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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:
HIGH SPEED MUSIC, INC.,
Debtor(s).

Bk. No. SV 06-11676 MT
Bk. No. SV 06-11674 MT
Bk. No. SV 06-11675 MT
Bk. No. SV 06-11399 MT

In re:
BETTER BANDWIDTH, INC.,
Debtor(s).

Chapter 7

Adv. No. SV 07-01224 MT
Adv. No. SV 07-01232 MT
Adv. No. SV 07-01237 MT
Adv. No. SV 07-01238 MT
Adv. No. SV 07-01239 MT

In re:
TYJ CONSULTING, INC.,
Debtor(s).

In re:
DATABASE STORAGE AND DESIGN,
INC.,
Debtor(s).

In re:
FOCUS ADVERTISING, INC.,
Debtor(s).

GERALD H. DAVIS, Chapter 7 Trustee of
the Bankruptcy Estate of Solutions Media,
Inc.,
Plaintiff(s),

v.
MICHAEL ALEXANDER, ERIC KIRKLAND
AND WILLIAM WRIGHT, et. al.,
Defendant(s).

**MEMORANDUM OF DECISION AND
ORDER RE: ORDER TO SHOW
CAUSE (1) WHY SANCTIONS
SHOULD NOT BE IMPOSED ON
MOVANTS/DEFENDANTS HIGH
SPEED MUSIC, INC.; BETTER
BANDWIDTH, INC.; DATABASE
STORAGE AND DESIGN, INC.; and
COUNSEL BRUCE M. GREENFIELD;
and (2) WHY BRUCE M. GREENFIELD
SHOULD NOT BE REFERRED TO
THE STATE BAR DISCIPLINARY
PANEL**

Date: December 5, 2007
Time: 10:00 a.m.
Place: Courtroom 302

1 **I. INTRODUCTION:**

2 On October 16, 2007, this court issued an Order to Show Cause why sanctions
3 should not be imposed against Respondents High Speed Music, Inc.; Better Bandwidth,
4 Inc.; TYJ Consulting, Inc.; Database Storage and Design, Inc.; Focus Advertising, Inc.;
5 (“Movants”) and counsel Bruce M. Greenfield (“Greenfield”) and why Bruce M.
6 Greenfield should not be referred to the state bar disciplinary panel (“OSC”). This OSC
7 stemmed from numerous bankruptcy filings and removals of a San Diego state court
8 action by Greenfield and Movants (collectively referred to as “Respondents”) from 2005
9 to present. It appears that the bankruptcy filings and removals, many of which resulted
10 in *sua sponte* remands, were filed to cause unnecessary delay to the San Diego state
11 court trial and constituted improper abuse of the bankruptcy process. The OSC seeks
12 sanctions against Respondents. A hearing on the OSC was held on December 5,
13 2007. As explained below, Respondents repeatedly used the bankruptcy court to
14 disrupt and delay state court discovery and trial with no legitimate basis to file
15 bankruptcy or any removal action. Their conduct was an egregious abuse of the
16 bankruptcy process.

17
18 **II. FACTS:**

19 The Original Bankruptcy Filing and Superior Court Action:

20 On October 30, 2000, Solutions Media, Inc., d.b.a. Spinerecords.com (“Solutions
21 Media”) filed a voluntary chapter 7 petition in the United States Bankruptcy Court for the
22 Southern District of California (“Southern District”), and Gerald H. Davis (“Davis”) was
23 appointed as chapter 7 trustee. On October 16, 2002, Davis filed a Complaint to Avoid
24 Fraudulent Conveyances in the San Diego Superior Court for the State of California,
25 case no. GIC 798121, (the “Superior Court action”) and a jury trial was scheduled to
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1 commence on October 1, 2007 at 8:30 a.m. in the San Diego Superior Court. The
2 Complaint names approximately twenty defendants, including Better Bandwidth, Inc.;
3 High Speed Music, Inc.; TYJ Consulting, Inc.; Database Storage and Design, Inc.; and
4 Focus Advertising, Inc.

5 The Initial Bankruptcy Filings:

6 From June 2005 to February 2006, Greenfield filed four bankruptcy cases in the
7 Central District of California ("Central District") for entities that are related to or involved
8 in the Superior Court action ("initial bankruptcy filings"). Specifically, these cases were:
9 (1) *In re Database Storage & Design, Inc.*, case. no. SV 05-14420 MT, filed on June 28,
10 2005 and dismissed on December 12, 2005; (2) *In re High Speed Music, Inc.*, case no.
11 SV 05-14558 MT, filed on July 5, 2005 and dismissed on September 26, 2005; (3) *In re*
12 *Better Bandwidth, Inc.*, case no. SV 05-14640 MT, filed on July 5, 2005 and dismissed
13 on September 26, 2005; and (4) *In re TYJ Consulting, Inc.*, case no. SV 05-14641 MT,
14 filed on July 5, 2005 and dismissed on October 12, 2005.

15 The Subsequent Bankruptcy Filings:

16 From August 21, 2006 to September 27, 2006, Greenfield refiled and/or filed five
17 bankruptcy cases for entities that are related to or involved in the Superior Court action
18 ("subsequent bankruptcy filings"). Specifically, these cases were: (1) *In re Focus*
19 *Advertising, Inc.*, case no. SV 06-11399 MT, filed on August 21, 2006; (2) *In re*
20 *Database Storage and Design, Inc.*, case no. SV 06-11675 MT, filed on September 27,
21 2006; (3) *In re High Speed Music, Inc.*, case no. SV 06-11676 MT, filed on September
22 27, 2006; (4) *In re Better Bandwidth, Inc.*, case no. SV 06-11677 MT, filed on
23 September 27, 2006; and (5) *In re TYJ Consulting, Inc.*, case no. SV 06-11674 MT,
24 filed on September 27, 2006. Davis filed motions for relief from the automatic stay
25 (action in non-bankruptcy forum) in the subsequent bankruptcy filings, and this court
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1 issued orders granting relief from stay.

2 The Removals:

3 On June 28, 2005, Greenfield filed a notice of related action and notice of
4 removal, adv. no. 05-01399 MT, which this court remanded on November 16, 2005.

5 From February 1, 2006 to September 18, 2007, Greenfield filed six notices of
6 related action and notices of removal in various adversary proceedings in the Southern
7 District attempting to move the Superior Court action to the bankruptcy court, all of
8 which were stricken by the Southern District bankruptcy court.

9 From September 19, 2007 to October 15, 2007, Greenfield filed five notices of
10 related action and notices of removal in various adversary proceedings in the Central
11 District before this court ("Central District removals"), attempting to move the Superior
12 Court action to this court. Specifically, the notices of related action and notices of
13 removal were filed in the following adversary proceedings: (1) adv. no. SV 07-01224
14 MT, filed on September 19, 2007 and remanded on October 1, 2007; (2) adv. no. SV
15 07-01232 MT, filed on October 11, 2007 and remanded on October 15, 2007; (3) adv.
16 no. SV 07-01237, filed on October 15, 2007 and remanded on October 15, 2007; (4)
17 adv. no. SV 07-01238 MT, filed on October 15, 2007 and remanded on October 15,
18 2007; and (5) adv. no. SV 07-01239 MT, filed on October 15, 2007 and remanded on
19 October 15, 2007.

20 The OSC:

21 On October 16, 2007, this court issued the OSC and set the matter for hearing
22 on December 5, 2007. In the OSC, this court set the deadline for response and
23 oppositions for November 9, 2007 and set the deadline for replies for November 21,
24 2007. On November 2, 2007, Davis filed a Declaration in Support of Imposition of
25 Sanctions and filed a copy of attorney fees incurred as a result of Respondents'
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1 actions. On November 7, 2007, Davis filed Declaration in support of OSC. On
2 November 8, 2007, Davis filed a Declaration of Robert Steele in Support of Order to
3 Show Cause, stating that Robert Steele, special counsel for Davis, incurred \$9,240.00
4 in September 2007 preparing for the Superior Court action trial that was delayed as a
5 result of Respondents' filings of removals.

6 On November 7, 2007, Respondents filed an Opposition to the Order to Show
7 Cause ("November 7, 2007 Opposition"). The November 7, 2007 Opposition stated
8 that Respondents "attempted numerous times in 'good faith' to request the court(s) to
9 order this matter to binding arbitration by numerous notices of removal to preserve the
10 rights of appeal by the defendant(s)." Respondents also reasoned that since "most
11 removals filed prior to commencement of trial were remanded 'sua sponte,'" it did not
12 delay trial. Finally, Respondents stated: "However, in the event that the court deems it
13 necessary and appropriate to award sanctions in the sum of \$148,850.00 (as requested
14 by the trustee's counsel), this sum certainly is a sufficient deterrent for any similar []
15 conduct (if determined by the court to be improper conduct) to eliminate any and all
16 necessity for any further penalties or any further action by the state bar disciplinary
17 panel."

18 On November 15, 2007, Greenfield filed a Request for Judicial Notice of Hearing
19 re: Judgment by Default, requesting that this court refrain from duplicate sanctions
20 since Judge Meyers of U.S. Bankruptcy Court in the Southern District is holding a
21 hearing on December 13, 2007 regarding sanctions relating to Respondents' actions in
22 the Southern District. On November 21, 2007, Greenfield filed a Request for Judicial
23 Notice re: Statutory Limit Upon Sanctions, whereby Greenfield argued that California
24 Code of Civil Procedure §177.5 creates a maximum limit of \$1,500 on sanctions and
25 that "the foregoing statute is relevant, as Section 105 has no specific sanction
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1 provisions and Section 105 only refers to general court awarded powers.”

2 On November 21, 2007, Greenfield filed a Request for Continuance of OSC
3 Hearing, requesting a continuance until after the December 13, 2007 hearing in the
4 Southern District. Greenfield stated that the Southern District adversary proceeding,
5 adv. no. 07-90318, was filed six months prior to the OSC and “supersedes [the] OSC
6 hearing.” Greenfield argues that the OSC should be continued and taken off calendar
7 after judgment in adv. 07-90318 in the Southern District because duplicate sanctions
8 and state bar referrals twice for the same conduct is appealable error. On November
9 28, 2007, this Court issued an Order Denying Motion to Continue the OSC Hearing
10 stating that the OSC hearing will be heard on December 5, 2007 as originally
11 scheduled.

12 On November 29, 2007, Greenfield filed a second Request for Continuance of
13 the Order to Show Cause Hearing, stating that he is unavailable on December 5, 2007
14 because he “must attend the meeting of creditors in a Chapter 13 case...’previously’
15 continued from November 21, 2007...which is good cause for non-appearance on
16 December 5, 2007.” No declaration and/or evidence was attached to the motion. On
17 November 29, 2007, this court issued an Order Denying Motion to Continue the OSC
18 Hearing, finding that Greenfield’s Request for Continuance filed on November 29, 2007
19 “fails to establish good cause for non-attendance of the OSC hearing.”

20 On December 3, 2007, Greenfield filed a third Request for Continuance of the
21 Order to Show Cause Hearing, stating that he is unavailable on December 5, 2007
22 because he agreed to attend a meeting of creditors in a chapter 13 case in case no. SV
23 07-13812 GM. The court determined that Greenfield’s meeting of creditor was
24 scheduled for 9:00 a.m. in a building adjacent to the courthouse, and the Order to Show
25 Cause hearing was scheduled for 10:00 a.m. Thus, on December 4, 2007, this court
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1 issued an Order Denying Motion to Continue OSC and notified Greenfield that his
2 Request for Continuance was denied and that he must appear at the OSC hearing.

3 On December 5, 2007, a hearing was held on the OSC hearing. Greenfield
4 appeared on behalf of Respondents, and Gary Rudolph (“Rudolph”) appeared on behalf
5 of Davis. Greenfield stated that his motive for filing the bankruptcies and removals was
6 to attempt to establish standing by reviving the corporations’ suspended status. He also
7 stated that the court clerk called him and told him that the judge was not inclined to
8 grant his motions to vacate default. Considering this court’s procedures, this court
9 found that statement to be not credible. When asked why he did not put any of his
10 reasoning in his opposition/response, Greenfield stated that he did not get a chance and
11 that he thought that he would receive a continuance. This court also found that
12 argument to be unpersuasive because Greenfield had weeks to file a detailed
13 opposition or response since this court issued the OSC six weeks prior to the OSC
14 hearing. Greenfield then argued that he requested the San Diego Superior Court to
15 consider his motion for arbitration prior to the trial, but the San Diego Superior Court
16 refused to entertain that motion. Greenfield stated that he removed the Superior Court
17 action to this court because the Superior Court refused to grant his arbitration motion
18 and he hoped that the bankruptcy court would assist with this binding arbitration issue.
19 This court questioned Greenfield’s reasoning behind the removal, stating that the
20 bankruptcy court does not act as a court of appeal for the state superior court. The
21 court also asked why Greenfield would think that the bankruptcy court would review the
22 superior court when relief from stay was granted and the removal was denied.
23 Greenfield responded that it was a core proceeding and that he wanted to be consistent
24 by having all of the corporations/Respondents make the same claim. Greenfield also
25 stated that he felt his removal filings were like an “tacit objection” to the trial.

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1 Rudolph argued that all Greenfield was attempting to do was reargue
2 disappointment he had with the state court judgment against his client. Rudolph also
3 stated that he has spent years trying to get the Superior Court action to trial, and that
4 trial was initially set for July 1, 2005. Rudolph stated that the trial was continued three
5 times due to Greenfield's filings. Further, this court found that Greenfield sent seventy-
6 three (73) faxes of the same document to Rudolph. Greenfield explained that he was
7 frustrated because Rudolph did not respond to his emails. Rudolph further explained
8 that Greenfield refused to talk to Rudolph on the phone and that Greenfield sent
9 Rudolph over two hundred and seventy-five (275) emails.

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11 **DISCUSSION:**

12 Due Process:

13 This court has satisfied due process by issuing the OSC a month and a half prior
14 to the sanction hearing and clearly describing the conduct leading to sanctions and the
15 grounds for sanctions. Due process requires that "prior to sanctioning an attorney, a
16 court must provide the party to be sanctioned with notice of and some opportunity to
17 respond to the charges." *In re DeVille*, 361 F.3d at 547. An order proposing to impose
18 sanctions should notify "the person charged both of the particular alleged misconduct
19 and of the particular disciplinary authority under which the court is planning to proceed."
20 *Id.* at 548. This court issued the OSC on October 16, 2007 and set the OSC hearing for
21 December 5, 2007. The OSC clearly described Respondents' filings of multiple
22 bankruptcies and removals. The OSC also addressed the possibility of sanctions
23 pursuant to 28 U.S.C. §1447(c), F.R.B.P. Rule 9011, and 11 U.S.C. §105(a).
24 Therefore, due process has been satisfied.

25 Opposition/Responses by Respondents:

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1 Respondents' opposition filed on November 7, 2007 is unpersuasive.
2 Respondents argue in their November 7, 2007 opposition that because the removals
3 were remanded "*sua sponte*," there was no delay to the trial. However, the evidence
4 shows that Respondents' numerous bankruptcy filings and notice of removals delayed
5 trial originally scheduled for October 1, 2007. Additionally, even if there had been no
6 delay to the trial date, Respondents' actions increased costs of litigation and unduly
7 harassed opposing party. Respondents also argue that the court's refusal to grant the
8 removals does not constitute a lack of merit or bad faith. However, in this court's
9 October 1, 2007 remand motion in adversary proceeding SV 07-01224 MT, this court
10 clearly found Respondents' actions to be "bad faith." The fact that Respondents
11 continued to file an additional four removals after that order and finally ceased filing
12 notices of removal only after this court issued the OSC shows that Respondents' had
13 knowledge of and intentionally proceeded with their bad faith conduct. Thus,
14 Respondents' opposition is not persuasive.

15 Respondents' Request for Judicial Notice re: Judgment by Default filed on
16 November 15, 2007 is irrelevant to our present OSC. Respondents argue that if Judge
17 Meyers in the Southern District awards sanctions, this court's sanctions will be a
18 duplicate of that. This court's OSC and sanctions relate directly to Respondents'
19 conduct in this court and does not refer to or relate to Respondents' actions in the
20 Southern District. Just because Respondent has chosen to engage in egregious
21 conduct in multiple courts does not prevent this court from sanctioning them for conduct
22 in this court. Therefore, there are no duplicate sanctions.

23 Finally, Respondents' Request for Judicial Notice re: Statutory Limit Upon
24 Sanctions filed on November 21, 2007 is also irrelevant to our present OSC.
25 Respondent argues that California Code of Civil Procedure §177.5 creates a maximum
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1 limit of \$1,500 on sanctions. California Code of Civil Procedure §177.5 states that “a
2 judicial officer shall have the power to impose reasonable money sanctions, not to
3 exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law,
4 payable to the court, for any violation of a lawful court order by a person, done without
5 good cause or substantial justification.” First, this statute is inapplicable because the
6 OSC and sanctions do not involve any violation of court order. Second, federal law and
7 not state law applies to our current sanctions. *In re Larry’s Apartment, LLC.*, 249 F.3d
8 832, 838 (9th Cir. 2001) holds that federal law and not state law applies for the purpose
9 of imposing sanctions in bankruptcy court. The reasoning is that: “federal courts must
10 be in control of their own proceedings and of the parties before them, and it is almost
11 apodictic that federal sanction law is the body of law to be considered in that regard.”
12 *Id.* Further, “when an attorney appears before a federal court, he is acting as an officer
13 of that court, and it is that court which must judge his conduct,” *Cord v. Smith*, 338 F.2d
14 516, 524 (9th Cir. 1996). Additionally, “[i]f anything, the need for uniform and
15 expeditious handling of bankruptcy cases make it even more important that federal, not
16 state, sanction rules apply.” *In re Larry’s Apartment*, 249 F.3d at 838. Thus, California
17 Code of Civil Procedure §177.5 and its limit on sanctions are not applicable to our
18 present OSC.

19 28 U.S.C. §1447(c):

20 Respondents can be sanctioned pursuant to 28 U.S.C. §1447(c) for expenses
21 and costs incurred as a result of the removal. 28 U.S.C. §1447(c) states: “An order
22 remanding the case may require payments of just costs and any actual expenses,
23 including attorney fees, incurred as a result of the removal.” *In re DeVille*, 361 F.3d
24 539, 546 (9th Cir. 2003) holds that “28 U.S.C. §1447(c) allows a court discretion to
25 grant attorneys’ fees and costs for an improper removal.” A finding of bad faith is not
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1 required to award attorney fees under 28 U.S.C. §1447(c). See *Moore v. Permanente*
2 *Medical Group, Inc.*, 981 F.2d 443, 445 (9th Cir. 1992). A fee award under 28 U.S.C.
3 §1447(c) is not punitive but is designed to reimburse unnecessary litigation costs. *Id.*
4 However, the 28 U.S.C. §1447(c) sanctions “must be tied to specific removals,” and the
5 bankruptcy court “must apply the statutory standard of ‘incurred as a result of removal’
6 and tie each dollar of the compensatory award to a removal, applying a removal-by-
7 removal analysis.” *In re DeVille*, 361 F.3d at 546.

8 Respondents’ removal filings in 2005 and from September 2007 to October 2007
9 in this court constituted improper removals. In *In re DeVille*, the defendants and
10 defendants’ attorney filed a series of bankruptcy filings and notices of removal of the
11 state court action to the bankruptcy court in order to delay the state court trial. 280 B.R.
12 483, 486-487. In the *DeVilleville* case, the attorney filed two bankruptcies and two
13 removals, with a third bankruptcy and third removal filed in pro per by one of the
14 defendants. *Id.* That court found the removals to be improper. *Id.* In our present
15 cases, Respondents filed a total of nine bankruptcy cases and five notices of removal
16 before this court, and this number excludes similar filings in the Southern District. This
17 court promptly remanded the removals, with some removals being remanded the same
18 day the removals were filed. This court’s October 1, 2007 order remanding the removal
19 filed by Greenfield on September 19, 2007, adv. no. 07-1224 MT, specifically found the
20 removal to be “filed in bad faith”. Subsequent to the October 1, 2007 remand order,
21 Greenfield continued to file four notices of removals, attempting to remove the same
22 Superior Court action to the bankruptcy court, even after this court found the previous
23 removal to be filed in bad faith. It was only after this court issued the OSC when
24 Respondents finally ceased filing additional notice of removals. Respondents’ removals
25 were improper, especially since Respondents filed additional removals with notice of
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1 and intent to continue their conduct. Thus, Respondents will be sanctioned and
2 ordered to reimburse attorney fees and expenses incurred as a result of the removals
3 pursuant to 28 U.S.C. §1447(c).

4 F.R.B.P. Rule 9011:

5 Respondents can also be sanctioned pursuant to F.R.B.P. Rule 9011. Under
6 F.R.B.P. Rule 9011(b):

7 By presenting to the court (whether by signing, filing, submitting, or later
8 advocating) a petition, pleading, written motion, or other paper, an attorney or
9 unrepresented party is certifying that to the best of the person's knowledge,
10 information, and belief, formed after an inquiry reasonable under the
11 circumstances,—(1) it is not being presented for any improper purpose, such as to
12 harass or to cause unnecessary delay or needless increase in the cost of
13 litigation; (2) the claims, defenses, and other legal contentions therein are
warranted by existing law or by nonfrivolous argument for the extension,
modification, or reversal of existing law or the establishment of new law; (3) the
allegations and other factual contentions have evidentiary support after a
reasonable opportunity for further investigation or discovery; and (4) the denials
of factual contentions are warranted on the evidence, or if specifically so
identified, are reasonably based on a lack of information or belief.

14 F.R.B.P. Rule 9011(c)(1)(B) states: "On its own initiative, the court may enter an order
15 describing the specific conduct that appears to violate subdivision (b) and directing an
16 attorney, law firm, or party to show cause why it has not violated subdivision (b) with
17 respect thereto." Pursuant to F.R.B.P. Rule 9011(c)(2), sanctions are limited "to what is
18 sufficient to deter repetition of such conduct or comparable conduct by others similarly
19 situated." F.R.B.P. Rule 9011(c)(3) specifies that in the order, "the court shall describe
20 the conduct determined to constitute a violation of this rule and explain the basis for the
21 sanction imposed." *In re DeVille* held that the imposition of Rule 11 sanctions requires
22 only a showing of objectively unreasonable conduct, and a finding of bad faith is not
23 required. 361 F.3d at 548. Moreover, "[i]n determining whether sanctions are
24 warranted under Rule 9011(b), [the court] must consider both frivolousness and
25 improper purpose on a sliding scale, where the more compelling the showing as to one
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1 element, the less decisive need be the showing as to the other.” *In re Silberkraus*, 336
2 F.3d 864, 870 (9th Cir. 2003).

3 In our present cases, Greenfield’s conduct in filing multiple bankruptcies and
4 numerous removals in the Central District constituted improper conduct to harass,
5 cause unnecessary delay, and to increase costs of litigation pursuant to F.R.B.P. Rule
6 9011(b)(1). Greenfield engaged in forum shopping by filing bankruptcies and removals
7 in the Central District after his attempts in the Southern District were unsuccessful.
8 Moreover, Respondents had no intent to follow through on their bankruptcies and were
9 abusing the bankruptcy system. Not only was Greenfield’s conduct “objectively
10 unreasonable,” it constituted bad faith. In *In re Chinichian*, 784 F.2d 1440, 1444-46 (9th
11 Cir. 1986), the Ninth Circuit found that filing of a bankruptcy petition to frustrate and
12 impede a state court litigation to be bad faith. Comparatively, Greenfield’s conduct is
13 more egregious because he filed multiple bankruptcies and removals in different forums
14 in an attempt to delay and impede the Superior Court action, especially since he
15 continued to file four additional notices of removals even after this court ruled the
16 September 19, 2007 removal to have been filed in bad faith. Further, Greenfield’s
17 argument in his November 7, 2007 Opposition that the trial was not delayed because
18 the removals were remanded *sua sponte* is unpersuasive. Just because Davis took
19 action to get the removed cases remanded and the court *sua sponte* granted remands
20 in a timely fashion does not mean that Greenfield’s egregious conduct did not constitute
21 bad faith. Therefore, since only a showing of unreasonable conduct is required for
22 sanctions under F.R.B.P. 9011 and Greenfield’s actions constituted bad faith, this court
23 can issue F.R.B.P. 9011 sanctions against Greenfield.

24 §105(a)/Inherent Authority:

25 Respondents can be sanctioned pursuant to 11 U.S.C. §105(a). Under 11
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1 U.S.C. §105(a), “[t]he court can issue any order, process, or judgment that is necessary
2 or appropriate to carry out the provisions of this title.” The court’s inherent power can
3 be used as an alternative authority for compensatory awards of attorney fees and costs.
4 *In re DeVille*, 361 F.3d at 544. The court can assess attorney’s fees “when a party has
5 acted in bad faith, vexatiously, wantonly, or for oppressive reasons,” “when fraud has
6 been practiced upon...or...the very temple of justice has been defiled,” or “when a party
7 shows bad faith by delaying or disrupting the litigation or by hampering enforcement of
8 a court order.” *Id.* at 544-545. Additionally, a federal court is not forbidden to sanction
9 bad faith conduct by means of an inherent power even if that conduct could be
10 sanctioned under the state or rules. *Id.* at 545. When there is bad faith conduct that
11 could be adequately sanctioned under other rules, the court should ordinarily rely on
12 those rules rather than the inherent power, but if neither the statute nor the rules are up
13 to the task, the court may rely on its inherent power. *Id.* The limitation is that
14 imposition of a sanction via the court’s inherent authority requires a finding of bad faith.
15 *Id.* at 548.

16 As discussed above, Respondents’ conduct in filing multiple bankruptcies and
17 removals, with no intent to complete the bankruptcies, constituted bad faith and
18 improper abuse of the bankruptcy process. Moreover, Respondents continued to file
19 notices of removals in order to delay the Superior Court action even after this court put
20 Respondents on notice that such conduct constituted bad faith. Respondents’ actions
21 delayed and disrupted the Superior Court litigation. Thus, this court will use its inherent
22 authority to award sanctions where sanctions are not covered by other statutes and as
23 an alternative measure of sanctions to other statutes.

24 Sanctions Imposed:

25 Initial Filings and Removal:

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1 Between June and August 2005, Respondents filed the following bankruptcy
2 cases in this court: (1) case no. SV 05-14420 MT, (2) case no. SV 05-14558 MT, (3)
3 case no. SV 05-14540 MT, and (4) case no. SV 05-14047 MT. Respondents also filed
4 a notice of removal on June 28, 2005, adv. no. SV 05-01399 MT. In the December 12,
5 2005 dismissal order in case. no. SV 05-14420 MT, this court awarded \$10,000 in
6 attorney fees and costs against Database Storage and Design, Inc. only. Davis' time
7 sheets, reflecting attorney fees and costs incurred as a result of Respondents'
8 conducts, are attached to the Declaration of Gary B. Rudolph in Support of Imposition of
9 Sanctions filed on November 2, 2007 ("Davis time sheets").

10 From July 5, 2005 to July 29, 2005, Davis incurred a total of \$6,688 as reflected
11 in the Davis time sheets. This amount was for attorney fees and costs relating to
12 Respondent's removal action, adv. no. 05-01399 MT, and the expenses were incurred
13 as a result of the removal. Moreover, the removal was part of a scheme to delay the
14 Superior Court action in bad faith. Thus, the court grants \$6,688 in sanctions to be paid
15 to Davis and/or his attorneys pursuant to 28 U.S.C. §1447(c) since these expenses
16 were incurred as a result of the removal and alternatively pursuant to 11 U.S.C.
17 §105(a).

18 From August 8, 2005 to August 29, 2005, Davis incurred a total of \$10,332.17 as
19 reflected in the Davis time sheets. This amount was for attorney fees and costs relating
20 to Respondent's removal action, adv. no. 05-01399 MT, and the expenses were
21 incurred as a result of the removal. Moreover, the removal was part of a scheme to
22 delay the Superior Court action in bad faith. Thus, the court grants \$10,332.17 in
23 sanctions to be paid to Davis and/or his attorneys pursuant to 28 U.S.C. §1447(c) since
24 these expenses were incurred as a result of the removal and alternatively pursuant to
25 11 U.S.C. §105(a).

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1 From September 7, 2005 to September 30, 2005, Davis incurred a total of
2 \$11,649.17 as reflected in the Davis time sheets. This amount was for attorney fees
3 and costs relating to Respondent's removal action, adv. no. 05-01399 MT, and the
4 expenses were incurred as a result of the removal. Moreover, the removal was part of
5 a scheme to delay the Superior Court action in bad faith. Thus, the court grants
6 \$11,649.17 in sanctions to be paid to Davis and/or his attorneys pursuant to 28 U.S.C.
7 §1447(c) since these expenses were incurred as a result of the removal and
8 alternatively pursuant to 11 U.S.C. §105(a).

9 From October 13, 2005 to October 31, 2005, Davis incurred a total of \$6,183.21
10 as reflected in the Davis time sheets. This amount was for attorney fees and costs
11 relating to hearings in the Respondent's bankruptcy and removal actions, motion to
12 dismiss the cases, motion for relief from automatic stays, and motion for remand. This
13 total can be tied to the removal since these motions had to be filed as a result of the
14 removal action, SV 05-01399 MT, pursuant to 28 U.S.C. §1447(c). Alternatively, 11
15 U.S.C. §105(a) can be used to justify the amounts found to be not directly tied to the
16 removal because the initial filings were done in bad faith in an attempt to delay litigation
17 with no intent to follow through the bankruptcy process. Thus, the court grants
18 \$6,183.21 in sanctions to be paid to Davis and/or his attorney pursuant to 28 U.S.C.
19 §1447(c) and alternatively, 11 U.S.C. §105(a).

20 From November 1, 2005 to December 25, 2005, Davis incurred a total of
21 \$549.41 as reflected in the Davis time sheets. This amount was for attorney fees and
22 costs related to motions to dismiss and other matters relating to the initial bankruptcy
23 filings. 11 U.S.C. §105(a) can be used to justify this amount because the initial filings
24 were done in bad faith in an attempt to delay litigation with no intent to following through
25 the bankruptcy process. Thus, the court grants \$549.41 in sanctions to be paid to
26

1 Davis and/or his attorney pursuant to 11 U.S.C. §105(a).

2 Therefore, the court grants sanctions in the total amount of \$35,401.96 to be
3 paid to Davis and/or his attorney as against Respondents for the initial filings and
4 removal. This amount shall be reduced to \$25,401.96 to take account of the earlier
5 sanction of \$10,000 in the December 12, 2005 order. However, the December 12,
6 2005 sanction is amended to include Greenfield to be jointly and severally liable for the
7 initial \$10,000 in sanctions.

8 Subsequent Filings:

9 Between August 2006 and October 2007, Respondents filed the following
10 bankruptcy cases: (1) case no. SV 06-11399 MT, (2) case no. SV 06-11675 MT, (3)
11 case no. SV 06-11677 MT, and (4) case no. SV 06-11674 MT. In addition,
12 Respondents filed five removal actions: (1) adv. no. SV 07-01224 MT, (2) adv. no. SV
13 07-01232 MT, (3) adv. no. SV 07-01237 MT, (4) adv. no. SV 07-01238 MT, and (5) SV
14 07-01239 MT.

15 From September 1, 2006 and September 28, 2006, Davis incurred a total of
16 \$979.94 as reflected in the Davis time sheets. This amount was for attorney fees and
17 costs relating to motions to dismiss and matters relating to the subsequent bankruptcy
18 filings. 11 U.S.C. §105(a) can be used to justify this amount because the subsequent
19 filings were done in bad faith in an attempt to delay litigation with no intent to following
20 through the bankruptcy process. Thus, the court grants \$979.94 in sanctions to be paid
21 to Davis and/or his attorney pursuant to 11 U.S.C. §105(a).

22 From March 19, 2007 to March 26, 2007, Davis incurred a total of \$4,947.00 as
23 reflected in the Davis time sheets. This amount was for attorney fees and costs related
24 to motions for relief from stay and other matters relating to the subsequent bankruptcy
25 filings. 11 U.S.C. §105(a) can be used to justify this amount because the subsequent
26

1 filings were done in bad faith in an attempt to delay litigation with no intent to following
2 through the bankruptcy process. Thus, the court grants \$4,947.00 in sanctions to be
3 paid to Davis and/or his attorney pursuant to 11 U.S.C. §105(a).

4 From April 2, 2007 to April 26, 2007, Davis incurred a total of \$14,121.98 as
5 reflected in the Davis time sheets. This amount was for attorney fees and costs related
6 to motions for relief from stay, motions for dismissal, and other matters relating to the
7 subsequent bankruptcy filings. 11 U.S.C. §105(a) can be used to justify this amount
8 because the subsequent filings were done in bad faith in an attempt to delay litigation
9 with no intent to following through the bankruptcy process. Thus, the court grants
10 \$14,121.98 in sanctions to be paid to Davis and/or his attorney pursuant to 11 U.S.C.
11 §105(a).

12 From June 1, 2007 to June 30, 2007, Davis incurred a total of \$9,880.90 as
13 reflected in the Davis time sheets. This amount was for attorney fees and costs related
14 to motions for relief from stay, appeal, and other matters relating to the subsequent
15 bankruptcy filings. 11 U.S.C. §105(a) can be used to justify this amount because the
16 subsequent filings were done in bad faith in an attempt to delay litigation with no intent
17 to following through the bankruptcy process. Thus, the court grants \$9,880.90 in
18 sanctions to be paid to Davis and/or his attorney pursuant to 11 U.S.C. §105(a).

19 From September 26, 2007 to September 30, 2007, Davis incurred a total of
20 \$3,359.24 as reflected in the Davis time sheets. This amount was for attorney fees and
21 costs relating to Respondents' removal action, adv. no. 07-01224 MT, and the
22 expenses were incurred as a result of the removal. Moreover, the removal was part of
23 a scheme to delay the Superior Court action in bad faith. Thus, the court grants
24 \$3,359.24 in sanctions to be paid to Davis and/or his attorneys pursuant to 28 U.S.C.
25 §1447(c) since these expenses were incurred as a result of the removal and
26

1 alternatively pursuant to 11 U.S.C. §105(a).

2 In September 2007, special counsel for Davis, Robert Steele, incurred a total of
3 \$9,240.00 as stated in the Declaration of Robert Steele in Support of Order to Show
4 Cause filed on November 8, 2007. This amount was for attorney fees and costs
5 incurred in preparation for the Superior Court action trial, scheduled in September
6 2007. The trial was postponed due to the filings of removal notices by Respondents,
7 and Steele will need to re-prepare for the continued trial date. This total can be tied to
8 the removal because Robert Steele incurred these fees as a result of the removal
9 action, adv. SV 07-01224 MT, pursuant to 28 U.S.C. §1447(c). Alternatively, 11 U.S.C.
10 §105(a) can be used to justify the amounts found to be not directly tied to the removal
11 because the subsequent filings and removals were done in bad faith in an attempt to
12 delay litigation with no intent to follow through the bankruptcy process. Thus, the court
13 grants \$9,240.00 in sanctions to be paid to Robert Steele pursuant to 28 U.S.C.
14 §1447(c) and alternatively, 11 U.S.C. §105(a).

15 Therefore, the court grants sanctions in the total amount of \$42,499.06,
16 \$9,240.00 to be paid to Robert Steele and the remaining amount to be paid to Davis
17 and/or his attorney as against Respondents for the subsequent filings and removal.

18 F.R.B.P. Rule 9011 Sanctions:

19 This court can choose to grant sanctions as against Greenfield to be paid to the
20 court pursuant to F.R.B.P. Rule 9011. However, this court finds the attorney fees to be
21 paid to Davis and Robert Steele to be sufficient deterrent against Respondents, so no
22 Rule 9011 sanctions will be issued.

23
24 **DISPOSITION:**

25 After considering the responses, the court record, and the oral arguments at the
26

CERTIFICATE OF SERVICE BY MAIL

DEC 11 2007

I certify that a true copy of this **ORDER** was mailed on
to the parties listed below:

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Dated:

DEC 11 2007

Amy Dominguez

DEPUTY CLERK