IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES et al. ex rel.
JOSEPH FUENTES et al.,

HEARING REQUESTED

Plaintiffs,

v.

CASE NO.: 8:09-CV-1245-SDM-EAJ

GENZYME CORPORATION,

Defendant.
_____/

THE TRUSTEE'S MOTION FOR LEAVE[1] TO FILE CHARGING LIEN ON BEHALF OF THE ESTATE OF NATALIE KHAWAM, ESQ.

Beth Ann Scharrer, the Trustee of the Estate of Natalie Khawam, ("Estate") seeks leave[2] to file a charging lien on this docket. Ms. Khawam ("Debtor") filed a Petition for Relief under Chapter 7 of the Bankruptcy Code, which is captioned as *In re Natalie Khawam*, 12-5664-KRM (Bankr. M.D. Fla. April 14, 2012) ("Bankr. Doc. 1"). Beth Ann Scharrer ("the Trustee") was duly appointed in the Chapter 7 case. The Trustee has a fiduciary duty to liquidate all non-exempt assets for the benefit of Debtor's creditors. Given the procedural posture of this and other pending litigation involving relator's counsel, Barry A. Cohen, and his law firm, The Barry A. Cohen Law Group, and its various predecessors, (collectively,

[1]Debtor apparently sought similar relief (Doc. S-7) earlier in this litigation. Her effort was rebuffed "for failure to comply with Local Rule 3.01(g) and on the merits." (Doc. 25) Both relators and Debtor apparently filed papers that violated Rule 12(f), Federal Rules of Civil Procedure. (Doc. 23) To the extent this motion seeks similar relief, the Trustee nonetheless begs that this Honorable Court reconsider its previous order(s). This motion is properly brought by the real party in interest, at a time when it is ripe but not yet moot, in a paper that sets cites legal authority, complies with the local rules, and omits, to the extent feasible, scandalous matter. By contrast, Cohen has filed stricken and / or sealed papers on Ms. Khawam's bankruptcy docket athwart this Honorable Court's orders regarding sealed and / or stricken items. (Bankr. Doc. 43-1)

[2]Although a party need not seek leave to file a charging lien in the usual instance, the Trustee is seeking such leave in an abundance of caution here. Attorney Arnold Levine apparently purported to file a charging lien on this docket. However, Arnold Levine referred to Ms. Khawam's agreement with Cohen as an "oral agreement" even though it was documented. (Bankr. Doc. 43-1, Page 5).

"Cohen") the Trustee determined that a charging lien on this docket is indispensable to protect the Estate's interest.[3] The Trustee believes that Cohen is or will soon become insolvent. On March 24, 2014, Bankruptcy Judge May granted the Trustee's motion to approve the retention of undersigned counsel. (Bankr. Doc. 126)

INTRODUCTION

Relators Joseph Fuentes and Christopher Russo ("relators") were pharmaceutical sales representatives for Defendant Genzyme Corporation. ("Genzyme") Relators confided in co-relator Scott Kelley, M.D. (Dr. Kelley) and revealed to him the impropriety giving rise to this underlying litigation. Dr. Kelley then introduced relators to Debtor, his sister-in-law and Georgetown Law School graduate. After conferring with relators, Debtor and Dr. Kelley coordinated this *qui tam*. Debtor needed a suitable platform to effectively pursue this litigation, and so Dr. Kelley introduced Debtor to Cohen, who represented Dr. Kelley and his wife in unrelated real estate litigation. (Doc. 28, Page 4) Cohen was eager to expand his *qui tam* practice and therefore emailed Debtor and offered her a six-figure salary plus 30% equity in any fee from this matter as an inducement for Debtor to introduce relators to Cohen. See Affidavit of Natalie Khawam. Debtor accepted and performed and relators retained Cohen. Debtor then used her expertise and contacts within the federal system to assist with the preparation, filing, and pursuit of this action.[4]

---

[3]The Trustee and others pursue litigation against Cohen in various fora arising from Cohen's improprieties in the pursuit and finance of this *qui tam* and other litigation. (Bankr. Doc. 49)

[4]Cohen may mischaracterize the events surrounding Ms. Khawam's departure and argue that Debtor is limited to *quantum meruit*. *C.f. Wilkinson v. Tilden*, 14 F. 778, 785 (S.D.N.Y. 1883) (noting that even attorney who abandons the representation is entitled to *quantum meruit*). The email agreement forecloses such a position, and such an adjustment in this circumstance is not warranted by existing caselaw. *State Contractor and Engineering v. Condotte America*, 97-7014, 2004 U.S. Dist. LEXIS at *95 (S.D. Fla. 2004) (noting that bickering between lawyers, as opposed to between attorney and client, is unique situation not contemplated by charging lien caselaw and refusing to depart from the split percentages) *citing Nickerson v. Holloway*, 469 S.E.2d 209, 210 (Ga. App. 1996) ("as long as both attorneys have done some work on the case beyond signing and referring the client, the courts will not engage in the cumbersome task of evaluating after the fact the relative contributions

Although Debtor kept her end of the bargain, Cohen's mismanagement of his personal and business finances rendered him unable to meet his financial obligations to Debtor and others.[5] When Debtor complained, she was directed to speak with Alan Goldberg, Cohen's paymaster, who in turn issued an indecent proposal to Debtor.[6] Despite efforts to resolve the various conflicts, Debtor was unable to endure that hostile work environment and resigned.[7]

Although relators initially expressed a strong preference to follow Debtor to her new firm, they suddenly and inexplicably reversed course and decided to remain with Cohen. Upon information and belief, Cohen threatened to initiate litigation or liens against relators if they refused to remain his clients. Moreover, Cohen unaccountably attempted to completely

---

made by the bickering attorneys") *accord Kilgore v. Sheetz,* 603 S.E.2d 24 (2004) (adjudicating dispute between deceased attorney's estate and co-counsel and refusing to depart from split based upon inquiry into parties' contributions or intentions), *see also Montpellier Farm v. Crane Environmental,* 07-22815, 2009 U.S. Dist LEXIS 61786 at *12-13 (S.D. Fla. March 18, 2009) (holding that a charging lien could potentially attach when the lienor attorney simply drafted, but did not sign or file, the initial complaint). Given that Debtor and Cohen agreed on a split, and both performed substantial work on this matter, this Honorable Court should enforce the parties' agreement on division of the fee. Cohen apparently concedes Ms. Khawam's involvement in the filing of the original Complaint in this action. (Doc. 68, Page 2, Note 1) Cohen also concedes facts supporting constructive discharge. Bankr. Doc. 43-1, Page 123 (discussing Goldberg's implied admissions against interest and Cohen's request that Goldberg refrain from any contact with female employees.) In any event, the value, including appropriate lodestar enhancements, of Ms. Khawam's assistance in developing and advancing the Genzyme case through November 2009 is likely worth even more than her contractual 30% share of the attorney fee. The prevailing share for a referring attorney assuming *secondary responsibility* is 25%. Rule 4-1.5(f), Rules Regulating the Florida Bar. Moreover, Because Ms. Khawam used to work with various regulators in Washington, she was able to shepherd this matter through the DoJ approval process and likely facilitated the government's intervention in this matter. See generally Affidavit of Natalie Khawam. Cohen appears oblivious to the fact that intervention is widely considered the *sine qua non* of a successful *qui tam*. *C.f.* Doc. 60, Page 3 (Cohen unnecessarily antagonizing DoJ over perceived delay of settlement), Bankr. Doc. 43-1, Page 59 (Cohen stating that "[the Tampa AUSAs] are lazy and we must do their work for them if we're going to make money on these cases. They get paid the same salary whether they take a case or not.")

[5]The full extent of Cohen's financial embarrassment was not yet apparent. In July of 2010, Wells Fargo sued to foreclose on a Redington Shores condominium owed by Cohen, alleging that he had not paid his mortgage since April, 2010. Cohen is also quoted in the Tampa Bay Times as saying, “We missed payroll a few times, but, hell, so has everybody.” Tampa lawyer Barry Cohen forms ‘strategic alliance’ with law firm, April 24, 2012, see also Affidavit of Merida Simmons at 3. (Cohen missed payroll numerous times in Spring 2010.)

[6]Cohen’s partnership with Goldberg, the firm’s paymaster, permeated the environment at the firm. In an attempt to put his financial house in order, Cohen retained Goldberg and gave him near-complete authority over the firm’s finances. Goldberg's financial control became so pervasive that Goldberg essentially ran the firm. Despite recitals to the contrary in Goldberg's consulting contract, the effect of Goldberg's control extended to client matters. See Goldberg Engagement Letter. In any event, Cohen created a powerful paymaster who then used his control and authority to run roughshod over the women in the firm.

[7]Debtor has sought relief for this harassment, as well as the breach of contract giving rise to this motion, in a state court lawsuit. *Khawam, et al v. Barry A. Cohen, et al,* 12-10603 (Fla. 13th Cir. Hillsborough).

exclude Dr. Kelley, his former client, from this action. (Doc 28, Page 5) Although Cohen implicitly recognizes Dr. Kelley's expertise and contribution, he continues to harass and oppress Debtor and her family. In particular, he (1) "blackballed" Debtor in the legal community, rendering it difficult for her to obtain suitable employment,[8] and (2) hosted a November 2012, "press conference" at which he disparaged Debtor and her sister Mrs. Kelley, Dr. Kelley's wife and also a former Cohen client.[9]

Cohen casts aspersions upon Debtor both on this docket and in her bankruptcy proceeding but his own conduct better informs this motion.[10] Cohen's financial problems lead to his dispute with Debtor and worsened after her departure. Cohen misses payroll, defaults on personal and business obligations, and is accused of fraud. The questionable manner in which Cohen thwarts each secured creditor suggests that the Trustee needs a charging lien to protect Debtor's otherwise unsecured fee.

The Complaint filed in *Counsel Financial Services, LLP v. RD Legal Funding Partners, LP*, No.: 2010-5773 (N.Y. Sup. Erie), details a complex scheme devised by Cohen pursuant to which he sold expected but uncollected attorney fees to multiple financial institutions. In December 2006, and again in February 2009, Cohen executed promissory

---

[8]Debtor did not seek to remove any Cohen matters she did not originate.

[9]Cohen also defames undersigned counsel: "[Debtor's] lawyer and she underestimated the oppositional component of my personality, and there was no reasonable basis for them to do that . . . There's no way . . . I'm going to let this drop. I'm going to take her down, and I'm going to [sanction Florin.]" Faced with employment lawsuit, Tampa lawyer Barry Cohen goes into attack mode. *Tampa Bay Times*, August 27, 2012, available at: http://www.tampabay.com/news/courts/faced-with-employment-lawsuit-tampa-lawyer-barry-cohen-goes-into-attack/1248260. This article is a party admission under Rule 801(d)(2), Federal Rules of Evidence.

[10]Upon information and belief, a Washington, D.C.-based attorney from a "biglaw" firm filed a complaint against Cohen with The Florida Bar. The complaint, which arises out of the actions described in the preceding paragraph, remains pending investigation. Upon information and belief, the gravamen of the inquiry is that Cohen acted adverse to his then clients, Dr. Scott Kelley and his wife Jill Kelley, by excluding them from the *qui tam* and advocating against their intervention in this action. Such behavior is prohibited by the Florida Rules of Professional Responsibility, and Florida law supports the forfeiture of attorneys' fees under similar circumstances. (Doc. 27, Page 12) *see also The Florida Bar v. Rodriguez*, 959 So.2d 150 (Fla. 2007) (forcing attorney to disgorge $6.4m payment received in consideration for practice restriction that was obtained by lawyer while he was settling clients' product liability claims against Dupont.)

notes in favor of Counsel Financial Services, LLP ("CFS"), which were collateralized by Cohen receivables. Compl. ¶¶ 4-5. Between February and June 2009, Cohen defaulted on the loan and needed to raise $1.3m. Compl. ¶ 9. Cohen therefore sought additional financing from RD Legal Financing, LP ("RDLF") in or around June 2009. In exchange for $3m, Cohen sold $4.2m of anticipated fees from another *qui tam*. ¶ Compl. 10-12. Cohen used the $3m to pay the arrears to CFS. *Id.* Because CFS already had a perfected, first-position security interest in the *same* $4.2m, CFS and RDLF entered into an Intercreditor Agreement by which CFS subordinated its interest to RDLF's interest in the remainder of the $4.2m. *Id.* In the agreement, RDLF represented that Cohen owed RDLF only $3m. However, CFS later discovered that Cohen and RDLF were already parties to an October 2007 agreement that sold rights to fees that had also been promised to CFS. Two years later, presumably realizing that they had been double-crossed, both lending companies sued Cohen. *See Counsel Financial Services, LLP v. Barry Cohen, PA*, No.: 2012-605133 (N.Y. Sup. Erie); and *RD Legal Funding, LP v. Barry Cohen, PA and Barry Cohen,* 2:13-cv-00077-JLL-MAH (D.N.J.).[11] Each complaint alleges Cohen's fraud and requests preliminary relief. *Id.*, *c.f. Cerna v. Swiss Bank Corp*, 503 So. 2d 1297, 1298 (Fla. 3d Dist. App. 1987) ("it seems clear that prejudgment attachment is available against assets which are held in the name of another and which have either been fraudulently transferred from the debtor, or remain equitably owned by him.") (citations omitted)

This Honorable Court could adjudicate the relators' share and attorney fee in this matter. A proper respect for judicial economy and the reality of a collection action against Cohen, who by several accounts fails to meet a myriad of financial obligations, dictates that

[11]Cohen defaulted on the federal RDLF case after initially litigating two (apparently) unsuccessful motions to dismiss. Cohen subsequently moved to vacate the default and that motion remains pending.

this Honorable Court allow the Trustee to place a charging lien on this docket and obtain an adjudication here of Debtor's rightful share of the fee. The Trustee believes that Debtor's claim to an equitable share of this fee is the most significant estate asset. Because Cohen's actions are at least partially to blame for Debtor's bankruptcy, any prejudice to Cohen is more than offset by (1) the interest of the Trustee in protecting the creditors' interest in Debtor's fee, (2) the likelihood that Debtor will be able to demonstrate an entitlement to some or all of the fee, and (3) the public interest, as articulated in the False Claims Act, in rewarding enterprising attorneys who initiate *qui tam* litigation.

THIS HONORABLE COURT SHOULD DETERMINE ATTORNEY FEES

A four factor test defines a district court's ancillary jurisdiction:

> (1) an ancillary matter should arise from the transaction that was the basis of the principal proceeding, during the course of the principal proceedings, or as an integral part of the main proceeding; (2) the federal court should be able to determine the matter without a substantial new factfinding proceeding; (3) failing to determine the matter should not deprive a party of any important procedural or substantive right; and (4) the matter should be decided if necessary to protect the integrity of the principal proceeding or insure that its disposition is not frustrated.

Hogben, 2007 U.S. Dist. LEXIS 55792 at *14, *citing Jenkins v. Weinshienk,* 670 F.2d 915, 918 (10th Cir. 1982). Although a federal district court exercises only limited jurisdiction, this Honorable Court may entertain and adjudicate Debtor's charging lien. A federal district court's ancillary jurisdiction easily accommodates a charging lien filed by a jilted attorney:

> One well recognized application of [ancillary jurisdiction] is the resolution of disputes between a party to a federal lawsuit and that party's attorneys over the proper amount of fees due the attorneys for work performed in the lawsuit.

Hogben v. Wyndham International, 2007 U.S. Dist. LEXIS 55792, 05-20944 (S.D. Fla. August 1, 2007), *citing Gottlieb v. GC Financial*, 97 F. Supp. 2d 1310 (S.D. Fla. 1999) (other citations omitted). *Gottlieb* states that "[v]irtually every jurisdiction in the United States

recognizes the right of an attorney to recover fees by imposing a lien on a judgment obtained by his efforts for his client", and that federal district judges enforce this state law right of recovery. *Gottlieb*, 97 F. Supp. 2d at 1311. Magistrate Judge Kelly adopted this approach and exercised ancillary jurisdiction over an associate's charging lien in *Travelers Casualty v. Paramount Lake Eola*, 08-805, 2010 U.S. Dist. Lexis 75260 *14 (M.D. Fla. June 21, 2010).

Debtor's Charging Lien Arose During this Proceeding

It is "well established" that the resolution of charging liens and attorneys' fee disputes "fits easily into the concept of ancillary jurisdiction." *Hogben Id.* 2007 U.S. Dist. LEXIS at *13, *citing Garrick v. Weaver,* 888 F.2d 687, 690 (10th Cir. 1989). Exercise of ancillary jurisdiction to resolve charging liens is "particularly appropriate" due to the Court's "inherent jurisdiction to supervise the bar and to insure compliance with the reasonableness standard set forth in the attorneys' rules of ethics and professional responsibility." *Hogben, Id*., at *14. As noted in *Jenkins v. Weinshienk,* 670 F.2d 915, 918(10th Cir. 1982):

> Ancillary jurisdiction rests on the premise that a federal court acquires jurisdiction of a case or controversy in its entirety. Incident to the disposition of the principal issues before it, a court may decide collateral matters necessary to render complete justice. 13 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3523 (1975). . . .
> . . .
> Determining the legal fees a party to a lawsuit properly before the court owes its attorney, with respect to the work done in the suit being litigated, easily fits the concept of ancillary jurisdiction. The federal courts often exercise jurisdiction over attorneys' fees in the cases before them, and if counsel withdraws or is discharged during the litigation, the courts have often ordered the clients to pay reasonable attorneys' fees or post a bond as security before requiring the lawyer to relinquish the clients' papers.

Id. at 918 (some internal citations and quotes omitted). *Wilkinson v. Tilden,* 14 F. 778 (S.D.N.Y. 1883), discusses attorney protection as well as supervision:

> When its intervention is asked for the substitution of an attorney, the court will hold the client to fair dealing, and will refuse its assistance to any attempt

> to take an unfair advantage of one of its officers. In this behalf courts have frequently and usually required the client to discharge the attorney's claim for services in the suit as a condition of substitution.

Id. at 780.[12] *John Griffiths & Son v. United States*, 72 F.2d 466, 468 (7th Cir. 1934) notes:

> Admittedly, where an attorney is employed … and the clients desire to terminate the relations, the proper practice is to set a motion for substitution of counsel down for a hearing, notify the attorney of record of the motion, ascertain all that is due and owing him by reason of his services and expenses, and provide for the payment of his compensation . . .

Lastly, *Zaklama v. Mount Sinai Medical Center*, 906 F. 2d 650 (11th Cir. 1990) states:

> Zaklama's attempt to renege on a valid contingency fee agreement is reprehensible and this appeal is without merit. The district court's award to G & D for completed services before their discharge is in accord with Zaklama's responsibilities under the contingency fee agreement. A client may not accept the benefits of a valid contingency fee contract and subsequently contest his obligations thereunder.

Id. at 653. Here, Debtor fully performed by introducing relators to Cohen and inducing them to retain Cohen. Debtor diligently pursued this matter until her departure from Cohen. Both Cohen and relators benefited from her efforts.

The ancillary matter of attorney fees and costs incurred in prosecuting this action arose during the course of the principal proceeding.[13] Thus, in the typical charging lien case, the attorney fee dispute here arises from and was an integral part of the main proceeding. *United States ex rel. Taxpayers Against Fraud v. GE*, 41 F.3d 1032, 1035 (6th Cir. 1994) ("The district judge has broad equity power to supervise the collection of attorney's fees under contingency fee contracts.") Federal courts vigorously adjudicate attorney fee disputes in federal question cases. *C.f. United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038,

[12]The Court later held that "[w]hether payment of fees is required as a condition precedent to substitution, the attorney's lien for fees earned is not destroyed or affected by the change of attorneys." *Id.* at 783.

[13] In fact, federal courts adjudicate charging liens even for attorneys who never appeared in the main action. *See e.g. Garrick v. Weaver*, 888 F.2d 687, 690 (10th Cir. 1989) (adjudicating charging lien of attorney who engaged in settlement negotiations and noting that the lawyer's claim was "still derived from 'work done in the suit being litigated.'") and *Goldin v. Murphy's Law Hollywood*, 2009 U.S. Dist. LEXIS 118135, 09-60238 (S.D. Fla. 2009) (adjudicating and awarding charging lien to attorney discharged for failure to file suit).

1056-58 (10th Cir. 2004) (finding jurisdiction to award fees in favor of defendant who prevailed on subject matter jurisdiction defense) *c.f Inmates of R.I. v. Martinez*, 465 F.Supp.2d. 131, 136, (D.R.I. 2006) (relaxing intervention standards to allow organization to assert entitlement to attorney fees on the basis that fee shifting statute promotes public policy expressed in the federal civil rights statutes).

The dual goals of protection of court officers[14] and the power of the court to do "full and substantial justice" provide the basis for this Honorable Court's ancillary jurisdiction over this motion. *Broughten v. Voss*, 634 F.2d 880, 882-3 (5th Cir. 1981) ("If, upon withdrawal, counsel is unable to secure payment for his services, the court may assume jurisdiction over a claim based on a charging lien over the proceeds of the lawsuit.")[15] *see also Iowa v Union Asphalt*, 409 F.2d 1239, 1244 (8th Cir. 1969) (affirming, over sovereign immunity objection,[16] adjudication of attorney fee dispute and noting that such "relief was required to do full and complete justice.") *and National Equipment Rental v. Mercury Typesetting*, 323 F. 2d 784, n.1 (2d Cir. 1963) (Lumbard, J.) ("The termination of relations between a party in litigation in a federal court and his attorney is a matter relating to the protection of the court's own officers and is not subject to the [Erie] doctrine.").

Federal courts sometimes adjudicate attorney fees even when no party requests such action and / or a state forum is available. *Rosquist v. Soo Railroad*, 692 F.2d 1107, 1111-2

---

[14]*See e.g.* Rule 45, Federal Rules of Civil Procedure, Notes on 1991 Amendment (describing an attorney as a "officer of the court . . ." Debtor is in any event entitled to protection as an attorney with the fortitude to coordinate *qui tam* actions on behalf of the government. *C.f.* 31 U.S.C. § 3730(h) (protecting whistleblowers) and *United States ex rel. Taxpayers Against Fraud v. GE*, 41 F.3d 1032, 1035 (6th Cir. 1994) ("the entire statutory scheme of § 3730 is to encourage *private citizens* to assume the heavy initial burdens of bringing a *qui tam* action, by inducing them with promises of a significant financial recovery.") Congress' statutory scheme is bolstered by protecting attorneys who, like relators, invest heavily and risk time and resources to initiate and pursue *qui tam* lawsuits.

[15]The order was vacated because the district judge conducted a *sua sponte* inquiry into the reasonableness of the fee arrangement on a simple motion to withdraw. *Id.*

[16]A newly elected Attorney General requested that private counsel retained by his predecessor withdraw from an antitrust action against the state's cement contractors.

(7th Cir. 1982) (adjudicating validity of attorney contingency fee contract despite availability of state probate court); *Schlesinger v. Teitelbaum*, 475 F.2d 137 (3d Cir. 1982) ("The district courts' supervisory jurisdiction over contingent fee contracts for services rendered in cases before them is well-established"). This Honorable Court therefore enjoys jurisdiction to resolve Debtor's lien and related issues of fees payable for work performed in this *qui tam* action, pursuant to which the United States recovered more than $20 million.

Adjudication of Debtor's Charging Lien Requires Little Judicial Labor

This Honorable Court's adjudication of Debtor's charging lien will promote judicial economy because a factfinder already familiar with *qui tams* in general and this action in particular will adjudicate the *qui tam* fee.[17] After a lengthy adjudication involving dozens of attorneys, taking nearly five years, and generating nearly one hundred docket entries, this Honorable Court is obviously (perhaps painfully) aware of the matters at issue in this case. Moreover, because Debtor's share of the attorney fee is liquidated in her email agreement with Cohen, this Honorable Court need not adjudicate new issues or engage in substantial factfinding to determine the charging lien.[18] In fact, any judicial labor by this Honorable Court will not exceed that required to conduct a hearing in this action on relators' respective claims for fees or moiety under 31 U.S.C. § 3730(d).[19] This efficiency is most likely one of the primary factors that such a disposition is the “preferred method” for resolving charging liens. "It makes sense to leave the discretion to set fees with the judge who has seen the preparation of counsel, heard the case, directly experienced the difficulty of the legal issues,

[17]Judge Arnold will still adjudicate the sexual harassment claims.
[18]Enforcement of such agreements *saves the time of courts* and reduces the expense of litigation. Rest. (1st) of Contracts § 339 (1932).
[19]Such adjudications need not consume an inordinate amount of judicial resources. *See e.g. United States ex rel. Thornton v. SAIC*, 207 F.3d 769, 773 (5th Cir. 2000) (asserting that inquiry into value of defendants' counterclaims subsumed in *qui tam* settlement and proper resulting relator's share "should not balloon into extensive collateral litigation.")

and, for comparison, presided over similar trials in the past." *Rosquist v. Soo Railroad*, 692 F.2d 1107, 1112 (7th Cir. 1982) *citing Allen v. United States*, 606 F.2d 432, 436 (4th Cir. 1979) (denying request by government for assignment of case away from district judge who had mishandled fee award). There is an inherent efficiency in having this Honorable Court hear issues relating to attorneys' fees and costs earned in a case pending before it.[20]

A Summary Proceeding in the Original Action is the "Preferred Method"

"A summary proceeding in the original action represents the preferred method of enforcing an attorney's charging lien in Florida." *Florida Allstate Trucking, Inc. v. Padgett Wares*, P.A., 207 B.R. 256, 258 (M.D. Fla. 1997) (Paskay, C.B.J.); *Daniel Mones, P.A. v. Smith*, 486 So. 2d 559, 561 (Fla. 1986). Resolution of Debtor's claim would promote judicial economy because this Honorable Court remains apprised of this matter. A charging lien obviates the need for a jilted attorney to spawn yet another lawsuit.[21] Although Cohen may argue that state court could accommodate this dispute,[22] the Florida Supreme Court held that attorney fee disputes are best asserted in the proceedings from which the fee dispute arose:

---

[20]Whatever burden may ensue from such adjudication, *qui tam* actions fall within the heartland of federal court expertise. A federal judge will routinely inquires into an issue far more removed from a core federal interest. *See e.g. Lynn's Food Stores v. United States*, 679 F.2d 1350 (11th Cir. 1982) (requiring federal district judges to scrutinize FLSA settlements for fairness).

[21]In this instance Debtor asserts in a pending state court action that sexual harassment resulted in her departure from Cohen. In that action, Debtor also claims an entitlement to her portion of any fee awarded to relators in this action. Because these claims are not inextricably intertwined, Debtor may pursue a simple charging lien here without prejudice to her sexual harassment and contract claims in the state court action. *See e.g. Buckley Towers v. QBE Insurance*, 07-22988, 2012 U.S. Dist. LEXIS 24159 at *19 (S.D. Fla. Feb. 22, 2012) (exercising supplemental jurisdiction to resolve parties charging liens under equitable principles but leaving parties free to pursue other claims in state court.) Moreover, Debtor is not foreclosed from seeking a charging lien merely because she also seeks compensation for her work in another forum. *See, e.g. Butler, Fitzgerald & Potter v. Gelmin*, 651 N.Y.S.2d 525 (N.Y. App. Div. 1st Dept. 1997) (holding that former attorneys were not precluded, under election of remedies theory, from pursuing both charging lien and separate action for recovery of fee)

[22]This would be highly disingenuous, given that Cohen has opposed the pursuit of the state court action by asserting various procedural arguments which were unsuccessfully bolstered with *ad hominem* attacks on Debtor. (Bankr. Doc. 43-1) (providing scandalous and misleading details of Debtor's employment and romantic history.) Cohen also considerably exaggerated the *res judicata* effect of this Honorable Court's rulings. Id. at 8 (claiming that "she has already lost on her contract claims set forth in her Complaint as to these issues was (sic) already resolved in [this case.]" He also implied that this Honorable Court engaged in factfinding. *Id.* at 9

> . . . an attorney's lien in a case like this [should] be enforced in the proceeding where it arose. The parties are before the court, the subject matter is there, and there is no reason whatsoever why they should be relegated to another forum . . .

In re Estate of Warner, 160 Fla. 460, 464 (1948), *accord Dowda & Fields, P.A., v. Cobb*, 452 So.2d 1140, 1143 (Fla. 5th Dist 1984) ("an attorney's lien []is commonly enforced against the judgment by summary proceedings in the original action.") *and Daniel Mones, P.A. v. Smith*, 486 So. 2d 559, 561 (Fla. 1986) ("A summary proceeding in the original action represents the preferred method of enforcing an attorney's charging lien in Florida.") In fact, if the Trustee were to prevail on a contract claim arising from the email in the state action, and obtain an adjudication there of Ms. Khawam's share of the relator's attorney fee in this action, Cohen would likely claim that execution on that judgment interferes with this Court's jurisdiction. *C.f. Chancey v. Bauer*, 97 F.2d 293 (5th Cir. 1938) (discussing injunction against attorney who sued in state court to attach proceeds of federal lawsuit).

A refusal to adjudicate Debtor's charging lien would prejudice enforcement of the Trustee's substantive rights under Florida law. Federal courts enforce the Florida state law right to a charging lien. *Travelers Property*, 2010 U.S. Dist. Lexis 75260, *14, *citing Gottlieb*, 97 F. Supp. 2d at 1311. This Honorable Court's failure to recognize Debtor's charging lien would deprive the Trustee of the right to “fees owed for legal services secured by the judgment or recovery in a lawsuit”, which has been recognized “for over a century.” *In Re Washington*, 242 F. 3d 1320, 1323 (11th Cir. 2001).

Resolution by summary proceeding affords the attorney the protection of the charging lien against any recovery and further avoids any inequities attendant to later collection on a judgment obtained in a separate proceeding. Given Cohen's diabolical financial legerdemain

---

("Federal District Judge Merryday failed to believe Khawam and rejected Khawam's contract claims . . ." This Honorable Court should correct that blatant obfuscation.

detailed elsewhere, the Trustee expects substantial difficulty in realizing any recovery in state court. Such an attempt would include, at the very least, (1) pursuing an action before a factfinder less familiar with *qui tams* in general and this case in particular than this Honorable Court, (2) attaching any unencumbered assets controlled by Cohen, and (3) initiating proceedings to void Cohen's fraudulent transfers. Upon information and belief, Cohen has severely mismanaged his personal and business finances, is currently insolvent, continues to dissipate assets, has assigned or will "factor" some or all of any proceeds received in this action, and will otherwise thwart the Trustee's effort to obtain fees owed to Debtor. Cohen's actions should persuade a disinterested observer that he will distribute the *qui tam* attorney fee to third parties in an attempt to avoid payment to the Trustee.[23]

Determination of This Matter Protects the Integrity of the Principal Proceeding

Each decision discussed above contemplates an attorney's strong substantive right to recover fees and costs incurred in securing a successful result for a client. Courts recognize a preference for a determination by the court before which an action pended. Federal judges should address disputes arising in federal question cases, particularly when, as noted above, their resolution would impact the willingness of enterprising attorneys to pursue successful *qui tams* which return substantial sums to the public coffers. A refusal to address fee and lien issues would greatly frustrate the litigation process, as well as the integrity of the federal system, because lawyers would resort to state court judges who would be obliged to evaluate the pursuit of federal *qui tams*. "Proceedings at law between attorney and client for collection

[23]Under these circumstances, an attachment would pass constitutional muster. *See e.g. Shaumyan v. O'Neill*, 987 F.2d 122, 124 (2d Cir. 1993) (holding that workman's lien satisfied documentary proof requirement under *Connecticut v. Doehr*, 501 U.S. 1 (1991)), *c.f. Mitchell v. W.T. Grant*, 416 U.S. 600 (1974) (considering whether such attachment could issue *ex parte*.) Any prejudice to Cohen caused by a "prejudgment attachment" would in any event be limited due to Cohen's already existing financial difficulties and embarrassment.

of fees have long been disfavored." *Sinclair, Louis, et al. v. Baucom*, 428 So. 2d 1383, 1385 (Fla. 1983). This Honorable Court should help avoid a disfavored proceeding.[24]

The requested relief will not unduly delay the rights of the original parties.[25] This Honorable Court and / or the DoJ are tasked with adjudicating the relators' share and attorney fee in this (or any other) *qui tam* action. *U.S. Ex. Rel. Alderson v. Quorum Health*, 117 F.Supp.2d 1323, 1336 (M.D. Fla. 2001) (Merryday, J.). A federal judges allow a jilted attorney to intervene in a district court proceeding to protect her fee. *Hylind v. Xerox*, 481 Fed.Appx. 819 (4th Cir. 2012) (affirming grant of attorney's motion to intervene).[26]

The Trustee's interest in securing funds owed to Debtor and distributing them to the unsecured creditors is strong.[27] Debtor, like many past and prospective whistleblower

---

[24]Federal courts apparently prefer the charging lien rather than Rule 24 intervention as a basis for an attorney to protect his fee in the action where he earned it. *State Contractor and Engineering v. Condotte America*, 97-7014, 2004 U.S. Dist. LEXIS at *38 (S.D. Fla. 2004) (noting, in charging lien case, that attorney need not intervene as a party.) Although the Trustee is therefore requesting a charging lien, and not Rule 24 intervention, she clearly demonstrates entitlement to the latter as an alternative basis for this Honorable Court's determination of Debtor's attorney fee. *See e.g. Wilkerson v. Schirmer Engineering*, 04-00258, 2009 U.S. Dist. LEXIS (D. Colo. Aug. 26, 2009) (allowing trustee to intervene to assert monetary claims.) Rule 24(a)(2), Federal Rules of Civil Procedure states that intervention of right is available to anyone who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest . . ." The Trustee has a right to the attorney's fees from the *qui tam* case and / or a share of the judgment. Debtor can demonstrate that, but for her efforts, relators would never have retained Cohen nor would they have prevailed in this matter. Without this Honorable Court's intervention, the Trustee will not be able to recover Debtor's rightfully owed fees.

[25]Returning again to the Rule 24 context, the principal consideration is "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." This factor is apparently considered when evaluating permissive intervention, see Rule 24(b)(3), rather than intervention of right, which is, in this unusual case, more obviously applicable here. The Trustee nonetheless addresses this factor because Cohen could conceivably argue that it counsels against the relief requested.

[26]Florida Courts also allow the assignee of the right to collect an attorney fee to intervene to protect that interest. *Beeler v. Banco Indus. de Venezuela*, 834 So. 2d 952, 952-3 (Fla. 3d Dist. App. 2003) (allowing criminal defense attorney, over objection that intervention would impede orderly progression, to intervene to protect assignment to him of right to sue defendant's former employer for indemnification of attorney fees) *citing Union Central Life Ins. Co. v. Carlisle*, 593 So. 2d 505 (Fla. 1992) (allowing health insurer entitled to reimbursement to intervene in lawsuit against tortfeasor), *John G. Grubbs, Inc. v. Suncoast Excavating, Inc.*, 594 So.2d 346 (Fla. 5th DCA 1992) (allowing intervention by competing bidder for government contract), *Citibank, N.A. v. Blackhawk Heating & Plumbing Co.*, 398 So.2d 984 (Fla. 4th DCA 1981) (allowing intervention by a pledgee entitled to sums paid to pledgor of stock in an action against purchaser of stock).

[27]Under Rule 24, the court also will consider whether the applicant will benefit by intervention, whether the applicant's interest is adequately represented, and whether the parties seeking intervention will significantly contribute to the just and equitable adjudication of the legal questions presented. *See e.g. USPS. v. Brennan*, 579

attorneys, significantly contributed to the just and equitable adjudication of Genzyme's false claims practices. Debtor was the first attorney to discover Genzyme's false claims, performed initial due diligence on the matter, approached Cohen with the case, consummated a written contract regarding the same, brought the relator clients with her to Cohen, drafted, signed, and filed the Complaint (Doc. 1), prepared a memorandum for the Department of Justice and other interested government agencies, and diligently pursued the case until she departed Cohen. A denial of this motion would deter other attorneys from investing time and resources in *qui tams* lest an unscrupulous colleague oust them from the proceeds.

DEBTOR ESTABLISHES A VALID CHARGING LIEN UNDER FLORIDA LAW

As set forth above, the charging lien is a mechanism recognized under Florida Law to secure an attorneys' equitable right of recovery. *In Re Washington*, 242 F. 3d at 1323. A charging lien protects an attorney's substantive right to "fees owed for legal services secured by the judgment or recovery in a lawsuit." *Id*., *citing Sinclair*, 428 So. 2d at 1383. Decisions dating back over 150 years confirm that this Honorable Court should protect the right of counsel appearing before it to receive just compensation:

> While our courts hold the members of the bar to strict accountability and fidelity to their clients, they should afford them protection and every facility in securing them their remuneration for their services. An attorney has a right to be remunerated out of the results of his industry, and *his lien* on these fruits is founded in equity and justice.

Baker & Hostetler, LLP v. Swearingen, 998 So. 2d 1158 (Fla. 5th DCA 2008), *citing Carter v. Bennett*, 6 Fla. 214, 258 (1855) *accord In re Barker's Estate*, 75 So.2d 303, 304 (Fla. 1954) ("An attempt to evade payment of an attorney's fee comes in poor grace after the work is

---

F.2d 188, 191-2 (2d Cir. 1978). Unfortunately, the Trustee, who is not adequately represented in this proceeding, will suffer prejudice if Debtor's fee is not recovered in this action.

done, the results accomplished and there is no question of bona fides.") More recently, the Florida Supreme Court has stated that:

> The intervening years have not diminished the attorney's duty of loyalty and confidentiality to his client. For this reason, proceedings at law between attorney and client for collection of fees have long been disfavored. The equitable enforcement of charging liens in the proceeding in which they arise best serves to protect the attorney's right to payment for services rendered while protecting the confidential nature of the attorney-client relationship. *In re Warner's Estate.*

Sinclair, 428 So.2d at 1385. The Court also detailed the requirements for a charging lien:

> The charging lien is an equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit. It serves to protect the rights of the attorney. Charging liens have been recognized in Florida for more than a century. The requirements for perfection of this lien are not statutorily imposed. Rather, the requirements have developed in case law which has delineated the equitable nature of the lien.
>
> . . . there must first be a contract between the attorney and the client. The contract may be express or implied. . . .
>
> There must also be an understanding, express or implied, between the parties that the payment is either dependent upon recovery or that payment will come from the recovery. The nature of the litigation involved and the relief sought in the suit . . . evidence a reasonable understanding that payment would either take the form of an award for attorneys' fees against [defendant] or be paid from [plaintiff's] award. . . .
>
> Finally, the remedy is available where there has been an attempt to avoid the payment of fees, or a dispute as to the amount involved. Again, the record before us shows a dispute as to the amount of the attorneys' fees. . . .

Sinclair, Id. at 1384-5 (quashing denial of enforcement of charging lien) (citations omitted).

A prospective charging lienor must therefore establish four elements:

> (1) a contract between the attorney and client; (2) an express or implied understanding that payment is either contingent upon recovery or will be paid from the recovery; (3) an attempt by the client to avoid paying or a dispute as to the amount of the fee; and (4) a timely notice of a request for a lien.

Id.; *Travelers Property,* 2010 U.S. Dist. Lexis 75260, *14. (hereinafter "Sinclair element(s)")

Each *Sinclair* element counsels in favor of a charging lien.

The absence of a specific agreement between Debtor and relators poses no obstacle to the Trustee's charging lien. *Ward v. Forde*, 154 Fla 383, 389-392 (1944) (describing lack of definitive agreement between attorney and clients but decreeing equitable lien).[28] When a client understands that the attorney will realize a fee from the proceeds of the litigation, the Supreme Court of Florida does not require an explicit attorney-client fee agreement:

> . . . as the result of services rendered by an attorney at law in suing for and recovering for his client certain real estate, the client has realized the real estate as fruits of the attorney's professional services, under an express or implied understanding on the part of both attorney and client, that a reasonable attorney's fee would be charged, and would of necessity be payable out of the property realized by the client as a result of the successful efforts of the attorney in litigating for it, that even in the absence of any express contract for a definite amount of fee, an equitable lien, based upon the fundamental maxim of equity that no one shall be unjustly enriched at another's expense, may be implied and declared by a court of chancery, out of general considerations of right and justice which must be applied to the relations of the attorney and client with reference to the fruits of the transaction . . .

Scott v. Kirtley, 113 Fla 637, 642 (1933) accord *Attorney and Client: Attorney's Charging Lien*, 4 U. Fla. L. Rev. 58, 59 (1951) (noting that "there may be no agreement as to the amount of the fee or its source . . . so long as the attorney and client are in agreement that the attorney shall proceed with the suit and will be paid for his services, a charging lien attaches to the judgment." In fact, courts have enforced post-judgment charging liens even in actions where contingency fee arrangements are impermissible. *Baker & Hostetler, LLP v.*

---

[28]Nor have other courts found that *Sinclair* imposes any such requirement:

> As *Sinclair, Louis* tells us, the requirements for the imposition of a charging lien are few and simple. There must be an agreement-written or oral, express or implied-between the attorney and the client that the attorney will proceed with the suit and that he will be paid for his services. The fees agreed upon may be based on a percentage of any monetary recovery, *In re Barker's Estate*, 75 So.2d 303, or may be contingent upon recovery, *Forman v. Kennedy*, 156 Fla. 219, 22 So.2d 890 (1945), or there may be no agreement as to the amount of the fee or its source, *Scott v. Kirtley*, 152 So. 721, in which case the court may determine a reasonable fee.

Litman v. Fine, Jacobson, et al., 517 So. 2d 88, 91 (Fla. 3d Dist. App. 1987) (citation omitted)

Swearingen, 998 So. 2d 1158 (Fla. 5th DCA 2008) (Monaco, J.) (marriage dissolution action), *In Re Washington*, 242 F. 3d 1320, 1323 (11th Cir. 2001) (same).

Even when the client lacks privity with the attorney claiming the lien, federal courts entertain charging liens.[29] In *Gottlieb v. GC Financial*, 97 F. Supp. 2d 1310 (S.D. Fla. 1999) (Dimitrouleas, J.), lead counsel contracted with another attorney to assist him with trial of a case, for which associate counsel was to receive 25% of the contingency fee. After depositions and mediation, lead counsel determined that associate counsel's performance was lackadaisical and discharged him. The court determined that the first *Sinclair* element for a charging lien was met because "there was a contract between [lead counsel] and the plaintiff. There was also a contract between [lead counsel] and [associate counsel]." *Id*. at 1311. In this case, Cohen and relators had a contract, as did Cohen and Debtor. Relators, whose primary point of contact with Cohen was the Debtor, were also undoubtedly aware of Debtor's fee arrangement with Cohen. The second *Sinclair* element was also met in *Gottlieb* because "the contract in question was for 25% of the contingent fee. Therefore, the payment was dependent upon the recovery." *Id*. Here, Debtor and Cohen agreed in writing that Debtor would receive 30% of the fee in this matter. The dispute between associate counsel, who claimed his full contingent fee and lead counsel, who asserted that associate counsel was only entitled to a reasonable fee for his services, likewise satisfied the third *Sinclair* element.[30] *Id.* Although Debtor fully performed,[31] Cohen unaccountably refuses to pay.

---

[29]Nor do district courts categorically limit themselves to adjudicating fee disputes between attorney and client, as opposed to other disputes over attorney fees that arise during litigation. *See, e.g. In re Air Passenger Computer Reservations Systems Antitrust Litigation*, 724 F. Supp. 744, 753 (C.D. Cal. 1989) (adjudicating dispute between plaintiffs as to responsibility for sharing attorney fees "in order to protect the legitimate expectations of the parties who entered into the contract").

[30]*Gottlieb* holds that associate counsel failed to meet the fourth requirement, timeliness and notice. *Id.* at 1312. The dispute between Debtor and Cohen, as well as Debtor's previous attempt to file a charging lien, placed counsel, Court, and relators on notice that Debtor asserts a right to 30% of the fee. *Heller v. Held*, 817 So.2d 1023 (Fla. 4th DCA 2002) (holding that language in attorney's motion to withdraw was sufficient to provide

Courts have even enforced equitable liens in favor of law firm associates in similar situations. For example, in *Barwick, Dillian & Lambert, P.A. v. Ewing*, 646 So.2d 776, 777 (Fla. 3rd DCA 1994), the firm had a policy of awarding to an originating associate thirty percent of any fee received by the firm. Ewing originated a medical malpractice matter through a referral from a friend and then engaged in substantial presuit work on the case. *Id*. When Ewing was dismissed, the client decided to remain with the Barwick firm.[32] The firm subsequently filed suit and tried the base to verdict, obtaining a seven figure verdict and six figure contingency fee. *Id*. at 778. Both the referring lawyer and the associate asserted charging liens on the fee. *Id*. at 778. Finding an oral agreement with Ewing, the court awarded the associate her claimed share of the contingency fee. *Id*. at 778. Finding that "there was no requirement that each individual lawyer within the firm execute separate agreements with the client," the appeals court concluded that:

> At the time Ewing left the Barwick firm, she had performed all of the steps necessary to qualify for the thirty percent share. Her performance had been accomplished while she was covered by the firm's contingency agreement with Giannelli. It is our view that after she departed, Ewing remained entitled to the share she had already earned. This was a matter of the internal compensation arrangements between Ewing and the Barwick firm.

Id. at 779. *Travelers v. Paramount Lake Eola*, 2010 U.S. Dist. LEXIS 75260 (M.D. Fla. June 21, 2010), follows *Ewing* and discusses a claim to an attorney fee by a former associate. In

---

defendants timely notice of charging lien and doctrine of election of remedies did not bar attorney's action), *c.f. Ketchum v. BAE*, 2012 U.S. Dist. LEXIS 7731, 10-cv-2246 (M.D. Fla. Jan. 24, 2012) (Merryday, J.) (stating that five months after the conclusion of litigation is "pardonable if sufficiently explained" but an *unexcused* delay precludes enforcement of a charging lien.)

[31]Debtor introduced Relators to Cohen and then prepared, signed, and filed the initial Complaint. (Doc. 1)

[32]Although Debtor resigned from Cohen, she asserts that Cohen (1) failed to pay her salary and travel reimbursements and (2) subjected her to sexual harassment by the firm paymaster when she complained. Debtor asserts constructive discharge. In any event, even if the Court construes Debtor's cessation of representation as a withdrawal based upon her departure from Cohen, rather than a discharge due to relators' reversal of their intent to follow Debtor to her new firm, Debtor remains entitled to compensation. *See, e.g. Carbonic Consultants v. Herzfeld & Rubin*, 699 So. 2d 321, 323 (3d DCA 1997) (noting that an attorney who withdraws with justifiable cause does not forfeit any right to compensation).

that case, the associate asserted that a partner offered her a portion of the potential contingent fee award for case she was handling. *Id*. at *4. The Court noted that "[while the standards for a charging lien] may appear to require that the attorney asserting a lien have a direct personal contract with the client, the only Florida[33] case directly addressing that point held otherwise." *Id*. at *15 (citing *Barwick*).[34] The Court therefore exercised supplemental jurisdiction over the associate's claim of lien. *Id*. at *20.[35]

Beyond timely notice, Florida law imposes no requirements for perfecting the lien and a valid attorney's charging lien arises by operation of law upon satisfaction of each requirement. *Sinclair, Id*. at 1385, *In Re Washington*, 242 F. 3d at 1323. The service of a notice to the client of the lien and/or the filing of a motion to enforce such a lien provides the notice necessary to perfect it. *Id*.; *Daniel Mones, P.A.*, 486 So. 2d at 561("in order to give

---

[33]Georgia would apparently agree with the Florida approach. *See Nickerson v. Holloway*, 469 S.E.2d 209, 210 (Ga. App. 1996) ("The client hired defendant Holloway and his firm, and Holloway associated plaintiff Nickerson and his firm with the client's knowledge and consent. . . .Agreeing with the trial court's determination that the fee should be divided 50-50 percent as a matter of law, we affirm.")

[34]Cohen graciously directs undersigned counsel's attention to *In re Daddy's Money of Clearwater, Inc*., 187 B.R. 750 (M.D. Fla. 1995) (Kovachevich, J.). In a March 26, 2014 email, he claims that this case supports the proposition that an "associate in [a] law firm did not have a charging lien where the contingency fee contract was not between associate attorney and debtor/client, but rather was between debtor/client and law firm in which attorney was an associate." Darken 3.01(g) Response and Rule 11 Warning. *Daddy's* predates *Travelers* and was apparently unpersuasive to Magistrate Judge Kelly (who did not cite it). *Daddy's* turned on the voidable preference doctrine and the statements about charging liens are dicta. *Id. at 757*. A smattering of other noncontrolling authority, also courtesy of Cohen, is similarly distinguishable:

> "[t]he dispute here is over the contractual arrangements between an attorney and his former employer, as opposed to the cases in which ancillary jurisdiction is correctly used to exercise jurisdiction over disputes between attorney and client." American Federation of State, County and Municipal Employees (AFSCME) Council 79 v. Scott, 949 F.Supp.2d 1239, 1245 (S.D. Fla. 2013); In re Hijacking of Pan Am. World Airways, Inc. Aircraft at Karachi International Airport, 698 F.Supp. 479, 482 (S.D.N.Y. 1988) (holding that fee disputes between an attorney who resigned as a shareholder of a law firm and his former firm were not germane to underlying litigation because the dispute "does not involve the claims directly"); Taylor v. Kelsey, 666 F.2d 53, 54 (4th Cir. 1981) (per curium) (declining to exercise jurisdiction over a fee dispute between attorneys because it "did not arise as a matter of necessity from anything which occurred in the proceedings of the litigation"). "[D]isputes which arise from a private contract between attorneys are wholly tangential to the federal question claims raised [in this case] and, thus, are not integral to the main proceeding and do not provide a basis for ancillary jurisdiction." AFSCME, 949 F.Supp.2d at 1245.

Darken Response, Id. at Paragraph 4.

[35]The Court ultimately denied the claim of lien on the basis that three of the four alleged parties to the conversation denied that the associate was offered a portion of the potential contingent fee award. *Id*. at 21-22.

timely notice of a charging lien an attorney should either file a notice of lien or otherwise pursue the lien in the original action."). In the case, Debtor first requested a charging lien within months of her discharge and years before the recent settlement. [36] Debtor continued to monitor the case to diligently protect her interest even though she never received the courtesy of notification of the settlement from Cohen. *C.f. Bruton v. Carnival*, 916 F.Supp.2d 1262 (S.D. Fla. 2012) (discussing timeliness requirement and noting that plaintiff's present counsel gave notice of settlement to previous counsel, although the court ultimately declined to adjudicate any charging lien because the proceeds had been obtained in litigation in other fora.) Florida law requires only that a charging lienor file the notice of the intent to impose a charging lien "in the original action." *Daniel Mones, P.A.*, 486 So. 2d at 561. The Florida Supreme Court has repeatedly confirmed that the attorney is merely "obligated to notify his clients *in some way* before the close of the original proceeding that he intended to pursue the charging lien." *Id*. (emphasis added). The requirement of filing this notice prior to the "close" of the original proceeding ensures the trial court does not lose jurisdiction to enforce the lien before that the matter is raised.[37] Upon information and belief, Genzyme has yet to pay Cohen's fee, which therefore remains within the constructive custody of this Honorable Court.

---

[36]Although Debtor diligently and timely attempted to protect her interest, this particular motion admittedly comes at a relatively late stage of the litigation. However, this is not due to any lack of continued diligence on the part of Debtor, who began discussing, through her personal counsel, this case with undersigned counsel within days of the DoJ press release announcing the settlement. However, because Debtor's interest in this litigation is an asset of her bankruptcy, undersigned counsel's retention involved a long process involving each stakeholder working to obtain the necessary approvals to proceed. The Trustee filed an Application to Employ the undersigned on Feb. 27, 2014 (Doc. No. 120) and a hearing on the Trustee's Application was held before the Honorable K. Rodney May. At the March 11, 2014 hearing, the Court approved the employment and issued an order documenting the same on March 24, 2014. (Bankr. Doc. 125)

[37]*Naftzger v. Elam*, 41 So. 3d 944, 946 (Fla. 2d DCA 2010); *Gottlieb*, 97 F. Supp. 2d at 1311 ("Where there has been a settlement, the funds may be outside the custody of the court, making the assertion of a lien 'before the close of the original proceeding', essential to maintenance of the right in the original action to enforce the lien against the settlement proceeds."), *citing Litman v. Fine, Jacobson, et al.*, 517 So. 2d 88, 92 (Fla. 3d DCA 1987).

In *Minks v. Polaris Industries*, 05-1894, 2011 U.S. Dist. LEXIS 84718 at *6-7 (M.D. Fla. Aug. 2, 2011), Judge Presnell confronted a tortured procedural history:

> It is true, in general terms, that a charging lien should be filed before the lawsuit has been reduced to judgment. But this is not some special requirement of charging liens. . . . Here, the second final judgment was entered on September 18, 2009, more than two months before the charging liens were filed. . . .The charging lien is an equitable remedy. Nichols v. Kroelinger, 46 So. 2d 722, 724 (Fla. 1950). There are no equitable principles here that would warrant a finding of untimeliness. [Counsel] promptly filed their lien after [the client] discharged them and [the client] suffered no prejudice under these circumstances. Accordingly, the liens were timely filed.

(citations and quotes omitted) Cohen will probably claim that this motion is improper because it was filed after the official close of this case. This argument should prove unavailing because (1) Debtor attempted to preserve her right to a charging lien years ago, and (2) this Honorable Court has not yet adjudicated any relator share or attorney fee. Thus, Debtor informed both relators and Cohen that she intended to enforce a charging lien before this "original proceeding" closed, however closure is defined.[38]

A recent Florida case has also specifically discussed the propriety of a post-judgment charging lien. In *Baker &Hostetler, LLP v. Swearingen*, 998 So. 2d 1158 (Fla. 5th DCA 2008) the trial court entered a final judgment of dissolution. Three months later, the firm filed a notice of charging lien. *Id*. at 1159. The trial court "reluctantly" concluded that it had no jurisdiction. *Id*. Judge Monaco reversed:

> Since the trial court had not yet taken up the issue of attorney's fees and had reserved its jurisdiction to do exactly that, we see no logic or equity in saying that the Wife's attorneys could not pursue a lien with respect to those very fees.

[38]In many cases, including *qui tams*, significant proceedings and judicial labor transpire post-judgment. *See e.g. U.S. Ex. Rel. Alderson v. Quorum Health*, 117 F.Supp.2d 1323 (M.D. Fla. 2001) (Merryday, J.). If a charging lien always needed to be filed prior to the entry of any judgment, it would be impossible to obtain a charging for work on any postjudgment motion or appeal. *C.f Gonter v. Hunt Valve*, 510 F.3d 610, 621-2 (6th Cir 2007) (allowing fees-on-fees award in *qui tam* litigation).

Id. at 1163. This Honorable Court has yet to rule upon the proper relator's share or attorney fee and the parties have yet to publicly announce any agreement.[39]

CHARGING LIENS APPLY IN THE *QUI TAM* CONTEXT

The False Claims Act provides a moiety to encourage private individuals (including attorneys) to report fraud against the government. *See, e.g. United States ex rel. Taxpayers Against Fraud v. GE*, 41 F.3d 1032, 1035 (6th Cir. 1994) ("The FCA qui tam statutes also contain a fee-shifting provision that aims at inducing 'whistleblowers' to step forward *and attorneys to pursue such actions* . . .") *accord* 132 Cong. Rec. 29315, 29321-22 (October 7, 1986) ("This is precisely what [the FCA] intended to do: deputize ready and able people . . . to play an active and constructive role *through their counsel* to bring to justice those contractors who overcharge the Government.") (emphases supplied)

Relators report fraud through counsel and *qui tam* attorneys such as Debtor are indispensable to the effective prosecution of fraud. *See e.g. U.S. Ex. Rel. Alderson v. Quorum Health*, 117 F.Supp.2d 1323, 1336 (M.D. Fla. 2001) (Merryday, J.) (noting that counsel's contribution to the litigation enhanced the relator's entitlement to a "robust" share of the proceeds); *Taxpayers Against Fraud*, 41 F.3d at 1035 (describing counsel's preliminary work, assistance to relator in documenting his allegations, and lobbying skeptical government officials to intervene, as contributing to government's "windfall"). The public interest therefore requires that contingency fee lawyers, particularly those who work in the *qui tam* field, enjoy adequate protections in the rough-and-tumble world of whistleblower practice. In this case, as in *Sinclair*, the nature of this *qui tam* proceeding justifies adjudication of this fee dispute here. Cohen cannot dispute Debtor's interest in the proceeds of this *qui tam* action because Debtor knew relators before joining Cohen, masterminded the case, filed the

[39] The government indicated that this issue "could be vigorously contested." (Doc. 68-4)

Complaint, worked the case through her departure, and was frustrated by Cohen in her attempt to continue.[40] If Debtor cannot pursue her remedy here, the Trustee will resort to a state-court adjudication of an attorney fee due in a complex and specialized federal matter.

A refusal to exercise jurisdiction would discourage other attorneys from coordinating *qui tam* actions. In *Gonter v. Hunt Valve*, 510 F.3d 610 (6th Cir. 2007), the relator's former counsel sought attorney fees after performing substantial presuit work. Judge Merritt noted:

> As an initial observation, both the Relators and [their current counsel] had fully resolved their FCA claims to contingency fees and attorneys' fees, respectively, prior to this appeal; consequently, as in Mathur, the district court's ruling -- and any additional award -- would only affect [former counsel]'s interests. See also Lipscomb, 643 F.2d at 320 ("[A]s a practical matter, the lawyer is frequently the only person adversely affected when attorney's fees are denied."). Because the district court awarded HMRP fees lower than the amount sought in the petition, the firm has suffered a putative injury in fact. Additionally, unlike the situation in Willis, the Relators in the instant case did implicitly approve the entire amount sought by HMRP when it filed the original fee petition for the full amount. To refuse standing, therefore, would be to tantamount to "exalt[ing] form over substance." Mathur, 317 F.3d at 741. An alternate holding would, moreover, potentially jeopardize the availability of sufficiently "reasonable" fees to attract competent representation and, by extension, the ability to vindicate the goals of the FCA. See S. Rep.No. 99-345, 99th Cong., 2d Sess. 23-23 (1986) ("The Committee's intent in amending the qui tam section of the False Claims Act is to encourage more private enforcement suits."). Consequently, in concluding that HMRP does have standing to bring this appeal, we reiterate our earlier observation that HN4 "[w]hen they are the real parties in interest, attorneys are entitled to their day in court."

Id. at 615-16. The late Judge Moore II protected the interest of a relator's initial counsel in a large *qui tam* settlement. *U.S. ex rel. Burr v. Blue Cross & Blue Shield*, 882 F. Supp. 166, 167-8 (M.D. Fla. 1995) (granting charging lien in favor of relator's initial counsel and

[40] In fact, Cohen, who performed little work before Debtor's departure, even had the temerity to assert a prospective charging and / or retaining lien after learning of relators' original intent to retain Ms. Khawam's new firm. See Affidavit of Natalie Khawam at Paragraph 29. Cohen's obnoxious emails, characterized by Mr. Hoyer as "gruff," constitute tortious interference. *Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla.1985) (The elements of tortious interference are "(1) the existence of a business relationship, not necessarily evidenced by an enforceable contract; (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the breach of the relationship."

prohibiting distribution of proceeds pending determination of initial counsel's fee). A district judge presiding over a *qui tam* action frequently adjudicates either the fee award or the relator's share, *Alderson, Id.*, exercises substantial control over a large fund, and appropriately reviews attorney fee issues.[41] The government, the relator, and relator's counsel each enjoy due process, see, e.g. 31 U.S.C. § 3730(c), and Debtor also deserves recourse.[42] Conventional jurisdictional concerns are inapplicable in *qui tams* because this Honorable Court retains constructive control over the attorney fee and therefore retains jurisdiction.[43]

CONCLUSION

Cohen's position that Debtor quit without cause and therefore forfeited her entire referral fee is completely untenable.[44] The Trustee is entitled to an adjudication of Debtor's charging lien and respectfully requests leave to file a charging lien on this docket in an amount to be determined but in any event not less than $450,000.00.[45]

[Signature Page Follows]

---

[41]*Chancey v. Bauer*, 97 F.2d 293, 296 (5th Cir. 1938) (Sibley, J., dissenting in part) ("But I think he had a lien upon the fund which the District Court is about to distribute and that in consequence the District Court should have given him relief."), *see also United States ex rel. Taxpayers Against Fraud v. GE*, 41 F.3d 1032, 1045 (6th Cir. 1994) (adjudicating dispute involving attorney fee and relator's share in lengthy opinion after district court conducted two-day hearing). In fact, even if there were no dispute over relator's share or attorney fees in this action (which apparently remains to be seen) this Court might have occasion to evaluate counsel or relators' contribution to this action. *C.f. Taxpayers Against Fraud*, 41 F.3d at 1035 ("The judge's discretion [over the attorney fee in a *qui tam* action] is not diminished even when parties have stipulated to the reasonableness of the number of hours and the hourly rate."); *United States ex rel. Thornton v. SAIC*, 79 F. Supp. 2d 655 (N.D. Tex. 1998) (describing Court's conditioning of approval of *qui tam* settlement agreement on review of same) *rev'd on other grounds at* 207 F.3d 769.

[42]Notably, in *Mager v. Bultena*, 797 A.2d 948 (Super Ct. Pa. 2002), an associate at a law firm received a personal referral of a *qui tam* matter. He worked the matter at the firm on an hourly rate before switching to a contingency arrangement and departing the firm for personal reasons. The Court treated both the former associate and the relator with substantial deference in subsequent litigation over the attorney fee.

[43]*C.f. Kokkonen v. Guradian Life*, 511 U.S. 365 (1994) (Scalia, J.) (finding that a court does not retain post-settlement jurisdiction in an ordinary case).

[44]If this Honorable Court denies this motion on jurisdictional grounds, the Trustee respectfully requests that the order specify such a basis, lest Cohen misrepresent any such result in a future state court filing.

[45]The Trustee reserves the right to request fees-on-fees if Cohen employs vexatious tactics.

Filed: March 28, 2014

Respectfully Submitted,

/s/Michael Paul Beltran
Michael P. Beltran
Fla. Bar. No. 093184
Beltran Litigation, P.A.
405 S. Dale Mabry Hwy. #370
Tampa, FL 33609
718-637-1028 (c)
michaelpaulbeltran@gmail.com

Wil H. Florin
Fla. Bar. No. 337234
Florin | Roebig, P.A.
777 Alderman Road
Palm Harbor, FL 34683
(727) 786-5000(o)
(727) 772-9833(f)
WHF@florinroebig.com
Special Litigation Counsel

Local Rule 3.01(g) STATEMENT

Undersigned counsel contacted a representative of each party involved in this matter:

1) Michael Addison, counsel for Dr. Kelley, confirmed by email on March 25, 2014 that "he ha[s] no right to voice an objection to the request for a charging lien, given the situation."

2) On March 25, 2014, undersigned counsel called the listed number for Cohen, which "could not be connected from [the local landline(s) used by undersigned counsel]." Undersigned counsel persisted by email and Kevin Darken responded and requested that undersigned counsel email Cohen. Undersigned counsel complied but after further exchanges Cohen resorted to his usual tactic and announced an intention to move for sanctions. Darken Local Rule 3.01(g) Response and Rule 11 Warning. Undersigned counsel is not afraid.[46]

[46] *United States ex rel. Maxwell v. Kerr McGee*, 04-1224, 2010 U.S. Dist. Lexis 21033 (D. Colo. Feb. 17, 2010) (denying motion to strike lien and for sanctions in dispute between former partners over proceeds of successful *qui tam* despite holding that paper contained misstatements), later proceeding at 793 F.Supp.2d 1260.

3) On March 25, 2014, undersigned counsel telephoned Kathleen Marie Von Hoene, lead counsel for the States. Ms. Von Hoene returned the call on March 26, 2014. Although the conversation was cordial, Ms. Von Hoene politely declined to opine on the merits prior to reviewing this paper.

4) On March 25, 2014, undersigned counsel telephoned and emailed AUSA Charles Harden, III, who wrote that the United States takes no position on this motion but reserves its right to file a response.

5) On March 25, 2014, undersigned counsel telephoned Jonathan Diesenhaus, counsel for Genzyme. Although he was vacationing, Mr. Diesenhaus immediately returned the call, requested and received the particulars in an email, claimed that Genzyme had reached an agreement with relators to pay fees, announced that "Genzyme will take no position on [the Trustee's] motion," but insisted that undersigned counsel "take up the details of the agreement [to pay fees] with Messrs. Darken and Cohen."

6) No party has agreed to suspend payment or collection pending further discussions. Cohen issues baseless threats but refuses to accept or return telephone calls. The Trustee submits this motion on notice but reserves the right to seek *ex parte* preliminary relief.

CERTIFICATE OF SERVICE

I, Michael Beltran, certify that a true and correct copy of the foregoing has been served on counsel for all parties via the Court's CM/ECF system this the 28th day of March, 2014.

/s/Michael Paul Beltran
Michael P. Beltran
Fla. Bar. No. 093184
Beltran Litigation, P.A.
405 S. Dale Mabry Hwy. #370
Tampa, FL 33609
813-870-3073
mike@beltranlitigation.com
Special Litigation Counsel