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In re FANTASEA ENTERPRISES, INC.,  
Debtor,

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FANTASEA ENTERPRISES, INC. dba  
PACIFIC AVALON YACHT  
CHARTERS; and JOHN GUEOLA, an  
individual,

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Plaintiffs and Appellees,

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v.

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COVERLAW, PC, a Wyoming  
Corporation; JAMES COVER, an  
individual; and DOES 1 through 25  
inclusive,

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Defendants and Appellants.

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Before the Court are two appeals filed by Coverlaw, PC and James Cover  
(collectively “Cover”) challenging decisions by the United States Bankruptcy Court for the  
Central District of California.

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**I. Factual and Procedural Background**

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According to the parties, Cover was employed by Fantasea Enterprises, Inc., doing  
business as Pacific Avalon Charters (“Fantasea”), as its bankruptcy counsel when Fantasea  
filed a Chapter 11 bankruptcy petition on December 23, 2014. Following the filing of the

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1 petition, Fantasea had 120 days, through April 22, 2015, to protect a dock lease for  
2 Fantasea's boat chartering business. Fantasea and its president, John Gueola, contend that  
3 Cover failed to protect the dock lease despite knowing of its importance to Fantasea.  
4 Fantasea replaced Cover as its bankruptcy counsel on July 31, 2015.

5 After being replaced as bankruptcy counsel, Cover filed, on January 13, 2016, an  
6 Application for Compensation and Reimbursement of Costs in the Bankruptcy Court seeking  
7 compensation for \$81,525.74 in fees for services performed from December 2014 through  
8 July 2015 on behalf of Fantasea. Fantasea filed an Opposition to Cover's fee application, in  
9 which it contended, among other arguments, that Cover acted imprudently in failing to  
10 assume the dock lease and billed an unreasonably excessive amount of time. The  
11 Bankruptcy Court eventually granted Cover's Application and awarded \$60,000 in fees in a  
12 February 8, 2016 order.

13 Fantasea and Gueola commenced a legal malpractice action against Cover in Orange  
14 County Superior Court on April 18, 2016. Cover, alleging that the malpractice action "arises  
15 under Title 11," filed a Notice of Removal with the Bankruptcy Court removing the  
16 malpractice action based on 28 U.S.C. §§ 1334 and 1452. The removed malpractice action  
17 became adversary proceeding number 8:16-ap-01143-TA.

18 Following removal, Cover filed a Motion to Dismiss the malpractice action. Relying  
19 on In re Iannochino, 242 F.3d 36 (1st Cir. 2001), Cover argued in the Motion to Dismiss that  
20 principles of res judicata and judicial estoppel bar the malpractice action because the  
21 Bankruptcy Court's order granting Cover's fee application impliedly determined that  
22 Cover's fees were reasonably and necessarily incurred in the bankruptcy proceeding and  
23 Fantasea did not timely disclose the malpractice claim as an asset of the bankruptcy estate.  
24 After briefing by the parties and a hearing, the Bankruptcy Court eventually denied Cover's  
25 Motion to Dismiss on October 4, 2016. (Excerpts of Record ("ER") Tab 30:1430-43.)  
26 Cover's appeal in Case No. SACV 16-1931 PA seeks leave to challenge that interlocutory  
27 ruling.

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1 While Cover’s Motion to Dismiss was pending, Fantasea and Gueola filed a Motion  
2 for Permissive Abstention and Remand. The parties briefed that Motion and the Bankruptcy  
3 Court conducted a hearing. The Bankruptcy Court issued an order granting the Motion for  
4 Permissive Abstention and Remand and remanded the action to Orange County Superior  
5 Court on October 7, 2016. (ER Tab 32:1464-74.) Cover’s appeal in Case No. SACV 16-  
6 1932 PA, seeks appellate review of the Bankruptcy Court’s order granting the Motion for  
7 Permissive Abstention and Remand.

8 **II. Standard of Review**

9 As Cover’s Motion to Certify Orders for Interlocutory Appeal in Case No. SACV 16-  
10 1931 PA indicates, that appeal seeks review of the Bankruptcy Court’s interlocutory order  
11 denying the Motion to Dismiss. Under 28 U.S.C. § 158(a)(3), district courts have discretion  
12 to review a bankruptcy court’s interlocutory orders. Oliner v. Kontrabecki, 305 B.R. 510,  
13 527 (N.D. Cal. 2004). Granting leave to consider an interlocutory appeal “is appropriate if  
14 the order involves a controlling question of law where there is substantial ground for  
15 difference of opinion and when the appeal is in the interest of judicial economy because an  
16 immediate appeal may materially advance the ultimate termination of the litigation.” In re  
17 Kashani, 190 B.R. 875, 882 (B.A.P. 9th Cir. 1995) (citing 28 U.S.C. § 1292(b)). “Although  
18 district courts have discretion to hear interlocutory appeals from bankruptcy courts, § 158(d)  
19 does not grant courts of appeal similar discretion to review interlocutory decisions. ‘The  
20 courts of appeals do not have jurisdiction to hear interlocutory appeals in bankruptcy  
21 cases.’” In re Rains, 428 F.3d 893, 900-01 (9th Cir. 2005) (quoting Silver Sage Partners,  
22 Ltd. v. City of Desert Hot Springs, 339 F.3d 782, 787 (9th Cir. 2003). “‘Under 28 U.S.C. §  
23 158(d), [a court of appeal’s] appellate jurisdiction exists when the bankruptcy court order  
24 and the decision of the district court acting in its bankruptcy appellate capacity are both final  
25 orders.’” Id. at 901 (quoting In re Bonham, 229 F.3d 750, 761 (9th Cir. 2000); see also In re  
26 Four Seas Center, Ltd., 754 F.2d 1416, 1418 (9th Cir. 1985); Matter of King City Transit  
27 Mix, Inc., 738 F.2d 1065, 1067 (9th Cir. 1984).

1 “The statutory standard for remand under 28 U.S.C. § 1452(b) is ‘any equitable  
2 ground.’” In re McCarthy, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999) (quoting 28 U.S.C. §  
3 1452(b)). A bankruptcy court’s “decision to remand under that provision can be reviewed  
4 by a district court or a bankruptcy appellate panel, and not by a court of appeals or by the  
5 Supreme Court.” Id. (citing 28 U.S.C. § 1452(b) and Things Remembered, Inc. v. Petrarca,  
6 516 U.S. 124, 116 S. Ct. 494 (1995)). The “‘any equitable ground’ remand standard is an  
7 unusually broad grant of authority. It subsumes and reaches beyond all of the reasons for  
8 remand under nonbankruptcy removal statutes.” Id. “At bottom, the question is committed  
9 to the sound discretion of the bankruptcy judge. It follows that the standard of review is  
10 abuse of discretion.” Id. Discretionary rulings should not be disturbed without a definite  
11 and firm conviction that the bankruptcy court committed a clear error of judgment. See In re  
12 Lowenschuss, 67 F.3d 1394, 1399 (9th Cir. 1995).

### 13 **III. Discussion**

14 In exercising their discretion to remand actions under section 1452(b)’s “any  
15 equitable ground” standard, courts have borrowed the standards for permissive or  
16 discretionary abstention under 28 U.S.C. § 1334(c)(1). See Fed. Home Loan Bank v. Banc  
17 of America Securities LLC, 448 B.R. 517, 525 (C.D. Cal. 2011). The factors a court should  
18 consider when deciding if permissive abstention and remand are appropriate are:

- 19 (1) the effect or lack thereof on the efficient administration of
- 20 the estate if the Court recommends [remand or] abstention; (2)
- 21 extent to which state law issues predominate over bankruptcy
- 22 issues; (3) difficult or unsettled nature of applicable law; (4)
- 23 presence of related proceeding commenced in state court or
- 24 other nonbankruptcy proceeding; (5) jurisdictional basis, if any,
- 25 other than § 1334; (6) degree of relatedness or remoteness of
- 26 proceeding to main bankruptcy case; (7) the substance rather
- 27 than the form of an asserted core proceeding; (8) the feasibility
- 28 of severing state law claims from core bankruptcy matters to

1 allow judgments to be entered in state court with enforcement  
2 left to the bankruptcy court; (9) the burden on the bankruptcy  
3 court's docket; (10) the likelihood that the commencement of the  
4 proceeding in bankruptcy court involves forum shopping by one  
5 of the parties; (11) the existence of a right to a jury trial; (12) the  
6 presence in the proceeding of nondebtor parties; (13) comity;  
7 and (14) the possibility of prejudice to other parties in the action.

8 In re Cedar Funding, Inc., 419 B.R. 807, 820 n.18 (B.A.P. 9th Cir. 2009); see also In re  
9 Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

10 In granting the Motion for Permissive Abstention and Remand filed by Fantasea and  
11 Gueola, the Bankruptcy Court cited to and analyzed each of these fourteen factors. (See ER  
12 Tab 32:1467-73.) The Bankruptcy Court did not commit a clear error of judgment when it  
13 concluded that the equities favored abstention and remand. See In re Lowenschuss, 67 F.3d  
14 at 1399; see also Ross v. Yaspan, No. CV 12-7048 DDP (FFMx), 2013 WL 3448725, at \*4  
15 (C.D. Cal. July 9, 2013) (“Here, the court finds it appropriate to abstain . . . . [E]ven if the  
16 malpractice claim is considered to arise in the bankruptcy action, legal malpractice claims  
17 are state law causes of action, and state courts are familiar with adjudicating such actions.”);  
18 Fed. Home Loan Bank, 448 B.R. at 525 (“Because section 1452(b) affords ‘an unusually  
19 broad grant of authority,’ any one or the relevant factors may provide a sufficient basis for  
20 equitable remand.”) (quoting In re Roman Catholic Bishop of San Diego, 374 B.R. 756, 761  
21 (Bankr. S.D. Cal. 2007)). This Court therefore affirms the Bankruptcy Court's order  
22 granting the Motion for Permissive Abstention and Remand.

23 In light of this Court's affirmance of the Bankruptcy Court's order remanding the  
24 malpractice action to the Orange County Superior Court, and the fact that the action is now  
25 pending in that court, this Court need not consider Cover's Motion to Certify Orders for  
26 Interlocutory Appeal. As a result, the Court denies that Motion, and the appeal in Case No.  
27 SACV 16-1931 PA, as moot. Moreover, even if the Court were to reach the merits of the  
28 Motion to Certify Orders for Interlocutory Appeal, the Court would, in the exercise of its

1 discretion, deny the Motion. Specifically, the appellate record reveals that the parties  
2 submitted voluminous requests for judicial notice, supplemental declarations, and facts  
3 outside the pleadings in support of and in opposition to Cover's Motion to Dismiss. (See ER  
4 Tabs 8, 9, 12, 17, 19, 20, 21, 22, & 23.) As the briefing and argument submitted to the  
5 Bankruptcy Court establishes, the issues raised by Cover's Motion to Dismiss required  
6 analysis of a substantial factual record that was inappropriate for resolution through a  
7 Motion to Dismiss. This Court therefore concludes that were it to reach the issue, the Court  
8 would find that allowing interlocutory review of the denial of Cover's Motion to Dismiss  
9 would not materially advance the ultimate termination of the litigation, further the interests  
10 of judicial economy, or resolve a controlling question of law. In re Kashani, 190 B.R. at  
11 882. Indeed, the Court finds it instructive that In re Iannochino, 242 F.3d 36, the case upon  
12 which Cover principally relies, was resolved on a summary judgment motion rather than a  
13 12(b)(6) motion.

14 **IV. Conclusion**

15 For all of the foregoing reasons, the Court affirms the Bankruptcy Court's order  
16 remanding the malpractice action to the Orange County Superior Court. The Court denies  
17 the Motion to Certify Order for Interlocutory Appeal as moot.

18 IT IS SO ORDERED.

19 DATED: February 17, 2016



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Percy Anderson  
UNITED STATES DISTRICT JUDGE