on the Order  
2 to Show Cause. (*See* REC\_388-REC\_389). The court found that “Debtor has  
3 control over the [Cook Islands Trust] funds and the ability to cause all assets held  
4 by the Trust to be turned over to the Trustee for at least the following reasons”: (1)  
5 Debtor’s sworn admission that she had previously caused funds to be withdrawn  
6 from the Trust; (2) iChat messages showing that Debtor retained control over her  
7 offshore assets; (3) Debtor’s agreement to enter into the Stipulation, which  
8 constitutes an admission that she had control over the funds and the ability to cause  
9 all assets held by the Trust to be turned over to the Trustee; Debtor’s  
10 representations on the record in open court regarding disclosure of the secret words  
11 that communicate to the trustee of the Cook Islands Trust that she wants actions to  
12 be taken and that she is not operating under duress; and Debtor’s April 13, 2016 e-  
13 mail communicating that she was acting under duress, constituting an  
14 acknowledgment that Debtor’s state of mind is relevant to the trustees of the Trust.  
15 (REC\_393-REC\_394, Findings of Fact ¶7).

16 The Bankruptcy Court also found that the Debtor had failed to turn over all  
17 assets to the Trustee, including any assets held in the Pink Panther Trust.  
18 (REC\_394, Findings of Fact ¶8). The court concluded based on the foregoing facts  
19 that

20 Clear and convincing evidence establishes that Debtor knowingly and  
21 willfully violated the Order Approving Stipulation by failing to turn  
22 over all assets to the Trustee, including all assets in the Pink Panther  
23 Trust, and by sending the April 13, 2016, e-mail that communicated  
24 that she was under duress, in contravention of the Order Approving  
25 Stipulation [...] (Dkt. 255) In doing so, Debtor could only logically  
26 have been attempting to thwart repatriation.

1 (REC\_395, Conclusions of Law ¶2). The Court also found that Debtor had made  
2 no attempt “to purge her contempt by communicating to the trustees and trust  
3 protectors of the Pink Panther Trust that she is acting of her own free will,  
4 voluntarily, and not under duress in seeking repatriation of all assets held in any  
5 Cook Islands Trust.” (*Id.*, Conclusions of Law ¶6).

6 To the extent that Debtor argued that compliance with the Order Approving  
7 Stipulation was impossible, the Bankruptcy Court held that she had failed to  
8 present any admissible evidence to support that contention, and that, insofar as she  
9 had any present inability to repatriate the Cook Islands Trust funds, it was of her  
10 own making, and that she therefore could not excuse her failure to comply with the  
11 order. (*Id.*, Conclusions of Law ¶¶3-5 (citing *F.T.C. v. Affordable Media, LLC*,  
12 179 F.3d 1228, 1240-1241 (9th Cir. 1999)).

13 In light of these findings and conclusions, the Bankruptcy Court found  
14 Debtor in civil contempt of the Order Approving Stipulation (REC\_396,  
15 Conclusions of Law ¶7), and that there were no less severe alternatives to bodily  
16 detention to coerce the Debtor to purge her contempt, because (1) in the more than  
17 one year since Debtor filed the bankruptcy case Debtor had failed to comply with  
18 her duty to turn over her assets to the Trustee; (2) Debtor had been warned on  
19 multiple occasions that her failure to comply with orders of the court would lead to  
20 further civil contempt proceedings and bodily detention; and (3) Debtor’s act of  
21 sending her April 13, 2016 email, which advised the trustees of the Trust that she  
22 was acting under duress, “was a flagrant act of contempt.” (*Id.*, Findings of Fact  
23 ¶9).

24 At the conclusion of the June 7, 2016 hearing, the Bankruptcy Court issued  
25 an Amended Order of Civil Contempt and for Body Detention of Debtor Jana  
26 Olson. (REC\_388-REC\_389). On June 10, 2016, the Bankruptcy Court issued  
27  
28



1 written Findings of Fact and Conclusions of Law relating to its order. (REC\_390-  
2 REC\_396).

3 The Debtor remained unwilling to purge her contempt with regard to the  
4 Cook Islands Trust funds – and thus she remained in jail for approximately one  
5 year following the June 2016 proceedings.

6 **F. Bankruptcy Court Rules that Debtor Is Not Entitled to**  
7 **Bankruptcy Discharge for Any Claim**

8 Passport and the Trustee initiated an adversary proceeding against the  
9 Debtor (Adversary Case No. 8:15-01341 TA) (the “Adversary Case”) in August  
10 2015, challenging the dischargeability of her debts on grounds that, *inter alia*, (1)  
11 Debtor’s debts to Passport were for money or property that was obtained by fraud  
12 and other willful and malicious conduct, and that (2) Debtor acted with the intent  
13 to hinder, delay, or defraud her creditors by transferring, concealing, or otherwise  
14 removing property from her direct control within one year of the petition date.  
15 (*See* REC\_015-REC\_016 at No. 74).

16 Passport and Trustee filed summary judgment motion in the Adversary Case  
17 on June 30, 2016. (*See* REC\_398, ln. 1-6). The Bankruptcy Court granted the  
18 motion and entered a related Judgment against Debtor on October 19, 2016,  
19 holding that

20 [Passport] is entitled to judgment against Debtor, pursuant to 11  
21 U.S.C. §§ 523(a)(2)(A) and 523(a)(6)<sup>7</sup>, denying Debtor a discharge  
22

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23 <sup>7</sup> 11 U.S.C. §§ 523(a) states in relevant part: “(a) A discharge under section 727,  
24 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual  
25 debtor from any debt— ... (2)(A) for money, property, services, or an extension,  
26 renewal, or refinancing of credit, to the extent obtained by—false pretenses, a  
27

1 for the indebtedness to Creditor that is represented by the two final  
 2 Judgments and five monetary sanctions orders entered against Debtor  
 3 and the Shell Companies in the State Court Action; [and]

4  
 5 Trustee and [Passport] are entitled to judgment against Debtor  
 6 denying Debtor's discharge under 11 U.S.C. § 727(a)(2) as a result of  
 7 Debtor's intent to hinder, delay, or defraud her creditors by  
 8 transferring, concealing, and otherwise removing estate property after  
 9 the date of the filing of the petition under 11 U.S.C. § 727(a)(4)  
 10 because Debtor knowingly and fraudulently, in connection with the  
 11 case, made a false oath or account[.]<sup>8</sup>

12 (REC\_398-REC\_399).

13 **G. Passport Allowed First-In-Priority Claim Status**

14 On April 15, 2016, Passport timely filed its proof of claim in the Chapter 7  
 15 case, which was assigned Claim No. 4 (REC\_290-REC\_385). Passport's claim is

16  
 17 false representation, or actual fraud, other than a statement respecting the  
 18 debtor's or an insider's financial condition; ... [or] (6) for willful and malicious  
 19 injury by the debtor to another entity or to the property of another entity[.]”

20 <sup>8</sup> 11 U.S.C. § 727(a) states in relevant part: “(a) The court shall grant the debtor a  
 21 discharge, unless— ... (2) the debtor, with intent to hinder, delay, or defraud a  
 22 creditor or an officer of the estate charged with custody of property under this  
 23 title, has transferred, removed, destroyed, mutilated, or concealed, or has  
 24 permitted to be transferred, removed, destroyed, mutilated, or concealed— ...  
 25 (B) property of the estate, after the date of the filing of the petition; ... [or] (4)  
 26 the debtor knowingly and fraudulently, in or in connection with the case— (A)  
 27 made a false oath or account[.]”

1 based on the judgments and awards made in Passport's favor against Debtor by the  
2 Superior Court. The Proof of Claim asserts that the amount Debtor owed to  
3 Passport as of the Petition date was \$11,590,628.98, plus interest and post-  
4 judgment costs, including attorneys' fees, and that the entirety of the claim is  
5 secured on account of Passport's actions to create judgment liens and in the  
6 absence of any senior liens. (REC\_297, ¶7).

7 Recognizing that Passport's \$11,590,628.98 claim, if it were allowed as a  
8 secured claim, would prevent any other creditor from being paid, and that even if it  
9 were unsecured, Passport's claim would comprise over 99% of the unsecured  
10 creditor body, the Trustee proposed a compromise agreement to resolve all  
11 disputes between Passport and the Trustee. The agreement between Trustee and  
12 Passport provides that "Passport shall have an allowed secured first-in-priority  
13 claim in the principal amount of \$11,590,628.98 ('Principal Sum Due')," and that  
14 "all property recovered under any theory of law or by consent from trust(s) settled  
15 by Debtor in the Cook Islands including the 'Pink Panther Trust' ... shall  
16 constitute property of the estate subject to Passport's first-in-priority secured  
17 claim." (REC\_421, ¶¶3-4). In exchange for allowing Passport a first-in-priority  
18 secured claim senior to all others, the agreement also provides a carve-out  
19 sufficient to allow for pro rata payment of all administrative and currently  
20 scheduled unsecured claims as if Passport's claim were not secured. (REC\_405,  
21 ln. 24-26).

22 The Bankruptcy Court granted Trustee's motion for an order approving his  
23 compromise with Passport for allowance of the secured claim and carve-out on  
24 February 6, 2017 ("Priority Order"). (REC\_527-REC\_533).

1 **II. Facts and Procedural History Regarding Trustee’s Compromise with**  
 2 **the Children’s Trust, Motion for Approval and Related Proceedings,**  
 3 **and Bankruptcy Court’s Approval Order**

4 **A. Trustee’s “Compromise” with Children’s Trust**

5 **1. Trustee Seeks Out the “Assistance” of Debtor’s Family in**  
 6 **Repatriating Funds in Exchange for a Significant Portion of**  
 7 **the Recovery**

8 As discussed above, Debtor (1) self-settled the Cook Islands Trust in 2009,  
 9 (2) fraudulently transferred millions of dollars from the Shell Companies to the  
 10 Trust within weeks of being served with Passport’s suit in 2010; (3) transferred her  
 11 beneficial interest in the Trust to her two minor children for no consideration in  
 12 2010, within days of being served by Passport, and (4) immediately prior to  
 13 bankruptcy, changed the name of the Trust to the “Pink Panther Trust,” a name she  
 14 did not identify on her Schedules. (REC\_535, ln. 20-25). Debtor also falsely  
 15 stated in her Schedules that the trust was “defunct and defunded.” (*Id.*).

16 In light of these facts, Trustee has contended throughout these proceedings  
 17 that the Debtor’s creation and funding of the self-settled Cook Islands Trust was  
 18 avoidable pursuant to 11 U.S.C. § 548(e).<sup>9</sup> (*See* REC\_536, ln.1-4). And, even if  
 19 they were not, Trustee has contended that Debtor’s transfer of her beneficial  
 20 interest to her children for no consideration was also avoidable as an actually  
 21 and/or constructively fraudulent transfer, in particular because Debtor made the  
 22 transfer within days after being sued by what is now her largest creditor, Passport.  
 23 (*Id.*, ln. 4-8).

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24  
 25 <sup>9</sup> “[T]he trustee may avoid any transfer of an interest of the debtor in property that  
 26 was made on or within 10 years before the date of the filing of the petition, if—  
 27 (A) such transfer was made to a self-settled trust or similar device[.]”  
 28

1 The Trustee argues that, because Debtor had been incarcerated for nearly  
2 one year for her refusal to repatriate the Cook Island Trust funds, it was necessary  
3 to enter into a compromise to gain the cooperation of Debtor, her former spouse  
4 Erlend Olson, and a court-appointed guardian for the children (Debtor's father,  
5 Barret Weekes), in order to obtain the Cook Island Trust funds. (*Id.* ln. 9-13). The  
6 Trustee represented that, in his business judgment, it was in the best interest of the  
7 Estate to enter into an agreement with the Weekes family and Debtor to pay  
8 Debtor's children approximately \$1 million of the \$4.3 million anticipated Cook  
9 Islands recovery (1) to avoid having to sue Debtor's children as the recipients of  
10 fraudulent transfers (which are non-dischargeable debts<sup>10</sup>), despite Trustee's  
11 confidence in the strength of that claim; (2) to preclude the possibility that the trust  
12 funds would never be returned; and (3) to heed the Bankruptcy Court's  
13 encouragement to find a solution that resulted in Debtor purging her contempt. (*Id.*  
14 ln. 16-25).

15 **2. Terms of the Compromise Agreement and Resulting Funds**  
16 **Transfers from Cook Islands Trust**

17 The Compromise recites that [Debtor] made certain transfers [of funds] to  
18 [the Children], including naming them as primary beneficiaries of the [Pink  
19 Panther Trust]" and further recites that "[Trustee] claims that all funds transferred  
20 by [Debtor] to the Children[,] including the funds in the [Pink Panther Trust,]  
21 belong to [Debtor's] bankruptcy estate or that any rights of the Children to such  
22 funds are subject to avoidance and recovery as fraudulent transfers." (REC\_547,  
23 Recitals C and F). The Compromise provides that

24 The effectiveness of the consideration provided by the Trustee  
25 pursuant to this Agreement is contingent upon the Court entering an  
26

27 <sup>10</sup> *Husky International Electronics, Inc. v. Ritz*, 136 S. Ct. 1581, 1589 (2016).  
28

1 order approving it. **Failure of the Court to approve this Agreement**  
 2 **shall render such provisions void and without effect.** The date that  
 3 the Court enters its order approving this Agreement shall be referred  
 4 to as the “Effective Date.”

5 (REC\_548, ¶1 (emphasis added)).<sup>11</sup>

6 The Compromise expressly provides that “**all transfers of property by**  
 7 **[Debtor] to the Children are avoided, recovered by, and preserved for the**  
 8 **benefit of [Debtor’s] bankruptcy estate.”** (*Id.* at ¶2) (emphasis added)). It also  
 9 provides that: “[i]mmediately upon execution of this agreement, Barret [Weekes,  
 10 Debtor’s father] request all property transferred to the Children by Debtor be  
 11 deposited into the Settlement Escrow Account related to the Children’s Trust ...”  
 12 and that “[w]ithin one business day after funds are received and become available  
 13 for withdrawal from the Settlement Escrow Account, including funds received  
 14 from the PPT [Pink Panther Trust], Douglas [Weekes, Debtor’s brother and trustee  
 15 of the Children’s Trust] shall: (a) Distribute to [Trustee] 77.78% of all funds and  
 16 retain 22.22%; and (b) Distribute to [Trustee] 100% of all funds after retained  
 17 funds reach One Million Dollars (\$1,000,000.00).” (*Id.* at ¶¶2-3).

18 On July 5, 2017, the Children’s Trust received \$4,342,149.82 from the Pink  
 19 Panther Trust. (REC\_536, ln. 21-22). Of that amount, \$3,377,324.13 was  
 20 transferred to the Trustee for the benefit of the bankruptcy estate. (*Id.*, ln. 22). The  
 21 Compromise provides that the remaining \$964,825.69 is to be retained by the  
 22 Children’s Trust for the benefit of the children. (*Id.*, ln. 23-24). On July 7, 2017,  
 23  
 24

---

25 <sup>11</sup> Notably, as noted below, the Cook Islands Trust Funds were repatriated to the  
 26 United States before the Effective Date, and before the Trustee moved for a court  
 27 order approving the Agreement.  
 28

1 Debtor was released from the custody of the United States Marshal Service. (*Id.*,  
2 ln. 24-25).

3 **B. Trustee's Motion for Approval of Compromise**

4 Approximately two weeks after the Pink Panther Trust Funds had been  
5 repatriated to a United States escrow account, the Appellee filed a Motion for  
6 Order Approving Compromise with the Olson Children's Irrevocable Trust on July  
7 18, 2017 ("Approval Motion"). (*See* REC\_534-REC\_561).

8 Passport objected, primarily on grounds that, pursuant to the United States  
9 Supreme Court's recent ruling in *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973  
10 (2017), the Bankruptcy Court could not approve a compromise agreement that  
11 distributed property of the bankruptcy estate (which Passport argued the entirety of  
12 the recovered trust funds were) in violation of Passport's first-in-priority lien. (*See*  
13 REC\_576-REC\_587). Passport also objected to the Compromise on grounds that it  
14 rewarded Debtor's fraud and contempt, and that it was simply a bad deal because  
15 the Weekes's assistance was never actually needed to repatriate the Pink Panther  
16 Trust funds, as Debtor had (and had always had) the power to cause the trustee to  
17 relinquish the funds, and therefore \$1 million was far too large a payment for  
18 providing – at best – a somewhat more expedient solution. (*See Id.*; REC\_596-  
19 REC\_623).

20 On August 15, 2017, counsel for the Trustee transmitted to counsel for  
21 Passport an accounting received from the Pink Panther Trust, which Passport then  
22 submitted to the court attached to its Supplemental Opposition. (*See* REC\_597,  
23 REC\_604, ¶¶3-5, REC\_605-REC\_620). The accounting shows that, both pre- and  
24 post-Petition, Debtor at all times herself had the sole ability to move money in and  
25 out of the Ora Fiduciary account. (*Id.*). This evidence further demonstrates that  
26 the Weekes family's "assistance" was never required to effect the repatriation of  
27 the Pink Panther Trust Funds.

1 In his Reply, the Trustee conceded that, if Passport’s property argument is  
2 correct – *i.e.*, that one hundred percent of the funds recovered from the Cook  
3 Islands Trust are the property of the bankruptcy estate, then the Trustee did not  
4 have the authority to give away a portion of the estate without Passport’s consent.  
5 (REC\_652-REC\_653, ln. 4). Trustee also stated that this issue was not one that he  
6 had identified prior to Passport’s written opposition. (REC\_652, ln. 14-16).<sup>12</sup>

### 7 **C. Tentative Ruling and Hearing on Trustee’s Motion**

8 The Bankruptcy Court held a hearing on August 29, 2017 to hear argument  
9 on the Trustee’s Motion (“Motion Hearing”). (*See* REC\_178-REC\_214 (Motion  
10 Hearing Transcript)). Shortly before the hearing, the Bankruptcy Court issued a  
11 tentative ruling granting the Trustee’s Motion (“Tentative Ruling”) (REC\_172-  
12 REC\_177), based upon the related submissions of the parties, which the parties had  
13 reviewed in advance of the hearing. (*See* REC\_181, ln. 2-6). The Bankruptcy  
14 Court would eventually attach and incorporate the Tentative Ruling into its  
15 Approval Order without amendment. (REC\_169, ln. 24-25).

#### 16 **1. Bankruptcy Court’s Tentative Ruling in Favor of Trustee’s** 17 **Motion for Approval**

18 The Tentative Ruling acknowledges that “Passport might be legally correct  
19 about its rights,” (REC\_175), and that Debtor had engaged in fraud and contempt  
20 (*id.* at REC\_173-REC\_174), but nonetheless approved the compromise based on  
21 the “very unusual” circumstances of the case, in which Debtor had been  
22 incarcerated for approximately one year on contempt charges stemming from her  
23 “attempts to apparently dissuade the Cook Islands trustee from repatriating the  
24 money” in the “the infamous ‘crucifixion memo’” and Debtor’s continuing refusal  
25

---

26 <sup>12</sup> Submissions in support of Trustee’s Motion were also made by Debtor,  
27 Erlend Olson, and the Children’s Trust.  
28



1 to cause the funds to be repatriated and purge her contempt. (REC\_173). The  
2 court thus relied in part on practical considerations, *i.e.*, the difficulty in and cost  
3 involved in the lengthy effort to collect the Pink Panther Trust funds, and the  
4 question of whether Debtor could as a practical matter have remained in jail  
5 indefinitely until she purged her contempt, concluding that “[a]bsent a compromise  
6 approach it is very questionable whether there would even today be anything to  
7 discuss here” because there would be “no assets in the estate at all.” (REC\_174-  
8 REC\_176).

9 But the court also expressed an overarching concern about “engaging in  
10 duplicitous behavior” by refusal to approve the Compromise after the funds had  
11 already been repatriated to the United States, and after the court had (in broad  
12 terms) encouraged a settlement to accomplish just that – even if neither the Trustee  
13 nor the Debtor and her supporters had asked the court (or Passport, for that matter)  
14 to approve the specific Compromise terms in advance of the transfer. (REC\_174).

15 Passport seems to be arguing a form of ‘King’s X’, that is, now that  
16 the funds are stateside forget the problems in getting that difficult part  
17 accomplished; revert only to consideration of difficulty in collection  
18 now *under U.S. law* and renounce any representations made in getting  
19 that done. The court will not participate in such duplicity. While such  
20 flexibility might be expected behavior from some debtors, or maybe  
21 even from some zealous creditors, it cannot be so for the court (or the  
22 Trustee) without major damage to the integrity of the entire process.  
23 (REC\_175 (emphasis in original)).

24 The Tentative Ruling also purported to distinguish the Supreme Court’s  
25 opinion in *Jevic*, on grounds it involved a Chapter 11 structured dismissal (not an  
26 interim distribution), and that the under “exceptional” circumstances of this case  
27 the priority-violating Compromise supposedly serves the objectives of the  
28

1 Bankruptcy Code because “[h]ere the question is between overruling the objection  
2 of the major creditor with a secured claim vs. no assets in the estate at all, with  
3 administrative creditors going unpaid, potentially forever, and the Debtor  
4 remaining in jail on an open-ended contempt charge.”<sup>13</sup> (REC\_177).

5 Nothing in the Tentative Ruling hints at the Bankruptcy Court’s deep  
6 misgivings about rewarding the Debtor’s fraud and contempt – despite also feeling  
7 compelled to approve the Compromise – revealed during the Motion Hearing.

## 8 **2. Motion Hearing**

9 At outset of the Motion Hearing, Passport re-asserted its arguments that the  
10 entirety of Cook Islands Trust funds were at all times property of the bankruptcy  
11 estate, and thus subject to Passport’s first-in-priority claim.<sup>14</sup> Passport also assured  
12 the court – to allay concerns expressed in the Tentative Ruling<sup>15</sup> – that there was  
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14 <sup>13</sup> As addressed in Argument Section I.A, the Bankruptcy Court misread the  
15 reasoning in *Jevic*, which explains that, unlike Chapter 11, priority-violating  
16 distributions are *not permitted at all* in the Chapter 7 context.

17 <sup>14</sup> The trust funds are the property of the estate for three primary reasons (1) those  
18 funds were implicated by the State Court judgments that are the basis of  
19 Passport’s claim against the Estate; (2) the terms of the Priority Order specify  
20 that Passport has a first-in-priority claim over all of Debtor’s assets, including the  
21 Cook Islands Trust funds, recovered under any theory of law; and (3) because the  
22 express terms of the Compromise agree that the trust funds are part of the  
23 bankruptcy estate, and are subject to Passport’s first-in-priority claim.  
24 (REC\_181, ln 21 - REC\_183, ln. 17; REC\_187, ln. 2-23).

25 <sup>15</sup> Debtor had also filed a paper in support of Trustee’s Approval Motion  
26 which, among other allegations, stated – falsely – that counsel for Passport had  
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1 no “duplicity” on Passport’s part with regard to the terms of the Compromise.  
2 (REC\_185, ln.13 – REC\_186, ln. 8). While Passport had been aware of  
3 negotiations between the Trustee and the Debtor and her family members, it did  
4 not take part, nor was it shown any form of agreement or asked to consent to the  
5 specific terms. (REC\_186, ln. 7-9). Passport was aware of the broad terms of the  
6 compromise proposal, and had informed the Trustee that Passport “though[t] that  
7 the debtor shouldn’t be paid a million dollars, and we told the trustee that we  
8 objected to the settlement[.]” (*Id.*, ln. 9-12). Passport was not asked to agree to the  
9 transfer of the trust funds to the United States (or the related *quid pro quo* in the  
10 Compromise), and did not have anything to do with the language of the  
11 Compromise that says “all transfers of property by [Debtor] to the Children are  
12 avoided, recovered by, and preserved for the benefit of [Debtor’s] bankruptcy  
13 estate.” (REC\_187, ln. 7-12). There was therefore no “duplicity” in asserting its  
14 legal rights based on the plain terms of the Compromise and the prior rulings of the  
15 court.

16 Passport also reminded the court that these funds had been a fraudulent  
17 conveyance by the Debtor in the first place, to avoid debts to Passport, and  
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19 previously offered Debtor sums of \$1-2 million in exchange for repatriation of  
20 the Pink Panther Trust funds, and implied. (REC\_641). Debtor also falsely  
21 stated that Passport had raised no objection to the Compromise prior to the Trust  
22 funds being repatriated and had in fact “actively encouraged it to happen.”  
23 (REC\_642). As noted above, in reality, Passport’s counsel had not participated  
24 in the Compromise negotiations, had not seen the form of the Compromise  
25 agreement until the Trustee’s Motion, and had advised the Trustee of its  
26 objection to the broad terms of the Compromise, *i.e.*, payment of \$1 million to  
27 Debtor’s children in exchange for repatriation of the funds.  
28

1 approving the Compromise would take a substantial portion of those funds from  
2 Passport and hand them right back to the fraudulent transferor. (REC\_188, ln. 22-  
3 25). The Bankruptcy Court was well aware of what was really going on, but was,  
4 in its view, left with no real option but to approve the Compromise, for both  
5 practical reasons and to avoid any appearance of duplicity:

6 Please don't misunderstand. I'm not saying any of this is right. Okay?  
7 ... I find the whole thumbing the nose at the rule of law to be  
8 reprehensible. Somebody who has built a life out of the rule of law  
9 should say no less. But I'm also a practical guy. I have to make some  
10 hard decisions. And to get your last million dollars, would have  
11 probably involved keeping Jana Olson in jail, more or less,  
12 indefinitely. And I don't know that I can do that.

13 \*\*\*

14 And she gets out of jail and you got nothing. Now, that's the reality,  
15 not that it's right. And under our scheme of law it is illegal, but I can't  
16 tell the Cook Islands what their laws are, right?

17 So that's the practical problem the trustee had to wrestle with. Now, if  
18 what you're trying to tell me is that, well, when dealing with frauds we  
19 can ... go through all these efforts and get a settlement and when it  
20 comes state-wise we'll do "King's X" – screw the settlement, we'll  
21 take all the money because you're bad guys to have done this in the  
22 first place which is more or less as I read your pleading. I can't do  
23 that. I cannot do that because that means that that gold eagle [outside  
24 the Courthouse] is a vulture like all the rest.

25 (REC\_190, ln. 25 – REC\_192, ln. 3).

26 ... I'm not happy about it. **I'm not happy that a bunch of frauds**  
27 **managed to break off a quarter of the loot here and keep it for the**  
28

1           **kids.** I don't think it's right, but I ... have to play the cards that are  
2           dealt me. And I was not dealt a very strong hand, despite what you  
3           think. A year is a long time to spend in jail.

4 (REC\_193, ln. 2-7 (emphasis added)).

5           Despite these statements, the court was also "troubled" by the argument that  
6           Passport's first-in-priority attached to the entirety of the repatriated funds, and that  
7           the court might be "breaking [its] own word" from the Priority Agreement if it  
8           approved the Compromise. (REC\_194, ln. 3-10). Trustee's counsel argued, as in  
9           its Reply, that it depended on the interpretation of the term "recovered" – and  
10          conceded that if the court interpreted that the term "property recovered" applied to  
11          100 percent of the repatriated Trust funds, then Passport was correct; if it applied  
12          only to the portion of the funds the Compromise agreed would be transferred to the  
13          estate by the trustee of the Children's Trust, then the remaining funds are not part  
14          of the estate and Passport has no lien right over them. (*See* REC\_194, ln. 11 –  
15          REC\_199, ln. 20).

16          Notably, Trustee's counsel also lamented that, Passport's legal arguments  
17          aside, the Compromise was, as the court had put it, "unpalatable"  
18          there's a certain amount of fairness going back to the Court's  
19          comment about unpalatable alternatives, you know, I can't recall a  
20          time in my 25 plus years, and I don't know if Your Honor can recall a  
21          time, where we were leaving family members of a debtor with close to  
22          a million dollars to resolve what I think is probably a slam dunk  
23          fraudulent transfer action.

24 (REC\_198, ln. 16-20). The court conceded that Passport's legal position was  
25 strong, and that the Compromise was not only inequitable, but akin to piracy:

26                 There's no question in my mind that Passport has good arguments.

27                 And there's really no question in my mind but that there is part of all  
28

1 this that just – ought not to sit well with anybody who believes in the  
2 rule of law. I mean, basically what it is is if you want to take a crude  
3 analogy, you don't negotiate with pirates. There's only one thing you  
4 do with pirates, and that is hang them.

5 (REC\_205, ln. 12-24). But the Court quickly backed away from the conclusion  
6 that it ought not to approve the results of the Trustee's negotiations with these  
7 "pirates," saying instead that the "world's moved on ... it's gotten quite a bit more  
8 complicated and what I am left with here is the very difficult job of ... deciding  
9 between unpalatable alternatives." (*Id.*, ln. 20-24).

10 In the Bankruptcy Court's view, one of these alternatives involved playing  
11 "gotcha" with Debtor – because the court had "implored be done from the bench a  
12 dozen times" to (in broad terms) "make a settlement to get that money back here so  
13 we can have an estate of some kind," it felt that it could not, after the money had  
14 been repatriated, refuse to enforce the terms of a settlement agreement that  
15 achieved that goal, because that would (again, in the court's view) make the court  
16 "one of the pirates."<sup>16</sup> (REC\_206, ln. 14-20). The "other unpleasant alternative"  
17 was to have Debtor taken into custody again, although it was not certain that was  
18 viable "because now the money's here." (*Id.*, ln. 23 – REC\_207, ln. 2). Because  
19 "they've already played the card," the court lamented that "I have to really have a  
20 time machine," in order to rectify the situation, because it would not "contradict  
21 the trustee's efforts and say, 'No, you should have read the fine point.'" (REC\_207,  
22 ln. 2-6).

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25 <sup>16</sup> The court conceded, however, that "At the end of the day, I have the great  
26 advantage that this is not my money and it's [Passport's] problem, not mine."  
27 (REC\_206, ln. 20-22).

1 So I'm left in this very unpleasant situation to try to do the best I can.  
2 I'm not happy about it, because I, again, don't think that people ought  
3 to gain advantages by putting money offshore to hide from the laws of  
4 the United States. But I don't know what I can do here to cut back on  
5 that, because so much has happened.

6 (*Id.*, ln. 7-12).

7 Passport's "good arguments" about its legal right to the Trust funds  
8 ultimately did not factor into the court's decision, because "in the context of a 9019  
9 motion I am supposed to not litigate all of this thing" but instead determine  
10 whether the Compromise is "a reasonable exercise and in the best interest of the  
11 estate. And I am left with the firm conviction ... that it is. The reason is because I  
12 don't know what the alternative is." (REC. 206, ln. 5-11). In short, in order to  
13 quell unfounded concerns about becoming "one of the pirates," the Bankruptcy  
14 Court knowingly set aside Passport's legal rights and allowed "a bunch of frauds"  
15 to make off with "a quarter of the loot." (REC\_193, ln. 2-3; REC\_206, ln. 18-19).

16 After the Bankruptcy Court ruled from the bench that it would grant the  
17 Trustee's motion, Passport requested a 30-day stay pending a planned appeal  
18 which was orally stipulated by the Trustee and granted. (*See* REC\_211).

19 **D. Bankruptcy Court Approves the Compromise and Passport**  
20 **Appeals**

21 On September 18, 2017, the Bankruptcy Court entered a written order that  
22 (1) Appellee's Motion to approve the Compromise was granted; that (2) the  
23 \$3,377,324.13 received by the Trustee pursuant to the Settlement Agreement is the  
24 non-exempt property of the bankruptcy estate and that (3) the Children's Trust may  
25 retain the proposed \$964,8225.69 settlement amount. (REC\_169-REC\_177 (the  
26 "Approval Order")). The Approval Order attached and incorporated the  
27  
28

1 Bankruptcy Court's Tentative Ruling as articulating the court's reasoning.  
2 (REC\_169).

3 On September 26, 2017, Passport filed its timely Notice of Appeal.  
4 (REC\_154-REC\_168). On September 29, 2017, at the Bankruptcy Court's  
5 direction, the parties filed a written stipulation to extend the temporary stay  
6 (REC\_718-REC\_726); the Bankruptcy ordered an extension of the temporary stay  
7 through the resolution of Passport's appeal on October 3, 2017 (REC\_727-  
8 REC\_728). This Court issued a Notice of Completion of the Bankruptcy Record  
9 on November 2, 2017.

### 10 SUMMARY OF THE ARGUMENT

11  
12 All of the funds transferred from the Cook Islands Trust were and are – by  
13 operation of the terms of the State Court judgments against Debtor, the Priority  
14 Order, and the Compromise itself – property of the Debtor's bankruptcy estate, and  
15 subject to Passport's first-in-priority secured claim status. In a Chapter 7 case,  
16 creditor priority is “an absolute command,” *Czyzewski v. Jevic Holding Corp.*, 137  
17 S. Ct. 973, 983 (2017), and thus the Trustee had no authority to distribute just  
18 under one million dollars of the bankruptcy estate to a non-party over the objection  
19 of the first-in-priority creditor, and it was a per se abuse of the Bankruptcy Court's  
20 discretion to approve it. *In re Debbie Reynolds Hotel & Casino*, 255 F.3d at 1065  
21 (approval of a settlement agreement based on an erroneous interpretation of the  
22 law is a per se abuse of discretion); *see also In re Arden*, 176 F.3d at 1228.

23 Even if the Bankruptcy Court had discretion to approve such a Compromise,  
24 the terms of the agreement must still support the objectives of the Bankruptcy  
25 Code, *Jevic*, 137 S. Ct. at 985, and must, under well-established Ninth Circuit  
26 precedent, be “fair and equitable,” *In re Woodson*, 839 F.2d 610, 620 (9th Cir.  
27 1988). The Compromise cannot meet either test. Indeed, the Compromise actively  
28



1 *undermines* the objectives of the Bankruptcy Code by – in the Bankruptcy Court’s  
2 own words – rewarding “a bunch of frauds” by permitting them to “break off a  
3 quarter of the loot here and keep it for the kids.” (*See* REC\_193, ln. 2-4). The  
4 Code contains a number of provisions (*e.g.*, nondischargeability) designed to  
5 prevent misuse of the Code to abet fraud. This Compromise is merely a back door  
6 approach that allows a fraudulent Debtor – despite the Bankruptcy Court’s  
7 nondischargeability order against her – to make off with a substantial portion of the  
8 “loot.” For similar reasons, a Compromise that unnecessarily gifts \$1 million in  
9 Estate assets to parties closely associated with the malfeasant Debtor cannot be  
10 held “fair and equitable.”

11         Neither the Appellee nor the Bankruptcy Court disputes that the Debtor  
12 fraudulently transferred assets to avoid her debts to Passport (and other creditors),  
13 and has acted in flagrant contempt of the Bankruptcy Court and the Superior Court  
14 in her attempts to avoid paying her debts. By the Bankruptcy Court’s own  
15 admission, its approval of the Compromise rewards the Debtor’s “piracy.” Worse,  
16 it creates a roadmap for other miscreant debtors to hide assets from legitimate  
17 creditors. The Bankruptcy Court’s concern that refusal to approve the  
18 Compromise after the repatriation of the funds would be “duplicity” was  
19 misplaced, since neither the court nor Passport had given approval beforehand –  
20 and in any case does not outweigh the inequity of rewarding a fraudulent Debtor at  
21 Passport’s expense. Similarly, the Bankruptcy Court’s and the Trustee’s  
22 frustration at Debtor’s obstinacy does not justify a \$1 million payment that is  
23 tantamount to a bribe.

24         The Bankruptcy Court’s Approval Order was therefore an abuse of its  
25 discretion should be reversed.

## ARGUMENT

### I. The Approval Order Is a *Per Se* Abuse of Discretion Because It Violates the “Absolute Command” of Chapter 7’s Priority Scheme

The Bankruptcy Court’s approval of the Compromise – which agreed to a priority-violating transfer of Estate assets to a non-party – was a *per se* abuse of the Bankruptcy Court’s discretion because “[i]n Chapter 7 liquidations, priority is an absolute command—lower priority creditors cannot receive anything until higher priority creditors have been paid in full.” *Jevic*, 137 S. Ct. at. at 983 (citing 11 U.S.C. §§ 725, 726); *see also In re Debbie Reynolds Hotel & Casino*, 255 F.3d at 1065 (“To the extent that the bankruptcy court’s approval of the settlement agreement rested on an erroneous interpretation of law, it was, per se, an abuse of discretion.”); *see also Koon v. United States*, 518 U.S. 81, 100 (1996) (“A district court by definition abuses its discretion when it makes an error of law.”).

The funds from the Cook Islands Trust were at all relevant times property of the Estate, and thus subject to Passport’s first-in-priority lien. Here, the Children’s Trust is not a creditor at all (and thus has no priority), but instead a post-petition vehicle created specifically to effectuate the retention of the fraudulent conveyance of the Debtor, for the benefit of non-parties who are intimately connected with the Debtor. The Bankruptcy Court’s approval of the Compromise – however reluctantly granted – therefore violates the Bankruptcy Code’s “absolute command” in the context of this Chapter 7 case to follow priority system for the distribution of a bankruptcy estate’s assets that “has long been considered fundamental to the Bankruptcy Code’s operation.” *Jevic*, 137 S. Ct. at 984.

1           **A. The Bankruptcy Court Had No Discretion to Permit a**  
2                           **Distribution That Violates Priority Without Passport’s Consent**

3           Under the Bankruptcy Code, secured creditors must be paid first before any  
4 other priorities come into play. *See U.S. v. Speers*, 382 U.S. 266, 269, n.3 (1965)  
5 (holding that “[s]ecured creditors, including those whose security was obtained  
6 subsequent to creation of the Government’s lien, would have recourse to their  
7 security before any of the Bankruptcy Act priorities come into play”); *accord*  
8 *Goggin v. Division of Labor Law Enforcement of California*, 336 U.S. 118, 126-28  
9 (1949). And, as *Jevic* instructs, in Chapter 7 case distributions priority must be  
10 strictly enforced, essentially creating a veto for priority creditors like Passport.

11           Although *Jevic* concerned the structured dismissal of a Chapter 11 case, its  
12 reasoning and holding apply to distributions in Chapter 7 liquidations – indeed, the  
13 Court specifically contrasted the limited flexibility in the Chapter 11 context to  
14 permit a priority-violating *interim* distribution, with the rigid application of priority  
15 in the Chapter 7 context: “[t]he Code also sets forth a basic system of priority ...  
16 and makes clear that distributions of assets in a Chapter 7 liquidation **must follow**  
17 **this prescribed order.**” *Jevic*, 137 S. Ct. at 979 (emphasis added) (citing 11 U.S.C.  
18 §§ 725, 726) and 983 (“**[i]n Chapter 7 liquidations, priority is an absolute**  
19 **command**-lower priority creditors cannot receive anything until the higher priority  
20 creditors have been paid in full”) (emphasis added). Based on the Supreme  
21 Court’s express inclusion of Chapter 7 liquidations in its analysis and its  
22 recognition that a Chapter 7 liquidation is rigid when it comes to priority-order  
23 distributions, the Supreme Court’s holding and reasoning in *Jevic* plainly extends  
24 to *all* distributions Chapter 7 cases, and not just end-of-case distributions, as the  
25 Bankruptcy Court supposed.

26           The Bankruptcy Court incorrectly distinguished *Jevic* on the ground that its  
27 Order did not end the case – apparently on the theory that “*Jevic* allows a departure  
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1 from strict priority distribution where other goals of the bankruptcy process are  
2 thus advanced, such as financing litigation or enabling reorganization, *nor*  
3 *involving a dismissal.*” (See REC\_176). But this ignores the Supreme Court’s  
4 reasoning that *in the Chapter 11 context* an interim distribution that violates  
5 priority *may* serve “other Code-related objectives”, such as preserving the debtor  
6 as a going concern or paying debtor’s employees’ pre-petition wages, do not apply  
7 in Chapter 7 liquidation. In the Bankruptcy Court’s view, its Approval Order  
8 complied with *Jevic*’s analysis of interim distributions because the Compromise (in  
9 the Bankruptcy Court’s view) met the significant Code-related objectives because  
10 it allowed the case to live on and for Passport to recover “something as opposed to  
11 nothing.” (*Id.*).<sup>17</sup>

12 This ignores the crucial difference between a Chapter 7 liquidation and  
13 Chapter 11 – unlike the Supreme Court’s discussion of Chapter 11 cases like  
14 *Iridium*, the interim distribution of the Cook Islands Trust fund here *will not* serve  
15 other Code-related objectives, but will instead merely enrich a Debtor who is a  
16 fraud and contemnor. The funds in question were always the property of the  
17 estate, subject to Debtor’s obligation to turn them over, and subject to Passport’s  
18 first-in-priority lien. The Bankruptcy Court’s approval of the Compromise

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21 <sup>17</sup> Notably, although the Bankruptcy Court’s Tentative Ruling raises practical  
22 considerations (funding the estate) as a Code-related goal, similar practical  
23 considerations raised in *Jevic* by the lower courts were not sufficient to overcome  
24 the Chapter 11 priority scheme in the context of a final distribution. *See* 137 S.  
25 Ct. at 982 (“[s]pecifically, the court predicted that without the settlement and  
26 dismissal, there was ‘no realistic prospect’ of a meaningful distribution for  
27 anyone other than the secured creditors ... A confirmable Chapter 11 plan was  
28 unattainable.”).

1 essentially agrees to pay a ransom to the Debtor for funds that it was always her  
2 obligation to relinquish to the bankruptcy estate, and which were in her possession  
3 through fraudulent transfers in the first instance. The Code’s distinction between  
4 priority distributions in the Chapter 7 “true bankruptcy” context and Chapter 11  
5 reorganizations is, at least in part, intended to shield priority creditors like Passport  
6 from such slights of hand.

7 **B. The Funds at Issue Are Irrefutably Property of the Estate and**  
8 **Subject to Passport’s First-in-Priority Claim**

9 As the Trustee has conceded, his authority to agree that a portion of the  
10 Cook Islands Trust funds could be retained by Debtor’s family for the benefit of  
11 her children depends entirely upon whether (and when) the all of the funds were  
12 part of the Debtor’s bankruptcy estate. (*See* REC\_652-REC\_653, ln. 4; REC\_194,  
13 ln. 11 – REC\_199, ln. 20). If the funds are part of the estate, Trustee agrees that he  
14 would need Passport’s consent to the transfer. (REC\_653, ln. 2-4). Nonetheless,  
15 the Trustee made a deal to gift nearly \$1 million in bankruptcy estate funds to the  
16 Debtor’s children – non-parties to the bankruptcy action with no priority status  
17 whatsoever – without the consent and over the objection of first in priority creditor  
18 Passport, and the Bankruptcy Court approved the deal, despite conceding that  
19 Passport’s property-based arguments were strong. The record is clear, however,  
20 that the Cook Islands Trust Funds were at all times part of Debtor’s bankruptcy  
21 estate, both prior to the Compromise and pursuant to: (1) the express terms of the  
22 Compromise; (2) the express terms of the Priority Order, which also establishes  
23 that these funds are subject to Passport’s first-in-priority lien; and (3) pursuant to  
24 the operation of the judgments against Debtor in the State Court Action.

25 First, the Compromise recites that “[Debtor] made certain transfers [of  
26 funds] to [the Children,] including naming them as primary beneficiaries of the  
27 [Pink Panther Trust]” and further recites that “[Trustee] claims that all funds  
28

1 transferred by [Debtor] to the Children[,], including the funds in the [Pink Panther  
2 Trust,] belong to [Debtor's] bankruptcy estate or that any rights of the Children to  
3 such funds are subject to avoidance and recovery as fraudulent transfers.

4 (REC\_547, Recitals C and F). Notably, but not surprisingly in light of these  
5 recitals, the Compromise also expressly provides that **“all transfers of property  
6 by [Debtor] to the Children are avoided, recovered by, and preserved for the  
7 benefit of [Debtor’s] bankruptcy estate.”** (REC\_548, ¶2 (emphasis added)).

8 Second, the Priority Order approving Passport’s allowed first-in-priority  
9 claim secured by the property of the bankruptcy estate, issued in conjunction with  
10 Trustee’s compromise agreement with Passport, expressly recites that Passport’s  
11 pre-petition judgment liens attached to *all* property of the estate – including the  
12 Pink Panther Trust funds – regardless of whether, as the Trustee initially disputed,  
13 Passport could establish its pre-petition liens on all of Debtor's assets. (*See*  
14 REC\_405, ln. 8-18 (agreeing, *inter alia*, that “all property recovered under any  
15 theory of law or by consent from trust(s) settled by Debtor in the Cook Islands  
16 including the ‘Pink Panther Trust’ ... shall constitute property of the estate  
17 subject to Passport's first-in-priority secured claim.” (emphasis added)).

18 Prior to reaching this agreement with Passport, the Trustee disputed  
19 Passport’s contention that its judgment liens attached to, and it had a constructive  
20 trust over, all of Debtor’s property, wherever located. Trustee’s concession was in  
21 return for Passport’s agreement to a carve-out for payment of allowed  
22 administrative claims and for payment of all other unsecured claims *pari passu* as  
23 if Passport’s claim were not secured. (*See* REC\_531 (Priority Order describing  
24 Passport’s carve-out)). Thus, as the Priority Order expressly recognizes, all of the  
25 Cook Islands Trust funds are property of the bankruptcy estate, and Passport’s  
26 first-in-priority lien attaches to all of those funds regardless of whether Passport’s  
27 liens extended to these same funds while they were located in the Cook Islands,

1 either before or after what the Trustee in the Compromise accurately characterizes  
2 as the Debtor's fraudulent conveyance of the trust funds to Debtor's Children.

3 Finally, the State Court Action Judgments issued against Debtor in  
4 Passport's favor also establish that the Pink Panther Trust funds are, and have  
5 always been, property of the bankruptcy estate. Pursuant to the Superior Court's  
6 October 2014 Judgment, "[Debtor] and all persons acting in concert with her, must  
7 restrain and enjoin to pay to Passport all of the fraudulent transfers..." (*See*  
8 REC\_294, ¶3(c)). Trust was funded, within weeks of Debtor being served with  
9 Passport's State Court Action and at Debtor's direction, with fraudulent transfers  
10 from the Shell Companies that the Superior Court ruled were Debtor's alter egos,  
11 and Debtor also fraudulently transferred her interest in the trust to her children  
12 within days of being served, for no value and in a further attempt to conceal the  
13 funds from Passport.

14 Thus, there can be no dispute – and the Trustee and the Children's Trust are  
15 estopped by the express terms of the Compromise from denying – that *all* of the  
16 funds recovered from the Cook Islands Trust, including the \$964,825.69 at issue,  
17 were transferred to a United States bank account in the name of the Children's  
18 Trust under an agreement between the Trustee and the Children's Trust *that all of*  
19 *the funds received were and are to be considered the Debtor's own money and*  
20 *property of the estate* and, thus, not the Debtor's children's property, much less the  
21 property of the Children's Trust.

22 Indeed, the Bankruptcy Court acknowledged the viability of Passport's legal  
23 claims to the Cook Islands Trust funds, and also acknowledged the fact that the  
24 Debtor was "get[ting away with the loot.]" (*See* REC\_205; REC\_193). But the  
25 Bankruptcy Court appeared to believe that, in the Rule 9019 context, it was not  
26 required to strictly apply the law when using its discretion to approve a settlement.  
27 (*See* REC\_173; REC\_206, ln. 5-11) That is precisely backward – in fact, a court  
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1 has *no discretion* to contravene the law, and therefore must determine whether a  
2 proposed compromise is, in fact, legal in the first place before it can be approved.  
3 *In re Debbie Reynolds Hotel & Casino*, 255 F.3d at 1065. The Bankruptcy Court’s  
4 approval of the Trustee’s agreement to gift any of the Estate’s funds to the  
5 Children’s Trust was therefore a *per se* abuse of discretion under the Bankruptcy  
6 Code. *See Jevic*, 137 S. Ct. at. 983 (citing 11 U.S.C. §§ 725, 726).

7 **II. Approving a “Compromise” that Rewards Debtor’s Fraud and**  
8 **Contempt and Undermines the Bankruptcy Code’s Procedural**  
9 **Safeguards Was Also a *Per Se* Abuse of Discretion**

10 Even if a priority-skipping compromise had been legal here, it would still  
11 have been an abuse of the Bankruptcy Court’s discretion to approve it. Under  
12 well-established Ninth Circuit precedent, a compromise agreement must be found  
13 “fair and equitable” to be approved under FRBP 9019. *In re Woodson*, 839 F.2d at  
14 620. The Compromise cannot meet the “fair and equitable” standard for many  
15 reasons – not least of which is that it rewards the Debtor’s fraudulent acts and  
16 subsequent contempt of court (at Passport’s expense) by giving away a large  
17 portion of the Estate to Debtor’s children under the dubious premise that their  
18 relatives’ assistance was required to repatriate the Cook Island Trust funds.

19 Further, as a federal bankruptcy court applying *Jevic* in the context of a  
20 Chapter 11 interim compromise agreement recently explained, “[i]n light of the  
21 Supreme Court’s recent ruling in *Jevic*, parties who seek approval of settlements  
22 that provide for a distribution in a manner contrary to the Code’s priority scheme  
23 should be prepared to prove that the settlement is not only ‘fair and equitable’ ...  
24 but also that any deviation from the priority scheme for a portion of the assets is  
25 justified because it serves a significant Code-related objective.” *See In re Fryar*,  
26 570 B.R. 602, 610 (Bankr. E.D. Tenn. 2017). Here, approval of the Compromise  
27  
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1 instead *undermines* the Bankruptcy Code’s objectives, *inter alia*, by circumventing  
2 the Code’s clear provisions intended to prevent and punish fraud.

3 **A. The Compromise Should Not Be Approved Because It Is Not**  
4 **“Fair and Equitable” for the Creditors**

5 In determining the fairness, reasonableness, and adequacy of a proposed  
6 compromise or settlement agreement, the court must consider: “(a) [t]he  
7 probability of success in the litigation; (b) the difficulties, if any, to be encountered  
8 in the matter of collection; (c) the complexity of the litigation involved, and the  
9 expense, inconvenience and delay necessarily attending it; (d) the paramount  
10 interest of the creditors and a proper deference to their reasonable views in the  
11 premises.” *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir.  
12 1986), cert. denied 479 U.S. 854 (1986); *see also In re MGS Mktg.*, 111 B.R. 264,  
13 267 (B.A.P. 9th Cir. 1990) (analyzing a compromise under FRBP 9019 and noting  
14 that a “bankruptcy court ... may only approve a proposal that is fair and  
15 equitable”). When determining whether a settlement is “fair and equitable” under  
16 Federal Rules of Bankruptcy 9019, the most important factor for a bankruptcy  
17 court to consider is “whether a particular settlement’s distribution scheme complies  
18 with the Code’s priority scheme.” *Motorola, Inc. v. Official Comm. of Unsecured*  
19 *Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 464 (2nd Cir. 2007); *see*  
20 *also In re de Armond*, 240 B.R. 51, 54 (C.D. Cal. 1999).

21 The Bankruptcy Court abused its discretion in finding that the Compromise  
22 is fair and equitable, because the agreement wastes estate assets and – as the  
23 Bankruptcy Court lamented – actually rewards Debtor’s “piracy.” More  
24 specifically, the Compromise fails the four-factor analysis outlined in *In re A & C*  
25 *Properties*, 784 F.2d at 1381, for approving a compromise under FRBP 9019.

26 First, with regard to the probability of success element in litigation, by the  
27 Trustee’s own admission, he “is confident that the Estate’s position is well-

1 founded and the subject transfers could be avoided.” (See REC\_539, ln. 24-25); see  
2 also REC\_198, ln. 16-20) (“I can’t recall a time in my 25 plus years ... where we  
3 were leaving family members of a debtor with close to a million dollars to resolve  
4 what I think is probably a slam dunk fraudulent transfer action.”). The facts  
5 support the Trustee’s assessment. Debtor’s transfer of the Miyim Trust funds to  
6 the Pink Panther Trust were fraudulent because Debtor made them within weeks  
7 after being sued by Passport and “because [Debtor’s] children did not provide any  
8 reasonably equivalent value in exchange for acquiring their interests in the offshore  
9 trust.” (See REC\_535; see also REC\_579, REC\_584). As admitted, the Trustee  
10 has a strong case and would likely succeed in litigation. As such, the probability of  
11 success does not weigh in favor of approving the Compromise.

12 Second, with regard to the difficulty in collecting on a potential judgment  
13 obtained by the Trustee, this factor, too weighs against approving the Compromise.  
14 Arguably, the largest obstacle in obtaining the funds was moving them from the  
15 Cook Islands to the United States. But because the subject funds have already  
16 been transferred to the United States without condition and are currently located in  
17 California and in the possession of the Children’s Trust, the funds are no longer  
18 subject to Cook Islands territorial jurisdiction or laws, and a California judgment  
19 would be easier to enforce. Once the Trustee obtained a judgment against the  
20 Children’s Trust, he would have been able to enforce it through the usual means  
21 provided by federal and state law.

22 While the Bankruptcy Court took issue with Passport’s application of United  
23 States law to this factor, because the Trust funds were only in the U.S. because the  
24 Debtor and her supporters had executed their part of the Compromise agreement,  
25 and because it did not want to “participate in ... duplicity” by refusing to approve  
26 the remaining terms of the Compromise (Tentative Ruling at 6), the court ignored  
27 that neither Passport nor the Bankruptcy Court ever promised Debtor anything in  
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1 return for repatriating the funds. Other than encouraging the Debtor to purge her  
2 contempt so that he could release her from jail, and parties to find an alternative  
3 solution to repatriating the funds in case the Debtor continued to refuse, the Court  
4 played no role in bringing about *this* Compromise and it was certainly never asked  
5 to approve these terms in advance of the transfer of funds to the United States.

6 The Compromise was contingent, however, on the approval of the  
7 Bankruptcy Court, and so executing the funds transfers *before* seeking the court's  
8 approval of the Compromise was a risk, but also quite possibly a gambit to  
9 increase the likelihood that the court (and Passport) would acquiesce. The gambit  
10 apparently succeeded, at least as far as the Bankruptcy Court is concerned. But the  
11 court misperceived the equities here – it was under no obligation to approve a deal  
12 it had never agreed to in the first place, when all the Debtor had done was to  
13 repatriate funds *as the Bankruptcy Court had ordered her to do*. Even if the  
14 Bankruptcy Code allowed for discretion to approve the Compromise – and it does  
15 not – it cannot be “fair and equitable” to *reward* the Debtor for creating the court's  
16 dilemma in the first place.

17 Third, the complexity of litigation, the expense, inconvenience and delay  
18 also weigh against approval. The Trustee has admitted that “the legal issues  
19 regarding avoidance of the transfers were not substantively complex.” (REC\_540).  
20 The only “complex” issue noted was the enforcement of a judgment of the United  
21 States in the Cook Islands. But, as discussed above, this is no longer an obstacle  
22 because the funds at issue are now in the United States, and subject to United  
23 States law. (*See* REC\_548, ¶2). Further, any anticipated litigation would be  
24 quickly resolved because, as the Trustee admits, the Trustee has a strong case and  
25 prior judgments and facts establish that the Children's Trust is not entitled to the  
26 Pink Panther Trust funds. Because the only “complex” issue in potential litigation  
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1 has been resolved and anticipated litigation would be quickly resolved in favor of  
2 the estate, this factor weighs squarely against approving the Compromise.

3 Finally, with regard to whether the Compromise serves “the paramount  
4 interest of the creditors” – which, as noted above is the most important factor – a  
5 Compromise that unnecessarily breaks off nearly \$1 million in estate assets for the  
6 benefit of the Debtor’s family inherently does not serve the interests of the  
7 creditors. To the extent that the Bankruptcy Court reasoned that it was faced with  
8 deciding “between overruling the objection of a major creditor with a secured  
9 claim vs. no assets in the estate at all,” under *Jevic*, the court did not appreciate (as  
10 it acknowledged at the hearing) that this is ultimately Passport’s money (*see*  
11 REC\_206, ln. 20-22), and therefore its prerogative to agree whether the  
12 Compromise is or is not in its best interest. *See generally In re Fryar*, 570 B.R. at  
13 610 (“Failing to approve this settlement may result in the unsecured creditors  
14 getting nothing, but that is their decision to make if they want to see if they can  
15 find a better deal for the Debtor’s stock interests. The fact that this settlement  
16 disregards the priority scheme contained in the bankruptcy code entitles them to  
17 ask the court for close scrutiny of the proposed compromise and the prospects for  
18 reorganization.”) (applying *Jevic* in the context of reviewing a proposed Chapter  
19 11 compromise agreement).

20 **B. The Compromise Undermines the Objectives of the Bankruptcy**  
21 **Code**

22 Finally, *Jevic* instructs that priority-violating compromise agreements – in  
23 the limited circumstances in which they are allowed at all (*i.e.*, interim Chapter 11  
24 distributions) – made without approval of the affected creditors must *at least* serve  
25 other significant objectives of the Bankruptcy Code, whereas distributions that  
26 “circumvent the Code’s procedural safeguards” should be rejected. *See* 137 S. Ct.  
27 at 985-86. The Compromise is squarely in the second category.



1 The lengthy record in this case and the related State Court Action – of which  
2 only the broad outlines are recounted here – aptly illustrates that the Bankruptcy  
3 Court’s characterizations of the Debtor as and her associates as “a bunch of frauds”  
4 and “pirates” was not mere hyperbole, but squarely on the mark. Contrary to the  
5 Bankruptcy Court’s reasoning, however, declining to approve a deal that abets and  
6 rewards the Debtor’s fraud and contempt of the courts does not make the court a  
7 fellow pirate – though arguably *assisting* the pirates might. Passport does not  
8 suggest that the Bankruptcy Court in any way intended to aid or endorse the  
9 Debtor’s fraud, but that was the undeniable effect of the Approval Order.

10 The Approval Order should accordingly be reversed.

11 DATED: December 4, 2017

PILLSBURY WINTHROP SHAW  
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By: \_\_\_\_\_ /s/

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. Bank. P. 8015(a)(7)(C), the undersigned certifies that the preceding Brief of Appellant Passport Management, LLC complies with the type-volume limitation in Fed. R. Bankr. P. 8015(a)(7)(B)(i), Local Rule 11-3.1.1, and the Standing Order for Cases Assigned to this Court, because has been prepared in Times New Roman style 14-point font and contains 13,496 words, excluding the items identified in Fed. R. Bank. P. 8015(a)(7)(B)(iii).

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1                   **PROOF OF SERVICE BY ECF AND OVERNIGHT COURIER**

2           I, Deirdre Campino, the undersigned, hereby declare as follows:

3           1.     I am over the age of 18 years and am not a party to the within cause. I  
4 am employed by Pillsbury Winthrop Shaw Pittman LLP in the County of San  
5 Francisco, State of California.

6           2.     My business address is Four Embarcadero Center, 22nd Floor, San  
7 Francisco, CA 94111-5998. My mailing address is P.O. Box 2824, San Francisco,  
8 CA 94126-2824.

9           3.     On December 4, 2017, in the city where I am employed, I served a  
10 true copy of the attached document(s) titled exactly **BRIEF OF APPELLANT**  
11 **PASSPORT MANAGEMENT, LLC; APPENDIX TO OPENING BRIEF OF**  
12 **APPELLANT PASSPORT MANAGEMENT, LLC: EXCERPTS OF THE**  
13 **RECORD PURSUANT TO FEDERAL RULE OF BANKRUPTCY**  
14 **PROCEDURE 8018(B), VOLUMES I and II; and the DECLARATION OF**  
15 **THOMAS V. LORAN III REGARDING SUPPLEMENTATION OF**  
16 **RECORD ON APPEAL**, electronically to the parties of record in this matter  
17 through the Court's ECF System, and also by depositing it/them in a box or other  
18 facility regularly maintained by FedEx, an express service carrier providing  
19 overnight delivery, or delivering it to an authorized courier or driver authorized by  
20 the express service carrier to receive document, in an envelope or package  
21 designated by the express service carrier, with overnight delivery fees paid or  
22 provided for, clearly labeled to identify the person being served at the address  
23 shown below:



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18  
 19  
 20 I declare under penalty of perjury that the foregoing is true and correct.  
 Executed this 4th day of December, 2017, at San Francisco, California.

21  
 22   
 23 \_\_\_\_\_  
 Deirdre Campino