

The Honorable Christopher Alston  
Chapter 7  
Hearing date: February 3, 2017  
Response date: January 27, 2017  
Hearing Time: 9:30am

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

JAYAKRISHNAN NAIR,  
  
Debtor

CHAPTER 7

BK CASE NO.: 15-12626- CMA

DEBTOR'S OBJECTION TO SYMMES  
APPLICATION FOR FEES AND COSTS

DEBTORS RESPONSE AND OBJECTION TO  
SYMMES APPLICATION FOR FEES

Page 1 of 6

VJ LAW FIRM PLLC  
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1 COMES NOW the Debtor, Jayakrishnan Nair, through undersigned counsel, Shashi Vijay of  
2 VJ LAW FIRM PLLC and files this response to the Application for Attorneys' Fees and Costs filed  
3 by the Symmes Law Group, PLLC, former counsel for the debtor [hereinafter "Symmes"].  
4

5 **I. PRELIMINARY STATEMENT**  
6

7 This case originally started as a Cha 13 filing by Debtor, JayKrishnan Nair [hereinafter "Mr.  
8 Nair"], by and through his former counsel Richard Symmes, who has filed an application for his fees  
9 and costs. The Chapter 13 petition was filed on April 29, 2015 [Dkt 1]. On August 11, 2015, Debtor  
10 filed a Motion to convert the Chapter 13 to a Chapter 11, by and through his former counsel, Richard  
11 Symmes. [Dkt # 40] and the case was converted to a Chapter 11 proceeding on September 2, 2015  
12 [Dkt # 56]. The case was then finally converted to a Chapter 7 on October 5, 2016 [Dkt # 196] and  
13 former counsel, assisted him with the initial Bankruptcy filings under the Chapter 7 Petition.  
14

15 Mr. Nair's counsel withdrew on October 14, 2016 [Dkt # 214] and Mr. Nair proceeded to file  
16 an appeal in this matter, pro se, on October 19, 2016.[Dkt # 218]. Mr. Nair represented himself at the  
17 first 341 hearing pro se but then felt he needed representation in his dealings with the Chapter 7  
18 Trustee. Subsequently, Mr. Nair retained undersigned counsel in this matter on December 13, 2016.  
19 [Dkt # 256]. Mr. Nair's estate is solvent and there are sufficient assets to pay all creditor claims in  
20 full.  
21

22 **OBJECTION AND LEGAL AUTHORITY**  
23

24 This case is one wherein a more than solvent estate is being liquidated to pay the creditor  
25 claims. Debtor, Mr. Nair, has more than sufficient assets to resolve his debts outside of bankruptcy.  
26

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1 Mr. Nair contends that Symmes mistakenly advised him to file a Chapter 13 bankruptcy petition and  
2 then mistakenly advised him to convert to a Chapter 11 petition, when those cases should have simply  
3 be dismissed and he should have resolved his financial problems outside of bankruptcy. *See also In*  
4 *re: Lindo*, 2015 WL 9255561 \*5 (S.D.N.Y. 12/18/15)  
5

6           However, due to the eve of foreclosure filing, Mr. Nair has ended up going through  
7 bankruptcy under Chapter 13, 11 and 7 of the code. This is simply due to Mr. Nair's former counsel's  
8 incompetency. Mr. Nair should never have been advised to file a Chapter 13 bankruptcy action, when  
9 a debt payoff or debt negotiation would have been a more efficient resolution. ***See also attached***  
10 ***Exhibit A - Declaration of Brian Waid***. Further, subsequent to the Chapter 13 filing, a more prudent  
11 approach would have been to let the Chapter 13 action be dismissed rather than converting it to a  
12 Chapter 11. However, Mr. Symmes proceeded with the conversion of the Chapter 13 to Chapter 11.  
13 Due to the failure of the Chapter 11 confirmations, the Court then ordered the conversion of the case  
14 to Chapter 7, thereby resulting in a more than solvent estate to be subject to liquidation and causing  
15 waste of the Debtor's assets.  
16  
17

18           An attorney is negligent if he "failed to exercise the ordinary reasonable skill and knowledge  
19 commonly possessed by a member of the legal profession." *Rubens v. Mason*, 387 F.3d 183, 189 (2d  
20 Cir. 2004) (citing *Darby & Darby, P.C. v. VSI Int'l, Inc.*, 95 N.Y.2d 308, 313 (2000)). An attorney  
21 may be liable for legal malpractice based on his "ignorance of the rules of practice, failure to comply  
22 with conditions precedent to suit, or for his neglect to prosecute or defend an action." *Achtman v.*  
23 *Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 337 (2d Cir. 2006) (quoting *Bernstein v. Oppenheim*  
24 *& Co.*, 554 N.Y.S.2d 487, 489-90 (N.Y. App. Div. 1990)) (internal quotation marks omitted).  
25  
26

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1 Further, “Where an attorney in a bankruptcy case fails to perform competently and efficiently  
2 those legal services for which a debtor has contracted, it is appropriate for the [c]ourt to review the  
3 compensation arrangement and, among other things, to direct a remittance to the debtor[.]” *Matter of*  
4 *Grant*, 14 B.R. 567, 569 (Bankr. S.D.N.Y. 1981) (citing 11 U.S.C. § 329(b)(2)); see also *Matter of*  
5 *Chin*, 47 B.R. 894, 897 (Bankr. S.D.N.Y. 1984) (The Bankruptcy Court may “deny compensation to a  
6 debtor’s attorney, to cancel an agreement to pay compensation, or to order return of the compensation  
7 paid if ‘such compensation exceeds the reasonable value of any such services.’”) (quoting 11  
8 U.S.C.A. § 329(b)). Because, Symmes’ services were rendered in such a negligent manner that they  
9 had no reasonable value, Symmes application for compensation must be denied and his claim should  
10 be disallowed in entirety.  
11

12  
13 Since Symmes’ representation of Mr. Nair provides a basis for a potential legal malpractice  
14 action, Mr. Nair has amended his Schedule B and listed the malpractice action as a potential claim of  
15 the estate. [*See attached Exhibit B – also filed separately as Docket # 279*].  
16

17 For all the aforementioned reasons, Defendants respectfully request that Symmes’ application  
18 for fees and costs be summarily DENIED and the claim be disallowed. Alternatively, since the  
19 Trustee has not had an opportunity to investigate the details pertaining to this claim, the Debtor  
20 respectfully requests a continuance of the hearing on the application of fees and costs.  
21

22 DATED, this 27<sup>th</sup> day of January 2017  
23

24 /s/ Shashi Vijay \_\_\_\_\_  
25 Shashi Vijay, WSBA # 41625  
26 Attorney for Debtor

27 DEBTORS RESPONSE AND OBJECTION TO  
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PROOF OF SERVICE

I, Shashi Vijay, declare as follows:

1. I am a citizen of the United States and of the State of Washington, living and residing in King County, over the age of 21 years, not a party to the above-entitled action and competent to be a witness.

2. On January 27, 2017, I caused to be served a true and correct copy of the Notice of Appearance via CM/ECF system which will send notification of such filing to the following parties:

Brian M Born [bborn@turnbullborn.com](mailto:bborn@turnbullborn.com)

Douglas R Cameron [dcameron@hansonbaker.com](mailto:dcameron@hansonbaker.com), [kevans@hansonbaker.com](mailto:kevans@hansonbaker.com)

Annette Cook [acook@mccarthyholthus.com](mailto:acook@mccarthyholthus.com), [bknotice@mccarthyholthus.com](mailto:bknotice@mccarthyholthus.com);  
[acook@ecf.inforuptcy.com](mailto:acook@ecf.inforuptcy.com)

K Michael Fitzgerald [courtmail@seattlech13.com](mailto:courtmail@seattlech13.com)

Nancy L James [njames@epitrustee.com](mailto:njames@epitrustee.com), [njames@ecf.epiqsystems.com](mailto:njames@ecf.epiqsystems.com)

Lance E Olsen [lolsen@mccarthyholthus.com](mailto:lolsen@mccarthyholthus.com), [bknotice@mccarthyholthus.com](mailto:bknotice@mccarthyholthus.com);  
[lolsen@ecf.inforuptcy.com](mailto:lolsen@ecf.inforuptcy.com)

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[tara.ladwig@leahyps.com](mailto:tara.ladwig@leahyps.com), [vanessa.gomez-riebs@leahyps.com](mailto:vanessa.gomez-riebs@leahyps.com), [dainen.penta@yahoo.com](mailto:dainen.penta@yahoo.com)

David R Riley [dr@w-legal.com](mailto:dr@w-legal.com), [andrear@w-legal.com](mailto:andrear@w-legal.com)

Daniel Ross [danielr@w-legal.com](mailto:danielr@w-legal.com), [BNCmail@w-legal.com](mailto:BNCmail@w-legal.com)

Martin L. Smith [martin.l.smith@usdoj.gov](mailto:martin.l.smith@usdoj.gov), [Young-Mi.Petteys@usdoj.gov](mailto:Young-Mi.Petteys@usdoj.gov);

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1 Tara.Maurer@usdoj.gov;Martha.A.VanDraanen@usdoj.gov

2  Richard J. Symmes richard@symmeslaw.com, symmeslaw@gmail.com;

3 G3183@notify.cincompass.com

4  United States Trustee USTPRegion18.SE.ECF@usdoj.gov

5  
6  
7 I declare under penalty of perjury under the laws of the State of Washington and the United  
8 States that the foregoing is true and correct to the best of my knowledge.

9 DATED this 27<sup>th</sup> day of January 2017

10  
11 /s/ Shashi Vijay  
12 Shashi Vijay

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# EXHIBIT A

Honorable Christopher M. Alston  
February 3, 2017; 9:30 a.m.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

**In re:**

**JAYAKRISHNAN K. NAIR,**  
**Debtor(s).**

**Chapter 7  
Bankruptcy No. 15-12626**

**DECLARATION OF BRIAN J. WAID IN  
SUPPORT OF DEBTOR'S OBJECTION  
TO APPLICATION FOR ATTORNEYS'  
FEES AND COSTS**

Brian J. Waid, under penalty of perjury, testifies as follows:

1. I have been retained by the Debtor, Jayakrishnan K. Nair, to express an opinion relative to the fee application filed in this matter by his former attorney, Richard J. Symmes and Symmes Law Group, PLLC and noted for hearing on February 3, 2017. I make this Declaration as authorized by RPC 3.7, based on my personal knowledge and experience as described below.

**QUALIFICATIONS**

2. I am qualified, by training and experience, to express the opinions hereinafter set forth. More specifically, I have actively practiced law for forty-one (41) years, including relatively intense work in litigation, both on behalf of plaintiffs and on

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1 behalf of defendants, in commercial disputes (including real estate and maritime  
2 foreclosure), bankruptcy, personal injury, product liability, lender liability, class action,  
3 and employment law, as well as in connection with professional responsibility issues. I  
4 have tried many cases, including many jury trials, to verdict. Relative to the specific  
5 opinions expressed relative to this case, my past experience includes: (a) four (4) years  
6 representing clients in personal bankruptcy filings; (b) an additional 2 ½ years  
7 conducting bankruptcy-related litigation and supervising the bankruptcy practice of five  
8 attorneys and two paralegals in the Consumer Law Unit at New Orleans Legal  
9 Assistance Corporation (“NOLAC”); (c) fourteen (14) years of private practice during  
10 which I regularly represented clients in bankruptcy-related litigation, including: (i) a  
11 bank (including Ch. 11 workouts, protection of cash collateral, etc.); (ii) creditors; (iii)  
12 bankruptcy Trustees; (iv) and creditors’ committees. During that same time period, I  
13 was also appointed by United States Bankruptcy Court for the Eastern District of  
14 Washington as: (i) an examiner on Ch. 11 and Ch. 7 cases in which fraud was  
15 suspected, and (ii) as Trustee in at least one Ch. 11 and one Ch. 7 bankruptcy case.

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18  
19 4. In addition, I have represented clients in legal malpractice claims against  
20 their former attorneys dating back to the early 1990’s. One of my very first legal  
21 malpractice cases arose out of a denial of bankruptcy discharge in *In re: Perez* (listed on  
22 attached Exhibit 1). When I moved to my wife’s native West Seattle in 1996, I initially  
23 worked with Bob Gould, primarily on legal malpractice cases from 1996-1998, while I  
24  
25

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1 wound down my Louisiana law firm. I worked with the Bendich Stobaugh & Strong  
2 firm from 1998-2003, primarily on the Microsoft perma-temps and other class action  
3 litigation. As the perma-temps litigation wound down, I returned to the Gould firm,  
4 where I resumed representation of clients in legal malpractice claims against their  
5 former attorneys until 2009. In 2009, I opened my own firm, with which I have  
6 practiced since then. We primarily represent clients in legal malpractice claims against  
7 their former attorneys. I thus have more than fifteen (15) years of experience  
8 representing clients in legal malpractice claims.  
9

10 4. Throughout my years of representing clients in legal malpractice claims,  
11 I have often been called upon to review and evaluate potential legal malpractice claims  
12 arising out of the clients' representation in bankruptcy-related proceedings. *In re:*  
13 *Owen*, which is listed in Exhibit 1, provides another example of such a case. Even the  
14 preliminary evaluation of such claims requires knowledge of bankruptcy law and  
15 procedure. Moreover, the propriety of an attorney's recommendation that the client  
16 file bankruptcy represents one of the most important issues during that review, because  
17 the ramifications of a bankruptcy filing by a client can (as in this case) have  
18 extraordinarily detrimental consequences for the client.  
19  
20

21 5. I have also authored professional articles and publications, and lectured  
22 as a faculty member at numerous Continuing Legal Education programs.

23 6. Background information detailing only some of my experience, as  
24  
25

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1 provided at my website, is attached hereto as **Exhibit 1**. Thus, the standard of care  
2 issues in this case were not particularly complicated or unique to me, and were certainly  
3 within my field of knowledge and expertise.

#### 4 **INFORMATION REVIEWED**

5  
6 7. I reviewed the following documents and information in connection with  
7 the preparation of this Declaration:

- 8 A. Docket in *In re: Nair*, United States Bankruptcy Court for the Western  
9 District of Washington, Case no. 15-12626-CMA;
- 10 B. Selected pleadings in *In re Nair*, including but not limited to Mr.  
11 Symmes' Notice of Hearing and Application for Attorneys' Fees  
12 and Costs [Dkt. no. 273, *et seq.*], the Trustee's Objection to  
13 Confirmation [Dkt. nos. 28, 29], Mr. Symmes' application for  
14 employment [Dkt. no. 78] and related Order [Dkt. no. 85];
- 15 C. Numerous email communications related to *In re Nair*;
- 16 D. Information related to ARAG, through which Mr. Nair initially  
17 retained Mr. Symmes and Symmes Law Group, PLLC;
- 18 E. Documents posted on the website of Symmes Law Group, PLLC at  
19 [www.bankruptcy-law-seattle.com](http://www.bankruptcy-law-seattle.com);
- 20 F. Mr. Symmes' listing on the ARAG Legal Center for Members, under the  
21  
22 Legal Issue heading "Real Estate and Home Ownership" and Type of  
23  
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1 Issue heading “Foreclosure.”

2 8. I also interviewed Mr. Nair at significant length, as well as Mr. Nair’s  
3 replacement bankruptcy attorney, Ms. Vijay.

4 9. I also conducted legal research to review selected Bankruptcy Code  
5 sections and Bankruptcy Rules of Procedure, as well as cases which explain the  
6 relationship between the fee application of a Debtor’s attorney and a Debtor’s claim of  
7 legal malpractice against that same attorney.  
8

9 **FACTS ASSUMED**

10 10. I assumed the following facts to be true,<sup>1</sup> based upon the information  
11 reviewed and listed above:  
12

13 A. The website of Mr. Symmes’ law firm, Symmes Law Group, PLLC,  
14 markets itself with “Stop Foreclosure. Stop Collections. End Your Stress.  
15 BE DEBT FREE!” and “Seattle Bankruptcy Attorney Who Gets Debt  
16 Relief Fast.”

17 B. Mr. Symmes’ has contracted with a prepaid legal insurance company  
18 known as ARAG, pursuant to which attorneys offer ARAG-paid and/or  
19 below-market legal fees to ARAG members. Mr. Symmes’ listing on the  
20 ARAG Legal Center for Members, appears under the Legal Issue  
21 heading “Real Estate and Home Ownership” and Type of Issue heading  
22  
23

24 <sup>1</sup> See, *Cotton v. Kronenberg*, 111 Wn. App. 258, 266-267, 44 P.3d 878 (2002)

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“Foreclosure.”

D. Mr. Nair is not an attorney. He is an immigrant from India, in 2001, and was unfamiliar with U.S. bankruptcy rules and procedures prior to his retention of Mr. Symmes.

E. Mr. Nair is the co-founder of a successful biotech startup, Ratner Biomedical Inc., and real estate entrepreneur, who owned five cash-positive investment properties at the time of his bankruptcy filing on April 29, 2015.

F. In October 2014, Mr. Nair learned that First Tech Credit Union “FTCU,” which held a second-position deed of trust on one of Mr. Nair’s rental properties, in the amount of \$100,000 and a then-current balance of approximately \$72,000, had initiated foreclosure proceedings against that one property.

H. Mr. Nair was a member of ARAG. When his personal attempts to resolve the foreclosure proceeding failed, he found Mr. Symmes’ listing with ARAG. He then contacted Mr. Symmes to assist him in resolving the foreclosure. Mr. Symmes acknowledges that Mr. Nair retained him, initially, through the ARAG prepaid legal insurance plan, at a rate of \$187.50. [Source: Symmes Decl. ¶4; Dkt. 273-1].

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I. At the time Mr. Nair first contacted Mr. Symmes, Mr. Nair had approximately two weeks remaining in which to resolve the foreclosure. Mr. Nair had ample cash resources readily available to pay off the FTCU debt in full, including \$20,000 in cash in liquid accounts, and \$100,000 in a 401k. It is my further understanding, that Mr. Nair also could have taken money out of the 401k and re-deposited it within 60 days without any tax penalty.

J. Mr. Nair alerted Mr. Symmes to his (Nair's) financial circumstances, including the fact that he had approximately \$6,000,000 in real estate investments and privately held shares in the RBI startup, as well as \$20,000 in cash deposits and \$100,000 in his 401k.

K. Mr. Symmes advised Mr. Nair to file Chapter 13 bankruptcy, and advised him against using his 401k funds because of the potential 10% tax penalty. Mr. Symmes represented that he expected that Mr. Nair would save approximately \$5,000 in fees and penalties if he filed Chapter 13 bankruptcy rather than pay off FTCU immediately.

L. Mr. Nair did not want to file bankruptcy; however, Mr. Symmes so strongly recommended the bankruptcy filing that Mr. Nair eventually went along with Mr. Symmes' strong recommendation.

M. Mr. Nair thus relied heavily on Mr. Symmes' professed expertise in

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defending foreclosures and representing clients in bankruptcy proceedings.

N. Mr. Symmes was aware of Mr. Nair's lack of knowledge about bankruptcy and that Mr. Nair relied on Symmes' recommendations as to how he (*i.e.*, Nair) should proceed.

O. Mr. Symmes' firm filed Mr. Nair's Chapter 13 bankruptcy petition on April 29, 2015.

P. On July 16, 2015, the Trustee filed his Objection [Dkt. no 28] to confirmation of Mr. Nair's Ch. 13 plan, citing among other problems, the fact that Mr. Nair did not qualify for Ch. 13. The Objection furthermore pointed out that Mr. Symmes had not served the plan on Mr. Nair's creditors, and that the plan as submitted was not confirmable.

Thereafter, on July 26, 2015, the Chapter 13 Trustee moved to dismiss Mr. Nair's Chapter 13 bankruptcy petition [Dkt. no. 29], in part because Mr. Nair was not eligible for Ch. 13 relief. The defects pointed out by the Trustee strongly suggest that Mr. Symmes' \$3,500 flat fee for Ch. 13 services was not reasonable.

Q. Mr. Symmes could, and should, have advised Mr. Nair to agree to dismiss the bankruptcy case, rather than convert the case to either Ch. 11 or Ch. 7 at that time.

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R. Although Mr. Symmes has testified [Dkt. no. 273-1 ¶6(a)] that he “fully advised [Mr. Nair] of his option to let his chapter 13 case be dismissed,” Mr. Nair categorically denies Mr. Symmes’ account. He instead reports that Mr. Symmes advised him to convert his case to Chapter 11 rather than Ch. 13. Symmes reportedly informed Mr. Nair that conversion to Chapter 11 was simply a minor procedural process. Mr. Symmes moved to convert the case to Ch. 11 on August 11, 2015 [Dkt. no. 40].

S. Considering the administrative and other time-consuming and costly burdens required in Ch. 11 proceedings, as well as the risk of loss of control over the start-up, Mr. Symmes does not appear to have provided Mr. Nair with all of the material information necessary to enable Mr. Nair to give informed consent to the conversion from Ch. 13 to Ch. 11. RPC 1.4.

T. After conversion to Ch. 11, Mr. Nair reports that he repeatedly asked Mr. Symmes to have the bankruptcy dismissed; however, Mr. Symmes told him that Mr. Nair could not dismiss the bankruptcy and that if he were to file a motion to dismiss, the creditors and the US Trustee might move to convert the case to Ch. 7.

U. The fees sought by Mr. Symmes in his current motion were incurred in connection with the Chapter 11 proceedings, with the apparent

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1                   exception of \$2,000 which Mr. Symmes is charging for the “[b]alance of  
2                   retainer owed from Ch. 13 case prior to conversion.” Symmes Decl.  
3                   Dkt. no. 273-2, p. 5 of 7.

4                   V.     No determination has been made as to whether Mr. Symmes’ “flat fee”  
5                   rate of \$3,500 was reasonable for the Ch. 13 filing, particularly  
6                   considering the defects in the Ch. 13 filing, as well as uncertainty  
7                   relative to Mr. Symmes’ fee-related obligations arising out his ARAG  
8                   contract.   Dkt. no. 273-2 ¶3.

9  
10                   **OPINIONS**

11                   11.     In determining the reasonable standard of care for Washington lawyers  
12                   and the scope of a Washington lawyer’s fiduciary duty to his or her client, under the  
13                   same or similar circumstances as those applicable to Mr. Symmes and his representation  
14                   of Mr. Nair, I rely upon my experience as a practicing lawyer representing clients in  
15                   both personal and litigation matters over more than forty-one (41) years and the matters  
16                   discussed above in ¶¶2-9. All opinions are expressed under this standard of care. Any  
17                   citation to the Rules of Professional Conduct (“RPCs”) is limited to a factor which I  
18                   considered in determining the standard of care for Mr. Symmes in the underlying action  
19                   [see, *Hizey v. Carpenter*, 119 Wn.2d 251 (1992)], as a factor in determining the  
20                   fiduciary duty of a lawyer in Washington to a client in the same or similar  
21                   circumstances to those involved in Mr. Symmes’ representation of Mr. Nair, or as a  
22  
23  
24  
25

**Declaration of Brian J. Waid in Support of  
Debtor’s Objection to Application for Attorneys’  
Fees and Costs**

**WAID LAW OFFICE  
5400 CALIFORNIA AVENUE SW, SUITE D  
SEATTLE, WA 98136  
206-388-1926**

1 public policy limit on standards for attorney-client fee arrangements.

2           12. Mr. Symmes breached the standard of care when he advised Mr. Nair to  
3 file bankruptcy, because the extraordinary costs and adverse consequences of filing  
4 bankruptcy were not warranted at the time. If the goal of the bankruptcy filing was to  
5 stop a pending foreclosure proceeding, Mr. Nair had available cash sufficient to satisfy  
6 the demand of the foreclosing creditor and thus obtain a delay in the pending  
7 foreclosure. I am also informed that Mr. Nair could have borrowed money from his  
8 401k plan to pay off the foreclosing creditor in full, which he could then have replaced  
9 within 60 days without incurring any federal tax penalties. Nevertheless, payment of a  
10 10% tax penalty would have been a far, far better alternative than the certain negative  
11 consequences of filing a bankruptcy petition in Mr. Nair's circumstances. More  
12 significantly, the filing of a bankruptcy petition has significant ramifications for the  
13 owner of a start-up enterprise, because of the risk of loss of control over the enterprise  
14 posed by Bankruptcy Court jurisdiction. Mr. Symmes strongly recommended the filing  
15 of bankruptcy. No reasonable Washington attorney would have made that  
16 recommendation to a client in Mr. Nair's circumstances, particularly considering the  
17 client's expressed "disgust" at the mere thought of filing bankruptcy.  
18  
19  
20

21           13. Mr. Symmes breached the standard of care when he advised Mr. Nair to  
22 file a Chapter 13 bankruptcy. Mr. Nair did not meet the Ch. 13 limitations. That defect  
23 became manifest when, on July 16, 2015, the Trustee moved to dismiss the Chapter 13  
24  
25

**Declaration of Brian J. Waid in Support of  
Debtor's Objection to Application for Attorneys'  
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206-388-1926**

Page 11 of 13

1 bankruptcy because Mr. Nair did not qualify for Chapter 13 reorganization. Mr.  
2 Symmes' fee application thus reflects \$3,500 in fees charged for an improper and ill-  
3 advised Chapter 13 filing.

4  
5 14. Mr. Symmes breached the standard of care when, in response to the  
6 Trustee's motion to dismiss filed on July 16, Mr. Symmes advised Mr. Nair to convert  
7 the Chapter 13 case into a Chapter 11 reorganization, rather than have it dismissed, at a  
8 time when the disastrous results of the Ch. 13 filing could still be at least partially  
9 mitigated.

10  
11 15. Mr. Symmes further breached the standard of care when, in response to  
12 Mr. Nair's request that Symmes dismiss the bankruptcy, he advised Nair not to file a  
13 motion to dismiss.

14  
15 16. Mr. Symmes' \$3,500 flat fee for the Ch. 13 filing, \$2,000 of which is  
16 included in his current fee application, appears unreasonable considering that Mr. Nair  
17 was not eligible for Ch. 13, and that Mr. Symmes did not submit a confirmable plan and  
18 did not provide notice to the creditors of the proposed Ch. 13 plan.

19  
20 17. This bankruptcy case should never have been filed, and it should have  
21 been dismissed when Mr. Symmes had the opportunity to concede the Trustee's motion  
22 to dismiss. If it had not been filed, or if Mr. Symmes had recommended that Mr. Nair  
23 concede the Trustee's motion to dismiss, then Mr. Symmes' bankruptcy fees and  
24 expenses would not have been incurred. His fees are, therefore, unreasonable and  
25

**Declaration of Brian J. Waid in Support of  
Debtor's Objection to Application for Attorneys'  
Fees and Costs**

**WAID LAW OFFICE**  
5400 CALIFORNIA AVENUE SW, SUITE D  
SEATTLE, WA 98136  
206-388-1926

Page 12 of 13

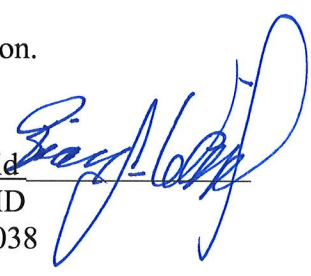
1 should not be allowed.

2 18. I reserve the right to supplement and/or amend this declaration and my  
3 opinions based on further review and discovery.

4 I declare under penalty of perjury that the foregoing is true and correct to the  
5 best of my knowledge and belief.

6 DATED this 27th day of January, 2017 in Seattle, Washington.

7  
8  
9 /s/ Brian J. Waid  
10 BRIAN J. WAID  
11 WSBA No. 26038



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**Declaration of Brian J. Waid in Support of  
Debtor's Objection to Application for Attorneys'  
Fees and Costs**

**WAID LAW OFFICE  
5400 CALIFORNIA AVENUE SW, SUITE D  
SEATTLE, WA 98136  
206-388-1926**

# **EXHIBIT 1**

# Law Office of Brian J. Waid

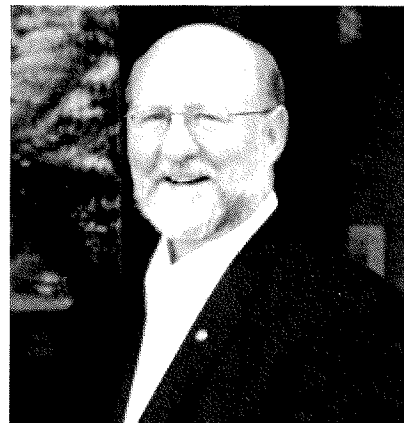
## Brian J. Waid

**Location:** Seattle, Washington

**Phone:** 206-462-4435  
888-702-9277

**Fax:** 206-388-1925

**Email:** [E-mail Me](#)



Waid Law Office offers you 39 years of experience in civil litigation and appeals, including substantial experience representing clients in legal malpractice claims and attorney fee disputes.

Brian Waid grew up in rural Nebraska, where he developed his commitments to hard work and unquestionable integrity. In 1975, he began his professional career as a Reginald Heber Smith Fellow with the Legal Services Corporation, *i.e.*, a poverty lawyer, providing the disadvantaged with legal services. Mr. Waid eventually managed the Consumer Law Unit at New Orleans Legal Assistance Corporation in New Orleans, Louisiana, where he represented low-income clients in consumer class action litigation and nuclear power plant rate proceedings. Recognizing his particular expertise, the Loyola Law Review asked him to publish an article on attorneys' ethics in class action litigation. In 1982, Mr. Waid entered private practice in Louisiana, where he represented businesses in commercial litigation, injured victims in personal injury litigation, and a bank in complex fraud-related litigation. Because of his demonstrated expertise in fraud-related litigation, the United States Bankruptcy Court in New Orleans appointed Mr. Waid to investigate bankruptcy reorganizations in which fraud was suspected.

In 1996, Mr. Waid and his family moved back to his wife's native West Seattle. Since then, he has focused his legal practice primarily on malpractice claims by clients against their former attorneys. However, he also authored the winning briefs in two of the Washington Supreme Court's seminal insurance bad faith cases, *Mutual of Enumclaw Ins. Co. v. Dan Paulson Construction Co.* and *Kirk v. Mt. Airy Insurance Co.*, and represented the plaintiff class in the Microsoft "perma-temps" litigation as its designated trial attorney.

### **Bar Admissions**

Nebraska, 1975 inactive  
Louisiana, 1980 inactive  
Alaska, 1999 inactive  
Washington, 1996  
U.S. District Court Eastern District of Washington  
U.S. District Court Western District of Washington  
U.S. District Court Middle District of Louisiana  
U.S. District Court Western District of Louisiana  
U.S. Court of Appeals 5th Circuit  
U.S. Court of Appeals 8th Circuit  
U.S. Court of Appeals 9th Circuit  
U.S. Supreme Court, 1980

### **Areas of Practice**

Legal Malpractice

### **Litigation Percentage**

75% of Practice Devoted to Litigation

### **Education**

University of Nebraska College of Law, Lincoln, Nebraska

### **Published Works**

Telling the Truth--When Things Go Wrong, King County Bar Association Bar Bulletin, February, 2011

The Perils of the Co-Counsel Relationship and How to Reduce Them, Washington State Bar Association Bar News, May, 2010

Ethical Problems of the Class Action Practitioner, 27 Loy.L.Rev. 1047, 1981

A Lesson in Real Trust, King County Bar Association Bar Bulletin, July, 2013

## Representative Cases

*Stewart Title Guar. Co. v. Sterling Sav. Bank*, 178 Wn.2d 561, 311 P.3d 1 (2013)

*Owen v. Godwin*, 2012 WL 3945770 (E.D. Wash.)

*Shoemake v. Ferrer*, 168 Wn.2d 193, 225 P.3d 990 (2010)

*Shoemake v. Ferrer*, 143 Wn. App. 819, 182 P.3d 992 (2008)

*Bertelsen v. Harris*, 537 F.3d 1047 (9th Cir. 2008)

*Mutual of Enumclaw Ins. Co. v. Dan Paulson Constr.*, 161 Wn2d 903, 169 P.3d 1 (2007)

*Feature Realty v. Kirkpatrick & Lockhart Preston Gates & Ellis, LLP*, 161 Wn.2d 214, 164 P.3d 500 (2007)

*Burns v. McClinton*, 135 Wn. App. 285, 143 P.3d 630 (2006)

*VersusLaw v. Stoel Rives, LLP*, 127 Wn. App. 309, 11 P.3d 866 (2005)

*Metropolitan Water Dist. of Southern California v. Superior Court*, aff'd, 32 Cal.4th 491, 84 P.3d 966, 9 Cal. Rptr.3d (2004)

*Vizcaino v. Microsoft*, aff'd, 290 F.3d 1043 (9th Cir. 2002)

*Vizcaino v. Microsoft*, Cert. Denied, 537 U.S. 1018 (2002)

*Vela v. Plaquemines Parish Government*, 811 So.2d 1263 (La. 2002)

*Metropolitan Water Dist. of Southern California v. Superior Court*, 112 Cal. Rptr. 513, 92 Cal. App.4th 1112 (2001)

*Vizcaino v. Microsoft*, 142 F. Supp.2d 1299 (W.D. Wash. 2001)

*Winbun v. Moore*, 143 Wn.2d 206, 18 P.3d 576 (2001)

*Vizcaino v. U.S. Dist. Ct.*, 173 F.3d 713 (9th Cir. 1999)

*Vela v. Plaquemines Parish Government*, 729 So.2d 178 (La. App. 1999)

*Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 951 P.2d 1124 (1998)



*Brin v. Stutzman*, 89 Wn. App. 809, 951 P.2d 291 (1998)

*Hoskin v. Plaquemines Parish Government*, 703 So.2d 207 (La. App. 1997)

*Higgins v. USAA Prop. & Cas. Ins. Co.*, 669 So.2d 498 (La. App. 1997)

*Haworth v. L'Hoste*, 664 So.2d 1335 (La. App. 1995)

*Vela v. Plaquemines Parish Government*, 658 So.2d 46 (La. App. 1995)

*Olinde v. Couvillion*, 650 So.2d 1241 (La. App. 1995)

*Buffinet v. Plaquemines Parish Government*, 645 So.2d 631 (La. App. 1994)

*McKee v. Inspectorate America Corp.*, 636 So.2d 305 (La. 1994)

*Longman v. Allstate Ins. Co.*, 635 So.2d 343 (La. App. 1994)

*Perez v. Shook*, 1993 WL 515775 (E.D. La.)

*Berrera v. Hyundai Motor America*, 620 So.2d 890 (La. App. 1993)

*Succession of Cosse*, 608 So.2d 1092 (La. App. 1992)

*Scandurro v. Thibaut*, 1992 WL 394712 (E.D. La.)

*Spitzfaden v. Daigle Welding Service, Inc.*, 607 So.2d 951 (La. App. 1992)

*Cosse v. Commercial Union Ins. Co.*, 597 So.2d 84 (La. App. 1992)

*H & B Const. Co. v. La. Insurance Guarantee Association*, 580 S.2d 931 (La. App. 1991)

*DuBois v. McGuire*, 579 So.2d 1025 (La. App. 1991)

*Putzeys v. Schreiber*, 576 So.2d 563 (La. App. 1991)

*Davenport v. Amax Nickel, Inc.*, 569 So.2d 23 (La. App. 1990)

*Smith v. Zimmer*, 553 So.2d 919 (La. App. 1989)

*Cantwell v. Garcia*, 522 So.2d 721 (La. App. 1988)

*Foval v. First Nat'l Bank of Commerce*, 841 F.2d 126 (5th Cir. 1988)

*Adolph v. FEMA*, 854 F.2d 732 (5th Cir. 1988)

*Eddie's Quality Oysters v. F.S.B., Inc.*, 503 So.2d 562 (La. App. 1987)

*Wallen v. Simpson*, 518 So.2d 1144 (La. App. 1987)

*Page v. Page*, 512 So.2d 1234 (La. App. 1987)

Taylor v. Taylor, 505 So.2d 98 (La. App. 1987)

Taylor v. Taylor, 473 So.2d 867 (La. App. 1985)

Hero Lands Co. v. Borello, 459 So.2d 658 (La. App. 1984)

Metro. New Orleans Ch. of La. Consumers League v. Council of City of New Orleans, 391 So.2d 878 (La. App. 1980)

Powers v. Chizek, 285 N.W.2d 501 (Neb. Sup. Ct. 1979)

Miller v. Reighter, 581 F.2d 1181 (8th Cir. 1978)

Binnick v. Avco Finance, 435 F. Supp. 359 (D. Neb. 1977)

Volvo Constr. Equipment NA, LLC v. Clyde/West, Inc., 26 F. Supp.3d 1033 (W.D. Wash. 2014), 2014 WL 5365454 (W.D. Wash. 10/20/14), and 2014 WL 6886679 (W.D. Wash. 12/3/14)

Perkumpulan Investor Crisis Center Dressel-WBG v. Wong, 2012 WL 3871582 (W.D. Wash. 09/04/12), 2012 WL 3871592 (W.D. Wash. 09/04/12), and 2014 WL 1047946 (W.D. Wash. 3/14/14)[RICO defense]

## **Classes/Seminars**

What You Don't Know (or Do) Can Hurt You: Tips, Trips, and Lessons Concerning Employment Law Legal Malpractice Claims, Washington State Bar Association, Seattle, November 18, 2016

Emerging Ethics and Standard of Care Issues in Trust and Estate Practice, National Business Institute, Yakima, November 15, 2016

Annual Law of Lawyering Seminar, Washington State Bar Association, December 20, 2013

Legal Malpractice: A Primer With a Cutting Edge, National Association of Legal Secretaries, April 12, 2013

Ethics of Withdrawing from Representation, National Association of Legal Secretaries, January 26, 2013

Law Firms & Associations, Law of Lawyering Seminar, Washington State Bar Association, December 14, 2012

Local Counsel-Hazards of the Relationship, National Association of Legal Secretaries, March 17, 2011

Effective and Ethical Fee Agreements, Before the Fee Agreement, King County Bar Association, October 27, 2010

Ethics for the IP Attorney, Washington State Bar Association, Intellectual Property Institute, Seattle, 2009

Legal Ethics and Malpractice Issues for the Intellectual Property Attorney Wannabe, Washington State Bar Association, Seattle, 2008

Ethics: Establishing and Maintaining the Attorney-Client Relationship, Washington State Trial Lawyers Association, Seattle, 2008

It's Not Just Microsoft!, Washington State Bar Association, Employment Law Seminar, Washington State Bar Association, Employment Law Seminar, 2000

Employment Law Seminar, Washington State Trial Lawyers Association, 2000

Rule 11: Its Use and Abuse, and Implications for Professionalism, King County Bar Association, 1998 - 1999

ERISA Subrogation, Washington State Trial Lawyers Association, 1998

Chairperson, Subrogation, King County Bar Association, 1998

## **Honors and Awards**

AV-Rated by Martindale-Hubbell (The Highest Peer Rating of Competence and Ethics), 2005 - Present

Rotarian of the Year, Rotary District 5030 (Seattle and King County area), 2005 - 2006

Rotarian of the Year, Rotary District 6840 (SE La./So. Miss.), 1993 - 1994

## **Professional Associations and Memberships**

Washington State Bar Association

American Bar Association

King County Bar Association

Alaska Bar Association

Louisiana State Bar Association

Nebraska State Bar Association

American Bar Association Center for Professional Responsibility

### **Past Employment Positions**

Southeast Nebraska Legal Services Corp., Smith Fellow and Staff Attorney

New Orleans Legal Assistance Corp., Consumer Law Unit Managing Attorney, 1979 - 1982

Bubrig & Waid, Buras and Belle Chasse, Louisiana, Associate, Partner, Managing Partner, 1982 - 1998

Law Offices of Robert B. Gould, Contract Attorney, 1996 - 1998

Bendich, Stobaugh & Strong, Trial Attorney, 1998 - 2002

Law Offices of Robert B. Gould, Trial Attorney, 2003 - 2009

### **Law Office of Brian J. Waid**

5400 California Ave SW, Suite D

Seattle, WA 98136

Phone: 206-462-4435

Toll Free: 888-702-9277

Fax: 206-388-1925

[Seattle Law Office Map](#)

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# EXHIBIT B

**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		<b>44.43% Interest in Ratner Bio Medical Inc. Tech startup has 50 shareholders and company was recently valued to raise funding.</b>		<b>3,490,000.00</b>
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		<b>Bank of America Checking Account ending in 3880</b>		<b>9.64</b>
		<b>Bank of America Checking account ending in 5575</b>		<b>0.00</b>
		<b>Bank of America savings account ending in 0058</b>		<b>3.48</b>
		<b>Chase Checking account ending in 2292</b>		<b>0.00</b>
		<b>Fidelity Account ending in 1060</b>		<b>149.36</b>
		<b>Fidelity Account ending in 1905</b>		<b>4.50</b>
		<b>Home Street Bank checking account ending in 3099</b>		<b>65.83</b>
3. Security deposits with public utilities, telephone companies, landlords, and others.	<b>X</b>			
4. Household goods and furnishings, include audio, video, and computer equipment.		<b>4 TV's</b>		<b>400.00</b>
		<b>All household appliances</b>		<b>500.00</b>
		<b>All household furniture</b>		<b>1,000.00</b>
		<b>Desktop computer, monitor and printer</b>		<b>150.00</b>
		<b>Laptop</b>		<b>150.00</b>
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	<b>X</b>			
6. Wearing apparel.		<b>Clothes</b>		<b>500.00</b>
7. Furs and jewelry.	<b>X</b>			
8. Firearms and sports, photographic, and other hobby equipment.	<b>X</b>			
9. Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	<b>X</b>			
10. Annuities. Itemize and name each issue.	<b>X</b>			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	<b>X</b>			

IN RE Nair, Jayakrishnan K

Case No. 15-bk-12626

Debtor(s)

(If known)

**SCHEDULE B - PERSONAL PROPERTY  
(Continuation Sheet)**

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		<b>401K Retirement Account Fidelity Roth IRA</b>		<b>89,000.00 16.02</b>
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements in which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	<input checked="" type="checkbox"/>	<b>POTENTIAL MALPRACTICE CLAIM AGAINST FORMER BK COUNSEL, RICHARD SYMMES.</b>		<b>UNKNOWN</b>
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		<b>2001 BMW X5 89,000 miles Good condition</b>		<b>5,332.00</b>
		<b>2003 Infiniti G35 114,000 miles Good condition</b>		<b>4,924.00</b>
26. Boats, motors, and accessories.	X			

**SCHEDULE B - PERSONAL PROPERTY  
(Continuation Sheet)**

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
27. Aircraft and accessories.	<b>X</b>			
28. Office equipment, furnishings, and supplies.	<b>X</b>			
29. Machinery, fixtures, equipment, and supplies used in business.	<b>X</b>			
30. Inventory.	<b>X</b>			
31. Animals.	<b>X</b>			
32. Crops - growing or harvested. Give particulars.	<b>X</b>			
33. Farming equipment and implements.	<b>X</b>			
34. Farm supplies, chemicals, and feed.	<b>X</b>			
35. Other personal property of any kind not already listed. Itemize.	<b>X</b>			
<b>TOTAL</b>				<b>3,592,204.83</b>

0 continuation sheets attached

(Include amounts from any continuation sheets attached.  
Report total also on Summary of Schedules.)



**United States Bankruptcy Court  
Western District of Washington**

In re Jaykrishnan K. Nair

Debtor(s)

Case No. 15-12626

Chapter 7

**AMENDED  
DECLARATION CONCERNING DEBTOR'S SCHEDULES**

**DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR**

I declare under penalty of perjury that I have read the foregoing document(s), consisting of 3 page(s), and that they are true and correct to the best of my knowledge, information, and belief.

Date January 27, 2017

Signature /s/ Jaykrishnan K. Nair

**Jaykrishnan K. Nair**

Debtor

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.

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The Honorable Christopher Alston

Chapter 7

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

JAYAKRISHNAN NAIR,

Debtor

CHAPTER 7

BK CASE NO.: 15-12626- CMA

**PROPOSED ORDER DENYING SYMMES  
APPLICATION FOR COMPENSATION OF  
FEES AND COSTS**

PROPOSED ORDER

Page 1 of 2

VJ LAW FIRM PLLC  
22525 SE 64<sup>th</sup> place, Suite 249  
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Ph: 425-557-4305  
Fax: 425-557-3605  
[shashi@vjlawfirm.com](mailto:shashi@vjlawfirm.com)

