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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 FRESNO DIVISION

8 In re) Case No. 10-19193-B-13
9)
10 Enrique Medina and)
11 Susana Medina,)
Debtors.)
_____)

12 **ORDER DENYING ORAL MOTION TO STRIKE**

13 Thomas O. Gillis, Esq., appeared as counsel for the debtors, Enrique Medina and
14 Susana Medina.

15 Michael H. Meyer, Esq., appeared in his capacity as the chapter 13 trustee.

16 On August 28, 2014, a hearing was held on this court's order to show cause
17 why the debtors' attorney, Thomas O. Gillis, Esq. ("Gillis"), should not be sanctioned
18 for, *inter alia*, violating Federal Rule of Bankruptcy Procedure 9011(b) (the "OSC").
19 Prior to the hearing, on August 25, the chapter 13 trustee, Michael H. Meyer, Esq.
20 (the "Trustee") filed a response to Gillis' supplemental brief (ECF No. 76; the
21 "Trustee's Response"). At the hearing, Gillis made an oral motion to strike the
22 Trustee's Response (the "Motion to Strike"). For the reasons set forth below, the
23 Motion to Strike will be denied.

24 The Motion to Strike was stated broadly. Without citing which specific
25 portions of the Trustee's Response were offensive, Gillis took issue with the Trustee's
26 comments regarding his ability to represent his clients and moved to strike the entire
27 Response. The court has reviewed the Trustee's Response and identified only one
28 sentence in the brief which appears to relate to Gillis' objection, it states:

1 Due to [counsel's] numerous filings and numerous cases
2 currently pending and his failure to accurately represent the law
3 and facts, the Trustee is concerned that even now Debtors'
4 counsel is not knowledgeable enough in Chapter 13 to represent
5 his clients.

6 Trustee's Resp. 4:6-8, Aug. 25, 2014, ECF No. 76.

7 In a supporting declaration, the Trustee made the statement:

8 I merely advised Mr. Gillis, that he did not understand how to
9 read the information [in the Trustee's computer system] and that
10 due to his incompetence I would be forced to rectify this matter.

11 Trustee Decl. 6:11-12, Aug. 25, 2014, ECF No. 77.

12 The court's authority to strike a pleading arises under Fed.R.Civ.P. 12(f)(made
13 applicable here by Fed.R.Bankr.P. 7012) which states in pertinent part: "The court
14 may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous
15 matter." Rule 12(f) motions are generally viewed with disfavor, and are not
16 ordinarily granted, because they are often used to delay, and because of the limited
17 importance of the pleadings in federal practice. *Bureerong v. Uvawas*, 922 F. Supp.
18 1450, 1478 (C.D. Cal. 1996). A motion to strike should not be granted "unless it is
19 clear that the matter to be stricken could have no possible bearing on the litigation."
20 *Lilley v. Charren*, 936 F.Supp. 708, 713 (N.D. Cal. 1996) (citing *Colaprico v. Sun*
21 *Microsystems, Inc.*, 758 F.Supp. 1335, 1339 (N.D. Cal. 1991)).

22 Here, the court issued the OSC because Gillis had filed a motion seeking to
23 judicially compel the Trustee to close a pending chapter 13 case before completion of
24 the term stated in the confirmed plan. The court denied the motion and issued the
25 OSC. The OSC necessarily questions Gillis' knowledge of the law and performance
26 of his duty of due diligence under Rule 9011(b). At the hearing on the OSC, Gillis
27 acknowledged that he was not familiar with the applicable Ninth Circuit authority
28 upon which the motion to compel had been denied.

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1 The Trustee's Response was filed at the court's invitation in a civil minute
2 order issued on August 7, 2014 (setting a briefing schedule for both parties to respond
3 to the OSC). The court views the above-referenced comments by the Trustee as mere
4 expressions of the Trustee's experience, frustration (presumably from prior cases),
5 and personal opinion. Both statements relate to the issue raised in the OSC, Gillis'
6 knowledge of applicable chapter 13 law. The statement in the Trustee's Response
7 falls within the scope of relevant argument. The "incompetence" statement in the
8 Trustee's declaration is merely a restatement of what the Trustee communicated to
9 Gillis. Both statements are relevant. However, the court is able to accept such
10 statements for what they are, argument and opinion. Neither statement will influence
11 the court's ability to rule on the OSC based on the record and the applicable law. The
12 Trustee's comments are certainly not egregious enough to justify striking the entire
13 Response. Based thereon,

14 IT IS HEREBY ORDERED that Gillis' Motion to Strike the entire Trustee's
15 Response is DENIED.

16 Dated: September 15, 2014
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19 /s/ W. Richard Lee
20 W. Richard Lee
21 United States Bankruptcy Judge
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