

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Chief Bankruptcy Judge  
Sacramento, California

January 7, 2016 at 10:30 a.m.

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1. [13-24254-E-7](#) RUSS TRANSMISSION INC MOTION TO APPROVE COMPENSATION  
SMD-5 Gary F. Zilaff FOR TRUSTEE'S ATTORNEY  
12-10-15 [[214](#)]

**APPEARANCE OF THE CHAPTER 7 TRUSTEE REQUIRED  
FOR THE HEARING - No Telephonic Appearance Permitted**

**If Trustee Fails to Appear, The Motion Will Be Denied  
Without Prejudice and The Trustee May Then File A New  
Motion Which Complies With Fed. R. Bankr. P. 9013, Is  
Supported by Competent Credible Evidence, And Exhibits  
Are Properly Authenticated (Fed. R. Evid. 901)**

**Tentative Ruling:** The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The

defaults of the non-responding parties are entered.

**The Motion for Allowance of Professional Fees is granted.**

Susan Didriksen, the Chapter 7 Trustee ("Applicant") for Russ Transmission, Inc, the Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period March 29, 2013 through December 10, 2015. Applicant requests the maximum commission under 11 U.S.C. § 326(a) of \$70,933.92 and costs of \$162.50.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Benefit to the Estate**

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The Applicant, as the Trustee, reviewed the Debtor's schedules and statements. The Applicant conducted the § 341 meeting, liquidated assets of the estates for the benefit of the estate. The applicant examined proofs of claim to eliminate duplication. The Applicant prepared monthly bank reconciliations and proper accounting of all assets. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The total disbursements to entities other than the Debtor are \$1,589,463.95.

The Bankruptcy Code limits the maximum amount of fees which a Chapter a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,00 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to

exceed 3% of such monies in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant seeks to be paid a sum of \$70,933.92 for its fees which is the maximum allowable under 11 U.S.C. § 326. The Applicant asserts that she has spent at least 312 hours on the administration of the instant case.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has not been organized into categories. Rather than organizing the activities which are best known to Applicant, it is left for the court, U.S. trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information.

When a Chapter 7 Trustee has an extraordinary case such as this one, in which substantial fees computed at the maximum commission amount are sought, it is the obligation of the Trustee to provide the court with sufficient information to determine that such maximum compensation also meets the statutory requirement that they be "reasonable" fees, which may not exceed the maximum percentages provided in the statute. 11 U.S.C. § 326(a), stating, "In a case under Chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, ...not to exceed [the specified statutory maximum percentages]. The court recognizes that the percentage compensation scheme is treated as a "commission," (11 U.S.C. § 330(a)(7)), which allows the bankruptcy process to take into account that for a trustee, the fees average out over time. However, the "commission" aspect must be reasonable, as expressly provided in 11 U.S.C. § 326(a) and § 330(a), but include all relevant factors into what is a reasonable "commission," including those stated in 11 U.S.C. § 330(b)(3) (A), (B), (C), (D), and (F). It is not merely a process in which the court rubber stamps the maximum percentage compensation.

The Trustee's Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the \$70,933.92 is based:

- A. Debtor commenced a voluntary Chapter 7 case on March 29, 2013.

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- B. Trustee was appointed on March 29, 2013.
- C. The court is directed to read the itemized statement of services provided filed as Exhibit 1.
- D. The Trustee performed normal trustee duties, including:
  - 1. Opening the case;
  - 2. Entering the case into the Trustee's case management software system;
  - 3. Reviewing petition, schedules, and statements;
  - 4. Reviewing mail;
  - 5. Preparing for and conducting the § 341 meeting;
  - 6. Liquidation of estate assets;
  - 7. Preparing and filing Forms 1, 2, and 3 [without identifying what such forms are] as required by the U.S. Trustee;
  - 8. Examining proofs of claims to eliminate duplicate claims, and compare claims to the debts listed on the Schedules;
  - 9. Preparing monthly bank reconciliations and accounting for assets; and
  - 10. Preparing final accounting.

Motion, Dckt. 219. The Motion continues to further assert that an aggregate of 312 hours was spent on administration of this case. (For the \$70,933.92 in fees, on an aggregate basis this averages \$227 an hour for the services provided.)

Based on the above, the Trustee seeks that the court determine that the reasonable trustee's fees, computed as a commission, must be the maximum amount permitted under the Bankruptcy Code. No grounds are stated as to what was done or why there is asserted to be 312 hours of work performed by the Trustee. From the Motion, this would appear to be little more than a simple one asset liquidation.

While not part of the Motion and not a statement of the grounds upon which the relief is requested, the court next looks to the Declaration of the Trustee. Dckt. 221. The "testimony" provided in the "Declaration," is nothing more than a cut and paste of the general "grounds" stated in the Motion. The Declaration offers little to nothing to help the court determine that the maximum percentage commission computation is reasonable.

Finally the court reviews the Exhibits, Dckt. 222, filed in support of the Motion (again the Exhibits not being "grounds" stated in the motion upon

which the relief is based).

The court has allowed the Trustee's Counsel \$124,387.000 in legal fees in this case. Order, Dckt. 187. The hourly rate for the senior partner billing for services provided the Trustee was \$390.00. No explanation was provided by the Trustee why counsel did not assist her in preparation of a \$70,933.92 maximum percentage fee application in this Chapter 7 case. The significant legal fees allowed by the court also foretell of this being a complex Chapter 7 case - however, neither the attorney nor the Trustee provide any such testimony.

Though the Trustee has chosen not to state as grounds or provide any testimony as to what has transpired in this case, the court looks to its own docket. The court first notes that almost immediately in this case there was a hotly contested motion for relief from the automatic stay (filed by Dos Rios Investors, LLC). DCN: MLG-1. The court denied the motion without prejudice, the findings of the court discussing that the moving creditor was adequately protected, the Trustee was addressing insurance proceeds, and that the Trustee was having to "hustle" with her professionals to determine the actual value of the property and benefit of it to the estate. Civil Minutes, Dckt. 65.

The Trustee then proceeded with several 2004 Examinations relating to insurance proceeds and further recovery for the estate relating to pre-petition damage to the property of the Estate. The Trustee then embarked on the marketing and sale of two real properties of the Estate - the Knights Landing Property and the Elvis Avenue Property. These were not simple sales, which overlapping deeds of trust. Civil Minutes, Dckts. 124, 125. This required multiple motions, as the Trustee addressed complex business issues concerning an asserted right of first refusal. Motion, Dckt. 133. The Trustee also sold the Folsom Boulevard Property.

The Trustee was also required to work with her accountant to reconstruct corporate tax returns for the fiscal years June 30, 20107 through June 30, 2012, address tax audits for those years, and the prior unsuccessful Chapter 11 case filed by Debtor. The Trustee also had to work with the accountant to generate the proper post petition tax returns. The court has allowed the accountant \$45,990.00 in fees and expenses just for the accountant's portion of the work.

As shown from the Docket and the Trustee's Final Report the gross proceeds from the sale of the three properties total \$1,510,000. In addition, the Trustee recovered \$70,749.20 in rent for the Folsom Boulevard Property. Trustee's Final Report, Dckt. 201. The Trustee collected smaller amounts of rent from the other properties of the estate.

After payment of secured claims, there was approximately \$700,000 for the estate. However, there are significant tax claims, State and Federal, which had to be paid (after the correct amounts determined). These were \$292,963.09 for 2014 (Dckt. 189), \$53,175.06 (sales tax), and \$19,770.57 (sales tax claim). To unwind, reconstruct, address, and deal with the complex business issues involving the property of the estate, the estate incurred substantial professional fees - aggregating approximately \$183,000. The court found that these costs and expenses were necessary for the Trustee to be able to properly administer the estate.

If one just fixated only on the Trustee's Final Report statement of monies to be paid to creditor's general unsecured claims, it might appear that \$70,933.22 in Chapter 7 Trustee fees to pay only \$25,218.19 is unreasonable. Such a myopic review would be as equally flawed and the Trustee's demand for payment of the maximum percentage commission as the minimum amount of reasonable fees without consideration of the statutory limitation that the fees, which cannot exceed the maximum percentages, must be "reasonable" and the various factors listed by Congress in 11 U.S.C. § 330.

The court is responsible for correctly applying the law, even when the parties ignore it. See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); see also *Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)). While the court does not present its own evidence in support of this ruling, the court does consider the record in this case as set forth on the Docket.

This has been an extraordinarily complex Chapter 7 case which has consumed two and one-half years of trustee and court time. Though the Trustee could state it much better and more clearly, the court has outlined some of the more complex tasks to be performed by the Chapter 7 Trustee. In many respects, this Chapter 7 Trustee was required to investigate and address business issues more akin to those faced by a Chapter 11 trustee.

While the court determines that awarding substantial fees to the Trustee, well in excess of what was generated for creditors holding general unsecured claims, the Trustee should not be misled into thinking: (1) the present Motion, Declaration, and Exhibits are sufficient; (2) the Trustee can just have the court do the work for the Trustee. Such pleadings are indicative of a trustee whose effective rate would be substantially less than what is being allowed in this case. The court computes that the Trustee has off-loaded 2.5 hours of work on the judge to properly consider this Motion. Using the same hourly rate as counsel for the Trustee, \$390 an hour, this equates to \$975.00 of value of such "services."

Though not explained by the Trustee, from the court's review of the 20 pages of the unauthenticated billing records, some of the activities stated as warranting the maximum percentage as the minimum amount of "reasonable" trustee fees appears to be clerical or secretarial.

The court finds that the reasonable commission fees in this case for the Chapter 7 Trustee are \$68,750.00. Including the \$852,419.06 in secured claims being paid, there was \$1,589,321.17 in gross receipts handled by the Trustee. The court's calculation computes the Trustee's fee on the full 25%, 10%, and 5% permitted under 11 U.S.C. § 326. The adjustment is a reduction of only 0.37 percentage points from the 3% maximum amount for the amounts in excess of \$1,000,000 on which the trustee's fees are computed (a 2.63% commission percentage on the amounts in excess of \$1,000,000). This adjustment takes into account the nature of some of the services and the quality of the work as demonstrated in the fee application. FN.1.

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FN.1. Trustee do themselves a great disservice, and all but beg the court to deny a substantial portion of fees, when they ask the court to merely rubberstamp a request for commission fees computed at the maximum amount

without regard to any grounds being stated or credible, properly authenticated evidence being submitted. Trustee's fees, in the plain language of the statute are: (1) treated as a "commission," (2) cannot exceed the maximum percentages stated by Congress, and (3) must be reasonable in light of the court considering the nature, extent, and value of the trustee's services, taking into account all relevant factors (including those specified in 11 U.S.C. § 330(b)(3)(A)-(F)).

A more skeptical judge might believe that this application was filed as a Trojan horse in an attempt to goad the court into denying the application. This would be done to set up an appeal, in which the Trustee would have no opponent to a contention that the maximum percentages really are the de facto minimum fees to be allowed a trustee without any showing of reasonableness. While this court does not believe that Congress has enacted a "if you ask for it, you will be paid" trustee compensation structure, in this case, on the merits, the Trustee is entitled to substantial compensation in the amount of \$68,750.00. If this court allows fees substantially less than the maximum amount permitted under 11 U.S.C. § 326, the basis for stating why such fees are not reasonable will be clearly stated.

The court does not believe that the Trustee was advancing such a Trojan horse, but the deficiencies in the pleadings may be indicative of bigger shortcomings for the Trustee that may surface in future more complex cases.

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**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$162.50 pursuant to this applicant. These three exhibits cover 23 pages and are not summarized in the Motion or discussed in the Declaration. The Trustee even fails to state under penalty of perjury that these documents are true and accurate copies, or that the information provided in them are true and correct. Fed. R. Evid. 901, authentication of documents.

The Trustee, rather than organizing, analyzing, and discussing the information in these Exhibits, the Trustee instead appears to delegate that work to the court (assuming that the court would find these unauthenticated documents to be credible). The court could interpret this failure to provide the court with this information to be a determination by the Trustee that \$70,993.92 in fees does not warrant her time and effort to provide the court with such information.

Exhibit 1 is Timesheet Report from March 29, 2013 through November 9, 2015. This listing of tasks covers 20 pages. Various activities running from talking with her attorney, communing with an auctioneer, preparing motions, inspection of property, correspondence with CPA, communicate with real estate agent, valuation of cell tower lease, reviewing damage to property of the estate, working on stipulations, negotiating sale of various assets, working with brokers to generate additional buyers, review prior tax returns, and pursuing a tax refund. It would appear, that with minimal effort, the Trustee could state substantial grounds in the Motion and provide testimony in a declaration of significant actions and activities of a sophisticated nature. However, she does not, apparently treating the maximum percentage computation of the commission as the automatic minimum "reasonable" trustee fees.



Trustee has been represented by counsel in this case.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.20	\$25.00
Paralegal Assistance	\$25.00 per hour	\$137.50
Total Costs Requested in Application		\$162.50

**FEES AND COSTS & EXPENSES ALLOWED**

Using the 11 U.S.C. § 326 trustee fee commission formula and making a modest reasonableness adjustment, the court allows fees in the amount of \$68,750.00.

**Costs and Expenses**

Applicant is seeking the reimbursement of expenses in the amount of \$162.50.

First, the court notes that in the Eastern District of California, the maximum cost per page allowed for photocopying is \$0.10 per page. Here, the Applicant is seeking reimbursement for double that amount. Therefore, calculating the number of photocopies at the District's \$0.10 per page rate, the court disallows \$12.50 of the requested copying costs and allows \$12.50.

Additionally, Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include "Paralegal Expenses". No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in addition to the professional fees requested as compensation. The court disallows \$137.50 of the requested costs.

Applicant is allowed, and the following amounts as compensation to this professional in this case:

Fees	\$68,750.00
Costs, and Expenses	\$12.50

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this

case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Susan Didriksen ("Applicant"), Trustee for the Chapter 7 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Susan Didriksen is allowed the following fees and expenses as a professional of the Estate:

Susan Didriksen, Professional Employed by Chapter 7 Debtor

Fees in the amount of \$68,750.00

Expenses in the amount of \$12.50

**IT IS FURTHER ORDERED** that the costs of \$150.00 are not allowed by the court.

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

2. [13-24254-E-7](#) RUSS TRANSMISSION INC MOTION TO APPROVE COMPENSATION  
SMD-6 Gary F. Zilaff FOR TRUSTEE'S ATTORNEY  
12-10-15 [[219](#)]

Final Ruling: No appearance at the January 7, 2016 hearing is required.  
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**The motion appearing to be an erroneous duplicate calendar entry, this duplicate calendar entry is removed from calendar.**

3. [11-36557-E-7](#) MARTHA RAMIREZ MOTION TO APPROVE COMPENSATION  
ASF-3 C. Anthony Hughes FOR TRUSTEE'S ATTORNEY  
12-7-15 [[331](#)]

Final Ruling: No appearance at the January 7, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Alan Fukushima, the Chapter 7 Trustee ("Applicant") for Martha Ramirez, the Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period March 20, 2012 through December 7, 2015. Applicant requests a reduced fee in the amount of \$11,000.00 and costs of \$13.02.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

**Benefit to the Estate**

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work

performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The Applicant, as the Trustee, reviewed the Debtor's schedules and forms, reviewed relevant financial information, including the Debtor's bank statements and tax returns, and also prepared a proper bond. The Applicant also reviewed the titles of multiple parcels of property owned by the Debtor. The Debtor had an interest in a total of 18 parcels. The applicant conducted an in-depth review of the title reports and determined the feasibility of administrating them. The Applicant had to reach out to renters and creditors to gain relevant information.

The Applicant also made attempts to make a global settlement of claims and administrative expenses. Additionally, the Applicant prepared a Motion to Sell property of the estate. The property was an alleged marijuana growing house and the Applicant contacted relevant officials to expedite a warrant to search the property. The Applicant discussed with the proposed buyer of the property and agreed to sell the property for \$205,000.00. The Applicant prepared the motion to sell and successfully gained court approval.

The Applicant reviewed the Debtor's alleged objection to the Proof of Claim of Celerino Benitaz. The Trustee determined that the information provided by the Debtor was inconclusive and told the Debtor that he would not be pursuing the objection.

The Applicant also secured the sale of the Riverside Drive Property for the benefit of the estate. The Applicant secured a sale price of \$75,000.00.

The Applicant is currently holding approximately \$22,265.43. The Applicant states that no other recoveries are anticipated and the estate is in the position to close. The total compensable disbursements are \$266,614.99. The court finds the services were beneficial to the Client and bankruptcy estate

and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

Applicant seeks to be paid a single sum of \$11,000.00 for its fees.

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$13.02 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$13.02
Total Costs Requested in Application		\$13.02

**FEES AND COSTS & EXPENSES ALLOWED**

Using the 11 U.S.C. § 326 trustee fee cap formula,

25% of first \$5,000.00	\$1,250.00
10% of next \$45,000.00	\$4,500.00
5% of next \$216,614.99	\$10,830.75

Calculated Maximum Total Compensation Permitted for Trustee	\$16,580.75
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This represents the Maximum Trustee Fees in a case that works its way through conclusion. Here, the Applicant is only seeking \$11,000.00. This is only 66.3% of the maximum allowable fees.

As discussed supra, the Applicant has performed for the benefit of the estate, namely selling and retaining equity for the estate for the benefit of the creditors. The Applicant, as the fiduciary of the estate, made determinations as to potential liabilities in the sale and insured the administration of the case through analysis of assets and ensuring necessary motions are filed.

In light of the instant request being less than the maximum allowed under 11 U.S.C. § 326 and the Applicant having provided real and actual services to the benefit of the estate, the Motion is granted.

First and Final Fees in the amount of \$11,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs and Expenses**

The First and Final Costs in the amount of \$13.02 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Applicant is allowed, and the following amounts as compensation to this professional in this case:

Fees	\$11,000.00
Costs, and Expenses	\$13.02

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Alan Fukushima ("Applicant"), Trustee for the Chapter 7 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Alan Fukushima is allowed the following fees and expenses as a professional of the Estate:

Alan Fukushima, Professional Employed by Chapter 7 Debtor

Fees in the amount of \$11,000.00

Expenses in the amount of \$13.02

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.



**No Tentative Ruling:** The Motion for Contempt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether a further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on November 4, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Contempt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The Motion for Contempt is ~~XXXXXX~~**

Kimberly J. Husted ("Trustee") moves for an order holding Walter H. Schaefer ("Debtor") in contempt for violating court orders, Dckt. 101 and 135. Trustee seeks (1) compulsory sanctions in an amount no less than \$5,000.00 per day; or (2) ordering that the Debtor be imprisoned until such time as the Debtor complies with the court's orders.

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FN.1. The court notes that the Motion contains a typographical error, misidentifying the trustee as J. Michael Hopper moving for an order of contempt. The court recognizes Kimberly J. Husted as the duly-appointed Trustee of the above-captioned bankruptcy estate.  
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**ALLEGED CONDUCT OF DEBTOR IN VIOLATION OF PRIOR COURT ORDERS**

Trustee alleges that Debtor violated court orders directing the Debtor to turn over certain real properties located in Costa Rica, corporations organized under the laws of Costa Rica which hold interests in the real properties, and ordering the Debtor to direct the Debtor's agents, attorneys, and brokers to comply with the Trustee's and her attorneys' instructions. Trustee provides the court with an exhaustive factual background, to contextualize the issue at hand, urging the court to grant the instant Motion. Trustee alleges the following:

Among the assets of the Debtor's bankruptcy estates is the Debtor's interest in:

- A. Certain real property commonly known as Los Delfines, Bayside, Unit #2, Tambor, Costa Rica ("First Condominium");
- B. Certain real property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Undisclosed Condominium");
- C. Certain unimproved lots in Costa Rica identified as Guanacaste Nos. 37920-000 and 37922-000 ("Lots"); and
- D. Corporations organized under the laws of Costa Rica which hold title to the aforementioned real properties and identified as Morena Velar S.A. ("Velar"), Free Solutions Imperial S.A. ("Free Solutions"), Bayside Tambor JVM Dos S.A. ("Bayside"), and 3101495080 S.A. ("Lot Corporations").

Debtor's original schedules only disclosed the Debtor's interest in the First Condominium, valued at \$300,000 and not subject to liens or a claim of exemptions. However, Debtor failed to disclose the other Costa Rican properties and the entities holding title to those properties. The Trustee alleges that this thus impaired her ability to protect the estate's rights.

Debtor and Priscilla Camperud-Schaefer have been parties to a marital dissolution proceeding that has been pending in the Orange County Superior Court since May 11, 2010. Prior to a Federal Rule of Bankruptcy Procedure 2004 examination, the Trustee caused the documents filed in the marital case to be reviewed. Through such review, the Trustee discovered that the Debtor had investment accounts with RBC Capital Markets, LLC and Edward D. Jones & Co., L.P., escrow for the First Condominium through Breedy Abogados S.A., and interest in Velar.

On April 9, 2015, the Trustee caused the Motion for Turnover of the First Condominium, documents related to the First Condominium's control and transfer, including the shares and books for Velar, and the investment accounts. Trustee alleges that at the time the Motion for Turnover was filed, Trustee uncovered that the Debtor had stolen assets of the bankruptcy estate, and was not responding to turnover demands for adequate assurance that the First Condominium would not be placed out of reach of the Bankruptcy Court. An order granting the Motion for Turnover was entered on May 22, 2015. Dckt. 135.

On April 13, 2015, at the 2004 examination, the Debtor testified:

- A. That Velar held title to the First Condominium;

- B. Identified a previously undisclosed interest in a deposit account in the name of Velar at a San Jose, Costa Rica branch of Banco Nazionale;
- C. Identified a Tambor, Costa Rica branch of Century 21 as real estate professionals with whom the First Condominium was listed for sale in 2014;
- D. Disclosed that the funds on deposit with the investment accounts were transferred for the operation of the Debtor's sheet metal fabricating business in Chester, California; and
- E. Stated there was no other real property in the world that he owned other than those disclosed in his original schedules.

During the 2004 examination, but not on the record, the Debtor confirmed that Breedy handled the Debtor's purchase of the First Condominium, incorporated Velar, and continues to serve as counsel for the Debtor and Velar.

Debtor disclosed, for the first time, his interest in the Undisclosed Condominium on April 17, 2015.

Luis Carballo, the estate's special counsel in Costa Rica, performed a public record search on April 23, 2015. Carballo advised the Trustee that Velar was not holding the condominium and had no assets. Rather, the Debtor was using two undisclosed corporations to hold the First and Undisclosed Condominium.

Adolfo Breedy, an attorney with Breedy, informed the Trustee for the first time that the Debtor had no interest in the Lots, on April 27, 2015. Additionally, Trustee learned that Bayside held title to the First Condominium, Free Solutions held title to the Undisclosed Condominium, and the Lot Corporations held title to the Lots.

Trustee therefore requested that the Debtor stipulate for turnover, the Debtor amend his schedules and SOFA, and that the Debtor execute in the presence of a notary a consent authorizing Breedy to deliver the contents of all files in its possession to assist with the estate's liquidation of the assets in Costa Rica.

#### **COURT ORDERS FOR TURNOVER OF ASSETS**

##### **May 5, 2015 Order For Turnover**

On May 5, 2015, the court entered an order granting the stipulation that provided for Debtor to:

- A. Account for and turnover the legal and equitable interest of Velar, Free Solutions, Bayside, and the Lot Corporations;
- B. Account for and turnover the legal and equitable interests in the First Condominium, the Undisclosed Condominium, and the Lots;
- C. Account for and turnover the legal and equitable interest of

the Debtor and the Costa Rican corporations in funds held by Banco Nacional, Breedy, and Century 21; and

- D. Direct all agents, including BN, Breedy, and Century 21, to comply with instructions of the Trustee and her attorneys with respect to the Costa Rican corporations and properties.

Order, Dckt. 122.

On May 6, 2015, Debtor's counsel e-mailed a copy of the Debtor's signed and notarized consent authorizing Breedy to deliver the contents of all files in its possession to Luis Carballo. However, Trustee asserts that the original was never provided to the Trustee.

On August 26, 2015, the Trustee requested that the Debtor provide the original notarized consent. The Trustee asserts that four other requests were made. Trustee was unable to proceed without the original notarized consent form. On September 14, 2015, the Debtor's counsel indicated that the Debtor was out of the country, and would return September 27, 2015, at which time he would provide an original signature.

Trustee has attempted to contact the Debtor, via text messages, to request the original notarized consent. The Trustee asserts that the Debtor has not responded to the Trustee's request nor has the Trustee received the necessary documentation to obtain the legal and equitable interests in the First Condominium, the Undisclosed Condominium, the Lots, and the related Costa Rican entities.

Trustee, by way of the aforementioned exhaustive factual background, asserts that Debtor has repeatedly failed to take reasonable steps to comply with the court's orders.

#### **May 22, 2015 Order for Turnover**

On May 22, 2015, the court filed the order granted the Trustee's Motion for Turnover of the following property: (1) The real property commonly known as Los Del Fines, Bayside, Unit #2, Tambor Costa Rica; (2) Documents related to the Property's control and transfer including the shares of books for the Costa Rica corporation known as Morena Velar, S.A.; and (3) Account of RBC Capital Markets, LLC and Edward D. Jones & Co. L.P. previously disclosed by the Debtor in a pending marital dissolution proceeding, along with any documents related to their control and transfer, including statements and deposit and withdrawal receipts reflecting current location of proceeds.

Order, Dckt. 135.

In the civil minutes, the court noted the following:

The factual circumstances surrounding this case are unique. The Debtor has allegedly relocated to Costa Rica and has failed to respond to any of the Movant's request for turnover. The assets requested by the Movant all fall within Property of the estate, pursuant to 11 U.S.C. § 541 and the documentation requested is necessary to determine the extent of the estate's interest as well as necessary for the Movant

to perfect any interest the estate may have in the assets. As pointed out by the Movant, the documentation requested is necessary for the Movant, as the fiduciary of the estate, to claim an interest in the Property.

The court ordered the following:

**IT IS ORDERED** that the Motion for Turnover of Property is granted.

**IT IS FURTHER ORDERED** that Debtor shall deliver on or before **May 22, 2015**, possession of:

1. The real property commonly known as Los Del Fines, Bayside, Unit #2, Tambor, Costa Rica ("Property")
2. Documents related to the Property's control and transfer including the shares of books for the Costa Rica corporation known as Morena Velar, S.A.
3. Accounts of RBC Capital Markets, LLC and Edward D. Jones and CO. L.P. previously disclosed by the Debtor in a pending marital dissolution proceeding, along with any documents related to their control and transfer, including statements and deposit and withdrawal receipts reflecting current location of proceeds.

with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property.

#### **APPLICABLE LAW**

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

Once an alleged contemnor's noncompliance with a court order is established, the burden shifts to the alleged contemnor to produce sufficient evidence of its inability to comply to raise a question of fact. *In re Icenhower*, 755 F.3d 1130, 1139 (9th Circuit 2014)(internal citations and quotations omitted)

## **DISCUSSION**

The court first notes that the Debtor, Debtor's counsel, and Debtor's Costa Rican counsel has failed to file a response to the instant Motion. The actions of Debtor in the instant case are troubling. On two separate occasions, the court has ordered that the Debtor turnover not only accounting but actual possession of certain assets located in Costa Rica.

Rather than complying with the court's April 23rd turnover order or the May 5th stipulated order, the Debtor has actively, consciously, and purposefully avoided providing the necessary documentation and turnover to the Trustee. The plain language of both orders show that the Debtor is in direct violation of two separate court orders. As stated by the Trustee, the Debtor has failed to turnover the ordered assets to the Trustee and appears to be actively "hiding" behind alleged jurisdictional barricades to hinder the Trustee from performing her fiduciary duties.

Attached to the Trustee's Motion are various correspondences between Trustee's counsel, Debtor's counsel, and Debtor's Costa Rican counsel. From these correspondences, the court can discern that the Debtor has avoided performing the court-ordered turnover through not providing the original notarized consent for the Trustee's counsel to effectuate the ownership of the estate's assets and not responding to Trustee's messages. This is only further emphasized by the Debtor being "out of the country" for a period of time. The Debtor nor Debtor's counsel has provided any information, evidence, or explanation why, after seven months from the court's first order for turnover, why the Debtor has consciously failed to comply with such.

Here, it is clear that the Debtor has failed to comply with two separate, yet interrelated, orders. The court has the authority to "enforce compliance with its lawful judicial orders." *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009). The Debtor's willful violation at turning over the assets and attempts to avoid such through travel and jurisdictional barriers has wasted judicial resources, the Trustee's resources,

and the estate's resources.

### **Rights of the Estate and Actions of the Trustee**

At this juncture, while the Debtor has sought the extraordinary relief of the Bankruptcy Code but has chosen to flaunt the orders of this court and improperly retain, control, and use property of the bankruptcy Estate, the court is unsure of what the Trustee is doing as the sole person authorized to use, control, possess and dispose of this property of the estate.

The Trustee states that Breedy Abogados S.A. is a law firm based in San Jose, Costa Rica which has files and records relating to the pre-petition financial transactions of the Debtor, and possibly post-petition activities with respect of the estate. The Trustee asserts that these records, and the right to the records are property of the Bankruptcy Estate for which she has the sole right to possession, control, and use. But the law firm is refusing to provide the estate's records because the Debtor is refusing to authorize the law firm to provide the estate's records to the Trustee.

Additional records and property of the estate is sought from Century 21 Realty and Banco Nacionale. The Trustee states that the Debtor is refusing to authorize Century 21 Realty and Banco Nacionale to turn over the property of the estate to the Trustee.

The jurisdiction of this court with respect to property of the bankruptcy estate is worldwide. As discussed in 1-3 Collier on Bankruptcy, ¶ 3.01;

"The section [28 U.S.C. § 1334e] applies to property "wherever located." This provision gives a United States court exclusive jurisdiction over property located, not only in the United States, but in other countries as well. 122 Nevertheless, a court in another country is not precluded from exercising jurisdiction over property that is part of a title 11 estate located in that country. Whether the exercise of that jurisdiction is appropriate involves such things as the extraterritorial effect of the automatic stay and the in personam jurisdiction of the United States courts over the entity at whose behest the foreign court is acting. That is to say, the extraterritorial jurisdiction of the United States courts for these purposes is in personam rather than in rem. If a creditor causes property of a title 11 estate to be seized in a foreign country, that creditor has violated the automatic stay. Whether that creditor can be sanctioned, however, is a function of that creditor's amenability to United States process. 123 By the same token, a United States court cannot control the action of the foreign court irrespective of section 1334(e). As one court put it, "the bankruptcy court is precluded from exercising control over property of the estate located in a foreign country without the assistance of the foreign courts."

Footnote 122. *Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991 (9th Cir. 1998) , cert. denied, 525 U.S. 1141, 119 S. Ct. 1032, 143 L. Ed. 2d 41 (1999).

Footnote 123. *Id.*; *Atteberry v. Barclay's Bank plc (In re Atteberry)*, 159 B.R. 1 (D. Kan. 1993) ; *Levey v. Hamilton (In re Teknek, LLC)*, 354 B.R. 181 (Bankr. N.D. Ill. 2006) ; *In re Chiles Power Supply Co., Inc.*, 46 C.B.C.2d 1109, 264 B.R. 533 (Bankr. W.D. Mo. 2001); *Nakash v. Zur (In re Nakash)*, 190 B.R. 763 (Bankr. S.D.N.Y. 1996); *In re Lykes Bros. S.S. Co.*, 191 B.R. 935 (Bankr. M.D. Fla. 1995)."

The Ninth Circuit Court of Appeal has been clear and unqualified in determining that all property, wherever located in the world, of the Debtor is property of the bankruptcy estate and the bankruptcy court has jurisdiction over all of that property.

"The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). With certain exceptions, the estate is comprised of the debtor's legal or equitable interests in property "wherever located and by whomever held." *Id.* (emphasis supplied). The district court in which the bankruptcy case is commenced obtains exclusive in rem jurisdiction over all of the property in the estate. 28 U.S.C. § 1334(e); *Commodity Futures Trading Comm'n v. Co Petro Marketing Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983)(interpreting 11 U.S.C. § 1471, the statutory precursor to 11 U.S.C. § 1334(e)). The court's exercise of "custody" over the debtor's property, via its exercise of in rem jurisdiction, essentially creates a fiction that the property - regardless of actual location - is legally located within the jurisdictional boundaries of the district in which the court sits. See *Katchen v. Landy*, 382 U.S. 323, 327, 15 L. Ed. 2d 391, 86 S. Ct. 467 (1966) (noting that bankruptcy courts have "constructive possession" over estate property) (internal quotation marks and citations omitted); *Commodity Futures*, 700 F.2d at 1282 (noting that under the bankruptcy code, "all property of the debtor, wherever located, is in custodia legis of the bankruptcy court."). This includes property outside the territorial jurisdiction of the United States. See *Stegeman*, 425 F.2d at 986 (construing extraterritorial jurisdictional reach of prior Bankruptcy Act); see also *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996).

Given this clear expression of intent by Congress in the express language of the Bankruptcy Code, we conclude that Congress intended extraterritorial application of the Bankruptcy Code as it applies to property of the estate.

*Hong Kong and Shanghai Banking Corporation Limited v. William Neil Simon (In re William Neil Simon)*, 153 F.3d 991, 996 (9th Cir. 1998) , cert. denied, 525 U.S. 1141, 119 S. Ct. 1032, 143 L. Ed. 2d 41 (1999).

The Trustee, as the "owner" of this property (the real and personal property, including records) can act as the owner. If there is a question for the bank and other parties, the court can issue the appropriate orders providing such assurances to third parties who are dealing with the Trustee in



good faith. If the third parties are not dealing in good faith, the Trustee can proceed in this court, to the extent that in personam jurisdiction exists or enforce the Trustee's rights in the Costa Rican courts as appropriate.

The court determines that in addition to, and in support of, the corrective sanctions ordered, the court shall also address the statutory rights of the Trustee and provide a clear order to third parties as to property of the estate and powers of the Trustee.

### **Continuing Failure to Comply with Orders of the Court**

The time for the Debtor to comply with the orders cooperatively and fully has come and gone. The Debtor has now shown through his inaction over the past seven months, whether through the failure to disclose the assets, failure to provide accounting of such assets, or the failure to actually provide the turnover, that he is unwilling and unable to comply with simplest of orders.

The Debtor has not provided any evidence as to why the Debtor cannot comply with the court's orders or how compliance with such is impossible. Instead, the Debtor stays mute, apparently ignoring these proceedings in the same manner as he is ignoring the court's orders.

In seeking to find a person in contempt for failure to comply with a court's prior order, the moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). If the moving party successfully makes the showing of violation of an order, the burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* (citing *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir.1999)).

A bankruptcy court's inherent power allows it to sanction "bad faith" or "willful misconduct," even in the absence of express statutory authority to do so. *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003). It also "allows a bankruptcy court to deter and provide compensation for a broad range of improper litigation tactics." *Id.* (citing *Fink v. Gomez*, 239 F.3d 989, 992-93 (9th Cir.2001)).

The inherent sanction authority differs from the statutory civil contempt authority in at least two ways. First, under the inherent power of a bankruptcy court, the court may sanction a "broad range" of conduct, unlike the "[c]ivil contempt authority[, which only] allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction)." *In re Lehtinen*, 564 F.3d 1052, 1058 (9th Cir. 2009) (quoting *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003)). Second, unlike the civil contempt authority, "[b]efore imposing sanctions under its inherent sanctioning authority, a court must make an explicit finding of bad faith or willful misconduct." *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003)(internal citation omitted).

"Civil penalties must either be compensatory or designed to coerce compliance." *Dyer*, 322 F.3d at 1192(citing *Hanshaw*, 244 F.3d at 1137-38).

Here, the court has been presented with clear and convincing evidence that Debtor is willfully and intentionally failing to comply with the orders of this court. Debtor is interfering with the Trustee rights, interests, and

control of the personal and real property of the bankruptcy case. By his wrongful conduct, Debtor is depriving the estate and the Trustee of the property of the estate, including all of the records and information in the hands of third parties.

Debtor filed this bankruptcy case on September 18, 2014. Under penalty of perjury on Schedule A he listed the Unit #2 property in Tambor, Costa Rica. Dckt. 12 at 10. He did not list interests in any other property in Costa Rica.

On Schedule B, Debtor did not list any interests in any companies, businesses, or entities other than AMI Precision, Inc. Schedule B, *Id.* at 11-13.

This case was converted to one under Chapter 7 on January 31, 2015. Order, Dckt. 48. The grounds for the conversion included Debtor (which serving as the Chapter 13 Debtor, who is a fiduciary of the bankruptcy estate) failing to comply with the Bankruptcy Code with respect to his stated attempts to sell property of the bankruptcy estate, defaulting in payments due under the Chapter 13 Plan, and the misuse of property of the estate by the corporation owned by the estate. Civil Minutes, Dckt. 46.

After the conversion of this case, Debtor proceeded to attempt to sell property of the estate to Ashman Auctions for \$220,000.00. Civil Minutes, Dckt. 164. After the conversion of the case, the Chapter 7 Trustee was the only person authorized to use, sell, lease, possess, or exercise any interest in or right to any property of the bankruptcy estate. 11 U.S.C. § 704. Debtor has been represented by knowledgeable, experienced, professionally regarded bankruptcy counsel. There has been no showing that Debtor had any belief that he could sell property of the bankruptcy estate after the conversion of the case to one under Chapter 7.

The assets in Costa Rica and the monies improperly obtained from the unauthorized attempt to sell the property of the estate may well exceed \$1,000,000.00 in value. Clearly, any corrective sanction issued by the court must be significantly large enough so that Debtor understands the serious consequences of failure to comply. For the first attempt at a corrective sanction, the court orders that if the Debtor fails to deliver the property, all documents and information, and provide the authorizations (though not required since the Trustee is the "owner" and sole person entitled to possession, control, and use of property of the estate, including records and information) by December 14, 2015, the court shall issue an order requiring the Debtor to pay a \$100,000.00 civil sanction to the court. Debtor can avoid the payment of the \$100,000.00 by merely complying with the prior orders of this court.

#### **NOVEMBER 23, 2015 ORDER**

Following the hearing on November 17, 2015, the court issued the following order, in relevant part:

**IT IS ORDERED** that a further hearing on this Motion is continued to 1:30 p.m. on December 15, 2015, for the court to ascertain the compliance of Walter Helge Schaefer, the Debtor, with this Order, issuance of further civil corrective sanctions if this Order has not been complied with, and

consideration of referring this failure to comply with the orders of this court to the United States District Court for the Eastern District of California for proceedings pursuant to that court's criminal contempt power.

**IT IS FURTHER ORDERED** that if Walter Helge Schaefer, the Debtor, fails on or before **December 14, 2015**, to:

1. Account for and turnover to the Trustee the legal and equitable interests of the Debtor in the following corporations organized under the laws of Costa Rica (hereinafter collectively "Corporations"):

- (a) MORENA VELAR S.A., #3-101-498655
- (b) FREE SOLUTIONS IMPERIAL S.A., #3-101-423100,
- (c) BAYSIDE TAMBOR J V M DOS S.A., #3-101-426279,
- (d) 3101495080 S.A., #3-101-495080;

2. Account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the following Costa Rica real property (hereinafter collectively "Subject Properties"):

- (a) BAYSIDE UNIT #2, Tambor, Puntarenas, #57104-F-00,
- (b) 184 LOS DELFINES, Tambor, Puntarenas, #27402-F-00,
- (c) LOT, Guanacaste, #37920-000,
- (d) LOT, Guanacaste, #37922-000;

3. Account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the funds held for their benefit by (hereinafter collectively "Funds"):

- (a) BANCO NACIONAL DE COSTA RICA ("Banco"),
- (b) BREEDY ABOGADOS S.A. ("Abogados"),
- (c) CENTURY 21 GLOBAL ("Brokers");

the court shall issue an order imposing and requiring Walter Helge Schaefer, the Debtor, pay \$100,000.00 in Civil Sanctions to the Clerk of the United States Bankruptcy Court, for said monies to be deposited in the U.S. Treasury. Walter Helge Schaefer, the Debtor, may avoid the imposition of the \$100,000.00 in Civil Sanctions by timely complying with this order which only requires what was the Debtor was ordered to do in prior orders.

**IT IS FURTHER ORDERED** that all persons, including all

agents, expressly including, without limitation,

- A. Banco Nacionale De Costa Rica,
- B. Breedy Abogados S.A., and
- C. Century 21 Global,

and their respective agents, employees, officers, representatives, and attorneys, are authorized to and shall comply with instructions of the Trustee and his attorneys with respect to the Costa Rica Assets, including disclosure of information, production of documents, remittance of funds, delivery of possession of the properties and businesses described in this Order and deliver possession of the of the shares and books for the Corporations and business enterprises listed in Paragraph 1 in the forgoing section of this Order.

Kimberly J. Husted, the Chapter 7 Trustee is the sole person authorized to hold, possess, use, sell, lease, or control any and all property of the bankruptcy estate of Walter Helge Schaefer, the Debtor. 11 U.S.C. § 704. "Property of the bankruptcy estate," wherever located in the world, is defined in 11 U.S.C. § 541 to include: legal; equitable; community property; and inherited, through dissolution of marriage, or life insurance obtained within 180-days after the commencement of the bankruptcy case property, rights, and interests, and all Proceeds, product, offspring, rents, or profits of or from such property.

**IT IS FURTHER ORDERED** that in addition to Kimberly J. Husted, the Chapter 7 Trustee, having the right to hold, possess, use, sell, lease, or control any and all property of the bankruptcy estate, including the records and information relating thereto, Walter Helge Schaefer, the Debtor has irrevocably authorized and directed in the Stipulation filed with this Court (copy attached as Addendum A to this Order) all and each agent, including those specifically stated above, to comply with the instructions of Kimberly J. Husted, the Chapter 7 Trustee, for the turnover of assets, information, and documents.

All persons may rely upon the irrevocable authorization provided in the Stipulation attached hereto as Addendum A and in this Order upon receipt of a copy of this Order which has been certified by the Clerk or a Deputy Clerks of the United States Bankruptcy Court for the Eastern District of California.

**IT IS FURTHER ORDERED** that Walter Helge Schaefer, the Debtor, and his counsel shall appear at the United States Bankruptcy Court, 501 I Street, Courtroom 33 (Sixth Floor), Sacramento, California at 1:30 p.m. on December 15, 2015, for the continued hearing on this Motion.

Dckt. 271.

**DEBTOR'S DECEMBER 8, 2015 STATUS REPORT**

On December 8, 2015, the Debtor filed a Status Statement. Dckt. 273. The Debtor reports that he has directed his attorneys and agents to sign over any and all interest in the ordered properties or corporations immediately to the Trustee's Costa Rican attorney, Luis Carballo. The Debtor states that all papers necessary to effect such transfer have been signed and delivered and the Debtor, should further papers be necessary, shall immediately execute them as soon as received. The Debtor states that he has directed his attorney and agents in Costa Rica to cooperate fully with the Trustee's agents and attorneys. The Debtor has signed an appropriate power of attorney directing such attorneys and agents to cooperate fully with the Chapter 7 Trustee and her attorneys. Lastly, the Debtor states that all keys in his possession have been turned over to the Trustee's attorney.

**TRUSTEE'S STATUS REPORT**

The Trustee filed a Status Report on December 9, 2015. Dckt. 276. The Trustee provides the following chart as to the status of various parts of the court's prior order:

<u>Order</u>	<u>Status</u>	<u>Compliance</u>
Account for and turnover of the legal and equitable interest of the Debtor in Morena Velar S.A., #3-101-498655	The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer	Complied in part.
Account for and turnover of the legal and equitable interest of the Debtor in Free Solutions Imperial S.A., 3-101-423100	The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer	Complied in part.

<p>Account for and turnover of the legal and equitable interest of the Debtor in Bayside Tambor J V M Dos S.A., #3-101-426279</p>	<p>The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer</p>	<p>Complied in part.</p>
<p>Account for and turnover of the legal and equitable interest of the Debtor in 3101495080 S.A., #3-101-495080</p>	<p>The Debtor has directed his lawyers to comply with the Trustee's request. The Trustee's counsel in Costa Rica has obtained the shares of stock in the entity, but the Debtor has yet to sign the shares over to the Trustee which would effectuate the transfer</p>	<p>Complied in part.</p>
<p>Account for Bayside unit #2, Tambor, Puntarenas, #57104-F-00</p>	<p>The Debtor has apparently occupied this unit recently, but has not disclosed whether any tenants have occupied the property post-petition. No rental agreement, bookings, itemization of rents collected, or deposits accounts related to the property have been provided.</p>	<p>No compliance</p>
<p>Turnover of Bayside, Unit #2, Tambor, Puntarenas, #57104-F-00</p>	<p>The Debtor has turned over the keys and the shares of stock for this property. The shares have yet to be signed over to the Trustee</p>	<p>Complied in part</p>
<p>Account for 184 Los Delfines, Tambor, Puntarenas, #27402-F-00</p>	<p>The Debtor has disclosed that there have been tenants post-petition but no other information or documentation has been provided</p>	<p>No compliance</p>

Turnover of 184 Los Delfines, Tambor, Puntarenas, #27402-F-00	The Debtor has turned over the shares of stock, but has not provided the keys	No compliance
Account for and turnover of Lot, Guanacaste, #37920-000	Vacant lot. The shares of stock have been turned over but the Debtor has yet to sign the shares over to the Trustee	Complied in part
Account for and turnover of Lot, Guanacaste, #37922-000	Vacant lot. The shares of stock have been turned over but the Debtor has yet to sign the shares over to the Trustee	Complied in part
Account for and turnover of the legal and equitable interest of the funds held by Banco Nacionale De Costa Rica	Information has yet to be provided.	No compliance
Account for and turnover of the legal and equitable interests of the funds held by Breedy Abogados S.A.	The Trustee has been informed that there are no funds held by Breedy Abogados S.A.	Complied
Account for and turnover of the legal and equitable interests of the funds held by Century 21 Global	The Trustee has been informed that there are no funds held by Century 21 Global. In addition, the Trustee has been informed that Century 21 Global only assisted with the Debtor's purchase of the condos	Complied
Directing Banco Nacionale de Costa Rica, Breedy Abogados S.A., and Century 21 Global and their agents, employees, officers, representatives, and attorneys to comply with the instructions of the Trustee and her attorneys.	With the exception of Banco Nacionale de Costa Rica, the Debtor has directed Breedy Abogados, S.A. and Century 21 Global to comply with the Trustee's instructions	Complied in part

The Trustee reports that the Debtor has been staying in Costa Rica at Bayside Unit #2, Tambor, Puntarenas, #57104-F-00, one of the properties that is to be turned over. This condo is approximately two hours from the Trustee's counsel in Costa Rica. However, the Debtor has advised that he is unable to travel to the Trustee's counsel's office to effectuate the transfer and turn over keys because he does not have transportation.

**DECEMBER 15, 2015 HEARING**

At the hearing, it was reported that some items have been completed, with the biggest issue being the accounting of rent monies and the \$50,000 in sales proceeds. The court continues the hearing to allow the Parties to further address these issues.

**DEBTOR'S DECEMBER 29, 2015 ACCOUNTING OF RENTAL MONIES**

On December 29, 2015, the Debtor filed an accounting of rental monies. Dckt. 298.

The Debtor states that there are two improved properties in Costa Rica held by the estate:

1. Bayside Unit #2, Tambor, Puntarenas, 457104-F--00, and
2. 184 Los Delfines, Tambor, Puntarenas, #27402-F-00

The Debtor states that separate bank accounts were set up for expenses and receipts for these units:

1. For Bayside #2: an account referred to as Morena Velar S.A., #2-101-498655; and
2. For 184 Los Delfines: an account referred to as Free Solutions Imperial S.A., #3-101-423100.

According to the Debtor, all the monies from a rental of the Bayside #2 unit went into the Morena Velar account and all funds from the rental and expenses for 184 Los Delfines went into the Free Solutions account.

The Bayside #2 unit has been rented continually from 2012 and is currently being rented at \$1,500.00 per month. Those sums, for the eleven months since the beginning of the Chapter 7 case is \$16,500.00. Expenses have been paid from that account. Additionally, 184 Los Delfines was rented for two months in November and December for a total of \$4,800.00.

The Debtor provides the following spreadsheet of income and expenses:

<u>Item</u>	<u>Income</u>	<u>Expense</u>
11 months rental income for Bayside #2	\$16,500.00	
2 months rental income for 184 Los Delfines	\$4,800.00	



Roof Repair for Bayside (September 2015)		\$2,000.00
Utilities (both) @ \$153.00 per month		\$1,683.00
Home Owners Dues (both)		\$10,400.00
Corporate Taxes (both)		\$1,400.00
Property taxes (both)		\$1,594.00
TOTALS	\$21,300.00	\$17,077.00

**JANUARY 7, 2015 HEARING**

At the hearing, **xxxxxx**

5. [15-20081-E-7](#) JANET ROBINSON  
DNL-9 Jared A. Day

MOTION FOR CONTEMPT  
12-23-15 [[129](#)]

**Tentative Ruling:** The Motion for Contempt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Contempt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The Motion for Contempt is granted.**

J. Michael Hopper, the Chapter 7 Trustee, filed the instant Motion for Contempt on December 23, 2015. Dckt. 129. The Trustee seeks an order holding Janet Robinson ("Debtor") in contempt for failing to comply with the court's order directing the Debtor to turn over, among other things, certain real property located at 725 Acacia Avenue, Richmond, California and the post-petition rents for the Acacia Property, and certain real property generally located at 681 8<sup>th</sup> Street, Richmond, California.

The Trustee requests compulsory sanctions in an amount no less than \$2,500.00 per day or the Debtor be incarcerated until such time as the Debtor complies with the court's order.

Trustee alleges that Debtor's Amended Schedule B, filed April 8, 2015,

disclosed for the first time the Debtor's one-sixth interest in the probate estate of her father. At that time, Debtor represented the 8<sup>th</sup> Street Property as the sole asset of the probate estate, and never disclosed the Debtor's interest in the Acacia Property.

At the second meeting of creditors, the Debtor confirmed that she had an interest in the 8<sup>th</sup> Street Property, and stated that the Subject Property was generating \$1,275.00 in rental income, and monthly mortgage payments approximated in the amount of \$268.00. At the fourth, and final, meeting of Creditors, the Debtor failed to provide any of the requested documentation and information related to the other purported owners of the 8<sup>th</sup> Street Property.

Trustee asserts that as part of its investigation, a public record search was caused to be performed. The public record reflected that, on the petition date, the 8th Street Property was solely in the Debtor's name. The same day the Grant Deed for the 8th Street Property was recorded, a Grand Deed was recorded that reflects that Julietta C. Robinson conveyed to Debtor and five other individuals the Acacia Property. Public records reflect that the title to this property remains in the Debtor's name.

Trustee notes that on September 3, 2015, this court entered an order granting the Trustee's motion to sell the 8th Street Property. Dckt. 90.

Trustee alleges that to date, Debtor has not provided any documentation or information related to the 8th Street Property, the post-petition rents collected, the Acacia Property, and the owners of the Acacia Property from the Debtor's counsel.

#### **OCTOBER 29, 2015 TURNOVER ORDER**

On October 29, 2015, the court granted the Trustee's Motion for Turnover and ordered the following:

**IT IS ORDERED** that the Motion for Turnover of Property is granted.

**IT IS FURTHER ORDERED** that Janet L. Robinson ("Debtor"), shall deliver on or before noon on November 20, 2015, possession of the property, including:

1. All post-petition rents, and accounting thereof, collected by the Debtor on account of certain real property located at 681 8<sup>th</sup> Street, Richmond, California;
2. Rent in the sum of \$8,925.00 collected from February 2015 to August 2015, on account of the 8<sup>th</sup> Street Property;
3. Certain real property located at 725 Acacia Avenue, Richmond, California; and
4. Any post-petition rents collected on account of the Acacia Property.

**November 19, 2015 at 10:30 a.m.**

(the "Property") with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property.

**IT IS FURTHER ORDERED** that the monies turned over shall be in the form of a cashier's check or other certified funds issued by a bank or credit union with physical branches in California or a money order issued by an entity with has physical locations in California. The cashier's check, certified funds, or money order, and any documents relating to the possession or control of other property to be turned over, shall be delivered to the Trustee at the following address: J. Michael Hopper, Trustee, c/o of Desmond, Nolan, Livaich & Cunningham, Attn: J. Luke Hendrix, 1830 15<sup>th</sup> Street, Sacramento, California 95811.

Dckt. 114.

#### **APPLICABLE LAW**

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

Once an alleged contemnor's noncompliance with a court order is

established, the burden shifts to the alleged contemnor to produce sufficient evidence of its inability to comply to raise a question of fact. *In re Icenhower*, 755 F.3d 1130, 1139 (9th Circuit 2014)(internal citations and quotations omitted)

## DISCUSSION

From the information provided for by the Trustee and a review of the instant case, the Debtor failed to comply with the court's order and turnover:

1. All post-petition rents collected by the Debtor on account of certain real property located at 681 8th Street, Richmond, California;
2. Rent in the sum of \$8,925.00 collected from February 2015 to August 2015, on account of the 8<sup>th</sup> Street Property;
3. Certain real property located at 725 Acacia Avenue, Richmond, California; and
4. Any post-petition rents collected on account of the Acacia Property.

Pursuant to the court's order, the Debtor had until noon on November 20, 2015 to turnover the properties, rents, and accounting to the Trustee. As testified by the Trustee in his declaration, the Debtor failed to comply. The Trustee testifies that on November 25, 2015, the Debtor's counsel provided a narrative response explaining that expenses the Debtor incurred related to the 8<sup>th</sup> Street Property apparently offset any rents collected. Dckt. 131. However, the Trustee states that no documentation was provided in support and no information or documentation was provided relating to the Acacia Property.

The Trustee states that through his counsel, on November 29, 2015 and December 7, 2015, attempted to obtain a substantiative response and compliance with the court's order. The Debtor's counsel responded on December 8, 2015 stating that the Debtor was not "tech savvy" and that the Debtor required an additional week. The Trustee allowed for an extension until December 14, 2015. However, the Debtor has still failed to comply.

It is apparent from the facts around this case that the Debtor has wilfully failed to comply with the court order to turnover the property. The Trustee offered the Debtor an additional 24 days to comply with the court's specific order. To date the Debtor was failed to take advantage of this extension. Rather, the Debtor and Debtor's counsel provided a "narrative" of how the rent monies were used and claim the Debtor's lack of computer knowledge as reasons for failing to comply. This is unacceptable.

Therefore, the Motion is granted. The Debtor has until **January 21, 2016** by noon to deliver possession of the property, including:

- 1 All post-petition rents, and accounting thereof, collected by the Debtor on account of certain real property located at 681 8<sup>th</sup> Street, Richmond, California;

- 2 Rent in the sum of \$8,925.00 collected from February 2015 to August 2015, on account of the 8<sup>th</sup> Street Property;
- 3 Certain real property located at 725 Acacia Avenue, Richmond, California; and
- 4 Any post-petition rents collected on account of the Acacia Property.

(the "Property") with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property.

If the Debtor fails to turnover the Property by January 21, 2016, the Debtor shall pay the Trustee \$250.00 per day for the continued violation of the court's October 29, 2015 Order. The sanctions shall be in the form of a cashier's check or other certified funds issued by a bank or credit union with physical branches in California or a money order issued by an entity with has physical locations in California. The cashier's check, certified funds, or money order, and any documents relating to the possession or control of other property to be turned over, shall be delivered to the Trustee at the following address: J. Michael Hopper, Trustee, c/o of Desmond, Nolan, Livaich & Cunningham, Attn: J. Luke Hendrix, 1830 15th Street, Sacramento, California 95811.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Contempt filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Contempt is granted.

**IT IS FURTHER ORDERED** that Janet L. Robinson ("Debtor"), shall deliver on or before noon on January 21, 2016, possession of the property, including:

1. All post-petition rents, and accounting thereof, collected by the Debtor on account of certain real property located at 681 8<sup>th</sup> Street, Richmond, California;
2. Rent in the sum of \$8,925.00 collected from February 2015 to August 2015, on account of the 8<sup>th</sup> Street Property;
3. Certain real property located at 725 Acacia Avenue, Richmond, California; and

4. Any post-petition rents collected on account of the Acacia Property.

(the "Property") with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property.

**IT IS FURTHER ORDERED** that if the Debtor fails to turnover the Property by noon on January 21, 2016, the Debtor shall be sanctioned **\$250.00** per day until the Debtor has turned over the Property.

**IT IS FURTHER ORDERED** that the sanctions shall be in the form of a cashier's check or other certified funds issued by a bank or credit union with physical branches in California or a money order issued by an entity with has physical locations in California. The cashier's check, certified funds, or money order, and any documents relating to the possession or control of other property to be turned over, shall be delivered to the Trustee at the following address: J. Michael Hopper, Trustee, c/o of Desmond, Nolan, Livaich & Cunningham, Attn: J. Luke Hendrix, 1830 15<sup>th</sup> Street, Sacramento, California 95811.

**IT IS FURTHER ORDERED** that further hearing on the Motion shall be conducted at 10:30 a.m. on February 25, 2016, for the court to consider:

- A. The effectiveness of the \$250.00 a day corrective sanctions;
- B. Issuance of an order computing the amount of the corrective \$250.00 sanction to the date of the hearing if the Debtor failed to comply with the turnover order;
- C. Whether the court should order incarceration as a corrective sanctions;
- D. Whether the court should order the corrective sanction of the dismissal with prejudice of this bankruptcy case if the Debtor does not comply with the prior turnover over by a future specified date; and
- E. Such other sanctions as proper.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

- A. 2004 Chevrolet Hummer H2

The proposed purchaser of the Property is Charles Mills, the Debtor, and the terms of the sale are to purchase the non-exempt equity of the Vehicle for the price of \$9,000.00. The purchase price is payable as follows: (1) \$1,000.00 due Friday, December 4, 2015; and (2) the balance payable \$1,000.00 per week beginning December 11, 2015 and continuing thereafter each consecutive Friday until paid in full. If a payment is not made, and such default remains uncured after five calendar days from the date of the payment was due, the Debtor shall be in default under the agreement and shall immediately turnover



to the Trustee possession of the Vehicle. The Trustee shall be allowed to retain all payments made, sell the estate's interest in the Vehicle to another buyer (with court approval) and pursue all rights and remedies available under applicable law.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The proposed sale allows the Debtor to pay the estate the non-exempt equity in the Vehicle. Given the fact that the Debtor had partially exempted the Vehicle, the sale of the non-exempt equity to the Debtor provides for the administrative ease of not selling to an unrelated third party and provides for the \$9,000.00 for the benefit of the estate and creditors.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Kimberly Husted, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Kimberly Husted, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Charles Mill or nominee ("Buyer"), the Property commonly known as 2004 Chevrolet Hummer H2 ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$9,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 326, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.