UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 8, 2015 at 3:00 p.m.

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1. 14-20352-E-11 PBG-5 PATRICK GREENWELL Pro per

APPROVAL OF DISCLOSURE STATEMENT FILED BY DEBTOR 12-3-14 [68]

Tentative Ruling: The Motion to Approve Disclosure Statement 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.

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 in pro per, parties requesting special notice, and Office of the United States Trustee on December 10, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Approve Disclosure Statement 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 and other parties in interest are entered.

The Motion to Approve Disclosure Statement is continued to 3:00 p.m. on February 5, 2015. Debtor-in-Possession shall file an amended Disclosure Statement on or before January 22, 2015.

FAILURE TO PROPERLY SERVE THE INTERNAL REVENUE SERVICES

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses,

including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:
United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19103-7346

The proof of service states that the addresses used for service are the

preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity. FN.1.

FN.1. In light of the Internal Revenue Service asserting in other proceedings that it is the position of the United States that it is not bound by any order for which the Internal Revenue Service was not properly served at all the required addresses, the court requires complete service for proposed plans and disclosure statements. While some debtors in possession assert that "I'm really not doing anything to the IRS," the court does not make such qualitative analyses for these government claims. However, since this is only a motion to approve a disclosure statement, and not to confirm the Plan, the court considers the merits of the present Motion.

Pursuant to the roster of governmental agencies maintained by the Clerk, there are two additional addresses in order to have proper service on the Internal Revenue Service that the Debtor-in-Possession has failed to serve.

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

However, the court waives the defect in light of this being a motion to approve the disclosure statement and not to confirm a plan (which would purport to alter the rights of the parties. The court can adequately consider whether there is sufficient information in the Disclosure Statement. Counsel can then insure that the Plan, approved Disclosure Statement, notice of confirmation hearing, and order confirming plan are properly served on the Internal Revenue Service at all of the required addresses.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: January 9, 2014

Background: Debtor-in-Possession is a practicing attorney for nearly 30 years. Debtor and his former wife invested in real estate. In approximately 2002, they acquired some undeveloped land in the City of Sonora. After a feasibility analysis showed a need, the started the process of building a 47 unit subdivision of detached single family homes. The first of those homes hit the market in 2005. The first of the homes sold quickly before the real estate market started to turn bad. Debtor and his former wife had a disagreement with the building contractor doing the work and agreed to sell the unfinished project to the builder. They received some money up front but carried a large note would be paid from future home sales. That deal was finalized right as the bottom dropped out of the real estate market. The builder lost the subdivision to foreclosure and since the Debtor was in second position, his interest was wiped out. While on paper the project made money from the first few sales, it was mostly reinvested in the project. The taxes due to the federal and state government are from the paper profits made from the project.

Debtor did close his law practice for approximately 2 years to devote his time and effort to the real estate business. When it failed he was left with no income and no assets. Everything was invested in the one project. He restarted his practice several years ago and it does continue to grow.

There was litigation following the project and no income to support Debtor. Debtor and his former wife separately filed Chapter 7 bankruptcy cases to deal with the immediate financial crisis. Debtor obtained a discharge in the prior Chapter 7 case, 09-91289.

The disclosure statement represents that Debtor has never had issues with the IRS. He has always timely filed his returns and had paid his taxes. Debtor did make offers in compromises to both the IRS and the FTB. The State of California demanded approximately $750.00 per month for 5 years and a proportionate increase of any future earnings. They also threatened him with pulling his law license if he did not pay. Debtor did not wait for the IRS to respond before filing this case. The Debtor could not afford the $750.00 to the state, let alone whatever the IRS would add to it.

PROPOSED PLAN TREATMENT (As stated in the Plan)

Creditor/Class	**Treatment**	
Unclassified Claims:	**Claim Amount**	
	Impairment	
	Unclassified claims, such as costs of administering this bankruptcy case, generally are entitled to be paid in full on the Plan's Effective Date, which is defined in the Plan and should be a short time after the Plan is confirmed. The only obligation that falls into this category is the quarterly fee paid to the US Trustee. Debtor-in-Possession is current on that fee and will remain so. FN.2.	
Class 1: Secured Tax Claims	**Claim Amount**	$47,331.00
	Impairment	
	Internal Revenue Services These claims will be bifurcated into: (1) a secured claim equal to the value of the property (in this Class 1) and (2) an unsecured claim for the remainder, sometimes called the "deficiency" claim will be treated as a General Unsecured claim (class 4). The Class 1 portion of this single claim will be paid the full liquidation value of the estate as detailed in Exhibit 7. That amounts to $11,117. It will be paid monthly over 60 months at 3% interest or $200 per month. FN.2.	
Class 2: All other Secured Claims	**Claim Amount**	$16,934.64
	Impairment	

	Steve & Gina Oliveria This claim is currently paid monthly with 3.5 years remaining at 18% interest. It will be paid over 5 years with the interest rate reduced to 8% or $283.87 per month. It will be paid from rental income through an arrangement with Springfield Flying Service. FN.2.	
Class 3: Priority Claims	**Claim Amount**	$10,630.22
	Impairment	
	Internal Revenue Service This claim will be paid in full over the 5 years of the plan with a 3% interest rate. Monthly payments of $192.00. FN.2.	
Class 4: General Unsecured Claims	**Claim Amount**	$473,409.99
	Impairment	
	Consists of “general” unsecured claims (claims that are not entitled to “priority” under the Bankruptcy Code and that are not secured by Collateral), which will receive, over time, the following estimated percentage of their claims: 0.00% Internal Revenue Service-Claim #1, Amount: $364,234.54 Franchise Tax Board- Claim #2, Amount: $108, 223.08 Capital One Bank- Claim #3, Amount: $286.75 Capital One Bank- Claim #4, Amount: $415.40 Pacific Bell Telephone- Claim #6, Amount: $240.22	

FN.2. The descriptions for the class treatment were taken from the proposed Plan attached to the Disclosure Statement. While this information typically must be included in the Disclosure Statement itself, the court waives this defect given the limited number of creditors in the case.

Unfortunately, the instant Disclosure Statement does not disclose to creditors the proposed plan treatment. Instead, it tells Creditors to not read the Disclosure Statement to obtain the information to allow a “hypothetical [creditor] of the relevant class to make an informed judgment about the plan...” (11 U.S.C. § 1125(a)(1)), but instead tells the Creditors to review the plan to discover the proposed terms and traverse various exhibits to assemble the information required to be in the Disclosure Statement. The information in the Exhibits is not even summarized in the Disclosure Statement. In substance, the Disclosure Statement is a generic primer on the Chapter 11

confirmation process.

The Debtor-in-Possession has filed a set of Amended Exhibits, Dckts. 80 and 81. Some of the information which should be in the Disclosure Statement itself is relegated to Exhibit Status (such as the background of what led to the bankruptcy filing and the Creditor's claims in various classes).

The Exhibit also includes the statement "Debtor has never had issues with the IRS. He has always timely filed his returns and [p]aid his taxes. Debtor did make offers in compromises to both the IRS and the FTB." Exhibit A pg. 2, Dckt. 80. This appears inconsistent with the facts and is internally inconsistent. The Internal Revenue Service has filed a Proof of Claim in the amount of $364,234.54, which is for the 2005, 2011, 2012, and 2013 tax years. Amended Proof of Claim No. 1. The California Franchise Tax Board has filed a Proof of Claim for $108,223.08, which is for the 2005 tax year. Amended Proof of Claim No. 2. Clearly the Debtor-in-Possession has not paid his taxes prior to the commencement of this case.

A Second Exhibit A describes the treatment of classes. In this Second Exhibit A, there are the terms for the proposed claim payments. Creditors should not be required to wade through multiple Exhibits to obtain the basic information about the plan treatment.

Though the court believes that the Debtor-in-Possession has not intentionally created a confusing disclosure statement as part of a scheme to mislead creditors, the proposed Disclosure Statement has been made unnecessarily confusing and difficult to understand. There are multiple exhibits with the same exhibit number. This is not the proper way to prepare a Disclosure Statement.

A. C. WILLIAMS FACTORS PRESENT

__Y__ Incidents that led to filing Chapter 11

__N__ Description of available assets and their value

__Y__ Anticipated future of the Debtor

__N__ Source of information for D/S

__Y__ Disclaimer

__N__ Present condition of Debtor in Chapter 11

__Y__ Listing of the scheduled claims

__Y__ Liquidation analysis

__N__ Identity of the accountant and process used

__N__ Future management of the Debtor

__Y__ The Plan is attached

In re A.C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re*

Metrocraft, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

No objections have been filed in connection with this case.

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra*.

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. In re Michelson, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

As discussed above, in the instant case, the Disclosure Statement does not provide reasonable understandable, accessible adequate information as required by 11 U.S.C. § 1125.

Creditors should not have to wade through multiple filings to piecemeal together a full Disclosure Statement that provides adequate information pursuant to 11 U.S.C. § 1125. The purpose of the Disclosure Statement is to have a single document that provides this adequate information to allow a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. Unfortunately, the Disclosure Statement as it currently stands does not provide this to the hypothetical or actual creditor.

However, the court concludes that the Debtor-in-Possession can assemble the information over the various exhibits into the actual disclosure statement, removing any confusion and unnecessary burden on creditors. The Debtor-in-Possession will need to revise his Disclosure Statement in light of the concerns the court describes supra. To afford the Debtor-in-Possession the

opportunity to correct these issues, the court will continue the hearing to allow the Debtor-in-Possession to file an amended Disclosure Statement, correcting the concerns of the court. This is appropriate under the circumstances to provide for the proper prosecution of this case, rather than just denying the motion and requiring the Debtor-in-Possession to proceed with a new motion.

The Debtor-in-Possession should incorporate the information in the attached exhibits into the amended Disclosure Statement to ensure that all necessary information is within the Disclosure Statement to satisfy 11 U.S.C. § 1125.

Therefore, the hearing is continued to 3:00 p.m. on February 5, 2015. Debtor-in-Possession shall file an amended Disclosure Statement on or before January 22, 2015.

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 Approval of the Disclosure Statement filed by the Debtor-in-Possession 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 is continued to 3:00 p.m. on February 5, 2015.
>
> **IT IS FURTHER ORDERED** that the Debtor-in-Possession shall file an amended Disclosure Statement on or before January 22, 2015.

2. 14-20352-E-11 PBG-6 PATRICK GREENWELL Pro per

MOTION TO VALUE COLLATERAL OF SECURITY FOR LIEN OF INTERNAL REVENUE SERVICE AND/OR MOTION TO DETERMINE THE LIEN EXTINGUISHED UPON PAYMENT OF SAID AMOUNT
12-10-14 [76]

Tentative Ruling: The Motion to Value secured claim 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.

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 (*pro per*), parties requesting special notice, and Office of the United States Trustee on December 10, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim 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 and other parties in interest are entered.

The Motion to Value secured claim of the Internal Revenue Service ("Creditor") is denied without prejudice.

The Motion filed by Partick Greenwell("Debtor-in-Possession") to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor-in-Possession's declaration.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. Debtor-in-Possession herein filed a Petition for relieve under Chapter 11 of the Bankruptcy Code on January 9, 2014.

B. Creditor recorded at least one tax lien against assets of the Debtor-in-Possession located in Tuolumne County, California, prior to Debtor-in-Possession's filing of the Chapter 11 Petition.

C. The value of all of Debtor-in-Possession's unencumbered assets at the time of filing the Chapter 11 Petition, as reflected in the Schedules totaled $27,819. Debtor-in-Possession claimed all unencumbered assets as exempt in Schedule C.

D. Miscellaneous personal items (clothing, household goods, furniture, etc.) are not subject to levy pursuant to 26 U.S.C. § 6334 and accordingly those items are treated as not subject to the lien. Those items are valued at $7,500.

E. The remaining value of assets to which the lien may attach is $20,319.

F. As a secured creditor in a Chapter 11 proceeding, the Internal Revenue Service is entitled to receive payment in the amount equal to the fair market value of the security at the time of filing the Chapter 11 Petition; and upon payment of that amount Debtor-in-Possession is entitled to have the Internal Revenue Service release the lien pursuant to 11 U.S.C. § 506(a) and (d).

G. Creditor Internal Revenue Service has filed a Proof of Claim, and an amendment on August 14, 2014. They claim the value of their secured claim is $47,331.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the Internal Revenue Service lien may only attached to certain items that the Debtor-in-Possession failed to list or value and conclusory statements as to how these undisclosed assets should be valued. In support, the Debtor-in-Possession merely references some statutes without providing the grounds for the relief. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading

which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.,* 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by

> motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

CONSIDERATION OF SPECIFICITY IN MOTION

With respect to the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, and the Local Bankruptcy Rules, this court has attempted to evenly and fairly apply the rules to all parties. Attorneys are not left to guess when they need to comply with the Rules and when the court will let them be ignored and the court will assemble pleadings or evidence for the attorneys. The Rules are applied, and the more simple the situation the easier it is for the attorney to properly plead the motion, prepare the points and authorities (if one is necessary) and present the evidence.

Here, from the face of the Motion the court has no idea what property is being valued in order to determine the value of the Creditor's secured claim. While the court could go and read Schedules B and C, then extract from the Schedules what the court believes the Debtor-in-Possession asserts is the collateral securing Creditor's claim, then extract the property which is asserted to be exempt pursuant to 26 U.S.C. § 6334, organize that information, state the grounds and property for the Debtor-in-Possession, and then rule on the motion based upon the work done by the court, this court does not believe that such is consistent with the Rules or the court being the impartial finder of fact, determining the law, and issuing the final order or judgment.

Here, all the Debtor-in-Possession has provided the court is a seven paragraph motion that states how the assets which are not identified in the motion should be valued and why some of the items which are not identified in the motion should not to be included in this calculation pursuant to 11 U.S.C. § 506(a). The court will not issue an order purportedly based on a valuing assets not identified in the Motion.

The Debtor-in-Possession's declaration offers little to support the

Motion. It repeats, verbatim, the first five paragraphs of the Motion. It fails to provide testimony as to the value of the property and does not confirm that the value stated in the Schedules is accurate or how that value was determined.

While counsel may believe that "this is so simple that the Motion should just be granted," if it was that simple the Motion would clearly state the property to be valued, the property to be claimed as exempt, and the other grounds for granting the Motion.

Because the Debtor-in-Possession failed to plead with particularity the grounds for the Motion or identify the collateral to be valued, the Motion is denied without prejudice.

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 Valuation of Collateral filed by Patrick Greenwell ("Debtor-in-Possession") 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 is denied without prejudice.

3. 14-20352-E-11 PATRICK GREENWELL
PBG-7 Pro per

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 1
12-9-14 [72]

Tentative Ruling: The Objection to Claim 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).

Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor (*pro per*), parties requesting special notice, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 31 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, 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 Objection to Proof of Claim Number 1 of Internal Revenue Service is overruled without prejudice.

Patrick Greenwell ("Debtor-in-Possession") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case.

The Objection states the following grounds with particularity upon which the request for relief is based:

A. The Debtor-in-Possession objects to the allowance of the claim:

(1) Except as a priority claim for: $10,630.22;

(2) Except as a secured claim for: $20,319; and

(3) Except as an unsecured claim for: $334,070.32.

B. The IRS Proof of Claim claims a secured debt in the amount of $47,331. However, the Debtor-in-Possession has very little property, other than nominal personal items, to which the tax lien may attach. The claim is only secured to the extent of the taxpayers equity in property. Many of the miscellaneous personal items owned by the Debtor-in-Possession are not subject to levy pursuant to 26 U.S.C. § 6334 and accordingly those items are treated as not subject to the lien.

C. The priority claim is $10,630.22 is allowed in the amount claimed.

D. The unsecured claim is increased to $334,070.32 by adding the unallowed secured claim to the unsecured claim.

Objection to Claim, Dckt. 72. In substance, the Objection is made in connection with the Motion to Value the Internal Revenue Service secured claim to be $20,319.00 and increase the amount of the general unsecured claim by the additional $27,012.00 which the court is requested to be determined pursuant to 11 U.S.C. § 506(a) to not be part of the asserted $47,331.00 secured claim. It appears that this Objection is a “belt and suspenders” supplement to the Debtor-in-Possession 506(a) motion. The court’s order valuing a creditor’s secured claim pursuant to 11 U.S.C. § 506(a) also provides that any amounts asserted as secured which are not included in the court’s valuation are to be paid as an unsecured claim in the case. FN.1.

FN.1. Interestingly, in the Debtor-in-Possession’s Declaration (Dckt. 74) he provides testimony identifying the personal property and its value (though not stated in the Objection) for the asserted secured claim. This testimony and information were not provided in connection with the Motion to Value the Secured Claim. It may well be that in counsel’s efforts to be thorough and cover every base, he inadvertently confused what was being pleaded and evidence presented for the Motion to Value with the Objection to Claim.

REVIEW OF PROOF OF CLAIM

Creditor filed Amended Proof of Claim No. 1 on August 14, 2014. The Claim is asserted to be $364,234.54, consisting of:

A. Secured Claim.....$ 47,331.00

B. Priority Unsecured.....$ 10,630.22

C. General Unsecured.....$306,273.32

A copy of the recording of a Notice of Lien is attached to Amended Proof of Claim No. 1.

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Debtor-in-Possession does not object to the claim of $364,234.54 or that of this there is a $10,630.22. The only "objection" is to the value of the secured portion of the claim, with Debtor-in-Possession asserting that the collateral has a value of only $20,319.00. See Objection to Claim, Dckt. 72.

The "objection" is a "disguised" request to value the secured claim of Creditor. Such relief is requested by a motion to value a secured claim pursuant to 11 U.S.C. § 506(a), not by objecting to the claim. See 11 U.S.C. § 502(b), grounds for objecting to claim.

The Objection to Claim is overruled without prejudice. Debtor-in-Possession can properly obtain the requested relief pursuant to his Motion to Value Secured Claim pursuant to 11 U.S.C. § 506(a).

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 Objection to Claim of Internal Revenue Service, Creditor filed in this case by Patrick Greenwell, Debtor-in-Possession, 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 objection to Proof of Claim Number 1 of Internal Revenue Service is overruled without prejudice.