

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 6, 2014 at 10:30 a.m.

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1. [12-36884-E-7](#) JENNY PETTENGILL CONTINUED MOTION TO APPROVE
MF-2 Richard A. Hall STIPULATION TO CONSOLIDATION
AND CONDUCT OF PROCEEDINGS RE
CLAIMS AGAINST CORRIGAN FINANCE
LIMITED, COUNTERCLAIMS AND
LEASING AND SALE OF REAL
PROPERTY
12-17-13 [[166](#)]

CONT. FROM 1-23-14

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2013. By the court's calculation, 37 days' notice was provided. 21 days' notice is required. That requirement was met.

Final Ruling: The Motion to Approve Stipulation was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(3). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to Approve Stipulation to February 19, 2014. No appearance at the February 6, 2014 hearing required.

BACKGROUND

Corrigan Finance Limited ("Corrigan") and John Roberts, Chapter 7 Trustee ("Trustee") move for an entry of an order approving the Stipulation to Consolidation of Proceedings re: Claims Against Corrigan Finance Limited, Counterclaims and Leasing and Sale of Real Property (the "Stipulation"), pursuant to Bankruptcy Code Sections 105(a), 327, 362(d), 363(b), 502(b) and 503(b)(1) and Rules 4001(d), 6004 and 7001 of the Federal Rules of Bankruptcy Procedure.

Jenny Belle Pettengill ("Pettengill") commenced a bankruptcy case by filing a voluntary chapter 13 petition on September 19, 2012 (Case No. 12-36884-E-7). The case was converted to chapter 7 on July 1, 2013. The case

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is now pending before this court. Stanislav Lazutkine ("Lazutkine") commenced a bankruptcy case by filing a voluntary Chapter 7 petition on February 13, 2013 (Case No. 13-21893-B-7). John Roberts is the Chapter 7 Trustee for both cases, and has filed identical motions to approve the stipulation in both cases.

Corrigan is the record owner of real property located at 1590 North Lake Boulevard in Tahoe City, California. Pettengill disputes Corrigan's ownership of the property, and represents that Corrigan is actually controlled by Lazutkine, and that the stock of Corrigan is community property of the Pettengill.

Pettengill is the separated wife of Lazutkine. Pettengill commenced marital dissolution proceedings in 2011, which are now pending as Marriage of Lazutkine before the Superior Court of the State of California, County of Placer (Case No. SDR-0037138) (the "Family Court"). Corrigan was subsequently joined as a party for the purposes of bringing an action to set aside Corrigan's purchase of the Property as a transfer of community property for less than fair and reasonable consideration pursuant to Family Code Section 1100, et seq.

Corrigan has brought certain counterclaims ("Counterclaims"). Pettengill has brought certain claims against Lazutkine personally, including claims for contempt and domestic support (collectively the "Personal Claims"). Trustee concludes that Pettengill properly exempted these Personal Claims. Corrigan also filed motions for relief from the automatic stay in both of the Cases, requesting a determination that the automatic stay does not apply to the Property, and for relief from the automatic stay to allow the litigation to go forward in Family Court with the Dissolution Proceedings. The Trustee objected. Creditor and the Trustee subsequently stipulated to dismissal of both motions without prejudice based upon their tentative agreement. That agreement is the basis for this Motion to Approve the Stipulation.

The court understands there are four pending or potential legal actions involving the Debtor (Pettengill) and Corrigan, where the matter of ownership and lawful occupation of the Tahoe property is in controversy:

- (1.) Marriage of Lazutkine, Superior Court of the State of California, County of Placer, Case No. SDR-0037138.
- (2.) In re Jenny Belle Pettengill, United States Bankruptcy Court, Eastern District, Case No. 12-36884-E-7.
- (3.) In re Stanislav Lazutkine, United States Bankruptcy Court, Eastern District, Case No. 13-21893-B-7.
- (4.) An Unlawful Detainer Action to be filed by Corrigan against Jenny Pettengill, asserting rightful possession of the Tahoe premises.

At the hearing on November 7, 2013, the court suggested that the matters regarding property of both bankruptcy estates could be consolidated such that they will be heard before the court, and that discovery exchanged in connection with the family court proceedings could be used in the bankruptcy case. Trustee and Corrigan now request that all claims reasonably related to property of either of the debtors' estates be heard by this court, and that the

discovery propounded and obtained in the Family Court be transferred to claims being heard before this court.

Trustee states that he wishes to evaluate Pettengill's claim against Corrigan and to prosecute it in bankruptcy court if appropriate, along with any other claims regarding property of both estates. Corrigan, on the other hand, wishes to preserve its right to offset any counterclaims it may hold against the estates, and neither the Trustee nor Corrigan wish to interfere with the Personal Claims between Pettengill and Lazutkine pending in Family Court that do not implicate a claim related to property of the estates. Pettengill and Lazutkine executed agreements to keep confidential certain information and documents discovered. Trustee and Creditor want to use the discovery obtained in connection with the Dissolution Proceedings in proceedings before the bankruptcy court.

Trustee and Corrigan state their desire to sell the property hold the net proceeds until it is determined what amount of the proceeds are property of the estates. This plan seems to be in the spirit of the court's comments at the November 7, 2013 hearing, when the court stated that the property can be sold and the proceeds deposited with the Clerk of the United States Bankruptcy Court. This comment was made in response to Corrigan's concerns that if the Lake Tahoe Property is not quickly sold it will suffer from dilapidation and loss of value.

Trustee and Corrigan further state that because Corrigan "can make certain representations and warranties as owner of record, Creditor would be better positioned to solicit and obtain a higher price if it takes the lead in arranging a sale." Pettengill currently occupies the property without paying rent or real property taxes.

Corrigan appears eager to initiate eviction proceedings against the Debtor, Pettengill. Corrigan and Trustee states that Pettengill has been given a reasonable opportunity to informally agree to pay rent or quit the premises, but has been unresponsive to Trustee's requests. Corrigan expresses its intent to bring an action for unlawful detainer against Pettengill, at its own expense. Trustee and Corrigan agree that the Property should be rented pursuant to a short term lease and that rent should be used to pay for repairs, maintenance and real property taxes, as appropriate, but are unclear how a potential lease agreement might affect the sales price when Corrigan sells the property to a third party.

Proposed Stipulation of Trustee and Corrigan

Corrigan and Trustee (referred to as the "Parties" in the provisions of their agreement), describe the terms of their agreement as follows:

- a. Within a reasonable time, Corrigan shall list the Property for sale and shall thereafter use its best efforts to sell the Property.
- b. All written offers received on account of said listing shall be disclosed to the Trustee within one business day of receipt by Corrigan. Acceptance of any offer and the making and form of any counteroffer shall be subject to the Trustee's advance approval,

overbids, and bankruptcy court approval which approval shall not be unreasonably withheld.

c. All net sale proceeds shall be transferred from escrow and held in a joint, interest bearing blocked account with an institution insured by the Federal Deposit Insurance Corporation (the "Account") pending resolution of the matters to be resolved by the Honorable Ronald H. Sargis (the "Bankruptcy Court").

d. The Trustee shall not unreasonably interfere with any unlawful detainer action to be brought by Corrigan against the person or persons now occupying the Property or other efforts to evict said person or persons.

e. Within a reasonable time of obtaining exclusive possession of the Property, Corrigan shall use its best efforts to lease the Property pursuant to a short-term lease.

f. All rents shall be deposited to the aforesaid Account. Corrigan may use said rents to pay the actual, reasonable costs of repairs and maintenance and to pay defaulted and current real property taxes and penalties subject to advance approval by the Trustee, which approval shall not be unreasonably withheld.

g. Pettengill's claim against Corrigan pursuant to Family Code Section 1100, et seq. and any other claim reasonably related to property of either of the debtors' estates (the "Estate Property Claims") shall be heard by the Court except as otherwise agreed by the Parties. Any Estate Property Claims that would otherwise be heard by the Honorable Thomas Holman shall be consolidated with the aforesaid claims such that they shall be heard by the Bankruptcy Court, and orders and judgments entered by the Bankruptcy Court in connection therewith shall have the same force and effect as if entered by the Honorable Thomas Holman.

h. The Parties hereby consent to the Court's authority to conduct a jury trial (if applicable), enter final orders and judgments with respect to the Estate Property Claims.

I. The Parties shall cooperate in good faith in advising the Family Court that the Dissolution Proceedings are stayed as to the Estate Property Claims but not as to the Personal Claims and shall cooperate in good faith with respect to the adjudication of the Estate Property Claims. The Parties shall meet and confer, in good faith, and propose a joint scheduling order to the Court (or separate proposed scheduling orders if there is an irreconcilable dispute).

j. The Parties may use information and documents discovered by Corrigan, Pettengill and/or Lazutkine in connection with the aforesaid Dissolution Proceedings in prosecuting and defending the Estate Property Claims. The Parties shall be bound by any confidentiality agreements, protective orders and other restrictions upon said information and documents applicable to Corrigan, on the one hand, and the Trustee as successor in interest to Pettengill and/or Lazutkine,

on the other hand. In the event that either Party wishes to request additional discovery, the Parties shall meet and confer, in good faith, with regard to exchanging discovery informally and any the application of any existing or proposed confidentiality agreement, protective orders or other restrictions.

k. Corrigan has filed or will file proofs of claim in both of the Cases on account of its Counterclaims against both of the debtors. In the event that the Trustee objects to either or both of said proofs of claim, the aforesaid provisions regarding consolidation of proceedings with the Bankruptcy Court and discovery shall apply to the claim objection proceedings (the "Claim Objections"). The Parties hereby consent to the Bankruptcy Court's authority to conduct a jury trial (if applicable), and enter final orders and judgments with respect to said potential Claim Objections.

l. The Parties agree that the Bankruptcy Court should not hear any Personal Claims pending in Family Court not reasonably related to the Estate Property Claims or the Counterclaims. The Trustee has concluded that Pettengill has exempted all claims she holds against Lazutkine personally. If requested by a party to the Dissolution Proceedings and it appears reasonably likely that the Family Court will not proceed without an order of the Court, the Trustee shall cooperate with the filing of a motion to abandon any Personal Claims not reasonably related to the Estate Property Claims or Counterclaims and/or stipulating to relief from the automatic stay with respect to said Personal Claims.

m. Corrigan's choice of (a) broker, listing price, commission and form of listing agreement in connection with the aforesaid sale of the Property, (b) leasing broker or property manager, proposed rent, form of lease and choice of tenant or tenants, and (c) attorneys or professionals to be engaged to assist in the aforesaid said unlawful detainer action or eviction efforts shall be subject to the Trustee's advance approval, which shall not be unreasonably withheld, and approval of the Court.

n. Within a reasonable time of Corrigan informing the Trustee of - and the Trustee's approval of - each of said choices of professional, the Trustee shall file with the Court an application or motion seeking approval of the professional's engagement. In the event that said application is not granted, the Parties reserve the right to contend that Court approval is not necessary.

o. Within a reasonable time of the completion of the work of each of said professionals, the Trustee shall file with the Court an application or motion seeking approval of any compensation, commissions, reimbursement of expenses and other amounts reasonably requested by said professionals. The order shall not be construed to require Court approval to pay liens, real property taxes, security deposits and other amounts for which Court authority is not required. If said application is not granted, the Parties reserve the right to contend that Court approval is not necessary.

p. In the event that the Property or the proceeds of the sale thereof are determined to be property of the estate of either of the debtors, Corrigan shall hold an administrative priority claim against said estate for the reimbursement of the reasonable attorney's fees, professional fees and costs of the aforesaid said unlawful detainer action and eviction efforts.

q. In the event of a dispute in connection with this Stipulation, the Court shall hear the dispute upon ten (10) calendar days' written notice to the other party, subject to the Court's availability.

Debtor's Opposition

Debtor opposes the stipulation based on her belief that the agreement is tantamount to "letting the fox into the hen house." Opposition, Dckt. 170. Debtor states that she has scheduled a community property interest of unknown value in Corrigan because Lazutkine told her that he owns corrigan. Debtor asserts that appointing Corrigan is not in the best interests of her bankruptcy estate because Corrigan "is patently incented to do its master's bidding." *Id.*

Additionally, Debtor asserts that there is no basis for so urgently pursuing the sale of the Tahoe property at this time. Liquidating the assets would only serve to lock the proceeds in an account partially controlled by Corrigan, which Debtor asserts is owned by Debtor. Furthermore, Debtor's scheduled claim of ownership has not yet been resolved. Debtor's counsel has also not been contacted regarding the renting of or vacating the Tahoe Property.

Trustee and Corrigan's Reply to Debtor's Opposition

Trustee and Corrigan maintain that Pettengill appears not to understand that any claims she may hold against Corrigan belong to the estate, and that Pettengill has no legitimate interest in the subject matter of the Stipulation. Trustee and Corrigan state that she has no principled objection to the stipulation other than a "generalized, vague and unsupported suspicion." Reply, Dckt. 173.

Trustee and Corrigan state that it is "undisputed" Corrigan holds record title to the real property at issue. The sale proceeds will be held pending resolution of whether the funds are property of the estate. Trustee and Corrigan assure Debtor and the court that the sale will be subject to the Trustee's approval, and the parties will seek Court approval of any brokers and other professionals to be employed and compensated.

The stipulation additionally provides for the Trustee to litigate issues regarding property of the estate in this court. Trustee and Corrigan state that Pettengill has not brought a motion requesting the Court to abstain in favor of the family court, and she has not provided any support therefor. It is necessary and customary for the Trustee to promptly reduce assets of the estate to cash. Both the Trustee and Corrigan are motivated to maximize the value of the property. Both Corrigan, as owner of the property, and the Trustee, as holder of any claims asserted by the estate, have "every incentive to maximize the sale proceeds as one of them will eventually receive the proceeds depending on the outcome of the potential litigation." *Id.*

DISCUSSION

At the core of the proposed stipulation is Trustee's and Corrigan's desire to sell the property at 1590 North Lake Boulevard, Tahoe City, California and reduce its value to cash. There are several issues arising from the disputed ownership of the property which complicates the court's analysis of the proposed agreement. The court is mindful that this is an arrangement that will imbue Corrigan with an enormous degree of control over the sale, and enable Corrigan to move forward in its unlawful detainer suit against Pettengill without interference from the Trustee.

Pettengill, Lazutkine, and Corrigan are embroiled in proceedings in the Family Court, where Pettengill is seeking to set aside a transfer of the property. Pettengill occupies the property, and asserts that Corrigan is a community business in which Lazutkine is the controlling owner. Pettengill alleges that Lazutkine established the business to avoid taxation of funds being brought into the U.S. from Swiss Bank accounts, and that it was a legal tax-sheltering tool (Dckt. No. 138, at pages 37-46).

As evidenced by Exhibit G in Support of Roman Rykounov's Declaration (filed in support of Corrigan's previous Motion for Relief from the Automatic Stay), titled "Pettengill Motion to Join Corrigan Finance Limited" in the state court action, Pettengill alleges that Lazutkine exercises unilateral control over Corrigan's money transfers, investments, executive decisions, and all other primary roles associated with being a controlling owner. Pleading on Joinder, Dckt. No. 138 at 38.

Pettengill argues that Corrigan is the sham company of Lazutkine, and designed to shield Lazutkine and other "officers" of the company from personal liability that may result from the self-dealing transactions in which company personnel were engaged. Pettengill alleges that Corrigan was structured as a vehicle for the transfer of funds from Lazutkine's foreign businesses to the U.S. for lifestyle acquisitions, and that the company was used to conceal Lazutkine's true net worth. Pleading on Joinder, Dckt. No. 138 at 38. It is alleged that Lazutkine himself orchestrated and finalized the purchase of the Tahoe residence, under his authority as a controlling owner, and that the property was actually a personal purchase of Lazutkine. ¶ 18, Pleading on Joinder, Dckt. No. 138 at 39.

Moreover, Pettengill asserts a community interest in the property, stating that the residence was a community purchase undertaken by both Pettengill and Lazutkine.

20. The Tahoe Home Was a Community Purchase. In April 2009, Respondent and Petitioner began shopping for a townhome for themselves in New York City. Respondent put an offer on an 82nd Street townhouse that ultimately fell through. At that time, they decided to look "closer to home," and ultimately settled on the Tahoe Home. They purchased it for \$2.5 million in cash in June 2009.

21. The Parties together chose the property, negotiated the price, proceeded with the acquisition, and worked with an engineering company in Tahoe City to receive all the necessary

permits. They even discussed primarily living in Tahoe City and switching high schools for Petitioner's son. After they purchased the Tahoe Home, Petitioner bought all furniture and fine art on behalf of the community or herself. Respondent continues to pay bills (including utilities) for the Tahoe Home (allegedly on behalf of MetProm, although he has not yet been reimbursed). Respondent told friends that the Tahoe Home was for the Parties' retirement and for their children, and he referred to the residence as the "Lazutkine family home." Respondent also purchased a boat for personal use at the Tahoe Home. And on September 11, 2010, the Parties personally donated use of the Tahoe Home to a benefit auction for the American Cancer Society. The two-night stay was auctioned in their names, and bought by an individual for \$1,800.

22. Despite these facts, Respondent now claims no interest in the Tahoe Home because it is owned by Corrigan. This is contrary to all of his prior actions and statements that the Tahoe Home was a community purchase.

Id.

The court understands Lazutkine's argument to be that the property was not purchased by the Debtor and Lazutkine as their community property, but solely as an investment by Corrigan.

Tahoe Property is Asserted by Pettengill to be Property of the Estate

First, the court is questions why Trustee and Corrigan believe that further state court eviction proceedings are necessary for the Trustee and Corrigan to obtain possession of the Tahoe Property to proceed with a sale. Pettengill is asserting that the property is community property, which then renders the Tahoe residence, if it is community property, to be property of the bankruptcy estate in this case.

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). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." Characterization of property as separate or community as of date of one spouse's bankruptcy filing is determined by applicable state law. *In re McCoy*, 9th Cir. BAP (Cal.) 1990, 111 B.R. 276. For purposes of § 541(a)(2), all community property in California that is not yet divided by a state court at the time of the bankruptcy filing is property of the bankruptcy estate. *In re Mantle*, 153 F.3d 1082, 1085 (9th Cir. 1998). Under California law, division of property is the event that will sever the liability of community property for community debts, and, until division, all community property of the divorcing couple is property of one spouse's bankruptcy estate. 11 U.S.C. § 541(a)(2). *Id.* at 1083.

Here, Pettengill argues that the property, the division of which is still being litigated in the state court dissolution proceedings, was a community acquisition. The proceeds generated would be property of Pettengill's bankruptcy estate pursuant to 11 U.S.C. § 541(a)(2). In the case

of *In re Mantle*, 153 F.3d 1082 (9th Cir. 1998), the Ninth Circuit Court held that since the state court adjudicating Chapter 7 debtor-husband's divorce had not entered any order dividing couple's property when the bankruptcy petition was filed, the proceeds from the sale of the community property house remained community property, and constituted property of the bankruptcy estate. 11 U.S.C. § 541(a)(2). *Id.* at 1085.

Because the property (as argued by Pettengill) remains property of Pettengill's bankruptcy estate, the court may order that Pettengill turn over possession to Trustee pursuant to 11 U.S.C. § 542. The Trustee's ability to request a turnover the nonexempt Tahoe property would render an unlawful detainer suit unnecessary and irrelevant. Rather than file an action to terminate Pettengill's possession of the premises in state court, court can easily order Pettengill turn over the possession of the property to Trustee. The court is uncertain as to why it is necessary for Corrigan to file an unlawful detainer complaint against Pettengill to remove her from property that can be turned over to Trustee.

Merely because Pettengill has stated under penalty of perjury in Schedules filed in this case and has filed pleadings in state court asserting claims in the various personal and real property, the court does not accept these statements as gospel. Though, it does cause heightened concern and demonstrates the need for all parties to sharply turn each corner, not procedurally and substantively taking shortcuts. For Pettengill, it is difficult to argue that the Chapter 7 Trustee should not have control of property which Pettengill argues is property of the bankruptcy estate.

AREAS OF CONCERN FOR THE COURT

Court Approval of the Terms of Sale

The court is troubled by the nature of Corrigan's control over the proposed sale and the language in the Stipulation restructuring the court's power concerning property of the estate. Trustee and Corrigan have agreed that Corrigan will list for sale and market the property. Trustee vaguely agrees to not "unreasonably interfere" with any unlawful detainer action to be brought by Corrigan against the occupants of the property, and to not "unreasonably" withhold approval of Corrigan's choice of broker, listing price, commission, and form of listing agreement in connection with the sale of the property. ¶ 12 of the Stipulation. Trustee also agrees not to unreasonably withhold approval of Corrigan's proposed leasing broker or property manger, proposed rent, form of lease, choice of tenants, and attorneys or professionals engaged to assist in the unlawful detainer action of eviction efforts against tenants.

Much of the power to direct the sale and the manner in which the property will be sold lies with Corrigan. In accordance with the stipulation, Corrigan will locate the brokers and agents who will effectuate the sale. These efforts include the eviction of Pettengill, and the stipulation provides accommodation for the professional fees and costs of any attorneys who may be employed to file an unlawful detainer action against Pettengill.

It is only after Corrigan has completed the legwork on the sale, that the ball bounces back to the Trustee, whose role is limited to giving his blessing to the sale. As the stipulation makes clear, Trustee's blessing shall

not be "unreasonably withheld" in approving the brokers and other professionals employed in the sale. The Trustee shall also not unreasonably withhold approval of bids, overbids, offers, and counteroffers fielded by Corrigan when the property is listed for sale.

The parties then provide that any sale is to be approved by the Bankruptcy Court, but the "not unreasonably withhold approval" standard for approval by the court is imposed by the parties.

The commands regarding the court and Trustee's consent are troubling in their lack of clarity, and restricts the authority of Trustee to fulfill his fiduciary duties to the estate and the power of this court to ensure that any sale is a bona fide, arms-length transaction.

Corrigan and Trustee agree that Corrigan, as the owner of record, is in a better position to solicit and obtain a higher price and should take the "lead in arranging a sale." Someone who asserts an interest in the property has to take the lead, and the decision to allow the party who appears as of title in the California real estate records does not unduly concern the court. However, the Trustee and Corrigan make short shrift of the contentions of misdealing and secret control of Corrigan by Lazutkine. While the court does not tar Corrigan with this contention, the procedures to be imposed on this court lend themselves to abuse by someone who might be trying to secretly operate Corrigan and improperly transfer assets.

The court begins with the engaging of a real estate broker to sell the property. It is not clear that such a broker will be approved by this court, that the broker be an independent third-party, and that the broker understand and accept his or her fiduciary duties to the bankruptcy Trustee and the estate. Second, the process does not appear to be a transparent one in which the court will be confident that the property was fully marketed in a manner to allow for independent third-party bona fide purchasers to be aware of the sale, have the ability to bid on the property, and ultimately be presented to the court. The Trustee is insulated from communicating with the broker, and only "written offers received" will be transmitted to the Trustee. From the face of the Stipulation, the Trustee will have no knowledge, input, or ability to communicate to the court and parties in interest that the marketing process was reasonable and a proposed sale is one generated from the proper marketing of the property.

Third, the Trustee and Corrigan have decided that the property should be rented for some indeterminate amount of time. There has been no knowledgeable, independent, third-party broker advice presented to the court. It may well be that to a real estate professional attempting to sell the Tahoe Property in a reasonable amount of time, a lease of the property only works to reduce the value and limit the marketability.

Fourth, the court is not sure what claims the parties have agreed to be determined in the state court. The recitals state that the Pettengill has exempted all claims which she hold against "Lazutkine personally." If the parties are limiting these claims to be litigated in the state court to the exempted claims, then they should be expressly identified and cross referenced to the Amended Schedule C. Pettengill listed an asset with a value of \$929,898.00 for "Alimony, Maintenance, Support, and Property Settlements and

being exempt pursuant to California Code of Civil Procedure § 703.140(b)(10)(D). That section provides that an exemption exists for,

"(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

The parties need to clearly state that it is the state law claim for alimony, support, or separate maintenance are the "personal claims" that will be litigated in state court. Dckt. 112 at 14. Also, the Trustee should make clear whether he has determined, and if the Trustee and Pettengill are going to notice creditors and seek a judicial pre-determination that whatever Pettengill is awarded is "reasonably necessary for support" or that issue remains to be determined by this court.

Amended Schedule C also lists an exemption in the claim that an exemption is also claimed in a 401(k) account pursuant to this same section. The amount claimed as exempt is \$10.00. The same issue exists.

The parties are reminded that the employment of professionals and the planned sale of the property cannot be completed without the approval of this court. 11 U.S.C. § 363(b) requires that the court review of the terms of the sale to make sure that the sale is fair and equitable, is of benefit the Debtor's bankruptcy estate, and does not violate any applicable nonbankruptcy laws. The court is responsible for examining the terms of any proposed sale to certify that Corrigan is not, for instance, selling the property to an insider, or manipulating the price in a way which would disadvantage Pettengill's estate.

ADDRESSING THE COURT'S CONCERNS

The court's concerns do not appear to be significant impediments to the parties consummating this stipulation and moving promptly to sell the Tahoe Property. Some possible adjustments to the Stipulation include:

- A. The real estate broker is jointly hired by Corrigan and the Trustee. The employment is approved by the court, with the broker demonstrating his or her understanding of the bankruptcy process and the fiduciary duty owed to Corrigan, the Trustee, and the bankruptcy estate.
- B. Corrigan be given the authority to have lead responsibility to give direction and instructions to the broker. The Chapter 7 Trustee could communicate directly with the broker, be copied on all correspondence, inquiries, and marketing data; have personal knowledge of the marketing efforts; and provide input and direction on the marketing of this property to Corrigan (which would not unreasonably object to such input and direction).
- C. As part of the application to be employed, the broker shall provide to Corrigan, the Chapter 7 Trustee, and the court his or her professional opinion as to whether rental of the property helps, hinders, or is of no impact to the business reasonable marketing and sale of the Tahoe property.

- D. The marketing of the property be done independently by the broker and in a manner to provide reasonable assurances that any potential purchaser is a good faith, arms length buyer.
- E. Upon the sale of the Tahoe property, all sales proceeds are placed in a blocked, interest bearing account from which no disbursements may be made except upon order of this bankruptcy court.
- F. Court approval of any proposed sale shall be subject to the standards of 11 U.S.C. § 363 and not a lesser standard created by the parties.
- G. The Chapter 7 Trustee be primarily responsible, with the assistance of Corrigan and its counsel as appropriate, for obtaining possession of the Tahoe property so that it can be marketed and sold. Corrigan and the Trustee can document as part of the Stipulation allowing Corrigan to have possession of the Tahoe property for purposes of the broker marketing it.

CONTINUANCE

The Court continued the hearing to allow the parties to file an amended Stipulation incorporating the issues discussed at the prior hearing.

At the hearing, the court addressed several issues that concerned the parties. First, the court recognizes the Debtor's distrust of Corrigan and that she alleges that Lazutkine controls the "sham corporation." The court determined that an independent third party real estate broker would provide the necessary transparency and commercial market force to reasonably market the property to receive the true fair market value. The Chapter 7 Trustee can further contact the independent real estate broker for information which will add additional transparency to the transaction and allow him to bring issues from the sale of the property to the court, if any arise.

Second, one asserted creditor associated with Debtor expressed concern that the court should not approve the sale of the Tahoe property until after the litigation between the Trustee and Corrigan regarding the community property issue was completed. However, no reason was given why the property should not be sold for cash now and the proceeds held until the dispute was resolved. The court recognizes that the costs and expenses associated with retaining the real property are substantial and do not appear to benefit any of the parties or the estate. Additionally, all parties agreed that the immediate sale of the property was the best course of action. Therefore, the court agreed that the sale of the subject property, with the above stated conditions, was proper and that the parties can resolve their ownership dispute thereafter.

STATUS REPORT

On February 3, 2014, the parties filed a Joint Status Report requesting more time to circulate the draft proposed order and to continue the hearing to February 19, 2014.

On February 3, 2014, the parties filed a Joint Status Report requesting more time to circulate the draft proposed order and to continue the hearing to February 19, 2014.

The court will issue an order consistent with this ruling.

3. [12-34689-E-7](#) ALLEN HASSAN MOTION TO SET ASIDE JUDGMENT
Pro Se 12-20-13 [[215](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Office of the United States Trustee on December 20, 2013. By the court's calculation, 48 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Set Aside has been 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Set Aside Judgment. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor Allen C. Hassan seeks to set aside the Judgments entered in this matter made on September 4, 2013 and November 30, 2013 granting Trustee fees, attorney fees and sanctions against the Debtor.

MOTION

The Motion states the following grounds with particularity (Fed. R. Bankr. P. 9013) upon which the request for relief is based:

- A. This motion will be based on the fact that the Trustee, Douglas Whatley, moved this Court for said orders without disclosing to this Court that he had physically kicked the Debtor out of the first meeting of creditors held on 4/26/2013 and ordered that he not return.

- B. This motion will be further based on the fact that the U.S. Trustee's office had offered to stipulate that this matter would be dismissed or that they would file to have this matter dismissed and when the Debtor agreed to the stipulation the U.S. Trustee's office refused to file said stipulation. Further the U.S. Trustee's office had informed the Debtor that by signing the stipulation that he would not have to attend the upcoming hearing.
- C. This motion is based on the Notice of Motion, This Motion to set aside the Court's Judgment, the declaration of Allen Hassan, the record and files in this case and such oral and documentary evidence as shall be submitted at the hearing of this matter.

The Motion to Set Aside Judgment does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The court declines the opportunity to provide associate attorney or law clerk services to Movant, to assemble the proper motion for Movant, assert those grounds, and then rule upon such asserted grounds.

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 MOTION AND SUPPORTING PLEADINGS

Even through the court does not typically consider motions that do not comply with Federal Rule of Bankruptcy Procedure 9013, the court will consider the allegations set forth in the Motion, Points & Authorities and Declaration.

The allegations in the Motion are set out above. The Points & Authorities sets out Federal Rule of Civil Procedure 60(b), providing the text and related case law. Debtor argues that the court should vacate the judgment under either Federal Rule of Civil Procedure 60(b)(3), (4), or (6) because he was under the impression that he did not have to attend any further hearings. Debtor states that the U.S. Trustee represented to him that the matter would be dismissed via stipulation by motion filed by their office. Debtor states that failure to vacate the Judgment would violate the Debtor's due process rights.

Debtor argues that there are two factors that prevent or deprive the Debtor of his day in court. First, Debtor argues that the Trustee, Douglas Whatley, failed to inform the court that he "threw the Debtor out of the Trustee's meeting using physical force." P&A, Dckt. 218, 5:22-23. Debtor states that the Trustee stated in clear and unequivocal terms that the Debtor should not return. Second, Debtor argues that the Debtor should be able to rely on the representations made by the U.S. Trustee's office, who offered to stipulate that this matter be dismissed or that they would file a motion to dismiss this matter and the Debtor would not have to appear at the hearing. Debtor states the stipulation was never submitted with the court and the U.S. Trustee never filed a Motion to Dismiss.

Debtor also argues that the Trustee seeks information from him that he does not have, regarding inventory of horses, art work, and antique vehicles that do not belong to the Debtor. Debtor states that he has been placed on a list of suspected terrorists and has had his assets frozen, which was the reason he filed for bankruptcy. Debtor states the court granting the Trustee's request for attorney fees places a hardship on him since the money taken were monies that were used to pay trial modification payments.

DECLARATION

In support of these contentions, Debtor offers his declaration, providing the following,

1. I am a Medical Doctor and I run an active medical practice and have so ran such practice since being licensed to practice medicine in 1966.
2. I am also an active Attorney being licensed by the State of California and being admitted to practice before all of the Courts in the State of California and before the United States District Court for the Eastern District of California.
3. Sometime prior to September, 2002 I was placed on the terrorist list by the Office of Foreign assets and Controls.
4. I am not a terrorist as I was born in Red Oak, Iowa, served a tour of duty in the United States Marines, did two tours as a Jungle surgeon during the Vietnam war era and later was promoted to commander in the United States Coast Guard.
5. However, being label a terrorist or at least being placed on the terrorist list by the United States Department of Justice and OFAC has had very negative consequences on m life and especially my financial well being.
6. I previously sued OFAC and the US Department of Justice, although that lawsuit was ultimately dismissed, the honorable Judge Karlton stated that I had suffered enormous damages and that I could still pursue those damages against OFAC and Credco Corelogic, for violations of FCRA, which said action is presently pending before Judge Karlton in the District Court for the Eastern District of California.
7. Because of being placed of this terrorist list I saw my income plummet from approximately \$600,000.00 per year to about \$200,000.00 per year. However, my Financial obligations did not decrease, they stayed the same or increased.
8. Furthermore my assets were frozen because of being placed on the terrorist list and I was not able to borrow money or earn money for that matter since payments on my accounts receivable from my medical practice had come to a halt for some strange reason.
9. The up shot of all of this is that I was forced into filing bankruptcy to save my assets. Initially I filed a Chapter 13 but I was told that my secured debt was too high for a chapter 13. It was recommended that I file a chapter 11 which I did.
10. However, because of conflict with the Attorney for the US Trustee's Office a motion was filed to either dismiss my bankruptcy or to convert it to a chapter 7.

11. My Bankruptcy was converted to a Chapter 7 and Attorney Douglas Whatley was appointed the Chapter 7, trustee.
12. Since Mr. Whatley's appointment he has lied to me and Lied, deceived and defrauded this Court.
13. Mr. Whatley has represented to this Court that I have major assets when I don't and has continually asked that I provide him with records and ownership information that I do not have. I cannot provided to him information that does not exist.
14. As a result Mr. Whatley hired an Attorney for the purpose of extracting exorbitant fee from me when his Attorney has done nothing other than asking this Court to extend the deadline for creditors to object to a discharge.
15. Again Mr. Whatley has mislead this Court since I do not have unsecured creditors that have not been paid or that has submitted a creditor's claim.
16. As this Court can see there is no reason that Attorney Whatley should exist in my life.
17. Trustee Whatley has made several representation to this Court that I have refused to attend Creditor's meetings or comply with his requests. Those are both lies concocted by Trustee Whatley.
18. Trustee Whatley admits that I attended the Creditor meeting on April 26, 2013. However, he fails to mention the fact that he became irate and got into a verbal altercaion with me when I inquired as to why he always placed me last on his list.
19. He also fails to mention that during this fit of anger, that during his outrageous rank and verbal altercation that he screamed at me that I should leave and that I should not return or come back.
20. He also fails to mention that during his tirade that he assaulted the only Black person in the meeting room and that his assaultive acts were intentional as he was trying to through the Black Gentlemen out of the trustee's meeting room.
21. He assumed that the Black Gentlemen was with me and he was right in that assumption. However, that did not justify his conduct in assaulting this gentlemen whom had been very respectful to the trustee during those proceedings, had not said a word, was properly dressed, had removed his hat out of respect for the Trustee.

22. Fortunately for this gentlemen he was much larger than the Trustee because based on the Trustee's actions he would have caused serious damage to a smaller man.
23. It was after that that trustee Whatley insisted that I leave and that I should never return.
24. The Trustee's Conduct was reported to the US Marshall's office and they agree that such behavior was unnecessary.
25. I have reported Attorney Whatley's conduct to the California State Bar for his unethical conduct and assaultive conduct to a innocent member of the public as well.
26. Also Attorney GE, whom is the Attorney for the United States Trustee's Office, sent me correspondence and a stipulation which he stated that by signing such stipulation and returning it to his office that this bankruptcy would be dismissed. (See Exhibit "A")
27. I complied with the request of Attorney GE, I signed the stipulation and returned it to his office in a timely manner.
28. Although there was a hearing coming up I was assured by Attorney GE that by signing the stipulation and returning it to his office in a timely manner that I would not have to attend that hearing since the Bankruptcy would be dismissed.
29. Well obviously that did not happen and I am now being punished for relying on the word of the United States Bankruptcy Office.
30. Since it is obvious that Trustee Whatley cannot be trusted to be honest in his representations to this Court and that the Attorney for the United States Trustee's Office has mislead me, I am asking that the Judgment entered in this matter be set aside and that I have an opportunity to respond to the accusations against me before this Court passes Judgment.

Declaration, Dckt. 217.

The declaration provided by Debtor does not provide the proper testimony under penalty of perjury. The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be

taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

Movant has failed to provide his testimony under penalty of perjury. Movant has failed to provide the court with competent evidence of the obligation and Movant's interests. While purporting to be a "declaration," no attestation that the statements are made under penalty of perjury and are true and correct. Given that this is a basic requirement for any declaration and that Movant is a licensed attorney, the court questions whether forgetting to state this was an accident or part of an effort to make allegations without the "burden" of them being true.

CHAPTER 7 TRUSTEE'S OPPOSITION

The Chapter 7 Trustee, Douglas Whatley, opposes the Debtor's motion stating that neither reason stated by the Debtor (that the Trustee physically removed him from the meeting of creditors and that the U.S. Trustee told him that he did not have to appear at further hearings based on a stipulated dismissal) are reasons to set aside the orders by this court. The Trustee states that the Debtor has not shown grounds for relief under 11 U.S.C. § 60(b). Trustee argues that Debtor is both an attorney and a physician that should know that an order from the court cannot be ignored, even if the above facts were true. Trustee states Debtor should know that a case is not closed until it is dismissed by the court. Trustee states that the allegations set forth by Debtor regarding the Trustee's actions are inaccurate and even if they were true, would not be sufficient for the Debtor to rely upon to ignore orders directly from the court.

U.S. TRUSTEE'S OPPOSITION

Tracy Hope Davis, the United States Trustee ("UST") opposes the Debtor's Motion on the basis that the Debtor's motion is not supported by evidence to show the Debtor signed a stipulation to dismiss the case with prejudice and that he returned such stipulation to the UST. While Debtor asserts that he signed a stipulation and that he returned the stipulation to

the UST, he offers no evidence regarding the same. The only evidence offered is the letter the UST sent Debtor, along with the unsigned stipulation; no evidence of a signed stipulation has been offered.

The UST states that she has not received the Stipulation allegedly signed by the Debtor or a copy thereof and has had no communication with the Debtor since August 2013, when the stipulation was originally sent. After receiving this motion, the UST then contacted the Debtor to provide a copy of the signed stipulation and has not received any such communication to date.

UST argues that the Debtor's assertion that the UST refused to file the stipulation is false and that they never received a signed copy of the stipulation.

Additionally, the UST argues that the Debtor's motion is not supported by evidence to show that the UST had informed the Debtor that if he signed the stipulation, he would not need to appear at any future court hearings and such an assertion is false. Furthermore, the UST states that the Debtor should have filed written responses to the Court's order to show cause to inform the court that he signed the stipulation, if he did.

Lastly, the UST argues that the motion should be denied because it is not supported by competent evidence.

DISCUSSION

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd

ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

The court begins with the observation that Allen C. Hassan, as stated in his declaration, is a medical doctor who runs an active medical practice and an active attorney licenced by the State Bar of California. This court recognizes that Allen C. Hassan is an experienced attorney. Despite this fact, the pleadings filed in this case are not compliant with the Local Bankruptcy Rules or the Federal Rules of Bankruptcy Procedure.

Regardless, Allen C. Hassan has not shown proper grounds pursuant to Federal Rule of Civil Procedure 60(b) for this court to vacate the prior orders issuing sanctions and attorney's fees. Debtor offers two excuses for his failure to respond to the orders issued by this court: (1) the Trustee physically removed Debtor from his meeting of creditors and told him not to return and (2) the UST made representations that he did not have to appear at further hearings based on a stipulated dismissal.

The court first notes that the following Orders to Appear and Show Cause were served on Allen C. Hassan's residence and his office:

- A. Order to Show Cause, dated June 25, 2013, Dckt. 176.
- B. Order Compelling Production of Documents and Appearance of Allen C. Hassan, Debtor, dated June 25, 2013, Dckt. 178.
- C. Order Imposing Sanctions, dated July 30, 2013, Dckt. 193.
- D. Order Imposing Corrective Sanctions for Failure of Allen C. Hassan to Comply with June 25, 2012 Order to Produce Books and Records of the Estate and to Appear at the June 25, 2013 First Meeting of Creditors; and Order for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting of Creditors; and Order to Show Cause as to Why Further Corrective Sanctions Should

Not Be Ordered if Allen C. Hassan Fails to Comply with Order, dated July 30, 2013, Dckt. 195.

- E. Order Imposing Corrective Sanctions for Failure of Allen C. Hassan to Comply with July 30, 2012 Order to Produce Books and Records of the Estate and to Appear at the First Meeting of Creditors; and for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting of Creditors; and Order to Show Cause as to Why Further Corrective Sanctions Should Not Be Ordered if Allen C. Hassan Fails to Comply with Order, dated September 4, 2013, Dckt. 206.
- F. Order Imposing Corrective Sanctions for Failure of Allen C. Hassan to Comply with September 4, 2013 Order to Produce Books and Records of the Estate and to Appear at the First Meeting of Creditors; and for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting of Creditors; and Order to Show Cause as to Why Further Corrective Sanctions Should Not Be Ordered if Allen C. Hassan Fails to Comply with Order, dated November 13, 2013, Dckt. 211.

Allen C. Hassan did not comply with any of these clear orders. The excuses provided by the Allen C. Hassan are not sufficient, nor material, especially for an experienced attorney like this Debtor. Even if the court were to believe the allegations set forth in Allen C. Hassan's declaration and points and authorities, they are not grounds under Federal Rule of Civil Procedure 60(b) to vacate the prior orders.

First, the Trustee requesting the Debtor (and his associates) to leave the 341 meeting of creditors, which is not held before this bankruptcy court, does not grant the Debtor permission to ignore all orders of this court. The Chapter 7 Trustee does not represent the court, does not exercise the federal judicial power of this court, or hold any authority to dictate appearances before the court. All attorneys understand the basic requirement that a person complies with order of the court, and if they fail to comply, corrective or punitive sanctions may be issued.

Debtor's contention that he did not have to comply with the court's orders is belied by the fact that the court repeatedly issued orders for his compliance and issued prospective corrective sanctions if he did not comply with the order. Further, the court's orders expressly stated that if he could not timely comply with the order, Allen C. Hassan could file a motion for relief from the order. Allen C. Hassan did not comply or seek relief from any order. Rather, he chose to ignore the orders, quite possibly hoping that the court would tire of his non-compliance and figure that enforcing federal court jurisdiction was just a waste of time when faced with counsel determined not to comply.

The grounds asserted by Allen C. Hassan do not go to ignoring the orders of this court and his failure to seek relief from those orders. He ignores that misconduct, and instead attacks the Chapter 7 Trustee. What the Chapter 7 Trustee has or has not done is not now before the court. No

contention is made by Allen C. Hassan that he complied with the orders of this court or attempted to comply with the orders of this court.

Second, Allen C. Hassan attempts to distract the court from his repeated non-compliance with the orders of this court and failure to seek relief from those orders with respect to his allegations of misconduct by the U.S. Trustee. Even if the court were to believe the allegations set forth by the Debtor, it is not sufficient basis under Federal Rule of Civil Procedure 60(b) to vacate the orders of this court. Allen C. Hassan provides an unauthenticated letter and unsigned stipulation from the U.S. Trustee. Allen C. Hassan does not provide evidence that he signed and returned these documents to the U.S. Trustee for him to file. As an attorney, Allen C. Hassan offers no explanation as to why he does not have an executed copy of the document in his files.

Even if what Allen C. Hassan alleges was true and the U.S. Trustee failed to docket the stipulation as asserted (for which there is no evidence), two parties stipulating to a dismissal does not allow Allen C. Hassan to ignore the orders of this court. While the U.S. Trustee is part of the United States Department of Justice, it is not part of the judicial branch and does not exercise the federal judicial power of the United States Courts. The U.S. Trustee does not dictate to the court which cases will be and when they will be dismissed. As attorneys know, members of the United States Department of Justice (U.S. Attorneys, Asst. U.S. Attorneys, U.S. Trustees, Assistant U.S. Trustees) do not vacate or issue court orders and do not "overrule" judges. Until the court dismisses a case it is still actively open, and even after dismissal, parties are still subject to the court's jurisdiction. 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).

Additionally, the conduct on the part of the Chapter 7 Trustee or the UST which Allen C. Hassan alleges is grounds for fraud pursuant to Federal Rule of Civil Procedure 60(b)(3) is not sufficient. Rule 60(b)(3) authorizes the court to grant a motion to relieve a party from a final judgment, order, or proceeding because of fraud, misrepresentation, or misconduct by an opposing party. Fed. R. Civ. P. 60(b)(3). FN.1. Both intentional and unintentional misrepresentations and failures to disclose are a sufficient basis for relief. See, e.g., *Lonsdorf v. Seefeldt*, 47 F.3d 893, 895 (7th Cir. 1995). However, the moving party has the burden of proving fraud or misrepresentation **by clear and convincing evidence**. *Bunch v. United States*, 680 F.2d 1271, 1283 (9th Cir. 1982) (emphasis added). Furthermore, the moving party must not only show fraud or other misconduct, but that the misconduct prevented moving party from a fair opportunity to litigate. *In re M/V Peacock*, 809 F.2d 1403, 1405 (9th Cir. 1987). Allen C. Hassan has not met his burden to show that the alleged conduct by the Chapter 7 Trustee or the UST was sufficient misconduct or fraud that warrants the court revoking the orders. Allen C. Hassan has not shown that this alleged conduct prevented him from a fair opportunity to prosecute this bankruptcy case.

FN.1. Examples of the type of fraud or misconduct found by the courts include the following: (1) Failure to truthfully respond to discovery requests may be fraud sufficient to set aside a judgment. *Schultz v. Butcher*, 24 F.3d 626, 630-631 (4th Cir. 1994) (boat operators failure to supply a Coast Guard report to boat owner in response to discovery request merited granted 60(b)(3) motion). (2) Presentation of wilfully perjured testimony may justify relief from judgment. *Diaz v. Methodist Hosp.*, 46 F.3d 492, 497 (5th Cir. 1995) ("If **unequivocal evidence** establishes that a party willfully perjured himself, and thereby prevented the opposition from fully and fairly presenting its case, use of Rule 60(b)(3) to grant the innocent party a new trial would be a proper response" [emphasis added]). (3) Presentation of false or forged documents may justify relief from judgment. *Lonsdorf v. Seefeldt*, 47 F.3d 893, 897-898 (7th Cir. 1995) (relief granted when defense in employment discrimination action was based on falsified training schedule).

Furthermore, the court does not find the testimony of Allen C. Hassan credible. As a licensed, experienced, well educated attorney (holding a medical license as well as licensed to practice law) knows the importance of an Order to Show Cause and the roles of the Chapter 7 Trustee and the United States Trustee. Allen C. Hassan was properly served with the Orders to Show Cause issued by this court and chose to ignore them. Allen C. Hassan could have filed the required written responses or even appeared at the hearings on the orders to relay these excuses to the court. Allen C. Hassan did not file a written response to the Court's order to show cause dated July 30, 2013, even though that order required a written response be filed by the Allen C. Hassan before August 22, 2013. Dckt. 195. Allen C. Hassan did not file a written response to the Court's September 4, 2013 order to show cause, which required a similar written response from the Debtor. See Dckt. 206. Nor did Allen C. Hassan appear at the court hearings on August 29, 2013, and November 7, 2013. Dckts. 205 and 213. Allen C. Hassan's post-hoc attempts to blame the other parties in this case for his failures to appear or respond to this court's orders is not credible and not in good faith.

ALLEN C. HASSAN'S BANKRUPTCY PROCEEDINGS

Allen C. Hassan's conduct in this and his prior bankruptcy case further undercut his credibility. His first bankruptcy case was filed on March 20, 2012. The case was filed as a Chapter 13 reorganization in which Allen C. Hassan elected to represent himself. Bankr. E.D. Cal. 12-25371 ("First Bankruptcy Case" or "FBC"). In his Statement of Financial Affairs Allen C. Hassan failed to disclose the amount of income he had earned for calendar year 2012 to date of filing, income earned in 2011, and income earned in 2010 as required. Instead, he merely inserted in response to Question 1 of the Statement of Financial Affairs the number and words for the amount and source, "75,000 Profession." FBC Dckt. 17 at 1. For other income for the three year period, in response to Question 2, Allen C. Hassan inserted the number "00.00." *Id.* In response to Question 18, "Nature, location, and name of business," Allen C. Hassan stated his medical practice and did not list his law practice. *Id.* at 7.

In response to Question 4, "Suits and administrative proceedings, executions garnishments and attachments" Allen C. Hassan listed a collection lawsuit and a foreclosure suit filed against him. *Id.* at 3. He did not list any lawsuits he had pending against anyone. On Schedule B Allen C. Hassan did not list any claims or other rights he had or was asserting against any other person. Allen C. Hassan did not list any sole proprietorships or interests in any limited liability companies, corporations, or professional corporation. These statement under penalty of perjury were made with the April 17, 2012 filing of the Schedules and Statement of Financial Affairs. *Id.*

On June 6, 2012, the Chapter 13 Trustee filed an Amended Motion to Dismiss the First Bankruptcy Case. FBC Dckt. 49. The grounds states were that Allen C. Hassan (1) failed to provide copies of require tax returns, (2) Allen C. Hassan had failed to file a motion to confirm the Chapter 13 plan and was not prosecuting the case, (3) the Plan proposed payments from Allen C. Hassan of \$300.00 a month plus other sums from "income from Allen C. Hassan, M.D., Inc." (which was not listed as an asset on Schedule B), but the Plan required the Chapter 13 Trustee to make disbursements of \$22,640.00 a month to creditors, (4) Allen C. Hassan was in default on his plan payments, having failed to make any payments to the Chapter 13 Trustee, (5) Allen C. Hassan's debts exceeded the debt limits of 11 U.S.C. § 109(e) to qualify as a Chapter 13 debtor, and (5) Allen C. Hassan conduct in the case demonstrated a strategy of delay, non-disclosure of assets, non-disclosure of the law practice, and non-disclosure of animals owned by Allen C. Hassan.

The court issued a conditional order of dismissal on June 21, 2012. FAC Dckt. 56. Unless Allen C. Hassan filed his election to convert the case from Chapter 13 to one under another Chapter on or before June 25, 2012, the First Bankruptcy Case would be dismissed. The original hearing was continued from May 30, 2012 to June 21, 2012 to allow Allen C. Hassan to engage the services of a knowledgeable, experienced bankruptcy attorney. At the June 21, 2012 hearing Allen C. Hassan represented to the court that he had engaged the services of such knowledgeable, experienced bankruptcy counsel, but that such counsel could not attend the June 21, 2012 hearing. FBC Dckt. 57, Civil Minutes. The court conditionally granted he motion, allowing Allen C. Hassan and the counsel to covert the case. However, no conversion was filed and the First Bankruptcy Case was dismissed on June 28, 2012. FBC Dckt. 60.

On August 10, 2012, approximately one month later, Allen C. Hassan filed his second bankruptcy case (this case, 12-34689). He filed a Chapter 11 case in *pro se*, choosing to representing himself. Though Allen C. Hassan had represented to the court that knowledgeable, experienced bankruptcy counsel had previously been retained by him, none appeared to represent him in this second bankruptcy case. On September 10, 2012, Allen C. Hassan filed his Schedules and Statement of Financial Affairs in the present case. Dckt. 16.

Schedule B does not list a sole proprietorship, limited liability company, corporation or professional corporation for either Allen C. Hassan's medical practice or legal practice. *Id.* at 2-4. Allen C. Hassan did list a \$300,000.00 "Medicare payment to be processed" as a personal asset on Schedule B. *Id.* at 3. No claims or actions against any persons

are listed on Schedule B. No business property, equipment or assets which would be used in a medical practice or a law practice are listed on Schedule B.

On Schedule I Allen C. Hassan stated that his monthly income was \$38,000.00, with the law practice income to increase by \$10,000.00 a month. *Id.* at 17. With this \$48,000.00 a month in income, Allen C. Hassan stated on Schedule J that he had \$37,312.00 in expenses, including \$3,800.00 a month for horses and miscellaneous expenses. *Id.* at 18. However, no horses are listed as being owned by Allen C. Hassan on Schedule B.

On the Statement of Financial Affairs Allen C. Hassan again failed to provide the income information for 2012 (the year in which the case was filed), 2011, and 2010. Instead, in response to Question 1 of the Statement of Financial Affairs he responded for amount and source, "150,000 Profession," and stated None in response to Question 2. *Id.* at 21-22. In response to Question 4 for Suits which are pending or were pending within the one-year period immediately preceding the commencement of the bankruptcy case, Allen C. Hassan again listed only a collection suit and a judicial foreclosure suit against him. *Id.* at 23. Allen C. Hassan did not disclose the District Court litigation.

On October 16, 2012, Allen C. Hassan filed his Chapter 11 Status Report. Dckt. 42. In the Status Conference Report Allen C. Hassan disclosed that he filed and served a lawsuit against the U.S. Government and others. He also advised the court and parties in interest that he leased new space on El Camino Avenue, additional space on Kent Drive, and hired a professional biller. Allen C. Hassan also represented that he intended to file a plan and disclosure statement by December 1, 2012.

Allen C. Hassan did not get to the December 1, 2012 to file his plan as a creditor and the U.S. Trustee filed motions to convert or dismiss the Chapter 11 case. The court denied without prejudice the motion filed by the creditor for defective service and improper pleadings.

The Motion to Convert filed by the U.S. Trustee alleged the following grounds.

- A. At the Initial Debtor Interview with the U.S. Trustee on September 25, 2012, Allen C. Hassan was told that he had to open the debtor in possession bank account(s) and provide proof of property and liability insurance. As of the October 31, 2012 filing of the Motion to Convert, no proof of the debtor in possession bank account(s) or the property and liability insurance had been provided to the U.S. Trustee.
- B. Allen C. Hassan had failed to file the Monthly Operating Reports for August 2012 and September 2012. (From reviewing the Docket the court can see that Allen C. Hassan failed to file any Monthly Operation Reports as Debtor in Possession, the fiduciary of the bankruptcy estate.)
- C. Allen C. Hassan failed to disclose any accounts receivable from his law practice or for the rental properties he owned.

- D. Allen C. Hassan failed to disclose accounts receivable in the First Bankruptcy Case.

Motion, Dckt. 53.

Allen C. Hassan filed no opposition to the Motion to Convert. At the Allen C. Hassan appeared and asserted that he had not been served with the Motion to Convert. He also asserted that Anthony Hughes was his counsel in this bankruptcy case. No substitution of attorney had been filed by Anthony Hughes. The court did not find Allen C. Hassan's statements to be credible. Proper certificates of service had been filed attesting to the service. The court did not find Allen C. Hassan's statements that "I have counsel, he just hasn't substituted in yet" to be credible.

The court converted the case to one under Chapter 7. Once converted, Allen C. Hassan became "missing in action," failing to appear at the meeting of creditors or any hearings. Anthony Hughes never substituted in the case as Allen C. Hassan's counsel. Allen C. Hassan made no attempt to reconvert the case to one under Chapter 11. Allen C. Hassan has not accounted for the \$48,000.00 a month in income which he stated under penalty of perjury on Schedule I during the period he served as the Debtor in Possession, the fiduciary of the bankruptcy estate.

This improper conduct has continued in this case with the repeated ignoring of orders to appear, orders to attend the First Meeting of Creditors, and orders to produce documents required of a bankruptcy debtor. Allen C. Hassan has repeatedly demonstrated that while he wants the benefits of being a bankruptcy debtor, he has determined that the laws do not apply to him, only to his creditors.

CONCLUSION

Allen C. Hassan has failed to show proper grounds for the court to vacate its prior orders imposing corrective sanctions. There has been no fraud and Allen C. Hassan has not been prevented or misled from responding to the court's orders. As a very well educated man and a licensed attorney, it is not credible for Allen C. Hassan to contend that he did not understand the court's orders, did not understand that if he was not going to comply with the court's orders he had to file a motion for relief from the order, or that the U.S. Trustee or Chapter 7 Trustee could not vacate or waive the orders of this court. What the present Motion clearly demonstrates, as Allen C. Hassan attacks the Chapter 7 Trustee and U.S. Trustee, while ignoring his failure to comply with the order, is that it is yet another attempt by Allen C. Hassan to abuse the bankruptcy laws and federal courts.

Based on the foregoing, the court denies the Debtor's request to set aside the Orders of the Court.

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 Set Aside Judgment filed by 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 the Motion is denied.

4. [12-34689-E-7](#) **ALLEN HASSAN** **MOTION TO DISMISS CASE**
UST-2 **Pro Se** **12-31-13 [220]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 31, 2013. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss Case 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 court's tentative decision is to grant the Motion to Dismiss Case with prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

INTRODUCTION

Tracy Hope Davis, the United States Trustee ("UST") moves to dismiss this case with prejudice pursuant to 11 U.S.C. §§ 707(a) and 349(a). Trustee states that this case commenced under Chapter 11, in August 2012 and that this case is the second, consecutive individual case filed by the debtor *pro se*. On November 29, 2012, this case was converted from Chapter 11 to one under Chapter 7. Although the Chapter 7 trustee scheduled numerous meetings of creditors, Allen C. Hassan, the "Debtor," appeared and testified at one meeting of creditors while this case was pending in Chapter 7. UST States that the Chapter 7 trustee twice sent letters to Allen C. Hassan requesting documents and information concerning the nature and extent of Allen C. Hassan's personal assets including artwork, 29 horses, and rental agreements, but Allen C. Hassan did not produce the requested documents and information. Since June 2013, the Court has issued four (4) orders to show cause and imposed sanctions, due to Allen C. Hassan's failure to comply with

court orders including the payment of the sanctions; to appear at follow-up meetings of creditors; and to produce documents to the Chapter 7 trustee.

The UST argues that although Allen C. Hassan owns rental property and appears to operate legal and medical practices, he has failed to disclose accounts receivable in his bankruptcy schedules, even after the Court dismissed his prior case and after the United States Trustee moved to convert this case, based on the same omissions. UST states that before the Court is a clear record of delay and contumacious, egregious conduct by Allen C. Hassan and that the case should be dismissed with prejudice.

The UST argues that this case should be dismissed with prejudice due to Allen C. Hassan's failure to appear at nine (9) scheduled meetings of creditors; failed to produce documents requested by the Trustee; failed to cooperate with the Trustee; disobeyed several court orders to appear and produce documents; and failed to amend his bankruptcy schedules to disclose accounts receivable and his Statement of Financial Affairs to disclose income from his rental properties.

The court also notes that during the Chapter 11 portion of this case Allen C. Hassan failed to file any monthly operating reports as the Debtor in Possession, the fiduciary of the bankruptcy estate. As set forth on Schedule I, Allen C. Hassan has stated under penalty of perjury that he had \$38,000.00 to \$48,000.00 a month in income (Dckt. 16 at 17), none of which he, as the fiduciary, has ever accounted for in this case.

Chapter 7 Trustee's Support

Douglas M. Whatley, Chapter 7 Trustee concurs with the UST's Motion to Dismiss Chapter 7 Case with prejudice. The Trustee requests that the court retain jurisdiction to further sanction Allen C. Hassan for fees and costs incurred by the Trustee and his counsel.

Creditor's Opposition

Creditors John Wolfgram and Stephen De Boever oppose the motion on the basis that dismissal benefits Allen C. Hassan for abuse of the bankruptcy process and rewards him for misconduct. Creditors appear to believe that the court will no longer have jurisdiction to sanction Allen C. Hassan if the case is dismissed without prejudice.

BACKGROUND

Allen C. Hassan's Bankruptcy Proceedings

Allen C. Hassan's conduct in this and his prior bankruptcy case further undercut his credibility. His first bankruptcy case was filed on March 20, 2012. The case was filed as a Chapter 13 reorganization in which Allen C. Hassan elected to represent himself. Bankr. E.D. Cal. 12-25371 ("First Bankruptcy Case" or "FBC"). In his Statement of Financial Affairs Allen C. Hassan failed to disclose the amount of income he had earned for calendar year 2012 to date of filing, income earned in 2011, and income earned in 2010 as required. Instead, he merely inserted in response to Question 1 of the Statement of Financial Affairs the number and words for

the amount and source, "75,000 Profession." FBC Dckt. 17 at 1. For other income for the three year period, in response to Question 2, Allen C. Hassan inserted the number "00.00." *Id.* In response to Question 18, "Nature, location, and name of business," Allen C. Hassan stated his medical practice and did not list his law practice. *Id.* at 7.

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Allen C. Hassan has brought to the court's attention that he has been a plaintiff in cases before the United States District Court for the Eastern District of California. A review on PACER of the District Court filed discloses the following case information in which Allen C. Hassan is either a Plaintiff or has filed a counter-claim.

A. Case No. 13-01942

1. Allen C. Hassan Complaint Filed September 18, 2013
2. Claims against the United States Government and non-governmental entities for violation of credit reporting laws, negligence, defamation, and violation of privacy rights. The complaint seeks actual and statutory damages between \$200.00 and \$20,000,000.00; additional actual damages for lost wages, pain and suffering, and attorneys' fees; punitive damages between \$100.00 and \$1,000,000.00 for each of the alleged fair credit reporting act violations. The claims related to conduct dating back to 2002.
3. Motions to Dismiss set for hearing on March 31, 2014.

B. Case No. 12-01933

1. Allen C. Hassan Complaint against the United States Government, State of California and other non-governmental entities Filed July 20, 2012.
2. Claims against the United States Government and non-governmental entities for financial damages of not \$20,000,000.00; general damages for claims since 2002, in the amount of \$100,000,000; punitive damages in an unstated amount, and additional punitive damages to fund an "Office of the Constitutional Defender."

3. Order dismissing the Complaint, with prejudice for all claims except those arising under credit reporting laws, filed February 11, 2013.
4. Ninth Circuit Court of Appeals Order dismissing for Allen C. Hassan failing to file opening brief filed on July 25, 2013.

On the Statement of Financial Affairs Allen C. Hassan was required to list all litigation in which he was a party at the time of filing or during the one-year period preceding the filing. Question 4, Dckt. 16 at 4, FBC Dckt. 17 at 3. The First Bankruptcy Case was filed on March 20, 2012, with the one-year disclosure period dates back to March 20, 2011. For the Current Bankruptcy Case, filed on August 10, 2012, the one year disclosure period dates back to August 10, 2011. Clearly District Court case no. 12-01933, filed on July 20, 2012, should have been disclosed in the Statement of Financial Affairs in the Current Bankruptcy Case.

Additionally, Allen C. Hassan was required to disclose the existence of these asserted rights to \$20,000,000.00+ on Schedule B filed in both bankruptcy cases. Any such rights and claims were and are property of the respective bankruptcy estates. 11 U.S.C. § 541(a). Further, when Allen C. Hassan filed the District Court action in case no. 13-01942 on September 18, 2013, the Current Bankruptcy Case had already been converted to one under Chapter 7. Order Converting Case filed on November 29, 2012, Dckt. 92. Upon conversion, the Chapter 7 Trustee was the only person authorized to exercise any rights, powers, and interests of the estate, and the only person with the right to control property of the estate. 11 U.S.C. §§ 704(a), 1106, 1107, 1203, 1303; *McGuire v. United States*, 550 F.3d 903, 914 (9th Cir. 2008); *Estate of Spirtos v. One San Bernardino County Superior Court Case Numbered SPR 02211*, 443 F.3d 1172, 1175 (9th Cir. 2006) ("We therefore reaffirm our previous reasoning and that of our sister circuits and hold that the bankruptcy code endows the bankruptcy trustee with the exclusive right to sue on behalf of the estate."); *Houston v. Eiler (In re Cohen)*, 305 B.R. 886 (B.A.P. 9th Cir. 2003). Allen C. Hassan had no right to file a lawsuit purporting to assert rights which were property of the bankruptcy estate.

On June 6, 2012, the Chapter 13 Trustee filed an Amended Motion to Dismiss the First Bankruptcy Case. FBC Dckt. 49. The grounds states were that Allen C. Hassan (1) failed to provide copies of require tax returns, (2) Allen C. Hassan had failed to file a motion to confirm the Chapter 13 plan and was not prosecuting the case, (3) the Plan proposed payments from Allen C. Hassan of \$300.00 a month plus other sums from "income from Allen Hassan, M.D., Inc." (which was not listed as an asset on Schedule B), but the Plan required the Chapter 13 Trustee to make disbursements of \$22,640.00 a month to creditors, (4) Allen C. Hassan was in default on his plan payments, having failed to make any payments to the Chapter 13 Trustee, (5) Allen C. Hassan's debts exceeded the debt limits of 11 U.S.C. § 109(e) to qualify as a Chapter 13 debtor, and (5) Allen C. Hassan conduct in the case demonstrated a strategy of delay, non-disclosure of assets, non-disclosure of the law practice, and non-disclosure of animals owned by Allen C. Hassan.

The court issued a conditional order of dismissal on June 21, 2012. FAC Dckt. 56. Unless Allen C. Hassan filed his election to convert the case from Chapter 13 to one under another Chapter on or before June 25, 2012, the First Bankruptcy Case would be dismissed. The original hearing was continued from May 30, 2012 to June 21, 2012 to allow Allen C. Hassan to engage the services of a knowledgeable, experienced bankruptcy attorney. At the June 21, 2012 hearing Allen C. Hassan represented to the court that he had engaged the services of such knowledgeable, experienced bankruptcy counsel, but that such counsel could not attend the June 21, 2012 hearing. FBC Dckt. 57, Civil Minutes. The court conditionally granted he motion, allowing Allen C. Hassan and the counsel to covert the case. However, no conversion was filed and the First Bankruptcy Case was dismissed on June 28, 2012. FBC Dckt. 60.

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Schedule B does not list a sole proprietorship, limited liability company, corporation or professional corporation for either Allen C. Hassan's medical practice or legal practice. *Id.* at 2-4. Allen C. Hassan did list a \$300,000.00 "Medicare payment to be processed" as a personal asset on Schedule B. *Id.* at 3. No claims or actions against any persons are listed on Schedule B. No business property, equipment or assets which would be used in a medical practice or a law practice are listed on Schedule B.

On Schedule I Allen C. Hassan stated that his monthly income was \$38,000.00, with the law practice income to increase by \$10,000.00 a month. *Id.* at 17. With this \$48,000.00 a month in income, Allen C. Hassan stated on Schedule J that he had \$37,312.00 in expenses, including \$3,800.00 a month for horses and miscellaneous expenses. *Id.* at 18. However, no horses are listed as being owned by Allen C. Hassan on Schedule B.

On the Statement of Financial Affairs Allen C. Hassan again failed to provide the income information for 2012 (the year in which the case was filed), 2011, and 2010. Instead, in response to Question 1 of the Statement of Financial Affairs he responded for amount and source, "150,000 Profession," and stated None in response to Question 2. *Id.* at 21-22. In response to Question 4 for Suits which are pending or were pending within the one-year period immediately preceding the commencement of the bankruptcy case, Allen C. Hassan again listed only a collection suit and a judicial foreclosure suit against him. *Id.* at 23. Allen C. Hassan did not disclose the District Court litigation.

Conversion of Case to Chapter 7

On October 16, 2012, Allen C. Hassan filed his Chapter 11 Status Report. Dckt. 42. In the Status Conference Report Allen C. Hassan disclosed that he filed and served a lawsuit against the U.S. Government and others.

He also advised the court and parties in interest that he leased new space on El Camino Avenue, additional space on Kent Drive, and hired a professional biller. Allen C. Hassan also represented that he intended to file a plan and disclosure statement by December 1, 2012.

Allen C. Hassan did not get to the December 1, 2012 date to file his plan. A creditor and the U.S. Trustee filed motions to convert or dismiss the Chapter 11 case. The court denied without prejudice the motion filed by the creditor for defective service and improper pleadings.

The Motion to Convert filed by the U.S. Trustee alleged the following grounds.

- A. At the Initial Debtor Interview with the U.S. Trustee on September 25, 2012, Allen C. Hassan was told that he had to open the debtor in possession bank account(s) and provide proof of property and liability insurance. As of the October 31, 2012 filing of the Motion to Convert, no proof of the debtor in possession bank account(s) or the property and liability insurance had been provided to the U.S. Trustee.
- B. Allen C. Hassan had failed to file the Monthly Operating Reports for August 2012 and September 2012. (From reviewing the Docket the court can see that Allen C. Hassan failed to file any Monthly Operation Reports as Debtor in Possession, the fiduciary of the bankruptcy estate.)
- C. Allen C. Hassan failed to disclose any accounts receivable from his law practice or for the rental properties he owned.
- D. Allen C. Hassan failed to disclose accounts receivable in the First Bankruptcy Case.

Motion, Dckt. 53.

Allen C. Hassan filed no opposition to the Motion to Convert. At the hearing, Allen C. Hassan appeared and asserted that he had not been served with the Motion to Convert. He also asserted that Anthony Hughes was his counsel in this bankruptcy case. No substitution of attorney had been filed by Anthony Hughes. The court did not find Allen C. Hassan's statements to be credible. Proper certificates of service had been filed attesting to the service.

The court converted the case to one under Chapter 7. Once converted, Allen C. Hassan became "missing in action," failing to appear at the Meetings of Creditors or any hearings. Anthony Hughes never substituted in the case as Allen C. Hassan's counsel. Allen C. Hassan made no attempt to reconvert the case to one under Chapter 11. Allen C. Hassan has not accounted for the \$48,000.00 a month in income which he stated under penalty of perjury on Schedule I was received by the estate while he was the Debtor in Possession.

This improper conduct has continued in this case with the repeated ignoring of orders to appear, orders to attend the First Meeting of

Creditors, and orders to produce documents required of a bankruptcy debtor. Allen C. Hassan has repeatedly demonstrated that while he wants the benefits of being a bankruptcy debtor, he has determined that the laws do not apply to him, only to his creditors.

LEGAL STANDARD

Section 707(a) provides three examples of "cause" that would justify dismissal of a chapter 7 case:

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within 15 days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by section 521(a)(1), but only on a motion by the United States trustee.

11 U.S.C. § 707(a). However, these examples are merely illustrative, and the court may dismiss the case on other grounds when cause is found to exist. 6 COLLIER ON BANKRUPTCY ¶ 707.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) The court has substantial discretion in ruling on a motion to dismiss under section 707(a). *Id.*

Furthermore, 11 U.S.C. § 349(a) provides that, "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed..." Therefore, the court has discretion, when there is cause, to deny the debtor the benefits of the general rule, i.e., to dismiss the case with prejudice thereby preventing the debtor from obtaining a discharge with regard to the debts existing at the time of the dismissed case. *See Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999); 3 COLLIER ON BANKRUPTCY ¶ 349.02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Dismissal with prejudice is a drastic remedy reserved for extreme situations. *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 922 (B.A.P. 9th Cir. 2011). This usually is permitted "only in the face of a clear record of delay or contumacious conduct." *Durham v. Fla. E. Coast Ry. Co.*, 385 F.2d 366, 368 (5th Cir. 1967).

DISCUSSION

Dismissal with Prejudice is Proper in this Case

Here, the court finds that the conduct of Allen C. Hassan in this case is sufficiently egregious, with a clear record of delay warranting dismissal of the case with prejudice. The court has discretion, when there is cause, to deny the debtor the benefits of the general rule, i.e., to dismiss the case **with prejudice** thereby preventing the debtor from obtaining a discharge with regard to the debts existing at the time of the

dismissed case. See *In re Leavitt*, 171 F.3d 1219. Dismissal with prejudice is a drastic remedy reserved for extreme situations. *In re Ellsworth*, 455 B.R. 904. This usually is permitted "only in the face of a **clear record of delay or contumacious conduct.**" *Durham v. Fla. E. Coast Ry. Co.*, 385 F.2d 366.

First, Allen C. Hassan failed to appear at nine (9) scheduled meeting of creditors. While Allen C. Hassan did make an appearance at the January 15, 2013 continued meeting of creditors (after failing to appear at the first), he apparently left the meeting room before the hearing was concluded. Declaration, Dckt. 225. He then appeared again at a further continued meeting of creditors on April 23, 2013, but approached the Trustee complaining about having to wait, disrupting an on-going meeting for another case and had to be removed by security officers before his meeting commenced. *Id.* Therefore, it is undisputed that Allen C. Hassan failed to attend the first meeting of creditors, January 4, 2013, and then nine (9) subsequent continued meetings. Not only is attendance mandatory, but failure to appear at the meeting of creditors is sufficient for dismissal with prejudice. 11 U.S.C. §§ 343, 707(a); *In re Leavitt*, 171 F.3d at 1226; see also *In re Ladd*, 82 B.R. 476, 476-77 (Bankr. N.D. Ind. 1988) (debtor's failure to appear at 3 meetings of creditors supported dismissal of Chapter 7 case with prejudice); *Colonial Auto Ctr. v. Tomlin (In re Tomlin)*, 105 F.3d 933 (4th Cir. Va. 1997) (debtor's failure to appear at the initial creditors' meeting supported dismissal of case with prejudice).

Additionally, Allen C. Hassan failed to produce the requested documents from the Trustee which he needed to determine the nature and extent of Allen C. Hassan's personal assets, business and personal income and income from rental properties in order to administer the estate. These documents were requested in two letters from the Trustee dated January 16, 2013, and February 28, 2013. Exhibits 3 & 4, Dckt. 228. Furthermore, the court issued the four (4) following orders for Allen C. Hassan to provide the requested documents:

- A. Order Compelling Production of Documents and Appearance of Allen C. Hassan, Debtor, dated June 25, 2013, Dckt. 178.
- B. Order Imposing Corrective Sanctions for Failure of Allen C. Hassan to Comply with June 25, 2012 Order to Produce Books and Records of the Estate and to Appear at the June 25, 2013 First Meeting of Creditors; and Order for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting of Creditors; and Order to Show Cause as to Why Further Corrective Sanctions Should Not Be Ordered if Allen C. Hassan Fails to Comply with Order, dated July 30, 2013, Dckt. 195.
- C. Order Imposing Corrective Sanctions for Failure of Allen C. Hassan to Comply with July 30, 2012 Order to Produce Books and Records of the Estate and to Appear at the First Meeting of Creditors; and for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting of Creditors; and Order to Show Cause as to Why Further Corrective Sanctions Should Not Be Ordered

if Allen C. Hassan Fails to Comply with Order, dated September 4, 2013, Dckt. 206.

- D. Order Imposing Corrective Sanctions for Failure of Allen C. Hassan to Comply with September 4, 2013 Order to Produce Books and Records of the Estate and to Appear at the First Meeting of Creditors; and for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting of Creditors; and Order to Show Cause as to Why Further Corrective Sanctions Should Not Be Ordered if Allen C. Hassan Fails to Comply with Order, dated November 13, 2013, Dckt. 211.

To date, Allen C. Hassan has failed to provide the requested documents or any information to the Trustee. This demonstrates Allen C. Hassan's failure to cooperate with the Trustee and proper administration of the estate. See 11 U.S.C. § 521(a)(3) and Fed. R. Bankr. P. 4002(a)(4).

Furthermore, it appears Allen C. Hassan has not properly disclosed accounts receivable on his schedules. It is undisputed that Allen C. Hassan is a physician, a lawyer, and a landlord. However, despite his professional and business operations, Allen C. Hassan disclosed no accounts receivable for his medical practice, his law practice, or his real property rental operations in Schedule B, as amended. Dckt. 43. A debtor is under a continuing duty to amend his or her bankruptcy schedules and Statement of Financial Affairs. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 784 (9th Cir. 2001).; see also *In re Hardy*, 2012 WL 847773 at *2 (Bankr. N.D. Ohio 2012) (Chapter 7 case dismissed with prejudice where debtor failed to abide by a court order requiring her to amend and supplement bankruptcy schedules).

In addition to failing to comply with the orders to produce documents and disclosing his accounts receivable, Allen C. Hassan has shown a pattern of failing to comply with other orders of the court. Allen C. Hassan has failed to appear, file written responses, pay sanctions, pay attorney's fees, or otherwise respond to the court's orders. Allen C. Hassan failed to appear at the continued meeting of creditors, failed to produce the necessary documents and records, failed to communicate with the Trustee or propose dates to produce documents; and failed to pay the \$500, \$2,000, \$5,000, or \$10,000 ordered sanctions. All orders and judgments of courts must be obeyed: "If a person to whom a judge directs an order believes that order is incorrect, the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal." *Maness v. Meyers*, 419 U.S. 449, 458 (1975).

"No one can dispute that a debtor's refusal to cooperate with the bankruptcy court may constitute cause warranting dismissal." See *In re Ladd*, 82 B.R. at 476-78 (dismissing Chapter 7 case with prejudice where debtor repeatedly failed to appear for three separate § 341 meetings and where "debtor has chosen to ignore or disobey the court's orders, complying, if at all, only when required to show cause..."). Serial filings, failure to appear at a creditors' meeting, bad faith, unreasonable delay, or violation of court orders may be sufficient cause under 11 U.S.C. § 349(a) warranting the dismissal of a case with prejudice. See *In re Leavitt*, 209 B.R. 935; see

also *In re McClure*, 69 B.R. 282, 286-87 (Bankr. N.D. Ind. 1987); *In re Ladd*, 82 B.R. at 477; *In re Petro*, 18 B.R. 566, 568-69 (Bankr. E.D. Pa. 1982).

The court ordered Allen C. Hassan to comply with the provisions of California Business and Professions Code § 6068(o) and self report the sanctions issued by this court to the State Bar of California. A review of the California State Bar website does not show any pending actions. State Bar of California, Member No. 104024, <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

Allen C. Hassan's failure to appear at the meeting of creditors, unreasonable delay in providing the necessary documents to the Trustee and filing proper schedules, and severe failure to obey court orders is sufficient egregious conduct to warrant dismissal of this case with prejudice. Much less egregious conduct has been found sufficient to warrant dismissal with prejudice. See e.g. *In re Leavitt*, 209 B.R. at 935; *In re McClure*, 69 B.R. 282; *In re Ladd*, 82 B.R. 476; *In re Petro*, 18 B.R. 566; *In re Tomlin*, 105 F.3d 933; *In re Hardy*, 2012 WL 847773 at *2.

Overruling Opposition and Court's Continuing Jurisdiction

The Wolfgram Opposition represents a shifting of alliances. When reviewing the District Court cases referenced by Allen C. Hassan, the court notes that John Wolfgram is listed as a Co-Plaintiff and on the banner in the upper left hand corner of the Complaint with Allen C. Hassan. E.D. Cal. Case No. 12-01933, Dckt. 1. In the Opposition to the Motion to Dismiss John Wolfgram asserts,

- A. Dismissal benefits Allen C. Hassan for his abuse of the bankruptcy process.
- B. Dismissal rewards Allen C. Hassan for his contemptuous misconduct before the bankruptcy court.
- C. John Wolfgram has filed a complaint to have the debt owed to him by Allen C. Hassan determined nondischargeable.
- D. John Wolfgram was privy to discussions between Allen C. Hassan and disbarred attorney Thomas Dixon in November and December 2012 concerning how to proceed after this bankruptcy case was converted from Chapter 11 to Chapter 7.
- E. John Wolfgram asserts that by mid-December 2012, he had convinced Allen C. Hassan to hire a bankruptcy attorney to have the case reconverted to Chapter 11 and work for a reorganization.
- F. John Wolfgram asserts that he located a team of attorneys to prosecute Allen C. Hassan's bankruptcy case. For the \$5,000.00 retainer required by the attorneys, John Wolfgram alleges that he loaned Allen C. Hassan \$4,500.00.
- G. John Wolfgram alleges that Allen C. Hassan and Thomas Dixon decided that a strategy of stalling and not complying with

the court's orders would lead to the bankruptcy case being dismissed.

- H. By not dismissing the case, Allen C. Hassan would be allowed a final opportunity to purge himself of the contempt. If Allen C. Hassan did not so purge the contempt, than John Wolfgram could proceed with his complaint for nondischargeability of the debt.

Opposition, Dckt. 242.

The Opposition of John Wolfgram is correct, if the court were to just dismiss this Chapter 7 case, Allen C. Hassan would be rewarded for his conduct in violating the Bankruptcy Code and orders of this court. Allen C. Hassan's misconduct runs deep in this case, well beyond "merely" failing to comply with orders of this court, providing documents to the Chapter 7 Trustee, and failing to attend the mandatory First Meeting of Creditors. While serving as the Debtor in Possession, the fiduciary of the bankruptcy estate, Allen C. Hassan failed to file any monthly operating reports. Under penalty of perjury Allen C. Hassan stated on Schedule I that the monthly income for the estate was \$38,000 to \$48,000. The case being converted on November 30, 2012, Allen C. Hassan, as the fiduciary Debtor in Possession, had between \$152,000 and \$192,000 of estate monies travel through his hands. (This is computed as 4 months of income between \$38,000 a month on the low end and \$48,000 on the high end, for the months of August - November 2012.)

Allen C. Hassan in both bankruptcy cases failed to list assets, including the horses; interest in medical corporation or practice; interest in law practice; equipment, tools and furniture uses in businesses; artwork; and accounts receivable. While accepting all of the benefits of being in a bankruptcy case, primarily the automatic stay, Allen C. Hassan has dismissed his obligations as a debtor and his fiduciary obligations as the debtor in possession as mere inconveniences which may be ignored.

The court does not need the contentions of John Wolfgram to conclude that Allen C. Hassan's ignoring of the court's orders were part of an intentional scheme to violate the Bankruptcy Code and orders of this court. While highly educated, it appears that Allen C. Hassan underestimated the seriousness with which the Chapter 7 Trustee takes his duties or the oversight responsibilities of the U.S. Trustee.

At this juncture, the next step would be for this court to order the incarceration of Allen C. Hassan, as a civil sanction, until he provided the information and turned over the property of the estate to the Trustee. The court has considered that alternative. The court decides against that course of action, and instead will give Allen C. Hassan what he wants - dismissal of the bankruptcy case, but a dismissal with prejudice.

A review of the Claims Register in this case discloses that 13 Proofs of Claim have been filed. Of these four of these are secured claims filed by Bayview Loan Servicing, LLC - Allen C. Hassan's nemesis in the ongoing dispute he has concerning foreclosures on his real properties. There is little for a Chapter 7 Trustee to do with respect to these claims.

Next, the Internal Revenue Service has filed two proofs of claim, with Proof of Claim No. 5 amending the prior Proof of Claim. The Internal Revenue Service asserts a priority claim in the amount of \$25,286.57. The U.S. Trustee has filed two priority claims in the amount of \$325.00 for unpaid quarterly Chapter 11 fees. The Internal Revenue Service can fend for itself in enforcing this claim outside of bankruptcy. The Claim of the U.S. Trustee is modest enough that it, standing alone, does not warrant forcing the continued administration of this case.

Three medical trade creditors have filed general unsecured claims totaling \$3,360.52.

The remaining two unsecured claims are those of John Wolfgram, in the amount of \$18,200.00 (Proof of Claim No. 10), and Stephen P. DeBoever (Proof of Claim No. 11), in the amount of \$15,000.00.

For the John Wolfgram Claim, it is stated to be for Loan for attorney, contract, federal minimum wages, and fraud. A statement signed by John Wolfgram attached to the proof of claim describes a working arrangement by which Allen C. Hassan was to pay for certain expenses incurred in John Wolfgram performing the contracted for services, a \$4,500.00 loan, failure to pay wages for services provided, and for fraud.

For the Stephen DeBoever Claim, it is asserted to arise from breach of contract and bad faith. A statement, signed by John Wolfgram, to this Proof of Claim discloses that Stephen DeBoever asserts taht he worked as an investigator for Military Veterans. He worked out of an office in Allen C. Hassan's office complex, had a referral fee arrangement with Allen C. Hassan, and that Allen C. Hassan has failed to pay Mr. DeBoever \$15,000.00 in fees that are owed.

At the end of the day, if this case were to continue, it would be solely to create a forum for John Wolfgram and Stephen DeBoever to assert their non-bankruptcy claims against Allen C. Hassan. In substance, these two creditors seek to "federalized" their pre-judgment enforcement process and have the Trustee and court force Allen C. Hassan to "come clean." It is likely that John Wolfgram and Stephen DeBoever actually have more information about Allen C. Hassan and his assets than the Trustee. Those rights may be enforced through the normal state court of general jurisdiction, the California Superior Court.

Continuing Jurisdiction of This Court

Though dismissing the case with prejudice, the court has continuing jurisdiction to address the conduct of counsel and creditor parties appearing in this case. The court's jurisdiction over parties concerning their conduct in a bankruptcy case or adversary proceeding is not terminated by the dismissal of the case or adversary proceeding. *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495-496 (3rd Cir. 1989) ("The analogy of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court. See Fed. R. Civ. P. 11, advisory committee's note ('Since its original promulgation, Rule 11 has provided for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings...To hold that a

district court has no power to order sanctions after a voluntary dismissal is to emasculate Rule 11 in those cases where wily plaintiffs file baseless complaints, unnecessarily sap the precious resources of their adversaries and the courts, only to insulate themselves from sanctions by promptly filing a notice of dismissal.');

Greenberg v. Sala, 822 F.2d 882, 885 (9th Cir. 1987) ("At the time the district court denied the defendants' motions for Rule 11 sanctions, the case had been dismissed. The dismissal, however, did not deprive the court of jurisdiction to consider the motions. See *Szabo Food Service, Inc. v. Canteen Corp.*, No. 86-3093, slip op. (7th Cir. Jun. 29, 1987) (voluntary dismissal under Rule 42(a)(1)).")

CONCLUSION

Not only is dismissal proper, but a dismissal with prejudice. Allen C. Hassan has demonstrated that he and his conduct is everything that a bankruptcy debtor should not be. He has hidden assets. He has failed to fulfill his duties as a debtor. He has failed to fulfill his fiduciary duties as a debtor in possession. He has demonstrated through the two bankruptcy cases his abuse of the bankruptcy process for his own end. It is a proper result that he not receive the benefits of filing bankruptcy and should not be allowed to further abuse his creditors and the bankruptcy laws.

It may well be that Allen C. Hassan only has to deal with the Internal Revenue Service, John Wolfgram, and Stephen DeBoever. Even these debts are modest in light of the \$38,000.00 to \$48,000.00 a month which Allen C. Hassan states that he generates each month from his businesses.

In addition, the Chapter 7 Trustee or U.S. Trustee will proceed to enforce the sanction orders of this court. As set forth in the orders, the Chapter 7 Trustee was authorized, and if the U.S. Trustee takes over the recovery process it will be so authorized, to engage the services of a contingent fee third-party collection agency or collection attorney. Quite possibly the actual collection of these sanctions may ultimately have the intended corrective effect concerning Allen C. Hassan's practices in federal court.

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 Dismiss Case filed by the United States 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 is granted and Case No. 12-34689-E-7, Allen C. Hassan, is dismissed with prejudice pursuant to 11 U.S.C. §§ 707(a) and 349(a).

This court shall and does continue to retain jurisdiction over these proceedings, the conduct of the

parties, and the sanctions issued in this case notwithstanding this dismissal with prejudice.

5. [12-34689-E-7](#) ALLEN HASSAN MOTION FOR OSC RE CIVIL
Pro Se CONTEMPT AGAINST DEBTOR
1-23-14 [[243](#)]

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 (*pro se*) on January 23, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Order to Show Cause was not 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion for Order to Show Cause. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

SERVICE

The Proof of Service states the "summons and Notice of Status Conference in an Adversary Proceeding, and a copy of the complaint, and a Copy of Plaintiff's Opposition to Motion to Dismiss and Motion to OSC re Contempt was served by personal service to Allen H. Hassan at his usual place of business at 2929 El Camino Ave. Sacramento, California." The court is not certain if this is the same "Notice of Plaintiffs Wolfgram and DeBoever Motion for an Order to Show Cause to Allen C. Hassan as to Why He Should Not Be Held in Contempt of this Court" and if Allen H. Hassan is the same Allen C. Hassan. It does not appear the motion was served on the Chapter 7 Trustee, the U.S. Trustee or any other party in interest.

NOTICE

The "Notice of Plaintiffs Wolfgram and DeBoever Motion for an Order to Show Cause to Allen C. Hassan as to Why He Should Not Be Held in Contempt

of this Court" appears to be a combined Notice and Motion. The court is unable to determine what type of notice Movants are setting the Motion pursuant to Local Bankruptcy Rule 9014-1(f). Local Bankruptcy Rule 9014-1(f)(2) states that, "The notice of hearing shall inform the debtor, the debtor's attorney, and the Trustee that no written response to the objection is necessary." The court will consider the objection, but the moving party is reminded that failing to comply with local rules of this court is cause to deny the motion. Local Bankr. R. 1001-1(g).

PLEADINGS

The moving party filed the notice, motion and declaration in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

CONSIDERATION OF MOTION

The motion appears to oppose the Trustee's Motion to Dismiss on the basis that the court will no longer have jurisdiction to impose sanctions on the Debtor. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds upon which the requested relief (issuance of an order to show cause) is based:

- A. Dismissal benefits Allen C. Hassan for his abuse of the bankruptcy process.
- B. Dismissal rewards Allen C. Hassan for his contemptuous misconduct before the bankruptcy court.
- C. John Wolfgram has filed a complaint to have the debt owed to him by Allen C. Hassan determined nondischargeable.
- D. John Wolfgram was privy to discussions between Allen C. Hassan and disbarred attorney Thomas Dixon in November and December 2012 concerning how to proceed after this bankruptcy case was converted from Chapter 11 to Chapter 7.
- E. John Wolfgram asserts that by mid-December 2012, he had convinced Allen C. Hassan to hire a bankruptcy attorney to have the case reconverted to Chapter 11 and work for a reorganization.
- F. John Wolfgram asserts that he located a team of attorneys to prosecute Allen C. Hassan's bankruptcy case. For the

\$5,000.00 retainer required by the attorneys, John Wolfgram alleges that he loaned Allen C. Hassan \$4,500.00.

- G. John Wolfgram alleges that Allen C. Hassan and Thomas Dixon decided that a strategy of stalling and not complying with the court's orders would lead to the bankruptcy case being dismissed.
- H. By not dismissing the case, Allen C. Hassan would be allowed a final opportunity to purge himself of the contempt. If Allen C. Hassan did not so purge the contempt, than John Wolfgram could proceed with his complaint for nondischargeability of the debt.

While the court does not take light the conduct of Allen C. Hassan in this case and his failure to comply with order of the court, those have been and are being addressed pursuant to the Trustee's Motion. In large part the present request for a order to show cause duplicates what is already being done. Additionally, it appears to be tied into John Wolfgram's claims which he is asserting against Allen C. Hassan. The grounds asserted include seeking to have Allen Hassen sanctioned for failing to respond to the Complaint filed by John Wolfgram in the Adversary Proceeding. If Allen C. Hassan fails to respond, then the plaintiffs can take such action as is appropriate under the Federal Rule of Civil Procedure and Federal Rule of Bankruptcy Procedure

Notwithstanding the dismissal of the bankruptcy case, this court has continuing jurisdiction to address the conduct of counsel and creditor parties appearing in this case despite dismissing a case with prejudice. The court's jurisdiction over parties concerning their conduct in a bankruptcy case or adversary proceeding is not terminated by the dismissal of the case or adversary proceeding. *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495-496 (3rd Cir. 1989) ("The analogy of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court. See Fed. R. Civ. P. 11, advisory committee's note ('Since its original promulgation, Rule 11 has provided for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings...To hold that a district court has no power to order sanctions after a voluntary dismissal is to emasculate Rule 11 in those cases where wily plaintiffs file baseless complaints, unnecessarily sap the precious resources of their adversaries and the courts, only to insulate themselves from sanctions by promptly filing a notice of dismissal.');

Greenberg v. Sala, 822 F.2d 882, 885 (9th Cir. 1987) ("At the time the district court denied the defendants' motions for Rule 11 sanctions, the case had been dismissed. The dismissal, however, did not deprive the court of jurisdiction to consider the motions. See *Szabo Food Service, Inc. v. Canteen Corp.*, No. 86-3093, slip op. (7th Cir. Jun. 29, 1987) (voluntary dismissal under Rule 42(a)(1)).")

Finally, though the court has dismissed the Chapter 7 case, it has been dismissed with prejudice. Whatever concerns that John Wolfgram could have that a dismissal merely rewards Allen C. Hassan for his misconduct are illusory. The dismissal with prejudice results in all of the debts which could have been discharged becoming nondischargeable. It appears that the

However, the court having dismissed this case with prejudice pursuant to the UST's Motion to Dismiss, the motion is moot. Dismissing a case with prejudice prevents the debtor from obtaining a discharge with regard to the debts existing at the time of the dismissed case. See *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999).

Though this court has ordered the dismissal of the case with prejudice, that order is not yet final. If the order were to be reversed and this case proceed, possibly a question could exist as to whether the deadline expired and the U.S. Trustee, Chapter 7 Trustee, and parties in interest barred from presenting the court with grounds under 11 U.S.C. § 727. Therefore, the court grants the Motion and issues an open extension of time for the filing of an objection to discharge in this bankruptcy case. If the dismissal is reversed and this bankruptcy case proceeds further, Allen C. Hassan may make a motion to amend the open extension and the court shall set a date certain in the case.

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 Extend Deadline to File a Complaint Objection to Discharge of the Debtor or for Nondischargeability of Debts filed by the United States Trustee having been presented to the court, the court having entered an order dismissing this case with prejudice, the order dismissing the case not yet being final, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the deadlines for the U.S. Trustee, the Chapter 7 Trustee, creditors, or any other party in interest to file a complaint objecting to discharge pursuant to 11 U.S.C. § 727 or for a determination of the dischargeability of a debt pursuant to 11 U.S.C. § 523 are extended for an unlimited period of time in this case, and not scheduled to a date certain. If the dismissal of this case is reversed and prosecution of this is bankruptcy case proceeds, the Debtor may file a motion to amend this order and the court shall set a date certain for deadlines for the filing of complaints for claims arising under 11 U.S.C. § 523 and 727.

7. 12-34689-E-7 ALLEN HASSAN
BHS-3 Pro Se

CONTINUED ORDER TO SHOW CAUSE
9-4-13 [206]

CONT. FROM 11-7-13, 8-29-13, 7-25-13, 6-20-13

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor, Barry Spitzer, and the United States Trustee on June 25, 2013. 30 days notice of the hearing was provided.

Tentative Ruling: The court's tentative decision is to remove the Order to Show Cause from the calendar and conduct no further proceedings. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This is the continued hearing on the Order to Cause concerning Allen C. Hassan's failure to comply with the orders of this court. The history of the prior hearings, violations and orders are set forth below.

PRIOR PROCEEDINGS ON ORDER TO SHOW CAUSE

The Chapter 7 Trustee stated the instant case was converted from Chapter 11 to Chapter 7 on November 29, 2012 and that Allen C. Hassan, the Chapter 7 Debtor, is a California licensed attorney who has filed previous bankruptcies and has been "highly uncooperative."

The Chapter 7 Trustee stated that on April 25, 2013 he was advised that Debtor, acting as president and CEO, filed skeletal bankruptcy petitions for an entity named Pleasant Grove Foundation. See case numbers 12-41824 and 13-24848. Chapter 7 Trustee stated both cases were dismissed due to failure to file documents.

Chapter 7 Trustee stated that on April 26, 2013 the court issued an order compelling Debtor to appear on May 21, 2013 at 4:30 p.m. for the continued meeting of creditors and that Debtor shall produce documents to Chapter 7 Trustee on or before May 10, 2013. Chapter 7 Trustee states the order was served on Debtor by Counsel for Trustee and the court clerk on April 29, 2013. Chapter 7 Trustee stated the cover letter on the order indicated that noncompliance would result in sanctions and seizure by the U.S. Marshal Service. Chapter 7 Trustee stated Debtor did not appear and did not produce documents.

Chapter 7 Trustee stated that the instant case appears to be an asset case as Chapter 7 Trustee can recover non-exempt assets.

June 20, 2013 Hearing

At the October 17, 2012 Chapter 11 Status Conference the U.S. Trustee advised the court that a motion to dismiss would be filed. The court

expressed concern pertaining to Allen C. Hassan's ability, as the Debtor and Debtor in Possession fiduciary, ability to prosecute the instant case and noted that while Allen C. Hassan is an attorney he is not an experienced bankruptcy attorney. (Dckt. 44). While Allen C. Hassan may not be an experience bankruptcy attorney, he is still an individual with a background as an attorney and medical doctor. Allen C. Hassan fully understands his obligation to appear in court and produce formally requested documents. As a result, Allen C. Hassan's noncompliance, as the Debtor and fiduciary Debtor in Possession, can only be interpreted as willful and intentional.

On March 1, 2013, the Chapter 7 Trustee filed his motion for an order compelling Allen C. Hassan to appear at the First Meeting of Creditors in this case. Motion, Dckt. 154. In bringing the motion to compel the Chapter 7 Trustee cited to Federal Rules of Bankruptcy Procedure 2005(a) and 4002 in support of his motion.

Pursuant to Federal Rule of Bankruptcy Procedure 2005(a) the court may issue to the marshal or some other officer authorized by law, an order directing the officer to bring the debtor before the court where the debtor has willfully disobeyed a subpoena or order to attend for examination.

Federal Rule of Bankruptcy Procedure 4002 provides the duties of a debtor, which include submitting to an examination at the times ordered by the court and providing certain documentation at the meeting of creditors.

Here, Allen C. Hassan has failed to comply with Federal Rule of Bankruptcy Procedure 4002 as debtor did not comply with the April 26th order. Allen C. Hassan did not appear at the May 21st hearing and did not submit documents requested in the April 26th order.

This conduct of the Allen C. Hassan is highly disturbing. Allen C. Hassan is not a least sophisticated consumer, but is a highly educated man, holding both a license to practice law and a license to practice medicine. While in the Chapter 11 case, Allen C. Hassan, serving as the fiduciary Debtor in Possession, repeatedly assured the court that he had substantial accounts receivable to be generated from the cases he was working on in his law practice.

As a highly educated doctor and lawyer, Allen C. Hassan knows that subpoenas and orders of the court are not mere technicalities which he can ignore as serves his whims or interests. The federal and state judicial system are premised upon order of the court being complied with by the parties. Upon failure to do so, corrective sanctions, including incarceration, may be ordered by a bankruptcy judge. Additional, a District Court judge may order further punitive sanctions which go well beyond corrective incarceration and monetary sanctions.

It is necessary and proper for this court to issue the requested order to show cause. The court ordered that the Allen C. Hassan, the Debtor, to appear and produce the documents specified in Addendum A to the Order to Barry Spitzer, Esq., counsel for the Chapter 7 Trustee, at 11:00 a.m. on July 9, 2013, as and any other persons in attendance at the Law Office of Barry H. Spitzer, 980 9th Street, Suite 380, Sacramento, California. Further, that Allen C. Hassan, the Debtor, appear for

examination at 2:30 p.m. on July 25, 2013, at Room 7C, on the 7th floor of the United States Courthouse, 501 I Street, Sacramento, California for examination under oath by the Chapter 7 Trustee, U.S. Trustee, and Creditors. The court further ordered that if the Debtor fails to appear, it shall issue a monetary corrective sanction in the amount of \$2,000.00, report the corrective sanction and failure to comply with this order to the California State Bar and the United States District Court for the Eastern District of California, order the production and examination continued to a later date, and order the U.S. Marshal to take the Debtor into custody and produce him for the continued hearing date.

On June 25, 2013, the court issued a further Order to Show Cause for Debtor, Allen C. Hassan to appear to show cause why the court should not issue corrective sanctions in the amount of \$500.00 and the additional amount of the costs and expenses, including the billable time of the Trustee and counsel for the Trustee, caused by Debtor's failure to comply with and the Trustee having to seek the further judicial enforcement of the April 26, 2013 Order.

JULY 25, 2013 HEARING

Chapter 7 Trustee's Notice of Allen C. Hassan's Failure to Comply With Order of the Court

The Chapter 7 Trustee, Douglas, M. Whatley, filed a Notice of Failure to Comply with Court Order on July 10, 2013, in connection with Docket Control Number BHS-3, which states that Debtor Allen C. Hassan did not produce documents as required on July 9, 2013. Dckt. 182. Allen C. Hassan was also ordered to appear for examination on July 25, 2013. Dckt. 178.

In addition to requiring Allen C. Hassan to produce the documents and appear at the First Meeting of Creditors, the order further provided Allen C. Hassan with seven days to file an *ex parte* motion from the date of default for relief from the order (in the event that a medical or other emergency intervened to preclude compliance). No *ex parte* motion was filed by Allen C. Hassan.

Allen C. Hassan was also ordered to file written opposition to this Order to Show Cause at least fourteen (14) days before the date of this hearing. Debtor has failed to file written opposition to date. No responsive pleadings have been filed by the Debtor.

The court concluded that it cannot and will not allow a party to willfully ignore the obligations of a debtor and flaunt orders of the federal court. Having provided notice of this hearing and the possible corrective sanctions, and the Debtor having elected to not comply, the court sustains the Order to Show Cause and orders Allen C. Hassan shall pay corrective sanctions in the amount of \$500.00. In addition, the court ordered Allen C. Hassan to pay the Chapter 7 Trustee for the legal costs and expenses to the estate arising from Mr. Hassan's failure to comply with the prior discovery or the order of this court to produce documents on July 9, 2013.

**Imposition of Corrective Sanctions Pursuant to
June 25, 2013 Order**

In its June 25, 2013 Order, the court gave notice that if Allen C. Hassan failed to produce the documents as ordered (having failed to comply with the prior order of the court to produce such documents) or appear at the July 25, 2013 First Meeting of Creditors, the court would impose a \$2,000.00 corrective sanction. The court completed the hearing on the Order to Show Cause (DCN: RHS-1) on the afternoon of July 25, 2013, at which Allen C. Hassan did not appear. Counsel for the Chapter 7 Trustee appeared and notified the court on the record that Allen C. Hassan failed to appear at the July 25, 2013 continued First Meeting of Creditors as ordered by the court (DCN: BHS-3). Counsel for the U.S. Trustee also appeared at the July 25, 2013 continued hearing on the Order to Show Cause.

Allen C. Hassan has failed to offer any explanation or reason for failure to comply with the order of this court. Allen C. Hassan has been afforded the opportunity to avoid the imposition of the corrective sanctions by complying with the June 25, 2013 Order of the court, or if compliance was impossible, seeking relief from the June 25, 2013 Order. Allen C. Hassan has chosen to do neither. The court orders that Allen C. Hassan pay to the Clerk of the Court, \$2,000.00 in corrective sanctions. The court ordered and authorized the Chapter 7 Trustee to enforce this order and collect the \$2,000.00 in corrective sanctions, and to pay such amount to the Clerk of the Court. Order, Dkct. 195.

**Order for Further Proceedings, Production of Documents,
Attendance at First Meeting of Creditors, and Further
Corrective Sanctions if Allen C. Hassan Failed to Comply
With the Order**

The court issued a further Order to Produce Documents, Attend First Meeting of Creditors, and Show Cause why further corrective sanctions should not be ordered if Allen C. Hassan fails to comply with this Order to produce the documents and attend the First Meeting of Creditors as previously ordered by the court. Order, Dckt. 195.

The court also stated it may further issue an order for the United States Marshal to take Allen C. Hassan into custody and produce him in court for his First Meeting of Creditors.

Allen C. Hassan was ordered to communicate in writing to counsel for the Chapter 7 Trustee on or before **August 8, 2013**, and propose:

1. Three different dates, prior to August 22, 2013, and times (during weekday business hours between 9:00 a.m. 4:00 p.m.) for the production of the documents specified in the prior Order, to be produced at the office of counsel for the Chapter 7 Trustee, and
2. Three different dates after August 29, 2013, and before September 15, 2013, and times (during weekday business hours between 9:00 a.m. and 2:30 p.m.) for conducting the First Meeting of Creditors in this case.

Further, on or before **August 22, 2013**, Allen C. Hassan was ordered file with the court a status report of the dates proposed and date selected for the production of documents, the dates proposed and the date selected for the continued First Meeting of Creditors.

The court ordered a further hearing at **10:30 a.m. on August 29, 2013**, to determine whether Allen C. Hassan has complied with the order to propose the dates for production of documents and First Meeting of Creditors, and whether the documents have been produced. Allen C. Hassan was ordered to show cause why the court should not impose further corrective sanctions if he has not complied with this order. Any response to the Order to Show Cause shall be filed and served on or before **August 22, 2013**.

If the corrective sanction of \$2,000.00 now ordered by the court, which Allen C. Hassan could have avoided being imposed by complying with the court's prior orders or seeking relief if a bona fide reason existed for the failure to comply, is not a sufficient corrective sanction for Allen C. Hassan to comply with orders of the court, then,

- (1) the court shall issue a further corrective sanction of \$5,000.00 and an award of attorneys' fees and costs and the Chapter 7 Trustee's fees (computed on actual time expended) caused by Allen C. Hassan's failure to comply with this order; and
- (2) issue an order for production of documents and to attend the First Meeting of Creditors at a further date certain; set a higher corrective sanction amount; and afford Allen C. Hassan the opportunity to comply with the orders of the court and avoid the imposition of further corrective sanctions.

AUGUST 29, 2013 HEARING

As of the August 29, 2013 hearing, nothing had been filed on the docket by Debtor Allen C. Hassan. He did not appear at the hearing and has not complied with the court's order to produce the documents. Allen C. Hassan has demonstrated through his lack of compliance with the simple order of the court to produce documents that the prior monetary sanctions and the further \$5,000.00 in sanctions are not sufficient for him to correct his conduct. Allen C. Hassan could easily have avoided the court imposing \$5,000.00 in corrective sanctions by providing the documents and appearing for the First Meeting of Creditors in his case. By not doing so, Allen C. Hassan is stating that he would rather pay \$5,000.00 than complying with the order of the court.

Therefore, the court imposed an additional corrective sanction of \$5,000.00, which shall be paid by Allen C. Hassan to the Clerk of the United States Bankruptcy Court for the Eastern District of California for deposit in the Treasury of the United States. Order, Dckt. 206.

The Clerk of the Court not having the resources on staff to enforce the collection of sanctions, the court has authorized the Chapter 7 Trustee to collect said obligations. However, as the corrective sanction amounts grow (Allen C. Hassan demonstrating that the lower amounts do not have the proper corrective effect), the cost and burden on the Chapter 7 Trustee

grow. Possibly, Allen C. Hassan believes that a Chapter 7 Trustee cannot effectively, knowledgeable, or cost-effectively collect the sanction amounts. It is necessary and proper to allow the trustee to hire such collection professionals and services as are appropriate.

It is necessary and proper for the court to authorize the Chapter 7 Trustee to engage the service of a collection agency, collection attorney, or other debt collection service ("Collection Service Provider") for the collection of any and all sanctions or other monetary amounts ordered by this court (whether in prior, the present, or future orders in this case) to be paid by Allen C. Hassan to the Trustee or the Clerk of the Court in this case. The Collection Service Provided may be granted a contingent fee percentage of the monies collected or such other compensation formula which the Trustee determines in the exercise of reasonable business judgment. The Trustee shall obtain prior court approval of the employment of the Collection Service Provider Debt Collector and the compensation that the Collection Service Provider is to be paid.

The obligations of Allen C. Hassan to pay sanctions or other amounts as ordered by the court which may be assigned for collection are not "obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes;" (15 U.S.C. § 1692a) or "for property, services or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes" (Cal. Civil 1788.2(d), (e), (f)). These obligations are sanctions issue by this court for the failure to comply with the orders of this court and the obligations of Allen C. Hassan arising under the Bankruptcy Code and Federal Rule of Bankruptcy Procedure.

The court also ordered Allen C. Hassan to communicate in writing to Barry H. Spitzer, counsel for the Chapter 7 Trustee, on or before September 14, 2013, and propose:

1. Three different dates, prior to September 27, 2013, and times (during weekday business hours between 9:00 a.m. 4:00 p.m.) for the production of the documents specified in this Order, to be produced at the office of counsel for the Chapter 7 Trustee, and
2. Three different dates after October 11, 2013, and before October 25, and times (during weekday business hours between 9:00 a.m. and 2:30 p.m.) for conducting the First Meeting of Creditors in this case.

The court also ordered Allen C. Hassan to appear and produce the documents specified in Addendum A to the Order, to Barry H. Spitzer, Esq., counsel for the Chapter 7 Trustee, at the date prior to September 27, 2013, set by Allen C. Hassan and Barry H. Spitzer, such production to be made at the Law Office of Barry H. Spitzer, 980 9th Street, Suite 380, Sacramento, California.

The court also ordered a further hearing at 10:30 a.m. on November 7, 2013, to determine if Allen C. Hassan has complied with this Order in

communicating dates for the production of documents and the First Meeting of Creditors, and produced the documents. If Allen C. Hassan has failed to comply with everything required of him in this Order, he shall show cause at the November 7, 2013 hearing as to why the court should not order the further corrective sanctions as set forth below in this Order. Responses to this Order and to Show Cause by Allen C. Hassan, the Chapter 7 Trustee, and the U.S. Trustee shall be filed and served on or before October 31, 2013.

The court ordered that if Allen C. Hassan fails to comply with the order or any part thereof,

- (1) the court shall issue a further corrective sanction of \$10,000.00, to be paid to the Clerk of the court, and an award of attorneys' fees and costs and the Chapter 7 Trustee's fees (computed on actual time expended), to be paid to the bankruptcy estate, caused by Allen C. Hassan's failure to comply with this order to be paid by Allen C. Hassan;
- (2) issue an order for production of documents and to attend the First Meeting of Creditors; set a higher corrective sanction amount; and afford Allen C. Hassan the opportunity to comply with the orders of the court and avoid the imposition of further corrective sanctions;
- (3) Certify Allen C. Hassan's failure to comply with the orders of this court to the United States District Court for the Eastern District of California for the suspension of his admission to practice law in said District for a period of not less than one year;
- (3) such further sanctions and relief, including having Allen C. Hassan taken into custody by the United States Marshal to be presented in court for such future hearing and First Meeting of Creditors as ordered by the court.

NOVEMBER 7, 2013 HEARING

On October 29, 2013, Trustee filed a Report to Court on Compliance with Order for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting Of Creditors. The Trustee states that Debtor has not complied with any portion of the Court's September 4, 2013 Order. Trustee or his counsel have not been in contact with the Debtor.

No documents appear on the docket from Mr. Hassan for that hearing.

On November 13, 2013, the court filed its further Order Imposing Corrective Sanctions and Order to Show Cause ordering Allen C. Hassan to pay \$10,000 in corrective sanctions to the Clerk of the Bankruptcy Court on or before November 30, 2013 for the deposit in the Treasury of the United States. Order, Dckt. 211. The court also authorized the Trustee to enforce the payment of the corrective sanctions in the same manner as provided for the enforcement of an order or judgment of this court, including engaging

the services of a collection agency, collection attorney or other debt collection service. The court further ordered for Allen C. Hassan to appear and to conduct a further hearing.

ALLEN C. HASSAN MOTION TO VACATE SANCTION ORDERS

On December 20, 2013, Debtor filed a Motion to Set Aside Judgment Pursuant to Federal Rule of Civil Procedure 60(b). The motion requests to set aside the orders of this court from September 4, 2013 and November 30, 2013. The court denied the motion.

U.S. TRUSTEE MOTION TO DISMISS WITH PREJUDICE

On December 31, 2013, the United States Trustee filed a Motion to Dismiss with Prejudice. The court granted the motion and has ordered the case to be dismissed with prejudice.

Though afforded the opportunity to avoid the imposition of corrective sanctions, Allen C. Hassan chose to not comply with the orders of this court and have the sanctions issued. The Chapter 7 Trustee has been empowered to collect not only the sanctions ordered to be paid to the Chapter 7 Trustee, but also to the Clerk of the Court. From reviewing the pleadings filed with the court seeking to vacate the sanctions, it appears that they have not yet had their corrective effect. The court believes that the collection of such sanctions may well have prospective corrective effect on the conduct of Allen C. Hassan when he appears in federal court. Time will tell.

The court having decided that the case is dismissed with prejudice, there is no reason to further try and made Allen C. Hassan comply with his basic obligations as a debtor and the orders of this court. Any further sanctions would be the subject of proceedings before the United States District Court for punitive sanctions. Though attorney/doctor Allen C. Hassan's conduct in breaching his obligations as a debtor and debtor in possession, and repeatedly violating orders of this court is egregious, at this juncture this bankruptcy court is not referring the matter to the United States District Court. Rather, allowing the previously awarded corrective sanctions to be enforced may have the desired effect of changing Allen C. Hassan's conduct in the future and addressing his improper conduct in this court.

CONCLUSION

The court having granted the motion to dismiss with prejudice, the court will remove the present Order to Show Cause from the calendar, with no further proceedings to be conducted. If the dismissal of this case is vacated or reversed and the bankruptcy case prosecuted, the court may restore the Order to Show Cause to the calendar as appropriate.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the court having ordered this bankruptcy case dismissed with prejudice, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is removed from the calendar, with no further proceedings to be conducted by the court. If the order dismissing the case is vacated or reversed, and the bankruptcy case is prosecuted by the Debtor, the court may restore the Order to Show Cause to the calendar.

IT IS FURTHER ORDERED that removing the Order to Show Cause from the calendar for any further proceedings does not vacate, alter, or amend any prior orders of this court issuing corrective sanctions to be paid by Allen C. Hassan.

8. [12-34689-E-7](#) ALLEN HASSAN ORDER TO SHOW CAUSE WHY FURTHER
BHS-3 Pro Se CORRECTIVE SANCTIONS SHOULD NOT
BE IMPOSED
11-13-13 [[211](#)]

Final Ruling: This matter appears to be a duplicate of the Continued Order to Show Case, DCN BHS-3, discussed above in Item 7 on this calendar and is therefore removed from the calendar.

9. 13-35954-E-7 **ICING ON THE CUPCAKE,** **MOTION TO SELL AND/OR MOTION TO**
HLC-1 **LLC** **COMPEL ABANDONMENT O.S.T.**
 Matthew R. Eason **1-30-14 [44]**

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2014. By the court's calculation, 7 days' notice was provided.

Tentative Ruling: The Motion to Sell was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Sell. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Trustee to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b).

Here, Creditor BBC Blue Oaks, LLC ("BBC") and the Chapter 7 Trustee ("Trustee") propose to sell for \$2,500 cash, subject to overbids, all right, title, claims and interests of Debtor in the following assets:

- (1) all assets of the Icing on the Cupcake business, including equipment, office furniture, recipes, accounts, account receivables, client lists, phone number, name, trademarks and all other intellectual property and assets, but excluding (a) vehicles, (b) rights to leased premises excepting the premises located at 6839 Lonetree Boulevard, Suites 68G-101/102, in Rocklin, CA (the "Premises") which Premises will be immediately surrendered to BBC (regardless of who the successful bidder is) upon Close of Escrow, and (c) avoidance actions.

The terms of the sale are set forth in the Declaration of John R. Roberts in support of the Motion to Sell. Dckt. 47.

As described, all assets of Icing on the Cupcake business, where ever located and whatever they may be, are sold for \$2,500.00. The motion and contract do not purport to sell only the assets which are listed on the Schedules, not the assets located physically at the place of business, or assets which are described with some particularity. In essence one of two things is being said to the court. (1) Judge, just sign a blank piece of paper and blindly approve a sale of personal property because none of us know what it is and it's not worth our time to figure it out. (2) Judge, just sign a blank piece of paper because there are more valuable assets out there and hopefully we can slip them by the court.

No purchase and sale agreement is provided the court as an exhibit, though there are detailed terms which appear in the Motion. It appears that these terms and conditions may have been copied and pasted from a purchase and sale agreement which is not disclosed. It is curious that such detailed terms and conditions can be summarized in the Motion and there is no purchase and sale agreement provided as an exhibit.

The summarized terms also include a provision that personal property is sold to BBC, but that if BBC doesn't want it, then the property will be abandoned back to the Trustee. For the Trustee, and the court approving the sale of every possible asset in the world of this Debtor, this makes the transaction appear to be more of a "pig-in-a-poke deal" than an actual sale.

Adding to the confusion is that BBC and the Trustee have combined two separate contested matters into one motion - a motion to approve sale and a motion to compel abandonment. Federal Rule of Civil Procedure allowing for multiple claims to be asserted in one complaint is not incorporated as part of the law and motion practice in bankruptcy court. See Fed. R. Bank. P. 9014(b). Given the rapidity at which bankruptcy cases move and the substantive relief granted and rights altered in the bankruptcy law and motion practice, combining multiple claims in one motion (such as a motion to sell-abandon-grant relief from stay-obtain post-petition credit-value claim) would not only be a recipe for confusion, it would be a breeding ground for attorneys who are seeking to abuse the Bankruptcy Code, rights of the parties, and the Constitutional requirements for Due Process.

The Motion is denied without prejudice.

A minute order substantially in the following form shall be prepared and issued by the court:

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

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

IT IS ORDERED that Motion is denied without prejudice.