

WRITTEN DECISION - NOT FOR PUBLICATION

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| <p>ENTERED <u>AUG 16 2010</u><br/>FILED</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>AUG 16 2010</p> </div> <p>CLERK, U.S. BANKRUPTCY COURT<br/>SOUTHERN DISTRICT OF CALIFORNIA<br/>BY _____ DEPUTY</p> |
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re

PHISH HOUSE, LLC

Debtor.

Case No. 10-10566-MM11

MEMORANDUM DECISION AND ORDER  
TO THOMAS C. NELSON TO RESPOND,  
APPEAR AND SHOW CAUSE WHY HE  
SHOULD NOT BE ORDERED TO  
COMPLY WITH DISCLOSURE RULES,  
SANCTIONED, AND SUSPENDED FOR  
SIX MONTHS FROM PRACTICING  
BEFORE THIS COURT

DATE: October 18, 2010

TIME: 10:00 a.m.

DEPT: One

To: Thomas C. Nelson, Counsel for Phish House, LLC, Debtor:

1 The Court issues this order to Attorney Thomas C. Nelson (“Nelson”) to respond, appear  
2 and show cause (“OSC”) before this Court on October 18, 2010, at 10:00 a.m., as to why he  
3 should not be required to:

- 4 1) File a Disclosure of Attorney Compensation form and employment application in this  
5 case,
- 6 2) Disgorge all fees received from the client in this case,
- 7 3) Be subject to further sanctions in this case for filing the Chapter 11 petition without  
8 justification and for an improper purpose,
- 9 4) Be referred to the Southern District of California Standing Committee on Discipline  
10 (“Committee”), and the California State Bar, and
- 11 5) Be suspended from the practice of law in this Court for a period of not less than six  
12 months while the Committee considers any additional sanctions or discipline that may  
be appropriate.

13 This OSC is based upon Nelson’s conduct in this case in which he appears to have misused  
14 client funds, misrepresented his knowledge of the situation to the Court, failed to comply with his  
15 compensation disclosure obligations, and filed pleadings without substantial justification and for  
16 an improper purpose. The Court also will consider imposing the more severe sanction of  
17 suspension of Nelson from practicing in this Court<sup>1</sup> for a six-month period to protect clients, the  
public and the profession due to his misconduct in other cases pending before this Court.

18 Nelson’s conduct before this Court over the last two years suggests that he is a serial ethics  
19 offender. The very same misconduct found in the case has occurred in the majority of other cases  
20 filed by Nelson in this Court during this period, amounting to dozens of clients potentially harmed.  
21 Nelson’s conduct has not improved despite being sanctioned on three previous occasions earlier  
22 this year in other cases for similar misconduct, including being referred to the Committee.<sup>2</sup> The  
23 Court is therefore concerned Nelson will not be deterred from further misconduct by any lesser  
sanction than suspension.

24 This pattern of bad acts dates back nearly a decade. Nelson was suspended by the

25 <sup>1</sup> References to the “Court” refer to the United States Bankruptcy Court, Southern District of California.

26 <sup>2</sup> The referral to the Committee was made on July 30, 2010.

1 California State Bar<sup>3</sup> in 2002 for misuse of client trust funds and in 2008 for other ethical  
2 violations. Yet during this latter period of suspension, he continued to practice law in this Court.<sup>4</sup>

3 The Court's goal in issuing this OSC is not to punish Nelson, but to protect the public and  
4 the administration of justice. It is contemporaneously referring this matter to the Committee, the  
5 State Bar and United States Trustee for further consideration of disciplinary sanctions that may be  
6 punitive. Under the circumstances, however, the Court would be remiss if it did not seek to  
7 protect members of the public who may retain Nelson in the future while these investigations are  
8 pursued. Despite the potential presence of the mitigating factor of Nelson's health problems,  
9 protecting the public from further harm is the Court's paramount goal.

10 This OSC is brought pursuant to this Court's authority under 28 U.S.C. § 157, 11 U.S.C.  
11 §105, Bankruptcy Rule 9011, CivLR<sup>5</sup> 83, and the Court's inherent power to monitor the  
12 proceedings before it for the benefit of the Court, the profession and the public. *Chambers v.*  
13 *NASCO, Inc.*, 501 U.S. 32, 43, 47 (1991); *see also U.S. v. Wunsch*, 54 F.3d 579, 582-83 (9th Cir.  
14 1995) (attorney admitted to a particular bar may be disciplined for violations of that bar's local  
15 rules of professional conduct).

16 To respect Nelson's due process rights, and to provide him a full and fair opportunity to  
17 respond; the Court details the basis, grounds and nature of the discipline considered in this OSC.

### 18 Misuse of Client Funds

19 Nelson filed this Chapter 11 Case on June 17, 2010 and paid the filing fees of \$1,039.00  
20 with a bad check drawn on his office account. This Court's Clerk's Office spoke with Nelson on  
21 June 23 and 25, 2010 regarding the bad check. Nelson assured the Court both times he would  
22 cover the bad check or pay the filing fee immediately. The Clerk's Office then left two follow up  
23 voice mails for Nelson, and sent a letter on July 13, 2010. The letter advised Nelson that his  
24 failure to pay the filing fees by July 19, 2010 would cause this case to be dismissed.

25 <sup>3</sup> Nelson's California State Bar number is 82506.

26 <sup>4</sup> Nelson failed to disclose his compensation as counsel for the Debtor as required by 11 U.S.C. §329 and Bankruptcy  
27 Rules 2016(b) and 2014, leading to orders to show cause in several Chapter 11 cases in this Court: *In re Simplon*  
28 *Ballpark, LLC*, 08-01803-JM11; *In re Prize Properties, LLC*, 09-09817-JM7; and *In re Marshall Shields*, 09-17085-  
JM11. In response to orders to show cause entered in those cases, Nelson agreed to disgorge the retainers he received  
in *Prize Properties* and *Shields*, and his conduct was referred to the Committee. California State Bar records also  
reflect Nelson was suspended from the practice of law for the period from February 2, 2002 to September 14, 2004 for  
accepting client funds in trust and spending them on other purposes. Nelson was again suspended by the California  
State Bar from July 1, 2010 to August 28, 2010 for ethical violations.

<sup>5</sup> Local Rules of Practice for the United State District Court for the Southern District of California.

1 At the Chapter 11 status conference held in this case on July 29, 2010, the Court  
2 questioned Nelson about the unpaid filing fees. Nelson claimed to be unaware of the bad check.  
3 The Court finds this claim not credible given the five times the Court had contacted Nelson  
4 regarding the problem in the preceding month. This was also the third, not the first, bad check  
5 Nelson paid to the Court for filing fees for clients, and the Court had provided reminders to  
6 Nelson in those instances as well. Within the last seven months, Nelson also provided bad checks  
7 for the filing fees in *In re Cookie D. Wikander*, Case No. 10-01785, and *In re Sloan Zsiros*, Case  
8 No. 10-01905.

9 Any funds Nelson received from the client to pay the filing fees should have been held by  
10 him in trust. Ethically, he could not commingle them with his office funds. California Rule of  
11 Professional Conduct 4-100.<sup>6</sup> Nelson, instead of maintaining the client funds in trust, apparently  
12 treated them as his own and spent them for other purposes. This left insufficient funds in Nelson's  
13 office account to cover the check he wrote for the filing fees.

14 Misuse of client funds provided to pay filing fees is sanctionable misconduct. *In re Reno*,  
15 2002 Bankr. LEXIS 2008 (Bankr. N.D. Tex. 2002) (attorney sanctioned for failing to maintain  
16 client funds in trust resulting in payment of filing fees with a bad check); *see also In re Lewis*, 309  
17 B.R. 597, 611-2 (Bankr. N.D. Okla. 2004) (attorney sanctioned for payment of the filing fee with a  
18 bad check from his office after accepting post-dated checks from clients); *In re Pagaduan*, 429  
19 B.R. 752, 763-765 (Bankr. D. Nev. 2010) (attorney sanctioned for unethical conduct including  
20 failure to maintain client trust accounts).

### 21 **Disclosure Obligations**

22 Nelson has also violated his disclosure obligations in this case and myriad others. In order  
23 to permit the Court to protect the creditors and the debtor against overreaching by the attorney, the  
24 Bankruptcy Code and Rules contain an array of disclosure obligations that counsel must meet.  
25 *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997),  
26 *citing In re Walters*, 868 F.2d 665, 668 (4th Cir. 1989); *see also* 11 U.S.C. §§ 327, 329, 330 and  
27 Bankruptcy Rules 2014 and 2016. The disclosure rules reflect ethical obligations that are broader  
28 than state ethical rules, (*In re: Perry*, 194 B.R. 875, 880 (E.D. Ca. 1996)), and impose fiduciary  
obligations on counsel. *Lewis*, 113 F.3d at 1045 (disgorgement proper when, among other factors,  
the debtor's counsel did not timely file an employment application).

<sup>6</sup> Applicable in this Court pursuant to CLR Rule 83.4(b).

1 The importance of these disclosure requirements is recognized *In re Park-Helena Corp.*,  
2 63 F.3d 877, 880, 882 (9th Cir. 1995), *cert. denied*, 516 U.S. 1049 (1996). Strict compliance with  
3 the disclosure obligations is mandated. “[F]ailure to comply with the disclosure rules is a  
4 sanctionable violation.” *Park-Helena*, 63 F.3d at 880. This is true even absent harm to the estate.  
5 *Id.* at 881. *See also In re Basham*, 208 B.R. 926, 930 (9th Cir. BAP 1997), *aff’d* 152 F.3d 924 (9th  
6 Cir. 1998)(disgorgement of fees when compensation disclosure was filed albeit months late).  
7 Sanctions, of course, are particularly justified where there has been harm to the client from the  
8 attorney’s misconduct. *Peugeot v. United States Trustee (In re Crayton)*, 192 B.R. 970, 980 (9th  
9 Cir. BAP 1996).

10 Nelson filed neither a disclosure of compensation as required by Bankruptcy Rule 2016(b);  
11 or an employment application as required by Bankruptcy Rule 2014 in this case. The need for this  
12 disclosure is evident since the Court was unable to review Nelson’s compensation arrangements  
13 with his client to ascertain the circumstance of the bad check.

14 The Court believes Nelson’s disclosure failures were intentional because they helped  
15 conceal his misconduct about the bad check and because he cannot claim ignorance of these  
16 disclosure obligations. He has already been sanctioned by this Court three times for similar  
17 disclosure lapses.<sup>7</sup> The previous sanctions, which include the obligation to disgorge fees, should  
18 be a poignant reminder of his obligation. Nelson is reminded anew of this obligation each time he  
19 files a new case. If the disclosure is not filed with the petition, he receives from the Clerk of the  
20 Court a reminder notice. Nelson was reminded a third time of his disclosure obligations at the  
21 status conference on July 29, 2010. He promised the Court to promptly provide the disclosure, but  
22 has not.

23 Due to the disclosure problem in this case and the others where sanctions have been  
24 imposed, the Court has sought to determine the extent of the pattern of misconduct. The Court  
25 records reflect Nelson has failed to disclose his compensation in 53 out of the 62 cases he filed in  
26 the last 32 months.<sup>8</sup>

### 27 **Abandonment of Clients**

28 The Court record of cases filed by Nelson since January 2008 reveals an additional reason

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<sup>7</sup> See footnote 4.

<sup>8</sup> See attached Exhibit A, listing all of the 53 cases filed since January 1, 2008 where Nelson failed to provide the necessary disclosure.

1 why Nelson should be suspended from practice in this Court. In 47 of the cases filed by Nelson  
2 during this period, Nelson abandoned his clients and failed to competently represent them. He  
3 either failed to meet all of the requirements to prevent these cases from being dismissed, or failed  
4 to appear at the 341(a) meeting of creditors. Non-appearance at the meeting of creditors also  
5 results in dismissal of the case.<sup>9</sup> Dismissal of these cases would leave the clients facing  
6 foreclosure of their residence or whatever other financial problem led them to file bankruptcy in  
7 the first place.

8 Failure to competently represent clients is an additional ground for sanctions. *Hale v. U.S.*  
9 *Trustee*, 509 F.3d 1139, 1144-45 (9th Cir. 2007) (attorney sanctioned for not ensuring clients'  
10 consent to limitations on representations; court imposed both monetary and nonmonetary  
11 sanctions against the attorney); *Basham*, 208 B.R. at 933 (attorney sanctioned for providing  
12 minimal and incompetent representation of clients; disclosure to court was also inadequate).  
13 Repeated misconduct of this type will justify the suspension sanction. *Price v. Lehtinen (In re*  
14 *Lehtinen)*, 332 B.R. 404 (9th Cir. BAP 2005) *aff'd* 564 F.3d 1052 (9th Cir. 2009) (sanctions  
15 justified where attorney had abandoned the client, together with a lengthy pattern of misconduct);  
16 *In re Brooks-Hamilton*, 400 B.R. 238 (9th Cir. BAP 2009) (district-wide suspension on  
17 unprofessional and incompetent attorney with pattern of misconduct; case remanded for additional  
18 findings).

#### 16 **Bad-Faith Filing**

17 Nelson's very filing of this case may be sanctionable. This case is the successor to a case  
18 filed over a year ago, *In re: Prize Properties, LLC*, which is still pending in this district as Case  
19 No. 09-09817-JM7. In *Prize Properties*, Nelson was sanctioned for non-disclosure violations, was  
20 requested to disgorge his retainer of \$7,039,<sup>10</sup> and was disapproved as general counsel for the  
21 Debtor. Nelson nevertheless continued to file pleadings in the *Prize Properties* case, and remains  
22 listed as its general counsel on the docket. After the *Prize Properties* case was converted to a  
23 Chapter 7 case, the trustee abandoned its sole asset back to the debtor on June 14, 2010.<sup>11</sup> Three

24 <sup>9</sup> See attached Exhibit B, listing all of the cases filed since January 1, 2008 reflecting this conduct.

25 <sup>10</sup> In response to an order to show cause issued by the Court, Nelson agreed to disgorge \$6000 of his \$7039 retainer.

26 <sup>11</sup> A review of the docket in the *Prize Properties* case shows that the Chapter 7 Trustee in that case obtained an order  
27 authorizing the abandonment of the Property on June 9, 2010. On June 14, 2010, the Trustee in *Prize Properties*  
28 issued a Report to Abandon and Relinquish the Property to the debtor in that case. Docket 55.

1 days thereafter, at 1:53 p.m. on June 17, 2010, Prize Properties conveyed this asset<sup>12</sup> to the Debtor  
2 here. The Debtor has the same principals as did Prize Properties, holding the same ownership  
3 interests.<sup>13</sup> Three hours after the Debtor acquired the asset, Nelson filed this case.<sup>14</sup>

4 This case involves many of the elements of the “new debtor syndrome,” in which the filing  
5 of a Chapter 11 case has been found to be in bad faith. The syndrome involves a single asset  
6 debtor, created by same principals, without employees, which acquires troubled real estate on the  
7 eve of filing bankruptcy for no consideration. See *In re Yukon Enterprises, Inc.*, 39 B.R. 919, 921  
8 (Bankr. C.D. Ca. 1984); *In re Eighty South Lake, Inc.*, 63 B.R. 501, 509 (Bankr. C.D. Ca. 1986).  
9 Nelson is subject to sanctions under Bankruptcy Rule 9011 for filing this “new debtor” case  
10 without substantial justification and for an improper purpose as a “bad faith filing.” *Dressler v.*  
11 *Seeley Co. (In re Silberkraus)*, 336 F.3d 864, 871 (9th Cir. 2003). In *Silberkraus*, counsel was  
12 sanctioned under Bankruptcy Rule 9011 for filing the Chapter 11 case in bad faith. Applying  
13 Bankruptcy Rule 9011, the Ninth Circuit considered “both frivolousness *and* improper purpose (of  
14 the filing of the petition) on a sliding scale, where the more compelling the showing as to one  
15 element, the less decisive need be the showing as to the other.” *Id.*, citing *Marsch v. Marsch (In re*  
16 *Marsch)*, 36 F.3d 825, 830 (9th Cir. 1994) (emphasis in original). It affirmed the bankruptcy  
17 court’s findings that filing the bankruptcy petition was frivolous, due to the limited prospects for  
18 reorganization, and that the Debtor was motivated by the improper purpose of forum shopping. *Id.*

19 Here, Nelson filed a Chapter 11 petition for essentially the same debtor under a different  
20 name when the sole asset was no longer protected by the automatic stay due to the trustee’s  
21 abandonment. Nelson has essentially conceded that the filing was frivolous by failing to oppose  
22 the secured creditor’s motion from relief from stay, which asserted this case is a bad faith filing.  
23 See Order on Unopposed Motion, Docket No. 26. Nelson has also failed to comply with all of the

21 <sup>12</sup> This time and transfer appears from the Motion for Relief from Stay in this case, docket 13-1. A quitclaim deed  
22 was executed by Rebecca Gold as Manager for Prize Properties, LLC. and purports to transfer title to the Debtor of  
23 the condominium at 3914 Bayside Lane, San Diego. The quitclaim deed reflects the transfer was made for no  
24 consideration. The Motion for Relief from Stay also asserts that there is no evidence the debtor was ever validly  
25 formed.

24 <sup>13</sup> The docket in *Prize Properties* reveals ownership is split among three individuals: Maurice Maio with 50%, and  
25 Rebecca Gold and Norm Wigginton each with 25%. Paragraph 21 of the Debtor’s Statement of Financial Affairs in  
26 this case states that the Debtor is owned by the same three individuals in the same percentages, which they held their  
27 interests in Prize Properties. Docket 20.

26 <sup>14</sup> Nelson failed to identify this case as related to the Prize Properties case. Had Nelson made this identification as  
27 required by Bankruptcy Rule 1015-2, this case would have been immediately assigned to Judge James W. Meyers.  
28 However, Judge Meyers has recused himself from hearing this case.

1 requirements necessary to move the case forward toward reorganization, including timely filing of  
2 the schedules and statements, payment of the filing fees and disclosing compensation and  
3 necessary connections with the Debtor and its principals in his employment application as required  
4 by Bankruptcy Rule 2014. These latter omissions suggest that this case had no merit from the  
5 outset, and that it was filed for an improper purpose. Improper purpose is also indicated by the  
6 machinations regarding transferring the property on the eve of bankruptcy to the Debtor.

6 *Silberkraus*, 336 F.3d at 871.

### 7 **Unauthorized Practice of Law**

8 After his first suspension from February 2, 2002 to September 14, 2004 for misuse of  
9 client trust funds, Nelson was again suspended from the practice of law by the California State Bar  
10 from July 1, 2008 to August 28, 2008. Despite this suspension order, Nelson continued to actively  
11 represent a client and file pleadings during this period of suspension in the *In re: Simplon Ballpark*  
12 *LLC case*, Case. No. 08-01803. See docket nos. 81-82, 84-86, 88,89. Nelson, by engaging in the  
13 unauthorized practice of law before this Court, violated California Rules of Professional Conduct  
14 1-311, applicable to attorneys practicing before this Court. CivLR 83.4(b).

### 14 **Consideration of Sanctions**

15 To evaluate the extreme sanction of suspending Nelson from practice in this Court, the  
16 Court is guided by three disciplinary criteria: 1) the disciplinary process must be fair; 2) the  
17 evidence must support any findings; and 3) the penalty imposed must be reasonable. *Brooks-*  
18 *Hamilton*, 400 B.R. at 247; *Crayton*, 192 B.R. at 978. To address the first two criteria, the OSC  
19 hearing scheduled for October 18, 2010 will be a full day evidentiary hearing. The Court's  
20 findings will consider the evidence presented, which must be clear and convincing to justify this  
21 sanction. *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992); *Arden v. State Bar of California*, 43  
22 Cal. 3d 713, 725 (1987).

23 Evaluation of the third criteria, that the suspension be reasonable, must focus on protecting  
24 the public from harm. This appears necessary due to Nelson's continued, repeated and  
25 unrepentant conduct that has not been affected by previous sanctions awards. *Lehtinen*, 332 B.R.  
26 at 412 (suspension justified where there are multiple instances of misconduct and harm); *Crayton*,  
27 192 B.R. at 980, 981 (injury to the public and repeated violations of Peugeot's ethical duty to his  
28 client justified suspension). The Court will also apply the ABA disciplinary standards articulated  
in *Crayton, id.*:

- 1) whether a duty to the client, the public, the legal system, or the profession, was

1 violated;

- 2 2) whether the attorney acted intentionally, knowingly or negligently;  
3 3) whether the lawyer's misconduct caused a serious, or potentially serious, harm;  
4 4) whether aggravating or mitigating circumstances exist.

5 *See also In re Brooks-Hamilton*, 400 B.R. at 252 (citing *Crayton*, 192 B.R. at 981).

6 Factor 1: Whether a duty to the client, the public, the legal system, or the profession, was violated.

7 The evidence before the Court to date indicates duties to each of these constituencies were  
8 violated. Nelson's clients were potentially injured by the failure of their cases and the loss of their  
9 retainers. The legal system was burdened by needing to call Nelson to task for his misconduct.  
10 The profession was tarnished in the eyes of the public by Nelson's low standards of practice.  
11 Most importantly, suspension may be necessary to ensure other clients in financial distress do not  
12 hire Nelson to protect them, pay him a retainer with their limited funds remaining, and then find  
13 themselves re-exposed to the same financial distress a few months later when Nelson abandons  
14 their cases. *See In re Derryberry*, 72 B.R. 874, 881 (Bankr. N.D. Ohio 1987)(disciplinary  
15 proceedings are not for punishment, but to protect the courts and the public those unfit to practice).

16 Factor 2: Whether the attorney acted intentionally, knowingly or negligently

17 Nelson's misrepresentations to the Court regarding the bad check for the filing fee, the  
18 repeated instances of disclosure lapses despite numerous reminders, his resistance to change  
19 despite previous sanctions, and the history of ethical problems in the past strongly suggest  
20 intentional violations here. This conclusion is supported by Nelson's self-interest in not revealing  
21 his compensation agreements from the Court.

22 Factor 3: Whether the lawyer's misconduct caused a serious, or potentially serious, harm

23 In the Court's experience, people file bankruptcy only after exhaustion of other options and  
24 only in the face of extreme financial distress. The Court suspects that many of the clients who  
25 hired Nelson in Chapter 13 cases may have lost their homes due to the dismissal of their cases or  
26 Nelson's abandonment of his responsibilities to them.

27 Factor 4: Whether aggravating or mitigating circumstances exist

28 Mitigating Factors

Mitigating factors may include a personal or emotional problem, inexperience in the  
practice of law, absence of past disciplinary offenses, or good faith effort to rectify any damage  
caused by the misconduct. *Crayton*, 192 B.R. at 981. Nelson is an experienced attorney, which  
does not mitigate his conduct here. The Court is aware that Nelson claims to suffer from ill

1 health, which may be a mitigating factor. Nelson should provide details of his claim of illness  
2 with medical records at the OSC hearing. Medical records and information may be filed under  
3 seal in connection with the OSC hearing. Considering this factor in the best light, Nelson should  
4 address whether his health problems have affected his ability to practice competently, and whether  
5 he could rectify this misconduct.

#### 6 Aggravating Circumstances

7 Aggravating factors may include considerations that justify an increase in the degree of  
8 discipline imposed, such as prior disciplinary offense, multiple offenses, dishonest or selfish  
9 motive, or a pattern of misconduct. *Crayton, id.* Nelson's continued flaunting of disclosure and  
10 competence mandates for selfish fee related motives, which seem impervious to change despite  
11 repeated previous disciplinary actions over the last decade, may be aggravating factors.

#### 12 Conclusion

13 The Court's view of its role in issuing this OSC can best be paraphrased from Judge  
14 Markell's decision under very similar circumstances in *Pagaduan*, 429 B.R. at 769-70<sup>15</sup>:

15 It is thus this court's reluctant duty to deal with (Nelson's) many violations of the Rules,  
16 his disregard for the trust his clients place in him, and his cozening of people in their  
17 moments of weakness. These violations are external evidence that (Nelson) has designed  
18 the business side of his law practice with a grudging lassitude to his ethical obligations. Put  
19 another way, he operates as if the occasional sanction is simply a cost of doing business.

20 Sanctions are more than just mercantile matters. Sanctions seek to dissuade an attorney  
21 (and others similarly situated) from engaging prohibited and unethical conduct. . . The  
22 sanctions the court entered in (*In re Simplon Ballpark, LLC*, 08-01803-JM11; *In re Prize*  
23 *Properties, LLC*, 09-09817-JM7; and *In re Marshall Shields*, 09-17085-JM11) seem to  
24 have had little or no effect on (Nelson's) general operations. It thus appears that further  
25 sanctions are necessary to dissuade (Nelson's) (and others who might wrongheadedly  
26 attempt to emulate him) from continued and repeated violations of rules designed to  
27 protect his clients specifically and the legal profession generally.

#### 28 **IT IS ORDERED THAT:**

- 1) Thomas C. Nelson shall appear before this Court on October 18, 2010 at 10:00 a.m. in  
Department 1, Room 218, 325 West F Street San Diego, CA. and show cause why the  
Court should not impose sanctions against him, including:
  - a. Requiring him to file a Disclosure of Attorney Compensation form and  
employment application in this case,

<sup>15</sup> This quotation was altered by simply replacing the attorney's name in that case with Nelson's name and the previous sanction cases with those pending in this Court.

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- b. Requiring him to disgorge all fees received from the client in this case,
- c. Monetary sanctions in this case for filing the Chapter 11 Petition without justification and for an improper purpose,
- d. Referral of this matter to the Committee, and the California State Bar, and
- e. Suspension from the practice of law in this Court for a period of not less than six months while the Committee considers any additional sanctions or discipline that may be appropriate.

2) Nelson shall file a written statement setting forth his response to this Order no later than October 4, 2010. A copy of the Response must be served on the U. S. Trustee and the Committee.

DATED: August 16, 2010

By:   
MARGARET M. MANN, Judge  
United States Bankruptcy Court

**EXHIBIT A****THOMAS C. NELSON****List Of Cases With No Disclosure Of Compensation****Filed As Of January 1, 2008****53 Total Cases**

| Cases by Number   | Date Filed |
|---|------------|
| 08-10753-LA7<br>Tesla Gray                                  | 10/28/08   |
| 08-11187-LT7<br>Brighton Homes, LLC                         | 11/3/08    |
| 09-00995-PB11<br>SILL, Inc.                                 | 1/29/09    |
| 09-04303-JM11<br>Ahmad Hajiyousfi and Shalah Salah-Isfahani | 4/1/09     |
| 09-05086-JM13<br>George Conrad Bruton                       | 4/17/09    |
| 09-05168-LT11<br>Basmar LLC                                 | 4/20/09    |
| 09-05257-LA13<br>Eusebio Lorenzo Garcia                     | 4/22/09    |
| 09-05795-LA13<br>Victoria Lynn Tucker                       | 4/30/09    |
| 09-06393-JM13<br>Joe Fermin Martinez and Leila Martinez     | 5/11/09    |
| 09-06607-JM13<br>George Conrad Bruton                       | 5/14/09    |
| 09-06693-LT11   | 5/15/09    |

| Cases by Number   | Date Filed |
|---|------------|
| Josephine Velazuez  |            |
| 09-06904-PB13<br>Robert J Phillips and Pamela J Phillips        | 5/20/09    |
| 09-07316-LA13<br>Monty L Whitman                                | 5/28/09    |
| 09-07831-LA13<br>Victoria Lynn Tucker                           | 6/2/09     |
| 09-08094-LT13<br>Gregory Aguinaga and Ramona Aguinaga           | 6/9/09     |
| 09-08161-LA11<br>31302 Monterey Capital Management, Inc.        | 6/10/09    |
| 09-08309-LA13<br>Patricia Vanetti                               | 6/12/09    |
| 09-08537-LA13<br>Frederick Wikander and Cookie D Wikander       | 6/17/09    |
| 09-08892-LA13<br>Cesar Torres Macy                              | 6/24/09    |
| 09-09123-LA13<br>Eusebio Lorenzo Garcia                         | 6/29/09    |
| 09-09521-PB13<br>Susan L Warris                                 | 7/2/09     |
| 09-09567-LT13<br>Rabah Belabes                                  | 7/2/09     |
| 09-09757-JM13<br>Joe Fermin Martinez and Leila Martinez         | 7/8/09     |
| 09-09760-PB13<br>Robert J Phillips and Pamela J Phillips        | 7/8/09     |
| 09-09826-LA13<br>Theotis Duncan and Lizzie Duncan               | 7/9/09     |
| 09-09964-LA13<br>Bradford Daniel Martin                         | 7/13/09    |
| 09-10489-LT13<br>Gregory M Aguinaga and Ramona Lucilla Aguinaga | 7/22/09    |

| Cases by Number                            | Date Filed |
|--|------------|
| 09-11513-PB13<br>Susan L Warris            | 8/4/09     |
| 09-11531-LT13<br>Rabah Belabes             | 8/4/09     |
| 09-11930-LA13<br>Lizz Duncan               | 8/12/09    |
| 09-12633-LA13<br>Patricia Vanetti          | 8/26/09    |
| 09-12794-LA13<br>Frederick Wikander        | 8/28/09    |
| 09-15164-PB11<br>Ruffin Road Venture Lot 6 | 5/11/09    |
| 09-15263-LA13<br>Jeovane Bautista          | 10/7/09    |
| 09-15717-LA13<br>Monty L Whitman           | 10/16/09   |
| 09-16213-LT13<br>Miklos Sandor Zsiros      | 10/26/09   |
| 09-17062-PB13<br>Martin Chavez             | 11/5/09    |
| 09-17984-JM13<br>Lourdes Sanchez Hernandez | 11/23/09   |
| 09-18272-LA13<br>Theotis Duncan            | 11/30/09   |
| 09-18649-LT13<br>Refugio Nunez             | 12/4/09    |
| 09-19085-PB13<br>Martin Chavez             | 12/14/09   |
| 09-19670-PB11<br>Panoche Valley, LLC       | 12/23/09   |
| 10-00158-LT13<br>Miklos Sandor Zsiros      | 1/6/10     |
| 10-01725-PB13                              | 2/4/10     |

| Cases by Number                                  | Date Filed |
|--|------------|
| Grephy Barnett                                   |            |
| 10-01785-LA13<br>Cookie D Wikander               | 2/5/10     |
| 10-01905-MM13<br>Sloan Zsiros                    | 2/8/10     |
| 10-05594-LT11<br>Sloan T. Zsiros                 | 4/5/10     |
| 10-08144-LA13<br>Amado M Evangelista             | 5/13/10    |
| 10-09074-PB11<br>Osztar De Jourday               | 5/27/10    |
| 10-09212-MM13<br>Xose Escamilla                  | 5/28/10    |
| 10-10566-MM11<br>Phish House, LLC                | 6/17/10    |
| 10-12357-PB11<br>6231 Murphy Way Management, LLC | 7/14/10    |
| 10-13338-MM7<br>Juan and Patricia Zuniga         | 7/29/10    |

**EXHIBIT B****THOMAS C. NELSON****Cases Dismissed For Failure To File Information Or Attend 341(a) Hearing****Filed As Of January 1, 2008****47 Total Cases**

| <b>Cases by Number</b>   | <b>Date Filed</b> | <b>Reason for Dismissal</b>  |
|--|-------------------|--|
| 09-04303-JM11<br>Ahmad Hajiyousfi and<br>Shalah Salah-Isfahani | 4/1/09            | No appearance at 341(a) hearing.   |
| 09-05086-JM13<br>George Conrad Bruton                          | 4/17/09           | Failure to file certificate of creditor counseling. Filed mot for ext of time to file it b/c of exigent circumstances. Filed, but not in time. |
| 09-05168-LT11<br>Basmar LLC                                    | 4/20/09           | Failed to appear at 341(a) hearing.  |
| 09-05257-LA13<br>Eusebio Lorenzo Garcia                        | 4/22/09           | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.   |
| 09-05795-LA13<br>Victoria Lynn Tucker                          | 4/30/09           | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.   |
| 09-06393-JM13<br>Joe Fermin Martinez and<br>Leila Martinez     | 5/11/09           | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.   |
| 09-06607-JM13<br>George Conrad Bruton                          | 5/14/09           | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.   |
| 09-06693-LT11<br>Josephine Velazuez                            | 5/15/09           | Failure to file Cert of Credit Counseling.   |
| 09-06904-PB13<br>Robert J Phillips and Pamela<br>J Phillips    | 5/20/09           | Failure to file Ch 13 plan and cert credit counseling and Schedules of Assets and Liabilities and Statement of Financial Affairs.              |

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| 09-07316-LA13<br>Monty L Whitman                             | 5/28/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.                            |
| 09-07831-LA13<br>Victoria Lynn Tucker                        | 6/2/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.                            |
| 09-08094-LT13<br>Gregory Aguinaga and<br>Ramona Aguinaga     | 6/9/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.                            |
| 09-08161-LA11<br>31302 Monterey Capital<br>Management, Inc.  | 6/10/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs.                                     |
| 09-08309-LA13<br>Patricia Vanetti                            | 6/12/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.                            |
| 09-08537-LA13<br>Frederick Wikander and<br>Cookie D Wikander | 6/17/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling. |
| 09-08892-LA13<br>Cesar Torres Macy                           | 6/24/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling. |
| 09-09123-LA13<br>Eusebio Lorenzo Garcia                      | 6/29/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling. |
| 09-09521-PB13<br>Susan L Warris                              | 7/2/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.                            |
| 09-09567-LT13<br>Rabah Belabes                               | 7/2/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.                            |
| 09-09757-JM13<br>Joe Fermin Martinez and<br>Leila Martinez   | 7/8/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.                            |
| 09-09760-PB13<br>Robert J Phillips and Pamela<br>J Phillips  | 7/8/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling. |
| 09-09826-LA13<br>Theotis Duncan and Lizzie<br>Duncan         | 7/9/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling. |
| 09-09964-LA13  | 7/13/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs                                      |

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| Bradford Daniel Martin   |          | Plan and Cert of Credit Counseling.  |
| 09-10489-LT13<br>Gregory M Aguinaga and<br>Ramona Lucilla Aguinaga | 7/22/09  | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs<br>and Plan.                             |
| 09-11513-PB13<br>Susan L Warris                                    | 8/4/09   | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs<br>and Plan.                             |
| 09-11531-LT13<br>Rabah Belabes                                     | 8/4/09   | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs<br>and Plan.                             |
| 09-11930-LA13<br>Lizz Duncan                                       | 8/12/09  | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs<br>and Plan.                             |
| 09-12633-LA13<br>Patricia Vanetti                                  | 8/26/09  | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs<br>and Plan.                             |
| 09-12794-LA13<br>Frederick Wikander                                | 8/28/09  | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs,<br>Plan and Cert of Credit Counseling.  |
| 09-12956-PB7<br>Bruno Guy Daniel Barbieri                          | 8/31/09  | Failure to file proof of Fincl Mgmt Course.  |
| 09-14224-JM11<br>Marshall Barry Shields                            | 9/22/09  | Failure to appear at 341(a).   |
| 09-15263-LA13<br>Jeovane Bautista                                  | 10/7/09  | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs,<br>Plan and Cert of Credit Counseling.  |
| 09-15717-LA13<br>Monty L Whitman                                   | 10/16/09 | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs ,<br>Plan and Cert of Credit Counseling. |
| 09-16213-LT13<br>Miklos Sandor Zsiros                              | 10/26/09 | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs,<br>Plan and Cert of Credit Counseling.  |
| 09-17062-PB13<br>Martin Chavez                                     | 11/5/09  | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs,<br>Plan and Cert of Credit Counseling.  |
| 09-17085-JM7<br>Marshall Barry Shields                             | 11/5/09  | Failure to appear at 341(a) hearing.   |
| 09-17984-JM13<br>Lourdes Sanchez Hernandez                         | 11/23/09 | Failure to file Schedules of Assets and<br>Liabilities and Statement of Financial Affairs,<br>Plan and Cert of Credit Counseling.  |
| 09-18272-LA13  | 11/30/09 | Failure to file Schedules of Assets and  |

|                                       |          |   |
|---------------------------------------|----------|---|
| Theotis Duncan                        |          | Liabilities and Statement of Financial Affairs and Plan.  |
| 09-18649-LT13<br>Refugio Nunez        | 12/4/09  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs , Plan and Cert of Credit Counseling.                          |
| 09-19085-PB13<br>Martin Chavez        | 12/14/09 | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs.   |
| 10-00158-LT13<br>Miklos Sandor Zsiros | 1/6/10   | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs and Plan.  |
| 10-01725-PB13<br>Grephy Barnett       | 2/4/10   | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling.                           |
| 10-01785-LA13<br>Cookie D Wikander    | 2/5/10   | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling.                           |
| 10-01905-MM13<br>Sloan Zsiros         | 2/8/10   | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan, Cert of Credit Counseling and Dec re Electronic Filing. |
| 10-08144-LA13<br>Amado M Evangelista  | 5/13/10  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Cert of Credit Counseling.                           |
| 10-09074-PB11<br>Osztar De Jourday    | 5/27/10  | Failure to file Certificate of Credit Counseling.   |
| 10-09212-MM13<br>Xose Escamilla       | 5/28/10  | Failure to file Schedules of Assets and Liabilities and Statement of Financial Affairs, Plan and Certificate of Credit Counseling.                    |