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OPINIONS AND ORDERS

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT (FEBRUARY 28, 2022)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

WENDY M. DALE,

Debtor-Appellant,

v.

ALGERNON L. BUTLER, III,

Trustee-Appellee.

No. 21-2037

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. W. Earl Britt, Senior District Judge. (7:20-cv-00184-BR)

Before: GREGORY, Chief Judge, and NIEMEYER and KING, Circuit Judges.

PER CURIAM:

Wendy Dale appeals from the district court's order: (1) dismissing her appeal from the bankruptcy court's order limiting her claimed exemption in a lawsuit and prohibiting her from amending her claim of exemptions; and (2) affirming the bankruptcy court's orders quashing Dale's subpoena, denying her

motion to reconsider the order approving a settlement agreement and denying her motion to convert her case, denying reconsideration of the exemption order, denying her motion for a declaratory judgment, and imposing sanctions. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Dale v. Butler*, No. 7:20-cv-00184-BR (E.D.N.C. Sept. 14, 2021). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION (SEPTEMBER 14, 2021)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION

WENDY DALE,

Appellant,

v.

ALGERNON L. BUTLER, III,

Appellee.

No. 7:20-CV-184-BR

Before: W. Earl BRITT, Senior U.S. District Judge.

This matter is before the court on the appeal of debtor Wendy Dale ("appellant" or "debtor") from the bankruptcy court's: (1) 4 March 2019 order allowing Algernon L. Butler, III's (the "trustee") objection to an exemption; (2) 17 September 2020 order allowing the trustee's motion to quash subpoena; (3) 18 September 2020 order denying appellant's motion for reconsideration of the court's 9 December 2019 order; (4) 25 November 2020 order denying appellant's motion for reconsideration of the court's 4 March 2019 order; (5) 15 January 2021 order denying appellant's motion

for declaratory judgment; and (6) 28 January 2021 order supplementing the 15 January 2021 order. (Notice of Appeal, DE # 1; Am. Notice of Appeal, DE # 18; Second Am. Notice of Appeal, DE # 31.)

I. Background

In 2018, appellant, proceeding *pro se*, filed a voluntary petition under Chapter 7 of the Bankruptcy Code. (R., DE # 7-9, at 5-12.) In December 2018, she amended her exemption schedule to claim an exemption in her pending federal employment discrimination lawsuit (the "Red Hat Lawsuit") in the amount of "100% of the fair market value, up to any applicable statutory limit," citing N.C. Gen. Stat. § 1C-1601(a)(2).[1] (*Id.* at 86.) The trustee objected to this exemption. (*Id.* at 99-102.) Claiming "[i]t is essential to the administration of this estate that the Trustee and all parties in interest know and understand the extent to which the Debtor may be allowed an exemption in assets of th[e] bankruptcy estate," the trustee requested that the court limit the claimed exemption and enter "an order providing that the Debtor shall not be permitted to amend her claim of exemptions to claim, or increase any claim of, an exemption in any property in which an exemption is requested herein to be disallowed or limited." (*Id.* at 100-01.) He provided notice of the objection to appellant and the right to file a response and request for hearing. (*Id.* at 98 ("If you do not want the Court to grant the relief sought in Objection . . . , you or your attorney must file with the Court . . . a

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[1] Under N.C. Gen. Stat. § 1C1-1601(a)(2), a debtor may claim a "wildcard" exemption in any property in an amount up to $5,000. *See In re Phillips*, 553 B.R. 536, 543 n.14 (Bankr. E.D.N.C. 2016).

written response, an answer explaining your position, and a request for hearing. . . . ").) Appellant did not file a response or request a hearing.

On 4 March 2019, the bankruptcy court allowed the trustee's objection; limited the amount of appellant's exemption in the Red Hat Lawsuit to the statutory limit of N.C. Gen. Stat. § 1C-1601(a)(2) (less $70); and ordered that appellant "shall not be permitted to amend her claim of exemptions to claim, or increase any claim of, an exemption in any property in which an exemption has been disallowed or limited herein" (the "exemption order").[2] (Am. Notice of Appeal, DE # 18-1, at 21.) In January 2020, appellant moved for reconsideration of this order, seeking to amend her exemptions to claim an exemption in the Red Hat Lawsuit under N.C. Gen. Stat. § 1C-1601(a)(12).[3] (*See* R., DE # 7-9, at 310-11.) The bankruptcy court denied the motion for reconsideration. (*Id.* at 333.) On appeal,

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[2] The bankruptcy court entered a nearly identical order, on the trustee's same objection, on 24 January 2019. (*See* Am. Notice of Appeal, DE # 18-1, at 3-4.) Because there was a question as to whether appellant had received the trustee's original objection, the trustee initiated a "'do-over' of his objection." (*Id.* at 3.) This "do-over objection," to which appellant did not file a response, prompted the court's 4 March 2019 order. (*See id.* at 4.) Some documents in the record refer to the 24 January order, while others refer to the 4 March order or both orders. Because the orders are substantively identical and the later order is the operative one, the court relies on it.

[3] North Carolina General Statute, Section 1C-1601(a)(12) designates as exempt "[a]limony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor."

this court affirmed that order. *See Dale v. Butler*, No. 7:19-CV-254-BR, 2020 WL 6817059, at *3-4, 10 (E.D.N.C. Nov. 18, 2020), *aff'd*, No. 21-1221, 2021 WL 3783111 (4th Cir. Aug. 26, 2021) (per curiam).

In the meantime, in May 2019, the trustee filed a motion for approval of the settlement he had negotiated resolving all claims in the Red Hat Lawsuit. Two months later, appellant filed a motion to convert her case from Chapter 7 to Chapter 13. On 9 December 2019, the bankruptcy court denied appellant's motion and allowed the trustee's motion. (R., DE # 7-9, at 286-301.) On appeal, this court affirmed that order. *See Dale*, 2020 WL 6817059, at *4-8, 10.

In the Summer of 2020, while her appeal in this court was pending and pursuant to Federal Rule of Civil Procedure 60(b),[4] appellant sought reconsideration not only of the order denying her motion to convert and allowing the trustee's motion for approval of settlement but also of the exemption order. (R., DE # 7-9, at 347-70; R., DE # 7-10, at 3-34.) In response, the trustee filed a motion for sanctions and to prohibit appellant from filing further documents without prior authorization of the court. (R., DE # 9-4, at 117-41.)

Before the bankruptcy court ruled on these motions, appellant caused to be issued to the trustee a subpoena to produce documents. (R., DE # 7-10, at 64-66.) The trustee moved to quash the subpoena. (*Id.* at 71-76.) On 17 September 2020, the bankruptcy court held a hearing on all pending motions and quashed the subpoena. (Notice of Appeal, DE # 1-1,

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[4] Federal Rule of Bankruptcy Procedure 9024 makes Federal Rule of Civil Procedure 60 applicable to bankruptcy cases.

at 2.) The following day, the bankruptcy court memorialized what occurred during the hearing. Because appellant's appeal was pending, the bankruptcy court summarily denied appellant's motion to reconsider the order denying her motion to convert and allowing the trustee's motion for approval of settlement. (*Id.*, DE # 1-2, at 2.) The court denied without prejudice the trustee's motion for sanctions. (*Id.*) Notably, in this regard, the court stated:

> [T]he court cautioned the debtor that the court would look harshly upon further filings that are redundant or appear to consist of further efforts to "double down" on matters that are also on appeal, and emphasized to the debtor that the trustee should not be required to respond to sequential motions to reconsider. The debtor acknowledged her understanding of this warning, represented that she had "pretty much covered" all matters she intended to bring before the bankruptcy court, and indicated that future filings would pertain to the matters that currently are or will be presented to the district court on appeal.

(*Id.* at 2-3.)

On 25 November 2020, after appellant's appeal in this court concluded, the bankruptcy court denied appellant's second motion for reconsideration of the exemption order. (Am. Notice of Appeal, DE # 18-1, at 19.) In summary, the court stated:

> It is apparent to the court that this motion to reconsider the Exemption Order[ ] is prompted by the debtor's reconsideration of

> her own tactical decisions in the bankruptcy case, and it is plain that many of these have not led to the outcome that she expected or desired. But it simply is not the function of a Rule 60(b) motion to permit a party to advance new theories, or to wrangle for another bite at the decisional apple. The court finds no grounds on which it either can or should reconsider the Exemption Order[ ] . . . .

(*Id.*)

Shortly thereafter, appellant filed a motion for declaratory judgment to clarify the exemption order. (Supp. R., DE # 30-4, at 135-44.) She argued that the order was ambiguous as to whether she could amend her exemption in the Red Hat Lawsuit to claim a different statutory exemption. (*Id.* at 135.) In his response in opposition to the motion, the trustee renewed his motion for sanctions against appellant. (*Id.* at 162.)

In its 15 January 2021 order, the bankruptcy court recharacterized appellant's motion as one to clarify or amend the exemption order pursuant to Federal Rule of Civil Procedure 59.[5] (Second Am. Notice of Appeal, DE # 31-1, at 1-2.) The court recognized, "Both the express language and intent of the decretal paragraphs of the March 4, 2019 order prohibit any amended claim of exemption concerning the Red Hat Lawsuit." (*Id.* at 4.) Finding no grounds to reconsider or clarify its order, the court nonetheless

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[5] Federal Rule of Bankruptcy Procedure 9023 makes Federal Rule of Civil Procedure 59 applicable to bankruptcy cases.

addressed appellant's question about the order: "The debtor is prohibited from amending her exemption relating to the Red Hat Lawsuit." (*Id.* at 5 & n.3.)

Pertinent to the issue of sanctions, the bankruptcy court found appellant's "actions constitute a repeated and continuing abuse of process." (*Id.* at 6.) It prohibited appellant from filing any other requests pertaining to the exemption order without leave of court and ordered the trustee to file a bill of particulars regarding the costs incurred in responding to the motion. (*Id.* at 7.) After the trustee filed the bill of particulars, on 28 January 2021, the court supplemented its earlier order, finding the fees and expenses of the trustee reasonable and assessing $2,640.37 against appellant. (*Id.*, DE # 31-2, at 1-2.)

II. Discussion

When reviewing a decision of the bankruptcy court, this court sits as an appellate court and applies the same standards as would the Court of Appeals. *Paramount Home Ent. Inc. v. Circuit City Stores, Inc.*, 445 B.R. 521, 526-27 (E.D. Va. 2010). Accordingly, the court reviews the factual findings of the bankruptcy court for clear error and its legal conclusions *de novo*. *See Mort Ranta v. Gorman*, 721 F.3d 241, 250 (4th Cir. 2013).

Appellant contends the bankruptcy court: (1) lacked jurisdiction or authority to limit her exemption in the Red Hat Lawsuit and to prohibit her from amending the exemption; (2) erred in imposing such a limitation and prohibition; (3) erred in denying her motion to reconsider that order; (4) lacked jurisdiction to deny her motion for declaratory judgment and erred in its construction of the exemption order and

its sanctioning of her; and (5) erred in denying her motion to reconsider the order denying her motion to convert her case and allowing the trustee's motion for approval of the Red Hat Lawsuit settlement.[6] (Appellant's Br., DE # 32, at 5, 10.) Because the first four issues relate to the exemption order, the court considers those issues collectively and then turns to the issue regarding conversion of her bankruptcy case and approval of settlement.

A. Exemption in the Red Hat Lawsuit

1. Subject Matter Jurisdiction

Initially, appellant argues that the bankruptcy court lacked subject matter jurisdiction to limit her exemption in the Red Hat Lawsuit or prohibit her from amending that exemption. (Appellant's Br., DE # 32, at 25-35.) Although appellant did not raise this argument below, the court will consider it now. *See Casa De Maryland v. U.S. Dep't of Homeland Sec.*, 924 F.3d 684, 697 (4th Cir. 2019) ("[A] party may

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[6] As the trustee points out, appellant does not state any issue pertaining to the bankruptcy court's order allowing the trustee's motion to quash the subpoena in either her statement of issues on appeal or her statement of the issues to be presented. (*See* Appellant's Br., DE # 32, at 5, 10; Restatement of Issues to be Decided, DE # 38-3, at 1-2.) Nonetheless, the court will not deem that issue abandoned as the trustee urges. Appellant identifies the issue in the body of her brief, (*see* Appellant's Br., DE # 32, at 40), and argues, albeit briefly, the bankruptcy court erred in quashing the subpoena, (*see id.* at 46). She sufficiently put the trustee on notice of the issue, the trustee has argued the merits of the issue, and there is no prejudice to him. (*See* Appellee's Br., DE # 44, at 50-52.)

challenge subject matter jurisdiction for the first time on appeal. . . . " (citation omitted)).

A district court has jurisdiction "of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). In turn, the district court has the power to refer all such proceedings to the bankruptcy judges for the district, *id.* § 157(a); *see also Educ. Credit Mgmt. Corp. v. Kirkland (In re Kirkland)*, 600 F.3d 310, 315 (4th Cir. 2010), and this court has done so, *see* Standing Order No. 84-PLR-4 (E.D.N.C. Aug. 3, 1984). Resolution of an objection to a claimed exemption, including the propriety of amendment of an exemption, is within the bankruptcy court's jurisdiction and statutory authority. *See* 28 U.S.C. § 157(b)(1), (2)(B); *In re Drumheller*, 574 B.R. 422, 426 (Bankr. D. Mass. 2017) ("The matter before the Court, an objection to claim of exemption, arises under the Bankruptcy Code . . . and in a bankruptcy case and therefore falls within the jurisdiction given the district court . . . and, by standing order of reference, . . . referred to the bankruptcy court. . . . "); *In re Awan*, No. 13-71508, 2017 WL 4179816, at *2 (Bankr. C.D. Ill. Sept. 20, 2017) (determining the bankruptcy court had jurisdiction over the trustee's objection to the debtor's amendment of his claim of exemptions after the case was originally closed). Although appellant couches her arguments in terms of subject matter jurisdiction, they actually concern the bankruptcy court's legal authority under the Bankruptcy Code and procedural rules regarding amendment of exemptions. The question of whether the bankruptcy court properly limited, or prohibited amendment of, any exemption is distinct from whether it possessed subject matter

jurisdiction and goes to the merits of the exemption order, which, for the reasons discussed below, the court will not review.

2. Limitation of Exemption and Prohibition Against Amendment

Even if the bankruptcy court possessed jurisdiction, appellant argues, it erred in limiting her exemption in the Red Hat Lawsuit and prohibiting her from amending it because appellant was entitled to an exemption under N.C. Gen. Stat. § 1C-1601(a)(8) as compensation for personal injury and she had a right to amend her exemptions. (*See* Appellant's Br., DE # 32, at 36-40.) These arguments concern the merits of the exemption order, which was entered on 4 March 2019. Appellant filed her notice of appeal of that order on 9 December 2020. Because her appeal is untimely, *see* Fed. R. Bank. P. 8002(a)(1) (providing 14-day appeal period), the court lacks jurisdiction to review the order, *see Kelly v. Deutsche Bank Nat'l Tr. Co.*, Civ. No. RDB-18-2795, 2018 WL 6790304, at *1 (D. Md. Dec. 26, 2018) ("Failure to file a timely notice of appeal from a bankruptcy court order deprives the district court of jurisdiction to consider the appeal." (citing *Smith v. Dairymen, Inc.*, 790 F.2d 1107, 1109 (4th Cir. 1986); *Ekweani v. Wells Fargo Home Mortg., Inc.*, No. CCB-13-2661, 2013 WL 5937977, at *1 (D. Md. Nov. 5, 2013); *Reig v. Wells Fargo Bank, N.A.*, No. PWG-12-3518, 2013 WL 3280035, at *1 (D. Md. June 26, 2013)). Appellant's appeal of the order will be dismissed.

3. Reconsideration of the Exemption Order and Quashing the Subpoena to the Trustee

Appellant next challenges the bankruptcy court's 25 November 2020 order denying her second motion to reconsider the exemption order under Rule 60(b). Before the bankruptcy court, appellant argued that reconsideration of the exemption order was appropriate because she was entitled to amend her exemption schedule to claim a full, in-kind exemption in the Red Hat Lawsuit as compensation for personal injury pursuant to N.C. Gen. Stat. § 1C-1601(a)(8). (R., DE # 7-10, at 5-6.) The bankruptcy court concluded that appellant had failed to show any of Rule 60(b)'s prerequisites. (Am. Notice of Appeal, DE # 18-1, at 18.) The court reviews this decision for abuse of discretion. *See Snyder v. I.R.S.*, Civ. No. L-07-255, 2007 WL 4287529, at *1 (D. Md. Mar. 8, 2007) ("The Court reviews the denial of a Rule 60 motion for reconsideration under an abuse of discretion standard." (footnote omitted)), *aff'd*, 241 F. App'x 984 (4th Cir. 2007).

> Rule 60(b) allows a court to "relieve a party . . . from a final judgment, order or proceeding" on a limited number of grounds. To prevail, a party must demonstrate (1) timeliness, (2) a meritorious defense, (3) a lack of unfair prejudice to the opposing party, and (4) exceptional circumstances. "After a party has crossed this initial threshold, [it] then must satisfy one of the six specific sections of Rule 60(b)."

Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC, 859 F.3d 295, 299 (4th Cir. 2017) (citations omitted).

Appellant's primary arguments center on whether the trustee would be unfairly prejudiced. (*See* Appellant's Br., DE # 32, at 42-48.) Regarding this issue, the bankruptcy court stated:

> [A]s . . . the history of the matter makes clear, there is simply no way to unwind this case as the debtor seeks to do without extreme- and unfair-prejudice to [the] trustee and to the bankruptcy estate. It is true that creditors' claims were filed prior to the trustee filing the motion to approve settlement, but in negotiating that settlement and in filing the motion to approve it, the trustee took into account the obligation of the estate to pay unsecured creditors. Here, if the debtor were permitted to amend her exemptions to claim a personal injury exemption . . . , the trustee would no longer have that asset for purposes of distribution, which would be tantamount to abandonment. The court is of the view that prejudice to the trustee and the estate could not be any clearer. And again, on that point, the debtor's appeal of the court's order denying her first motion to reconsider the order limiting her ability to further amend her exemptions and the order approving the trustee's settlement of the [Red Hat] Lawsuit both recently were *affirmed*. In sum, that ship has sailed.

(Am. Notice of Appeal, DE # 18-1, at 17-18.) The court agrees with the bankruptcy court's assessment of the unfair prejudice which would result to the trustee and the estate if the exemption order were to be set aside. The bankruptcy court properly exercised

its discretion in denying appellant's second motion for reconsideration of the exemption order.[7]

Related to appellant's ability to show lack of prejudice to the trustee, she argues that the bankruptcy court erred in quashing the subpoena directed to the trustee. (Appellant's Br., DE # 32, at 46.) The subpoena at issue sought "[a]ll documentary evidence of administrative expenses paid or incurred by the Estate or Chapter 7 Trustee, to date, including all billable hours and all other costs and expenses. . . . " (R., DE # 7-10, at 64-66.) The trustee objected on several grounds, including the attorney-client privilege and the work product doctrine. (*See id.* at 71-72.) Nonetheless, responsive to the subpoena, the trustee provided (1) a record of the estate's cash receipts and disbursements, (2) the total time and expenses the trustee's attorneys had expended and advanced, (3) the amount Red Hat, Inc. ("Red Hat") had agreed to reimburse the estate,[8] and (4) the total time and expenses the trustee's attorneys had expended and advanced which Red Hat had not agreed to pay but which the trustee had incurred in reliance on the

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[7] Because the court concludes the bankruptcy court did not abuse its discretion in denying appellant's motion based on her failure to demonstrate a lack of unfair prejudice, the court does not consider her arguments regarding the other prerequisites necessary to obtain relief under Rule 60(b).

[8] In June 2020, the trustee disclosed an agreement between himself and Red Hat, the defendant in the Red Hat Lawsuit, pursuant to which Red Hat would pay up to a specified limit (subject to increase) the attorneys' fees and expenses incurred by the trustee in defending appellant's appeals and the settlement of the Red Hat Lawsuit. (R., DE # 7-9, at 334-46.) The bankruptcy court approved that payment agreement. (*Id.* at 377.)

exemption order and the order denying appellant's motion to convert her case and approving the Red Hat Lawsuit settlement. (*Id.* at 72-75.) The bankruptcy court found that the attorney-client privilege and the work product doctrine protected the documents and information sought and therefore quashed the subpoena. (Notice of Appeal, DE # 1-1, at 2.) That decision is reviewed for abuse of discretion. *See Cook v. Howard*, 484 F. App'x 805, 811 (4th Cir. 2012).

Under Federal Rule of Civil Procedure 45, a court must quash a subpoena that "requires disclosure of privileged or other protected matter, if no exception or waiver applies."[9] Fed. R. Civ. P. 45(d)(3)(A)(iii). Appellant summarily contends "[i]t would not have affected the confidentiality of the Trustee's work product to simply state the matter for which each expense was incurred." (Appellant's Br., DE # 32, at 46.) The court disagrees. As the bankruptcy court properly recognized:

> [T]he documents and information sought . . . particularly including records and descriptions of billable hours and services expended by the Trustee and his counsel, have been prepared by the Trustee's attorneys, contain detailed descriptions of the legal services provided to the Trustee, and would give privileged insight into the opinions, judgments, thought processes, and strategy of the attorneys and the Trustee.

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[9] Federal Rule of Bankruptcy Procedure 9016 makes Federal Rule of Civil Procedure 45 applicable to bankruptcy cases.

(Notice of Appeal, DE # 1-1, at 2.) The bankruptcy court did not abuse its discretion in granting the trustee's motion to quash.

4. Clarification of the Exemption Order and Sanctions

Appellant's remaining arguments concern the bankruptcy court's 15 January 2021 order denying appellant's motion for declaratory judgment to clarify the exemption order. In that order, the bankruptcy court concluded that neither clarification, amendment, nor reconsideration was warranted under Rule 59(e) or 60 and awarded sanctions to the trustee. This court reviews those decisions for abuse of discretion. *See Blue Cross Blue Shield of N.C. v. Jemsek Clinic, P.A. (In re Jemsek Clinic, P.A.)*, 850 F.3d 150, 156 (4th Cir. 2017) ("We review the bankruptcy court's sanctions order for abuse of discretion."); *Ginsberg v. Evergreen Sec., Ltd (In re Evergreen Sec., Ltd.)*, 570 F.3d 1257, 1263 (11th Cir. 2009) (recognizing the appellate court reviews the bankruptcy court's imposition of sanctions under its inherent authority and 11 U.S.C. § 105(a) for abuse of discretion); *Zhang v. Greenfield (In re Xiaolan Zhang)*, Civ. No. DKC 12 1287, 2012 WL 5200072, at *2 (D. Md. Oct. 19, 2012) ("An abuse of discretion standard applies to a bankruptcy court's orders denying either a Rule 60(b) motion or a Rule 59(e) motion." (citations omitted)); *Snyder*, 2007 WL 4287529, at *1.

Appellant contends the bankruptcy court improperly characterized her motion as one under Rule 59. (Appellant's Br., DE # 32, at 63.) According to appellant, her request for declaratory judgment was authorized under provisions (7) and (9) of Federal Rule of

Bankruptcy Procedure 7001 and the Declaratory Judgment Act, 28 U.S.C. § 2201(a). (*Id.*) Pursuant to the Declaratory Judgment Act, "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). Rule 7001 permits proceedings to obtain equitable relief or to obtain a declaratory judgment, among other things, to be brought as adversary proceedings in the bankruptcy court. Fed. R. Bank. P. 7001(7), (9). Notably, appellant's motion did not cite to either the Declaratory Judgment Act or Rule 7001. (*See* Supp. R., DE # 30-4, at 135-39.) A motion seeking clarification of an earlier order—which appellant undeniably sought here—is properly made under Federal Rule of Civil Procedure 59. *See CNF Constructors, Inc. v. Donohoe Const. Co.*, 57 F.3d 395, 400 (4th Cir. 1995) (considering the district's court denial of the appellant's motion for clarification) ("Once a final judgment has been rendered by a district court, we have stated that in cases where a party subsequently submits a motion which is unnamed and does not refer to a specific Federal Rule of Civil Procedure, the courts have considered that motion either a Rule 59(e) motion to alter or amend a judgment, or a Rule 60(b) motion for relief from a judgment or order." (cleaned up) (citation omitted)); *Curtis v. Alcoa, Inc.*, No. 3:06-CV-448, 2012 WL 12965609, at *1 (E.D. Tenn. June 11, 2012) ("Parties seeking a clarification of a judgment or order from the court may do so under Federal Rule of Civil Procedure 59(e)." (citations omitted)). Therefore,

the bankruptcy court properly considered appellant's motion under that rule.[10]

Appellant further claims the bankruptcy court lacked jurisdiction to rule on her (recharacterized) Rule 59 motion because her appeal from the bankruptcy court's denial of her second motion to reconsider the exemption order was pending before this court. (Appellant's Br., DE # 32, at 63-64.) "Generally, the filing of a notice of appeal divests a bankruptcy court of its 'control over those aspects of the case involved in the appeal.'" *In re Howes*, 563 B.R. 794, 806 (D. Md. 2016) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)).

> However, the rule "is not absolute" and the [lower] court "does not lose jurisdiction to proceed as to matters in aid of the appeal." Where a party files a post-judgment motion to alter or amend a judgment pursuant to Rule 59(e), the court retains jurisdiction to resolve the motion under the in aid of an appeal exception.

Zeigler v. Andrews, No. 5:17-HC-2044-FL, 2019 WL 6044809, at *2 (E.D.N.C. Nov. 14, 2019) (citing Fed. R. App. P. 4(a)(4)(B)(i), Advisory Committee Notes (1993 Amendments); *Wolfe v. Clarke*, 718 F.3d 277,

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[10] The bankruptcy court recognized appellant's motion was untimely. (*See* Second Am. Notice of Appeal, DE # 31-1, at 2 n.1.) Nonetheless, "in an effort to more efficiently administer th[e] case, the court [undertook] a substantive analysis of the issue presented." (*Id.*) The court also noted that, to the extent the motion was one for reconsideration under Federal Rule of Civil Procedure 60, it had set forth the grounds required for reconsideration in an earlier order, and appellant failed to show any of them. (*See id.* at 5 n.3.)

281 n.3 (4th Cir. 2013)). Therefore, the bankruptcy court appropriately considered appellant's Rule 59 motion.

Regarding the substance of the bankruptcy's decision, appellant contends the court erred in construing its exemption order to prohibit any amendment of her exemption in the Red Hat Lawsuit. (*See* Appellants Br., DE # 32, at 60-62, 64.) Appellate courts afford lower courts considerable deference in construing their own orders. *See JTH Tax, Inc. v. H & R Block E. Tax Servs., Inc.*, 359 F.3d 699, 705 (4th Cir. 2004) ("When a district court's decision is based on an interpretation of its own order, [appellate] review is even more deferential because district courts are in the best position to interpret their own orders." (citations omitted)); *Regis Corp. v. Houston NW, Inc. (In re Trade Secret, Inc.)*, Civ. No. 12-854-LPS, 2014 WL 3362322, at *2 (D. Del. July 7, 2014) ("[A] bankruptcy court is afforded considerable deference when construing its own orders. . . . "), *aff'd*, 609 F. App'x 98 (3d Cir. 2015). The bankruptcy court reasonably construed the exemption order and thus did not abuse its discretion in denying appellant relief under Rule 59.

Regarding the imposition of sanctions, appellant first contends she was not provided sufficient notice. She claims neither the trustee nor the bankruptcy court complied with the requirements of Federal Rule of Bankruptcy Procedure 9011. (Appellant's Br., DE # 32, at 65.)

> Rule 9011(b) provides that an attorney or *pro se* party who presents a motion to the court certifies that the motion is not presented for an improper purpose, that its arguments are warranted by existing law or by non-

> frivolous arguments to modify existing law, and that factual assertions (or denials thereof) are supported by evidence.

In re CK Liquidation Corp., 321 B.R. 355, 361–62 (B.A.P. 1st Cir. 2005) (footnote omitted) (citing Fed. R. Bank. P. 9011(b)). The bankruptcy court may impose a sanction for a violation of this rule, upon the filing of a separate motion for sanctions or on the court's initiative by a show cause order. Fed. R. Bank. P. 9011(c)(1). Here, the bankruptcy court did not impose sanctions based on a violation of Rule 9011. It did so based on its inherent authority as well as statutory authority under 11 U.S.C. § 105(a). (Second Am. Notice of Appeal, DE # 31-1, at 5-6.) Therefore, neither it nor the trustee was obligated to comply with Rule 9011's notice provisions.

Also, appellant faults the bankruptcy court for failing to provide her with any notice or opportunity for a hearing on the issue of sanctions. (Appellant's Br., DE # 32, at 65.) The bankruptcy court did not hold a hearing on the matter or provide independent notice to appellant that sanctions might be awarded. However, neither was warranted. The issue of imposing sanctions against appellant had been before the bankruptcy court just a few months prior. In a hearing on the trustee's earlier motion for sanctions, the court warned appellant about her conduct, reiterated that warning in a written order, and denied without prejudice the trustee's motion for sanctions. (*See* Notice of Appeal, DE # 1-2, at 2-3.) Under these circumstances, the bankruptcy court did not err in failing to hold a hearing on the trustee's renewed request for sanctions. In that renewed request, the trustee specifically referenced his earlier motion for

sanctions and related filing by docket entry numbers. (Supp. R., DE # 30-4, at 162.) In those filings, the trustee detailed the bases and authority for sanctions. (*See id.* at 36-38, 89-92.) In sum, appellant received adequate notice of sanctions.

Next, appellant argues that the bankruptcy court should not have imposed sanctions because she committed no misconduct. (Appellant's Br., DE # 32, at 65.) She justifies seeking clarification due to the exemption order's purportedly "ambiguous language." (*Id.*) The exemption order was not ambiguous, certainly not by the time appellant filed the Rule 59 motion in December 2020. By that time, on an appeal from the bankruptcy court's denial of appellant's *first* motion for reconsideration, this court had explicitly recognized that the exemption order "prohibit[ed] appellant from further amending her claimed exemption in the [Red Hat Lawsuit]." *Dale*, 2020 WL 6817059, at *3. Also, the bankruptcy court had denied appellant's *second* motion for reconsideration of the exemption order. (*See* Supp. R., DE # 18-1, at 1-2 (denying motion to reconsider and characterizing issue in motion as "the debtor's contention that she should be permitted to amend her exemptions, notwithstanding two Exemption Orders entered allowing the trustee's objections to her exemptions, in which he specifically sought to preclude further amendment of the exemption at issue here").) The court stated:

> [T]he debtor seeks to not only turn back time to the petition date in order to permit her to explore other strategies in the context of how best to exempt her assets, but to also recharacterize the very nature of the pre-petition asset-the [Red Hat] Lawsuit-she

> seeks to claim. There is no basis upon which the debtor may do so.

(*Id.* at 11.) Thus, when she filed the Rule 59 motion, it was clear appellant could not amend her exemption relating to the Red Hat Lawsuit.

Also, appellant argues sanctions were unwarranted because the bankruptcy court knows or should know her only source of income is monthly social security disability benefits, which is exempt from bankruptcy and legal process and insufficient to enable her to pay the trustee's administrative expenses. (Appellant's Br., DE # 32, at 66.) Social security benefits are not "subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. § 407(a). However, the bankruptcy court did not order that appellant use her social security disability benefits to pay sanctions. *Cf. Law v. Siegel*, 571 U.S. 415, 427-28 (2014) ("[A bankruptcy court] may not contravene express provisions of the Bankruptcy Code by ordering that the debtor's exempt property be used to pay debts and expenses for which that property is not liable under the Code."); *Mayer v. Shepard (In re Mayer)*, No. 98-30233, 1999 WL 706062, at *4 (5th Cir. Aug. 16, 1999) (per curiam) ("That [the debtor] may have to use social security benefits—after she receives them—to [pay sanctions], does not violate [42 U.S.C. § 407(a)]." (citation omitted)). Appellant provides no specific information about her financial situation, and the court notes that the bankruptcy court structured the sanctions to be paid in six monthly installments, not a lump sum, (*see* Second Am. Notice of Appeal, DE # 31-2, at 2), so it appears the court appropriately considered her ability to pay.

Finally, appellant suggests the bankruptcy court's imposition of monetary sanctions was unfair or otherwise improper because Red Hat had agreed to pay the administrative expenses pursuant to its agreement with the trustee and because the bankruptcy court additionally sanctioned her by prohibiting her from filing other motions regarding the exemption order without leave of court. The court presumes if appellant pays the trustee as ordered, he will not also seek reimbursement from Red Hat for those same expenses. The bankruptcy court concluded the dual sanctions were appropriate to "ensure the propriety of the debtor's future filings and avoid the substantial waste and delay that has resulted from her prior course of conduct." (*Id.* at 6.)

The bankruptcy court had just reason to sanction appellant based on its inherent and statutory authority. Appellant did not respond to the trustee's objection, which prompted the exemption order, (Second Am. Notice of Appeal, DE # 31-1, at 3; *see also id.* at 4); the trustee had previously moved for sanctions against appellant based on her numerous motions for reconsideration, (*Id.* at 4); the bankruptcy court had warned appellant about her conduct, (Notice of Appeal, DE # 1-2, at 2-3); and appellant had twice before moved to reconsider the order, (Second Am. Notice of Appeal, DE # 31-1, at 2), making this her third attempt to attack that order, (*Id.* at 6). The bankruptcy court acted within its discretion in sanctioning appellant.

B. Denial of Reconsideration of Conversion and Approval of Settlement

Lastly, the court considers appellant's challenge to the bankruptcy court's 18 September 2020 order.

In June 2020, appellant filed her motion for reconsideration under Rule 60(b) seeking relief from the bankruptcy court's order denying her motion to convert her case from Chapter 7 to Chapter 13 and allowing the trustee's motion for approval of the settlement of the Red Hat Lawsuit. (R., DE # 7-9, at 347-70.) At that time, appellant's appeal of that order was pending in this court. When the bankruptcy court held a hearing and decided the motion for reconsideration in September 2020, the appeal remained pending, and for that reason, the bankruptcy court concluded it lacked jurisdiction to consider the motion and summarily denied it under Federal Rule of Bankruptcy Procedure 8008(a)(2). (Notice of Appeal, DE # 1-2, at 2.) Appellant does not take issue with the bankruptcy court's conclusion, but rather she argues the merits of her Rule 60(b) motion. (*See* Appellant's Br., DE # 32, at 70-72.) The bankruptcy court's order is reviewed for abuse of discretion. *See Fairfield Sentry Ltd. v. Theodoor GGC Amsterdam (In re Fairfield Sentry Ltd.)*, No. 10-13164 (SMB), 2020 WL 4813565, at *11 (Bankr. S.D.N.Y. Aug. 10, 2020) ("The decision whether to defer, deny or issue an indicative ruling [under Rule 8008(a)] is within the Court's discretion." (citations omitted)).

"Generally, the filing of a notice of appeal divests a bankruptcy court of its 'control over those aspects of the case involved in the appeal.'" *In re Howes*, 563 B.R. 794, 806 (D. Md. 2016) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). Accordingly, while a bankruptcy court lacks jurisdiction to grant a Rule 60(b) motion while the underlying order is on appeal, *see Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 891 (4th Cir. 1999) ("[A]llowing a dis-

trict court to grant a Rule 60(b) motion while an appeal from the judgment is pending cannot be considered in furtherance of the appeal. . . . If the district court is inclined to grant the motion, it should issue a short memorandum so stating."), it nonetheless retains jurisdiction to entertain such a motion on its merits and deny it, *see* Fed. R. Bank. P. 8008(a)(2) ("If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may . . . deny the motion. . . ."); *Fobian*, 164 F.3d at 891 ("If the district court determines that the motion is meritless, as experience demonstrates is often the case, the court should deny the motion forthwith; any appeal from the denial can be consolidated with the appeal from the underlying order."). Although the bankruptcy court here did not reach the merits of the motion to reconsider, this court may affirm its denial of the motion on any ground apparent from the record. *See Williamson v. Stirling*, 912 F.3d 154, 171 (4th Cir. 2018) ("[W]e are entitled to affirm on any ground apparent from the record." (citation omitted)).

Shortly before appellant filed her Rule 60(b) motion, the trustee disclosed the payment agreement he had reached with Red Hat. *See supra* n.8. This disclosure along with a purported "material inaccuracy" in Red Hat's motion for a continuation of the stay of the Red Hat Lawsuit prompted appellant's Rule 60(b) motion. (*See* R., DE # 7-9, at 347-49.)

Several days after appellant filed her motion, the bankruptcy court approved the payment agreement between the trustee and Red Hat. (*Id.* at 377.) Importantly, the court recognized that the bankruptcy estate

was then administratively insolvent and, with the projected costs associated with the defense of appellant's appeals, would continue to be so "even after receipt of the Red Hat Settlement funds." (*Id.* at 375.) Without funds to assist in defending the appeals, the court found, "it is almost certain creditors of the Estate would not receive a distribution." (*Id.* at 376.) "[O]n the other hand," the court continued, the payment agreement would "enable the Estate to defend against the Appeals and provide a supplement to other funds of the Estate which may be used to defray its costs of such defense, thereby providing a greater potential for the unsecured creditors of the Estate to receive a substantial distribution." (*Id.*) The bankruptcy court concluded that the payment agreement was in the best interest of the bankruptcy estate. (*Id.* at 371.)

Appellant argues that she meets the threshold requirements for Rule 60(b) relief, (*see* Appellant's Br., DE # 32, at 67-70), and that relief was appropriate under sections (b)(1), (4), and (5), (*Id.* at 70-71). Even assuming appellant meets the threshold requirements, she has not satisfied these specific sections of Rule 60(b).

First, relying on Rule 60(b)(1), appellant contends that it was "clear error, mistake, or inadvertence" on the part of the bankruptcy court to approve the settlement of the Red Hat Lawsuit. According to appellant, the settlement agreement that the court approved was not the "full settlement agreement" between the trustee and Red Hat as it did not incorporate their payment agreement. (Appellant's Br., DE # 32, at 70.)

Rule 60(b)(1) permits relief from a final order or judgment for "mistake, inadvertence, surprise, or

excusable neglect." Fed. R. Civ. P. 60(b)(1). However, that section "applies to a party's conduct, not the Court's." *Williams v. Soc. Sec. Admin.*, No. CV 119-075, 2020 WL 2134115, at *1 (S.D. Ga. May 5, 2020) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993); *Solaroll Shade & Shutter Corp. v. Bio-Energy Sys., Inc.*, 803 F.2d 1130, 1132 (11th Cir. 1986)); *see also Burks v. Kelley*, No. 5:14-CV-00154 BSM, 2016 WL 11728948, at *2 (E.D. Ark. Aug. 22, 2016) ("Rule 60(b)(1), however, applies to a party's mistake, not the court's mistake." (citing *Fox v. Brewer*, 620 F.2d 177, 180 (8th Cir. 1980); *Tylon v. City of Chicago*, 97 Fed. Appx. 680 (7th Cir. 2004))). Appellant's own conduct is not a basis for her motion, and therefore, Rule 60(b)(1) is inapplicable. Even considering appellant's argument as falling under Rule 60(b)(6)'s "catchall" section, the payment agreement between the trustee and Red Hat does not impact the validity of the settlement agreement or the bankruptcy court's approval of either agreement. Therefore, the failure of the settlement agreement to incorporate the payment agreement does not justify relief. *See* Fed. R. Civ. P. 60(b)(6).

Next, appellant relies on Rule 60(b)(4). Under that section, a court may "relieve a party from a final order if the judgment is 'void.' An order is 'void' only if the court lacked personal or subject matter jurisdiction or acted contrary to due process of law." *Wells Fargo Bank, N.A.*, 859 F.3d at 299 (citations omitted). Appellant argues that the bankruptcy court lacked subject matter jurisdiction to approve the settlement of the Red Hat Lawsuit because the lawsuit was not property of the bankruptcy estate. (Appellant's Br., DE # 32, at 70.) The court disagrees. That pending

lawsuit is property of the bankruptcy estate as it was filed before appellant filed her Chapter 7 bankruptcy case and constitutes property in which she has a legal or equitable interest. *See* 11 U.S.C. § 541(a)(1) ("The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case."); *Dale*, 2020 WL 6817059, at *7 n.9 ("The lawsuit became property of the bankruptcy estate upon appellant's filing of her bankruptcy petition." (citations omitted)).

Finally, appellant argues relief from the bankruptcy court's order approving the settlement and denying conversion of her case was warranted under Rule 60(b)(5). (Appellant's Br., DE # 32, at 71.) This section of Rule 60(b) permits the court to relieve a party from the prospective application of an order where it "is no longer equitable." Fed. R. Civ. P. 60(b)(5). "This provision usually applies to modifications of injunctions or consent decrees and may be granted if the party seeking relief 'can show 'a significant change either in factual conditions or in the law.'" *United States v. Bissonnette*, No. 1:16-CV-1070 (RDA/IDD), 2021 WL 1438309, at *3 (E.D. Va. Mar. 24, 2021) (quoting *Agostini v. Felton*, 521 U.S. 203, 215 (1997)).

Appellant argues that Red Hat's agreement to pay certain administrative expenses of the trustee evinces Red Hat's willingness to settle for more than what the bankruptcy court approved, shows the approved settlement is unfair and unreasonable, and minimizes any prejudice to the bankruptcy estate. (*See* Appellant's Br., DE # 32, at 71.) Again, the court disagrees with appellant's position. Red Hat's willingness to

pay more, specifically towards the payment of the trustee's fees and expenses in defense of appellant's appeals, simply supports its desire that the bankruptcy court's approval of the settlement not be disturbed. That, in turn, results in the conclusion of litigation against it, a specific benefit it recognized in entering into the payment agreement. (*See* R., DE # 7-9, at 343 (recognizing in the payment agreement that "[t]he specific benefit to Red Hat of the Estate's prevailing in the Appeals includes a settlement and termination of the [Red Hat Lawsuit]").) Furthermore, that willingness does not impact the fairness or reasonableness of the settlement, which the bankruptcy court thoroughly examine and concluded was in the best interest of the estate and the creditors. *See Dale*, 2020 WL 6817059, at *8. To be sure, Red Hat's payment of some of the trustee's administrative expe benefits the estate. However, as noted above and as the bankruptcy court recognized, undue prejudice to the estate would result if the bankruptcy case, including the settlement of the Re Hat Lawsuit, is unwound.

In sum, the court concludes that the bankruptcy court did not abuse its discretion in denying appellant's Rule 60(b) motion to reconsider its order denying appellant's motion to convert her case and approving the settlement of the Red Hat Lawsuit.

III. Conclusion

For the foregoing reasons, the bankruptcy court's orders of 17 September 2020, 18 September 2020, 25 November 2020, 15 January 2021, and 28 January 2021 are AFFIRMED Appellant's appeal of the 4 March 2019 order is DISMISSED.

This 14 September 2021.

/s/ W. Earl Britt
Senior U.S. District Judge

ORDER OF THE UNITED STATES BANKRUPTCY COURT SUPPLEMENT TO ORDER DENYING DEBTOR'S MOTION FOR DECLARATORY JUDGMENT (JANUARY 28, 2021)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE: WENDY M. DALE,

Debtor.

Case No. 18-05448-5-SWH

CHAPTER 7

Before: Stephani W. HUMRICKHOUSE,
United States Bankruptcy Judge.

SUPPLEMENT TO ORDER DENYING DEBTOR'S MOTION FOR DECLARATORY JUDGMENT TO CLARIFY ORDER REGARDING TRUSTEE'S OBJECTION TO EXEMPTION AND PROHIBITING FURTHER MOTIONS FOR RECONSIDERATION, AMENDMENT, OR CLARIFICATION OF THE MARCH 4, 2019 ORDER

On January 15, 2021 the court entered the Order Denying Debtor's Motion for Declaratory Judgment to Clarify Order Regarding Trustee's Objection to Exemption and Prohibiting Further Motions for Reconsideration, Amendment, or Clarification of the March 4, 2019 Order (the Motion) and requested the trustee

file a bill of particulars with respect to his costs incurred in responding to the Motion. The trustee filed a Bill of Particulars on January 18, 2021 which reflects that he incurred $2,567.50 for attorney time and $72.87 in expenses responding to the Motion.

The court finds the fees and expenses to be reasonable and properly assessed against the debtor.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the debtor shall pay Algernon L. Butler, III, at the office of Butler & Butler, L.L.P., P.O. Box 38, Wilmington, North Carolina 28402, the sum of $2,640.37 in five (5) payments of $440.06 and (1) payment of $440.07 as follows:

1. The sum of $440.06 no later than each of March 15, 2021, March 15, 2021, May 15, 2021, June 15, 2021 and July 15, 2021; and
2. The sum of $440.07 no later than August 15, 2021.

SO ORDERED.

SIGNED this 28 day of January, 2021.

/s/ Stephani W. Humrickhouse
United States Bankruptcy Judge

ORDER OF THE UNITED STATES BANKRUPTCY COURT DENYING DEBTOR'S MOTION FOR DECLARATORY JUDGMENT (JANUARY 15, 2021)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE: WENDY M. DALE,

Debtor.

Case No. 18-05448-5-SWH

CHAPTER 7

Before: Stephani W. HUMRICKHOUSE,
United States Bankruptcy Judge.

ORDER DENYING DEBTOR'S MOTION FOR DECLARATORY JUDGMENT TO CLARIFY ORDER REGARDING TRUSTEE'S OBJECTION TO EXEMPTIONS AND PROHIBITING FURTHER MOTIONS FOR RECONSIDERATION, AMENDMENT, OR CLARIFICATION OF THE MARCH 4, 2019 ORDER

This matter came before the court upon the Motion for Declaratory Judgment to Clarify Order Regarding Trustee's Objection to Exemptions filed by the debtor on December 23, 2020, (DK #265) ("the Motion") and the Trustee's Response and Objection to Debtor's Motion for Declaratory Judgment to Clarify Order Regarding Trustee's Exemptions filed on January 4,

2021, (DK #269) ("Trustee's Response"). In the Motion, the debtor seeks clarification of this court's March 4, 2019 Order Regarding the Trustee's Objection to Exemptions (DK #51) ("the March 4, 2019 Order"). At the outset, the court notes that the debtor's request for a declaratory judgment is best recharacterized as a motion to clarify or amend the March 4, 2019 Order pursuant to Rule 59 of the Federal Rules of Civil Procedure made applicable to this case by Rule 9023 of the Federal Rules of Bankruptcy Procedure.[1] Additionally, it is noted that the debtor has sought reconsideration of the March 4, 2019 Order on two prior occasions: January 3, 2020 (DE #123)[2] and July 31, 2020 (DK #199). The January 3, 2020 motion was denied. *See* Order Denying Motion to Set Aside entered January 8, 2020 (DK #132). The July 31, 2020 motion was taken under advisement, *See* Order Regarding Debtor's Motions to Reconsider and Denying Trustee's Motion for Sanctions entered September 18, 2020 (DK #231), and later denied by Order Denying Debtor's Motion to Reconsider Orders Allowing Trustee's Objection to Exemptions entered November 25, 2020 (Dk #248).

In essence, the debtor wishes to know whether the March 4, 2019 Order prohibits her from amending her exemptions to claim her lawsuit against Red Hat,

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[1] Although the debtor's Motion is clearly untimely pursuant to Rule 9023, in an effort to more efficiently administer this case, the court will undertake a substantive analysis of the issue presented.

[2] The basis for reconsideration set forth in the January 3, 2020 motion was that the Red Hat Lawsuit should have been exempted under N.C. Gen. Stat. § 1C-1601(a)(12) as wages necessary for her support.

Inc. (*Dale v. Red Hat, Inc.*, Case No. 5:18-CV-262-BO (E.D.N.C. June 6, 2018), the "Red Hat Lawsuit") as exempt under N.C. Gen. Stat. § 1C-1601(a)(8). The answer is a resounding and unequivocal YES. A recitation of some of the history in this case is necessary to the discussion of why the court easily makes this determination.

The Red Hat Lawsuit was pending at the time the debtor filed her bankruptcy petition. The debtor first scheduled the Red Hat Lawsuit at a value of $32,000,000.00 and did not claim any exemption in it. The debtor then amended her schedules to value the Red Hat Lawsuit at $0.00 and to claim a wildcard exemption in it under N.C. Gen. Stat. § 1C-1601(a)(2) of "100% of the fair market value, up to any statutory limit." That exemption statute is informally referred to as the "wildcard" exemption and is capped at $5,000. The debtor also claimed a wildcard exemption in $70 in cash.

The trustee objected to the debtor's exemption for the Red Hat Lawsuit and requested that the exemption in the Red Hat Lawsuit be limited to $4,930.00. The trustee further requested that the debtor not be "permitted to amend her claim of exemptions to claim, or increase any claim of, any exemption in any property in which an exemption is requested herein to be disallowed or limited." Trustee's Objection to Exemptions filed December 31, 2018 (DE# 27).

The debtor did not respond to the trustee's objection and it was allowed by order dated January 24, 2019 (DK #37). After receiving notification of undeliverable mail to debtor, the trustee sought to ensure proper service on the debtor and refiled his objection seeking the same relief, but with service on

the debtor's temporary address (the accuracy of which had been confirmed by the debtor) (DK #46). The debtor did not respond again to the trustee's objection and the March 4, 2019 Order granting the amended objection was entered. The March 4, 2019 Order holds as follows:

1. The Objection is allowed.
2. The Debtor's claim of exemption in deposits of money pursuant to N.C. Gen. Stat. § 1C-1601(a)(2) shall be and hereby is allowed in the scheduled value of $70, and the Debtor's claim of exemption in the Claims Against Red Hat and Moore shall be and hereby is limited to the statutory limit of N.C. Gen. Stat. § 1C-1601(a)(2) less $70 representing the claim of exemption in the deposits of money.
3. The Debtor shall not be permitted to amend her claim of exemptions to claim, or increase any claim of, an exemption in any property in which an exemption has been disallowed or limited herein.

The debtor did not appeal the January 24, 2019 Order or the March 4, 2019 Order.

On May 20, 2019, the trustee filed a Motion to Approve Compromise with Red Hat seeking approval to settle the estate's claims against Red Hat for the sum of $54,450.00 (DK #59). In support of the motion, the trustee expressly sets forth in paragraph 8 thereof, the extent of any exemption in those claims as determined by the March 4, 2019 Order. In paragraph 19 of the motion, the trustee states that "an approval of the settlement shall secure a substantial fund for the

Bankruptcy Estate which otherwise would be unavailable." The fact that the exemption taken in the Red Hat lawsuit could not be amended was an integral part of the trustee's negotiations regarding and decision to seek authority to compromise the claim.

On June 7, 2019, the debtor filed her response to the compromise motion in which she makes no mention of any exemption in the Red Hat Lawsuit, but instead asserts that the claims of creditors can be satisfied by means alternative to the Red Hat settlement and asks that the court deny the compromise on that basis (DK #66).

On August 28, 2020, the trustee filed Trustee's Motion to Sanction Debtor and to Prohibit Her from Filing Further Documents Without Prior Authorization of the Court (DK #210). Therein, the trustee asserted that the debtor's numerous motions for reconsideration are meritless, vexatious, and a burden on the court, and the trustee requested that she be prohibited from filing any additional documents without prior authorization of the court and sanctions. On October 13, 2020, the debtor amended her Schedule A/B to list the Red Hat Lawsuit at a value of "$0, unknown" (DK #238). On that same date, the debtor filed an amended Schedule C that noted the Red Hat Lawsuit and simply referred to the March 4, 2019 Order where a description of the exemption claimed was requested.

Both the express language and intent of the decretal paragraphs of the March 4, 2019 Order prohibit any amended claim of exemption concerning the Red Hat Lawsuit. The lawsuit is property in which a claimed exemption has been limited to $4,930.00. The fact that the N.C. Gen. Stat. § 1C-1601(a)(2) wildcard exemption is not an in-kind property exemp-

tion does not change that conclusion. The property in which the exemption was claimed, whether it be the property itself or some amount of value in it, is the Red Hat Lawsuit.

Furthermore, as has been made imminently clear in the court's November 25, 2020 Order, the trustee sought a prohibition on further amendment so that his efforts to administer the estate would not be prejudiced. The purpose of prohibiting further amendment to a claim of exemptions in the lawsuit was to ensure that the trustee could assess the value of the Red Hat Lawsuit and negotiate a settlement with the understanding that any proceeds would be used to pay claims of creditors. If the debtor was allowed to further modify her exemptions in that lawsuit, the trustee's efforts would be prejudiced, and would result in no benefit to creditors. The debtor continues to misunderstand the prejudice to the trustee to be limited to his attorneys' fees, however, the prejudice includes his efforts to negotiate a return to her creditors, a prejudice that cannot be cured or avoided by the payment of fees by Red Hat. Most importantly, the debtor was given two occasions to respond to the trustee's specific request that no further amendment to exemptions be allowed, and she chose not to avail herself of those opportunities or appeal the January 24, 2019 Order or March 4, 2019 Order.

Once again, there are no grounds to reconsider the March 4, 2019 Order.[3] The court finds that the

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[3] The required grounds for reconsideration under Federal Rule of Civil Procedure 60 and Federal Rule of Bankruptcy Procedure 9024 are set out in full in the courts November 25, 2020 Order, and the debtor has failed to assert or show the existence of any.

March 4, 2019 Order needs no clarification but will answer the debtor's specific question: The debtor is prohibited from amending her exemption relating to the Red Hat Lawsuit.

Additionally, there is just cause to prohibit the debtor from filing any other requests for the reconsideration, amendment, or clarification of the March 4, 2019 Order without prior leave of this court, and this court has authority to do so.

Bankruptcy courts have the authority to regulate litigants' behavior and to sanction litigants for bad faith conduct pursuant to both § 105 of the Bankruptcy Code and a federal court's inherent powers. 11 U.S.C. § 105; *Ginsberg v. Evergreen Sec., Ltd., (In re Evergreen Sec., Ltd.)*, 570 F.3d 1257, 1263 (11th Cir. 2009); *McGahren v. First Citizens Bank & Trust Co. (In re Weiss)*, 111 F.3d 1159, 1171 (4th Cir. 1997) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44 (1991)). Pursuant to § 105 of the Bankruptcy Code:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). The fact that a litigant is *pro se* does not excuse the litigant's bad faith conduct. *Weiss*, 111 F.3d at 1170. Other courts have found that an appropriate sanction for a continuous pattern

of bad faith filings is to restrict the litigant's ability to file further pleadings without court authorization. *See, e.g., Gordy v. Stafford (In re Gordy)*, Case No. 12-60020, 2013 WL 5488657 (Bankr. S.D. Ga. Oct. 1, 2013); *In re Kozich*, 406 B.R. 949 (Bankr. S.D. Fla. 2009).

The debtor's actions constitute a repeated and continuing abuse of process. The debtor now has attempted to attack the March 4, 2019 Order on three occasions. No further attempts will be tolerated. An appropriate sanction is one which will ensure the propriety of the debtor's future filings and avoid the substantial waste and delay that has resulted from her prior course of conduct. The court finds that it is appropriate to prohibit the debtor from filing any other requests for the reconsideration, amendment, or clarification of the March 4, 2019 Order without prior leave of this court. The debtor is put on notice that she will be assessed sanctions should this order be violated. The court also requests that the trustee file a bill of particulars with respect to his costs incurred in responding to this most recent motion to reconsider.

THEREFORE, IT IS HEREBY ORDERED that the debtor is prohibited from filing any other requests for the reconsideration, amendment, or clarification of the March 4, 2019 Order without prior leave of this court. Violation of this order will result in significant sanctions.

IT IS FURTHER ORDERED that the trustee should file a bill of particulars with respect to his costs incurred in responding to this Motion within 14 days of entry of this order.

SO ORDERED.

SIGNED this 15 day of January, 2021.

/s/ Stephani W. Humrickhouse
United States Bankruptcy Judge

ORDER OF THE UNITED STATES BANKRUPTCY COURT DENYING DEBTOR'S MOTION TO RECONSIDER ORDERS ALLOWING TRUSTEE'S OBJECTION TO EXEMPTIONS (NOVEMBER 25, 2020)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE: WENDY M. DALE,

Debtor.

Case No. 18-05448-5-SWH

CHAPTER 7

Before: Stephani W. HUMRICKHOUSE,
United States Bankruptcy Judge.

ORDER DENYING DEBTOR'S MOTION TO RECONSIDER ORDERS ALLOWING TRUSTEE'S OBJECTION TO EXEMPTIONS

Pending before the court is the *pro se* chapter 7 debtor's motion to set aside or reconsider the court's orders of January 24, 2019 (Dkt. 37), and March 4, 2019 (Dkt. 51) (collectively, the "Exemption Orders"), which the debtor filed on July 31, 2020. Dkt. 199. The chapter 7 trustee filed a response in opposition to the motion on August 28, 2020. Dkt. 209. A telephonic hearing was held on this motion and sev-

eral others on September 17, 2020, after which the court entered a short order resolving those additional motions (Dkt. 231) and taking this motion to reconsider under advisement. For the reasons that follow, the motion will be denied.

The debtor filed her chapter 7 bankruptcy petition on November 8, 2018, and the bankruptcy court entered an order appointing Algernon L. Butler, III as the chapter 7 trustee on November 9, 2018. The order granting the debtor's bankruptcy discharge was entered on February 21, 2019. At issue in this motion to reconsider is the debtor's contention that she should be permitted to amend her exemptions, notwithstanding two Exemption Orders entered allowing the trustee's objections to her exemptions, in which he specifically sought to preclude further amendment of the exemption at issue here.

That exemption relates to a pre-petition civil action filed by the debtor on June 6, 2018 in the federal district court for the Eastern District of North Carolina. The debtor, proceeding *pro se* there as well as here, filed the action against her former employer, Red Hat, Inc., and Leah Moore, individually and in her official capacity as Red Hat's "Senior People Risk Manager." The debtor amended her complaint on August 14, 2018. The amended complaint alleged that Red Hat violated her rights under the Americans with Disabilities Act ("ADA") by failing to accommodate certain disabilities, by subjecting her to disparate treatment, and by engaging in retaliation; in addition, the debtor alleged wrongful termination under North Carolina state law (collectively, the "Claims Against Red Hat"). *Dale v. Red Hat, Inc.*, Case No. 5:18-CV-262-BO (E.D.N.C. 2018) ("Discrimination Lawsuit").

On motion of defendants Red Hat and Moore, the district court entered an order dismissing Moore from all of the claims asserted against her, and denying Red Hat's partial motion to dismiss.[1]

The Discrimination Lawsuit was pending at the time the debtor filed her chapter 7 petition and is the property of the bankruptcy estate. In schedules filed with her bankruptcy petition on November 8, 2018, the debtor valued the Discrimination Lawsuit at $32,000,000.00, and claimed no exemption in it. Dkt. 1 at 19. The debtor amended her schedules on December 27, 2018, to value the Discrimination Lawsuit at $0.00 and to claim an exemption in that asset pursuant to what is commonly termed the "wild card" provision set out in N.C. Gen. Stat. § 1C-1601(a)(2), of "100% of the fair market value, up to any statutory limit." The debtor likewise claimed the fair market value, up to any statutory limit, of certain cash deposits in the total amount of $70. Dkt. 24 at 8, 12. The trustee filed an objection, stating:

> As the debtor has claimed exemptions pursuant to N.C. Gen. Stat. § 1C-1601(a)(2) of "100% of the fair market value, up to any statutory limit" in both deposits of money listed with a value of $70, and in the Claims against Red Hat . . . which she has valued at $0, the Trustee requests that the Court enter an order (i) allowing the Debtor's claim of exemptions in the deposits of money pur-

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[1] The debtor also filed a state court action in Wake County Superior Court against Red Hat and multiple individual defendants, which also was dismissed on motion of defendants. *Dale v. Red Hat, Inc.*, Case No. 17 CvS 14409 (2017).

> suant to N.C. Gen. Stat. § 1C-1601(a)(2) in the scheduled value of $70, and (ii) limiting the Debtor's claim of exemption in the Claims Against Red Hat . . . to the statutory limit of N.C. Gen. Stat. § 1C-1601(a)(2) less $70 representing the claim of exemption in the deposits of money.

Dkt. 27 at 2. Under N.C. Gen. Stat. § 1C-1601(a)(2), the debtor's exemption in the Discrimination Lawsuit would be limited to $4,930.00. Arguing that the debtor already had received adequate time in which to claim exemptions and that any further amendment would be prejudicial to administration of the estate, the trustee sought entry of an order providing that the debtor could not further amend or increase her claims of exemptions. *Id.* The debtor did not respond, and the motion was allowed by order entered on January 24, 2019. Dkt. 37.

On February 22, 2019, the trustee initiated what was essentially a "do-over" of his objection by filing an amended objection to exemptions in which he sought the same relief the court already had allowed, explaining that the original objection to exemptions served on the debtor had been returned to the trustee's office as "Undeliverable," notwithstanding the fact that it had been correctly addressed. The trustee stated that his office had contacted the debtor via email and had confirmed with her the accuracy of that address, as well as the debtor's actual receipt of court notices and orders, and that the debtor had informed the trustee that she was temporarily living elsewhere. This amended motion, seeking the same relief, was then served on the debtor via email, at her permanent address, and also

at the temporary address she provided to the trustee. Again, the debtor did not file a response. The court's second order granting this amended objection to the debtor's claim of exemptions was entered on March 4, 2019. Dkt. 51. This order refers to the "Exemption Orders" in the plural but, as the trustee accurately points out, the orders are identical and the second order supplants the first order.

In this motion to reconsider, the debtor contends that the Exemption Orders are "in direct contravention of the Bankruptcy Code and Rules" and are "void to any extent they seek to limit Debtor's full claim of exemption in the Discrimination Lawsuit or her right to amend her exemption schedule." Dkt. 199 ("Debtor's Mem.") at 3-4. In addition and more specifically, the debtor contends that

> the information brought forward by the Trustee in his Disclosure and Application to Approve Agreement shows that the Court's Orders are no longer prospectively equitable in that any prejudice claimed by the Trustee in his Objection to Exemptions is no longer material because the Trustee's reasonable administrative expenses in attempting to liquidate the Discrimination Lawsuit are being covered by Red Hat; therefore, any basis that may have existed for the Court's prohibition on amendments to Debtor's exemption schedule is no longer applicable.

Id. at 4. Finally, and for the first time, the debtor argues that the Exemption Orders "do not impart justice in this matter because the Debtor has a statutory right to a full, in-kind exemption of her Discrimination Lawsuit because it constitutes a claim for

payment for personal injuries," such that justice requires that the Exemption Orders be overturned.[2] *Id.* (emphasis added). In response, the trustee argues that the debtor's motion is both untimely and unfounded. Dkt. 209 ("Trustee's Mem.).

DISCUSSION

Federal Rule 60 governs motions for relief from a judgment or order, and is made applicable in bankruptcy by Rule 9024 of the Federal Rules of Bankruptcy Procedure. That rule provides that relief from a judgment or order may be provided for any of six specified reasons, the existence of which must be established by the petitioning party:

> (b) Grounds for Relief from a Final Judgment, Order or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise or excusable neglect;

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[2] The Discrimination Action does not allege personal injury, as will be discussed later in this order, beyond a recitation that the debtor suffered emotional harm along with other repercussions from her dismissal from Red Hat; specifically, that she

> suffered severe emotional distress, public humiliation, damage to her professional and personal reputation, loss of income and benefits, loss of personal assets including her real estate investments and Red Hat stock, damage to her personal credit rating, social isolation, and other financial and non-financial harm.

Dale v. Red Hat, Inc., Case No. 5:18-CV-00262-BO, Dkt. 20 at p 14 (Amended Complaint filed on August 15, 2018).

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of Motion

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after entry of the judgment or order or the date of the proceeding.

Fed. R. Civ. P. 60(b), (c). In addition, both the debtor and the trustee acknowledge that under Fourth Circuit precedent, before a party may petition for relief under Rule 60(b), the party

> first must show "timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances." *Werner v. Carbo*, 731 F.2d 204, 207 (4th Cir. 1984). After a party has crossed this initial threshold, he then must satisfy one of the six specific sections of Rule 60(b). *Id.*

Debtor's Mem. at 4, *quoting Dowell v. State Farm Fire & Casualty Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993); *see also* Trustee's Mem. at 13-14. Whether to grant a motion for relief under any of these circumstances is within the sound discretion of the court. *Wendy Dale v. Algernon Butler, III,* No. 7:19-CV-254-BR, at 5 (E.D.N.C. Nov. 17, 2020) (Dkt. 2457) (citing cases); *see also Specialized Loan Servicing, LLC v. Devita,* 610 B.R. 513, 519 (E.D.N.C. 2019) (noting, in context of a thorough discussion of Rule 60(b) motions, that bankruptcy courts' denials of Rule 60(b) motions are reviewed for abuse of discretion).

The debtor maintains that she can satisfy these initial prerequisites, then argues that the court exceeded its authority in entering the orders such that they are void, per Rule 60(b)(4); that information submitted by the trustee in connection with his motion to approve an agreement with Red Hat in May of 2019 shows that the Exemption Orders are no longer prospectively equitable under Rule 60(b)(5); and, under Rule 60(b)(6), that the orders "do not impart justice in this matter because the debtor has a statutory right to a full, in-kind exemption of her Discrimination Lawsuit because it constitutes a claim for payment for personal injuries, and justice therefore requires that they be overturned." Debtor's Mem. at 3-4. The court turns now to the prerequisites for consideration of the motion to reconsider, and the initial question of timeliness.

I. Timeliness of Motion to Reconsider

Although the court refers to the "Exemption Orders" in this motion, it is undisputed that the second exemption order replaced the first one and is the

only Exemption Order in effect. *See* Trustee's Mem. at 12, n.4. The first order was entered on January 24, 2019, and the second order was entered on March 4, 2019. This motion to reconsider was filed on July 31, 2020–over sixteen months later.

The debtor maintains that she has "consistently sought to protect her interests in the discrimination lawsuit to the best of her ability and knowledge, objecting almost immediately to the Trustee's Motion to Approve Compromise of Controversy and timely filing a Motion to Convert to Chapter 13 before any action had been taken on the Trustee's Motion." Debtor's Mem. at 4-5. Those particular motions and matters are not at issue now, however, though it certainly is true that the debtor has been an active and capable participant in her bankruptcy case. For the matter that is at issue here, the debtor has offered no explanation as to why she did not previously seek reconsideration of the Exemption Orders on the bases she now asserts.[3] The debtor also did not respond in any way whatsoever to the trustee's

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[3] The debtor did seek reconsideration of the Exemption Orders (specifically, the first Exemption Order) in her motion to reconsider and/or for a new trial filed on January 3, 2020, wherein she asserted that the court should reconsider or amend that order, together with two additional orders. Dkt. 123. While that motion to reconsider was filed within a year of entry of the Exemption Order, it sought reconsideration on a completely different basis from the one the debtor now asserts. After a hearing on the motion, it was denied by order entered on January 8, 2020. Dkt. 132. The debtor appealed the January 8, 2020 order denying reconsideration, which was affirmed by the district court on November 17, 2020. Dkt. 247. The district court's order has some import in connection with this court's review of the instant motion, and is discussed *infra*.

initial objection to her exemptions at the time his objection was filed, either by filing a response, or requesting a hearing, or requesting additional time in which to respond if needed; nor has she provided any explanation as to why.

Instead, the debtor maintains that "this Motion is timely in that it is filed within a reasonable amount of time under the circumstances, before the end of the bankruptcy case, and without unnecessary delay after the Trustee's filing of his Disclosure of and Application to Approve Agreement." Debtor's Mem. at 5. While the bankruptcy case is not yet closed, the court otherwise cannot agree. There is nothing in "the circumstances" of which the court is aware to excuse the delay in filing this motion, and the trustee's application to approve agreement to which the debtor refers was in fact filed on May 20, 2019–well over a year ago. Dkt. 59. The debtor expects the court to excuse the lateness of this motion, without providing any legitimate basis upon which the court could even consider whether it would be appropriate to do so.[4]

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[4] The court is well aware that the debtor is proceeding *pro se* in this matter. However, while "*pro se* litigants are entitled to some deference from courts," that deference is not "unlimited." *Ballard v. Carlson*, 882 F.2d 93, 94 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990), *quoted in Harrington v. Saturn Corp.*, Case No. 8:17-CV-00656, 2017 WL 6419138, at *1 (D. Md. Sept. 25, 2017). As it does with all *pro se* parties, this court has extended to the debtor every available measure of patience and leniency, and has taken the most solicitous view reasonably possible of her arguments and pleadings.

The court notes that Ms. Dale is most certainly not a typical *pro se* litigant. She has extensive paralegal training and experience, which was a component of her position as a contracts specialist in Red Hat's Commercial Legal Group and is quite apparent in

Historically speaking, "courts ruling on Rule 60(b) motions 'have been unyielding in requiring that a party show good reason for his failure to take appropriate action sooner.'" *Kontoulas v. A.H. Robins Co.*, 745 F.2d 312, 316 (4th Cir. 1984) (internal citation omitted). The debtor delayed for almost a year and a half in filing this motion, during which time–as is addressed below–a series of significant actions were taken and decisions made in reliance on the Exemption Orders. The court concludes that this motion is untimely and that the debtor has provided no adequate or reasonable explanation for its lateness. On that basis alone, the motion fails to comport with the necessary prerequisites and must for that reason be denied.

II. Meritorious Defense

The second prerequisite to reconsideration under Rule 60(b) is that the petitioning party establish a meritorious defense, which "requires a proffer of evidence which would . . . establish a valid counterclaim" or, put another way, indicate the likelihood of a contrary outcome. *Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp.*, 843 F.2d 808, 812 (4th Cir. 1988). The debtor does not specifically address the second prong as such, but instead brings forward the

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both her pleadings and in the legal maneuvering she is currently undertaking in an effort to seek reconsideration or "do overs" of various aspects of this case. The debtor has at all times appeared to the court to be a sophisticated and capable participant in this matter, which is the debtor's third bankruptcy case in this district. The debtor also has at all times been fully aware of a fundamental precept that this court emphasizes to every *pro se* party: Neither the court nor any attorney on the other side of an issue can act as their advocate, or provide legal advice to them.

substance of and asserted bases for the reconsideration she asks the court to undertake. She maintains that the Exemption Orders were "in error and void ab initio" and "wrongfully deprived Debtor of the right to further amend her claim of exemptions in the Discrimination Lawsuit." Debtor's Mem. at 5.

The trustee responds that in order to establish a meritorious defense, the debtor must proffer evidence that she is entitled to both amend her claim of exemption in the Discrimination Lawsuit, again, and further that she may claim an unlimited personal injury compensation exemption pursuant to N.C. Gen. Stat. § 1C-1601(b). Trustee's Mem. at 14-18. The trustee cites a series of obstacles to the debtor in undertaking this effort, including: 1) the specific provisions of the Exemption Orders which preclude further attempts to amend the exemption; 2) the doctrines of res judicata and claim preclusion, which likewise preclude such attempts, citing *In re Gress*, 517 B.R. 543, 548 (Bankr. M.D. Pa. 2014) (debtor's attempt to amend claim of exemptions precluded where exemption has previously been disallowed); and 3) the waiver of any ability to assert the exemption due to the debtor's failure to assert same after notice do to so, under N.C. Gen. Stat. § 1C-1601(c)(3).

Further, the trustee argues, even if the Exemption Orders had not been entered and the obstacles just cited did not apply, the debtor still would not be able to amend or modify the exemption under N.C. Gen. Stat. § 1C-1603(g), due to the lack of a material change in circumstances as required by that statute. *See Taylor v. Caillaud*, No. 3:15-CV-00206-GCM, 2015 WL 7738391, at *5 (W.D.N.C. Dec. 1, 2015). The trustee concludes that principles of equitable estoppel likewise

bar any further amendment to the sworn representations made by the debtor in her schedules.

Finally, the trustee argues that the debtor's newly asserted basis for amendment is not even legally cognizable in light of the facts and procedural posture of this case. Specifically:

> The extensive and uncontroverted testimony given by witnesses at the hearing of September 18, 2019 on the Trustee's Motion for Compromise shows that . . . she has not sustained any personal injuries for which Red Hat could be held responsible. To the contrary, based upon the record before the Court the Debtor's suit was nothing but a "strike suit" and the value of the Red Hat Settlement that the Trustee was able to negotiate for the estate is not based upon or compensable for any injury to the Debtor. Because the Debtor is unable to demonstrate that she has any personal injuries for which Red Hat could be held responsible, she is unable to claim an exemption in the Claims Against Red Hat based on "compensation for personal injury" pursuant to N.C. Gen. Stat. § 1C-1601(a)(8).

Trustee's Mem. at 18.

It appears to the court that the trustee's final argument is most responsive to what the debtor seeks to do via this second motion to reconsider the Exemption Orders, which is to recharacterize the Discrimination Lawsuit as a personal injury tort action (notwithstanding the fact that the compromise of the Discrimination Lawsuit already has been both

approved and consummated), and then assert that the settlement proceeds of the Discrimination Lawsuit constitute "compensation for personal injury" which may, on that basis, be exempted by the debtor to an unlimited extent. In other words, the debtor seeks to not only turn back time to the petition date in order to permit her to explore other strategies in the context of how best to exempt her assets, but to also recharacterize the very nature of the pre-petition asset—the Discrimination Lawsuit—she seeks to claim. There is no basis upon which the debtor may do so.

In the interest of thoroughness, the court will review the history of this case, which makes it apparent to the court that the underlying premise of this motion to reconsider is the debtor's ongoing opposition to and disagreement with the court's order of December 9, 2019, wherein the court denied the debtor's motion to convert to chapter 13 and allowed the trustee's motion for approval of a compromise of the controversy between the debtor and Red Hat. Dkt. 101. The trustee's final argument in the context of whether the debtor can show a meritorious defense—which is that she seeks to recharacterize the Discrimination Lawsuit in order to take a fresh legal approach to claiming an exemption in it—likewise appears to recognize the actual gist of this motion. The court is aided in this discussion by the order recently entered by the District Court for the Eastern District of North Carolina, wherein that court affirmed both the December 9, 2019 order and this court's order of January 8, 2020, which denied the debtor's first motion to reconsider the Exemption Order and her motion for a stay pending appeal. Dkt 247.

By way of review, in the trustee's motion for approval of compromise, which he filed well over a year ago, the trustee sought approval of a proposed settlement of the Discrimination Lawsuit and the Claims Against Red Hat for the total sum of $54;450.00; of this amount, the trustee proposed that Red Hat pay $10,000.00 to the bankruptcy estate to compensate the estate for time and expense expended by the trustee, with the remaining $44,450.00 paid to the estate in full and final resolution of any claims the estate may have had against Red Hat (the "Settlement Agreement"). D.E. 59. The debtor filed a response in opposition to the motion in which she argued among other things that the trustee's proposed settlement was unreasonable, reflected a lack of due diligence, and was fundamentally unfair in that the proposed agreement grossly undervalued a claim she estimated to be worth $32 million dollars. D.E. 66.

The debtor also sought, unsuccessfully, to convert from chapter 7 to chapter 13, candidly explaining that it was her "intent to render [the] Trustee's Motion to Approve Settlement moot by converting to Chapter 13 Bankruptcy, under which she is entitled to retain control over her assets." Debtor's Response to Trustee's Supplemental Motion to Approve Compromise of Controversy and Supplemental Motion to Convert to Chapter 13 (D.E. 99) at 1 ("Debtor's Response"). In support of that motion, the debtor maintained that she had at all times been fully transparent about her income and assets, and that if she was permitted to convert the case, she would not be "depriving her creditors of anything they are legally entitled to so long as Debtor complies with the applicable bankruptcy law and a Court-approved Chapter 13 Plan." *Id.* at 6.

For the reasons set out in the court's order of December 9, 2019, applicable bankruptcy law precluded conversion of this case and supported the court's approval of the compromise proposed by the trustee. Dkt. 101 ("Compromise Order"). This order was affirmed by the district court on November 17, 2020. Dkt. 242.

The court notes that in that order, the court also considered the trustee's contentions that the debtor had made misleading and inaccurate representations on her statements regarding the Employment Action. The court undertook the necessarily broad analysis of whether the debtor's motion to convert should be denied on grounds that it was not filed in good faith, which generally involves an assessment of the totality of the circumstances. *See, e.g., Fields*, 2016 WL 3462203 *4 ("A determination of bad faith requires an examination of the totality of the circumstances."); *see also In re Marino*, 388 B.R. 679, 682 (Bankr. E.D.N.C. 2008). The court concluded that the debtor had misrepresented the value of the Discrimination Lawsuit, and taken unwarranted steps to regain control of that action, in ways that were "uncomfortably similar to the facts in *Marrama*." Dkt. 101 at 11, *citing Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007).

Specifically, the court concluded that the problem here lay "not in the debtor's desire to convert, but rather in the steps she has undertaken to facilitate it: Specifically, the debtor's amendment of her schedules to downgrade the value of the Discrimination Lawsuit from $32,000,000.00, which the court finds to be wildly overvalued, to $0.00 with a claimed exemption in that "fair market value," which the court found to

be a material and intentional misrepresentation." Dkt. 101 at 11. As the court explained:

> The court sees the debtor's misrepresentation of the value of the Employment Action, together with her effort to convert the case in order to take control of that asset despite her inability to qualify as a chapter 13 debtor, as being uncomfortably similar to the facts in *Marrama*. In that case, the chapter 7 debtor made misleading or inaccurate statements about a number of things and especially about his principal asset, which was a house in Maine. The debtor listed its value as zero, and denied that he had transferred any property other than in the ordinary course of business within the previous year. "In fact," the Court wrote, the property "had substantial value, and Marrama had transferred it into the newly created trust for no consideration seven months prior to filing his Chapter 7 petition." *Marrama,* 549 U.S. at 368. Marrama acknowledged that "the purpose of the transfer was to protect the property from his creditors." *Id.*

Id.

This court went on to discuss *Marrama* at some length in the Compromise Order, and brings up that discussion in this order as well because, while *Marrama* is primarily cited in the context of conversion, the import of that case reaches much farther. Significantly, the *Marrama* Court observed that "[n]othing in the text of either § 706 or § 1307(c) or the legislative history of either provision) limits the authority of the court to take appropriate action in response to fraud-

ulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama*, 549 U.S. at 374-75. To the contrary, the Court held, the "broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors." *Id.* at 375 (emphasis added, footnote omitted).

Returning to the instant motion, and with the full history of this case in mind, the court concludes that the debtor has not established a meritorious defense sufficient to warrant reconsideration of the Exemption Orders. And again, it is evident that what the debtor seeks to do here, by means of highly sophisticated legal maneuvering, is to take a fresh approach to claiming her exemptions by asserting that the Discrimination Lawsuit was, at least in part, a personal injury action such that proceeds from it would be exempt under N.C. Gen. Stat. § 1C-1601(a)(8). That untimely effort is precluded by both fact and law. Neither the Settlement Agreement nor the debtor's Discrimination Lawsuit include any assertion or discussion of a personal injury claim, nor did the debtor give any indication of a personal injury component to the Discrimination Lawsuit in connection with her opposition to the trustee's motion to approve the settlement of the lawsuit. Near the beginning of the almost four-hour hearing on that motion, in response to the debtor's arguments that the trustee failed to

accurately comprehend the potential value of the Discrimination Lawsuit, the court emphasized to the debtor that in the litigation context, "there comes a time when if someone has a position that is vital, that they ought to come forward, and show it." Dkt. 145 at 25 (transcript of September 18, 2019 hearing) (observing further that "today would have been a good time for you to have done that"). Instead, as the debtor herself made clear during the hearing on the trustee's motion to approve settlement, the Discrimination Action had four components:

> The, the claims that I've made in my lawsuit are failure to provide a reasonable accommodation. Uh, there is also, um, a harassment. There is also I guess adverse—you know, taking an adverse action or discrimination against someone because they are disabled. Um, and, uh, there's retaliation, which is all, all—you know, there are actually like four separate parts.

Dkt. 145 at 148. The separate state law claim, the debtor argued, is "a claim for wrongful termination under North Carolina law." *Id.* at 149. In addition, the debtor sought to advance public policy objectives by acting in accordance with her view that large companies should not be permitted to take wrongful actions without being held accountable. *Id.* at 147-48. She emphasized that it was not "just about money" but rather about exercising a "right to control," and to "have a voice . . . to explain what happened [and] why it's so devastating for me." *Id.* at 18. At no point in this whole long process has there been even a whiff of a personal injury claim against Red Hat–not until the debtor sought, in July of 2020, to rechar-

acterize her exemption. There is simply no basis upon which the debtor may do so.

III. Lack of Unfair Prejudice to Opposing Party

On this point, the debtor focuses on the provision of the compromise reached as between Red Hat and the trustee, and insists that the motion is

> not prejudicial to any interested party because it only seeks to set aside the Court's Orders in order to clarify that the Discrimination Lawsuit has already been fully exempted, or alternatively, to allow the debtor to exercise her statutory right to claim a full, in-kind exemption of the Discrimination Lawsuit by amending her claim. Such exemption would not be prejudicial to the estate because the agreements encapsulated in the Trustee's Motion to Approve Compromise of Controversy and the Trustee's Disclosure of and Application to Approve Agreement with Red Hat provide that Red Hat will be responsible for the Trustee's administrative expenses arising from his attempts to settle the Discrimination Lawsuit, in amounts which are more than sufficient to cover his reasonable expenses; therefore, should the Court grant this motion and Debtor successfully exempts the Discrimination Lawsuit, the Trustee would still be compensated for his efforts. Additionally, no creditor would be prejudiced because all creditor claims were filed prior to the filing of the Trustee's Motion for Approval of Compromise or Controversy; therefore, there is no evidence of

> detrimental reliance by any creditor upon the Orders or upon the Trustee's Proposed Settlement with Red Hat that seeks to liquidate the Discrimination Lawsuit for the benefit of creditors.

Debtor's Mem. at 5. The debtor, citing *Tignor v. Parkinson*, 729 F.2d 977, 979 (4th Cir. 1984), emphasizes that amendment to schedules generally is to be freely allowed, and that where a trustee's position in a case has not changed as a result of a particular exemption not being claimed when the petition was filed, there are "no exceptional circumstances warranting denial of the debtor's amendment" and the "trustee may not successfully claim detrimental reliance simply because a schedule that could be amended was in fact amended."

In addition, the debtor maintains, even if the posture of this case was such that the trustee would incur administrative expenses in having to reopen the case and object to an exemption, such a development still would not weigh against the debtor's right to amend her exemption schedule: Under *In re Dunn*, she argues, the court "allowed an amended claim for full exemption of a personal injury settlement several years after the case had been closed, despite the trustee's objection," based on that court's conclusion that "[d]isallowing the exemption at this juncture would deprive the debtor of an asset that he is otherwise lawfully entitled to and would result in a windfall to his creditors not sanctioned by the Bankruptcy Code." *In re Dunn*, No. 05-09708-8-JRL (Bankr. E.D.N.C. July 7, 2010) (emphasis added), *quoted in* Debtor's Mem.

at 10.[5] And, to the extent there would be any prejudice to the trustee if reconsideration was allowed and the relief sought awarded, the debtor believes that "any prejudice incurred by the Trustee as a result of this Motion is the result of his own bad faith intentions in refusing to acknowledge Debtor's statutory rights under the Bankruptcy Code, and most certainly not a consequence of Debtor seeking to amend her exemption schedule and exempt her assets pursuant to such rights." Debtor's Mem. at 6.

The trustee responds with a recitation of the extensive series of decisions made, actions undertaken, and orders entered in this case, all of which were responsive to and very "specifically in reliance on the provisions of [the Exemption Orders] limiting the Debtor's exemption to a maximum of $4,930 and precluding her from amending her exemptions to claim or increase her claim of exemption in the Claims Against Red Hat." Trustee's Mem. at 19. The court need not repeat those here, and as the foregoing

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[5] The court's rationale in *Dunn* does not extend to the instant case. In that case, the debtor was "entitled to a *personal injury settlement* from a *mass tort pharmaceutical product litigation suit*." *In re Dunn*, No. 05-09708-8-JRL, at 1 (Bankr. E.D.N.C. July 7, 2010) (emphasis added). The court attributed the debtor's failure to schedule the personal injury claim as an exempt asset to "excusable neglect," based upon the debtor's uncertainty of how he became involved in the class action in the first place, his reasonable reliance on communications from the class action attorney to the effect that the action had been dismissed, his own mental and physical health challenges, and the incompetence of his counsel. *Id.* at 2-3. In contrast, this case involves unfortunate efforts to assign value based on changing legal theories, and the facts of record have no tenable connection to a personal injury action for which the debtor conceivably could exempt "compensation for personal injury."

discussion of the history of the matter makes clear, there is simply no way to unwind this case as the debtor seeks to do without extreme–and unfair–prejudice to trustee and to the bankruptcy estate. It is true that creditors' claims were filed prior to the trustee filing the motion to approve settlement, but in negotiating that settlement and in filing the motion to approve it, the trustee took into account the obligation of the estate to pay unsecured creditors. Here, if the debtor were permitted to amend her exemptions to claim a personal injury exemption (which, as the preceding discussion makes clear, is an impossibility), the trustee would no longer have that asset for purposes of distribution, which would be tantamount to abandonment. The court is of the view that prejudice to the trustee and the estate could not be any clearer. And again, on that point, the debtor's appeal of the court's order denying her first motion to reconsider the order limiting her ability to further amend her exemptions and the order approving the trustee's settlement of the Discrimination Lawsuit both recently were *affirmed*. In sum, that ship has sailed.

IV. Exceptional Circumstances Warranting Relief

Finally, the debtor contends that exceptional circumstances exist here because the trustee has acted "based on his own bad faith intentions," undertaken "clandestine attempts to deprive this *pro se* Debtor of her statutory exemption rights," and has "exploited her lack of legal knowledge an experience in his attempts to deny her the full in-kind exemption in the Discrimination Lawsuit," among other things. Debtor's Mem. at 6-7. The court, upon full review of the pleadings and based upon the several hearings conducted

in this matter, concludes that there is no evidentiary basis whatsoever on which to conclude that the trustee has undertaken any aspect of his duties with an unprofessional motive or goal, let alone that the trustee has engaged in efforts to exploit the debtor or to act in any way that could be deemed "callous and unfair." The court is unable to find the existence of any exceptional circumstances that would support reconsideration of the Exemption Orders.

CONCLUSION

In light of the court's conclusion that the debtor cannot establish any of the prerequisites to reconsideration of the Exemption Orders, and because it is necessary to satisfy all of those prerequisites to proceed to reconsideration under Rule 60(b), the motion to reconsider must be dismissed. *Werner v. Carbo*, 731 F.2d 204, 206-07 (4th Cir. 1984). Though the court lacks grounds on which to undertake the Rule 60(b) analysis, the court's comprehensive review of the debtor's arguments makes plain that there are no bases under Rule 60(b) on which the debtor could prevail. The Exemption Orders are not void, they are not "prospectively inequitable," and the interests of justice would not be served by reconsideration.

It is apparent to the court that this motion to reconsider the Exemption Orders is prompted by the debtor's reconsideration of her own tactical decisions in the bankruptcy case, and it is plain that many of these have not led to the outcome that she expected or desired. But it simply is not the function of a Rule 60(b) motion to permit a party to advance new theories, or to wrangle for another bite at the decisional apple. The court finds no grounds on which it either can or

should reconsider the Exemption Orders, and the motion to reconsider the Exemption Orders is, for the foregoing reasons, DENIED.

SO ORDERED.

SIGNED this 25 day of November, 2020.

/s/ Stephani W. Humrickhouse
United States Bankruptcy Judge

ORDER OF THE UNITED STATES BANKRUPTCY COURT REGARDING DEBTOR'S MOTIONS TO RECONSIDER AND DENYING TRUSTEE'S MOTION FOR SANCTIONS (SEPTEMBER 18, 2020)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE: WENDY M. DALE,

Debtor.

Case No. 18-05448-5-SWH

CHAPTER 7

Before: Stephani W. HUMRICKHOUSE,
United States Bankruptcy Judge.

ORDER REGARDING DEBTOR'S MOTIONS TO RECONSIDER AND DENYING TRUSTEE'S MOTION FOR SANCTIONS

Pending before the court are two motions to reconsider filed by the pro se debtor, Wendy Dale. The first is the debtor's motion to reconsider the court's order of December 9, 2029 (Dkt. 101, the "Conversion Order"), which she filed on June 16, 2020.[1] (Dkt. 181) The

[1] This motion is the second motion to reconsider the Conversion Order. The debtor filed an initial motion to reconsider or set

trustee filed a response in objection on July 27, 2020. (Dkt. 197) The debtor also seeks reconsideration of the court's orders of January 24, 2019 (Dkt. 37), and March 4, 2019 (Dkt. 51) (collectively, the "Exemption Orders"). That motion was filed on July 31, 2020 (Dkt. 199), and the chapter 7 trustee filed a response in objection to this motion on August 28, 2020. (Dkt. 209)

Also pending before the court are two motions filed by the trustee. In a motion filed on August 28, 2020 (Dkt. 210), the trustee seeks sanctions and to prohibit the debtor from filing further documents without prior authorization of the court. The debtor did not file a response. Additionally, on September 8, 2020, the trustee moved to quash two subpoenas issued by the debtor on September 3, 2020 (Dkt. 215, Dkt. 216), pursuant to which the debtor sought production of documents by the trustee. (Dkt. 221) A telephonic hearing on the four motions was held on September 17, 2020, during which both the pro se debtor and the trustee appeared.

At the conclusion of the hearing, the court denied the debtor's second motion to reconsider the Conversion Order. The debtor already has appealed that order, and this court has no jurisdiction to consider it; accordingly, the motion was denied under Rule 8008 (a)(2) of the Federal Rules of Bankruptcy Procedure.

The court took the debtor's motion to reconsider the Exemptions Order under advisement. The debtor

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aside the Conversion Order on January 3, 2020. (Dkt. 123) Prior to that, the debtor had already appealed the Conversion Order. (Dkt. 103) The initial motion to reconsider the Conversion Order was denied by order entered on January 8, 2020. (Dkt. 132)

provided a series of exhibits in support of this motion, the admissibility of which was determined as follows: Exhibit A, admitted; Exhibits B1, B2 and B3, denied on grounds of hearsay and irrelevance; Exhibit C, admitted; Exhibit D, denied on grounds of hearsay and irrelevance; Exhibit E, admitted; Exhibits F1, F2, and F3, admitted (more specifically, the court takes judicial notice of these documents); and Exhibit G, admitted over the trustee's objection. The trustee may file a statement of position with respect to the court's evidentiary rulings.

The trustee's motion to quash was allowed, and that ruling is commemorated in a separate order entered on September 17, 2020. (Dkt. 230).

The trustee's motion for sanctions was denied without prejudice. However, the court cautioned the debtor that the court would look harshly upon further filings that are redundant or appear to consist of further efforts to "double down" on matters that are also on appeal, and emphasized to the debtor that the trustee should not be required to respond to sequential motions to reconsider. The debtor acknowledged her understanding of this warning, represented that she had "pretty much covered" all matters she intended to bring before the bankruptcy court, and indicated that future filings would pertain to the matters that currently are or will be presented to the district court on appeal.

SO ORDERED.

SIGNED this 18 day of September, 2020.

/s/ Stephani W. Humrickhouse
United States Bankruptcy Judge

ORDER OF THE UNITED STATES BANKRUPTCY COURT REGARDING TRUSTEE'S OBJECTION TO EXEMPTIONS (MARCH 4, 2019)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE: WENDY M. DALE,

Debtor(s).

Case No. 18-05448-5-SWH

CHAPTER 7

Before: Stephani W. HUMRICKHOUSE,
United States Bankruptcy Judge.

ORDER REGARDING TRUSTEE'S OBJECTION TO EXEMPTIONS

This matter comes before the Court upon the Trustee's Amended Objection to Exemptions claimed by the Debtor. For the reasons set forth in the motion, the Court finds that the Objection is appropriate and should be granted. Accordingly, the Court makes the following finds of facts and conclusions of law:

1. On November 8, 2018 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 7 with the U.S. Bankruptcy Court for the Eastern District of North Carolina, and Algernon L. Butler, III

was duly appointed as Chapter 7 Trustee in this case (the "Trustee").

2. On June 6, 2018 the Debtor filed in the U.S. District Court for the Eastern District of North Carolina a civil action captioned *Wendy M Dale, Plaintiff, vs. Red Hat, Inc. and Leah Moore, in both her individual capacity and as an agent of Red Hat, Inc., Defendants*," Case No. 5:18-CV-262-BO, and on August 14, 2018 the Debtor filed an amended complaint in that action asserting causes of action for failure to accommodate under the Americans with Disabilities Act, disparate treatment under the Americans with Disabilities Act, retaliation under the Americans with Disabilities Act, libel, punitive damages, and common law termination in violation of public policy (the "Claims Against Red Hat and Moore").

3. On the Debtor's originally filed schedules she listed the Claims Against Red Hat and Moore on Line 33 of her Schedule A/B as "Pending federal employment discrimination claim against former", valued the asset at $32,000,000, and did not claim any exemption therein.

4. The § 341 Meeting was held on December 18, 2018.

5. On December 27, 2018 the Debtor filed amended schedules. On the Debtor's amended schedules she listed the Claims Against Red Hat and Moore on Line 33 of her amended Schedule A/B as "Pending federal employment discrimination claim against former", reduced her statement of value of the asset to $0, and on her amended Schedule C listed the Claims Against Red Hat and Moore as "Federal lawsuit" with

a value of $0 but also indicated that she claimed an exemption in the asset pursuant to N.C. Gen. Stat. § 1C-1601(a)(2) in the amount of "100% of the fair market value, up to any statutory limit."

6. On the Debtor's amended schedules she also claimed an exemption pursuant to N.C. Gen. Stat. § 1C-1601(a)(2) of "100% of the fair market value, up to any statutory limit" in deposits of money listed with a value of $70.

7. It is essential to the administration of this estate that the Trustee and all parties in interest know and understand the extent to which the Debtor may be allowed an exemption in assets of this bankruptcy estate.

8. As the Debtor has claimed exemptions pursuant to N.C. Gen. Stat. § 1C-1601(a)(2) of "100% of the fair market value, up to any statutory limit" in both deposits of money listed with a value of $70, and in the Claims Against Red Hat and Moore which she has valued at $0, the Trustee requests that the Court enter an order (i) allowing the Debtor's claim of exemption in deposits of money pursuant to N.C. Gen. Stat. § 1C-1601(a)(2) in the scheduled value of $70, and (ii) limiting the Debtor's claim of exemption in the Claims Against Red Hat and Moore to the statutory limit of N.C. Gen. Stat. § 1C-1601(a)(2) less $70 representing the claim of exemption in the deposits of money.

9. The Debtor has had adequate time to claim exemptions, and any amendment to the Debtor's claims of exemption in the property that is the subject of this objection after the entry of the Court's order on this objection would be prejudicial to the Trustee

and his administration of this estate. Therefore, the Trustee also requests that the Debtor not be permitted to amend her claim of exemptions to claim, or increase any claim of, an exemption in any property in which an exemption is requested herein to be disallowed or limited.

NOW, THEREFORE, in consideration of the foregoing findings of fact and conclusions of law, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. The Objection is allowed.

2. The Debtor's claim of exemption in deposits of money pursuant to N.C. Gen. Stat. § 1C- 1601(a)(2) shall be and hereby is allowed in the scheduled value of $70, and the Debtor's claim of exemption in the Claims Against Red Hat and Moore shall be and hereby is limited to the statutory limit of N.C. Gen. Stat. § 1C-1601(a)(2) less $70 representing the claim of exemption in the deposits of money.

3. The Debtor shall not be permitted to amend her claim of exemptions to claim, or increase any claim of, an exemption in any property in which an exemption has been disallowed or limited herein.

SO ORDERED.

SIGNED this 4 day of March, 2019.

/s/ Stephani W. Humrickhouse
United States Bankruptcy Judge