

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

May 28, 2014 at 2:30 p.m.

- 
1. [08-35291](#)-E-13 VICTOR/PATRICIA GUZMAN CONTINUED PRE-TRIAL CONFERENCE  
[10-2141](#) RE: FIRST AMENDED COMPLAINT  
GUZMAN ET AL V. ONEWEST BANK, 3-15-10 [[1](#)]  
FSB ET AL

Plaintiff's Atty: Mark A. Wolff

Defendant's Atty:

Joshua A. del Castillo [OneWest Bank, FSB; IndyMac Mortgage Servicing]  
unknown [IndyMac Federal Bank]

Adv. Filed: 3/15/10

Amd Cmplt filed: 5/29/12

Answer: 4/14/10 [OneWest Bank, FSB; IndyMac Mortgage Servicing]

Answer to Amd Cmplt: 6/29/12 [OneWest Bank, FSB; IndyMac Mortgage Servicing]

Nature of Action:

Injunctive relief - other

Recovery of money/property - other

Validity, priority or extent of lien or other interest in property

Notes:

Continued from 3/19/14

2. [13-33903](#)-E-7 JAMES/GINA MOORE STATUS CONFERENCE RE: COMPLAINT  
[14-2086](#) 3-24-14 [[1](#)]  
COUNTY OF SACRAMENTO V. MOORE  
ET AL

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**

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Plaintiff's Atty: Robert P. Parrish

Defendant's Atty: unknown

Adv. Filed: 3/24/14

Reissued Summons: 4/1/14

May 28, 2014 at 2:30 p.m.

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Reissued Summons: 5/19/14

Answer: none

Nature of Action:  
Dischargeability - other

**The Status Conference is continued to 2:30 p.m. on July 9, 2014.**

**MAY 28, 2014 STATUS CONFERENCE**

A Summons was reissued on May 19, 2014 and served on May 21, 2014. Defendant has 30 days to respond to the Complaint and Reissued Summons. The court continues the Status Conference as no answer, responsive pleading, or appearance has been made by the name Defendants.

Notes:

Memorandum re Default Papers filed 5/14/14 [Dckt 18] stating deficiencies in default papers filed by the Plaintiff.

Summons reissued 5/19/14 [Dckt 19]

- |    |  |   |
|----|--|---|
| 3. | <a href="#">10-36505-E-13</a> DONNA VICKS<br><a href="#">14-2022</a><br>MICHAEL VICKS, JR., SUCCESSOR<br>IN INTEREST TO DONNA V. WELLS | CONTINUED STATUS CONFERENCE RE:<br>COMPLAINT<br>1-17-14 [ <a href="#">1</a> ] |
|----|--|---|

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**

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Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: unknown

Adv. Filed: 1/17/14  
Answer: none

Nature of Action:  
Recovery of money/property - other  
Dischargeability - other  
Other - e.g. other actions that would have been brought in state court if unrelated to bankruptcy case

**The Status Conference is continued to 2:30 p.m. on July 9, 2014, to allow the Parties to have the hearing on Motion for Entry of Default Judgment to**

be conducted, the judgment issued or Plaintiff to comply with further orders of this court if the Motion for Entry of Default Judgment is not granted, and this Adversary Proceeding resolved or continue to be diligently prosecuted by Plaintiff.

**MAY 8, 2014 STATUS CONFERENCE**

The hearing on the Plaintiff's Motion for Entry of Default Judgment was continued to provide sufficient notice and an opportunity to respond for the named Defendant.

Notes:

Continued from 3/19/14

[PLC-5] Motion for Default Judgment filed 3/20/14 [Dckt 10]; heard 4/24/14 and continued to 6/5/14 at 1:30 p.m.

4. [14-20708-E-13](#) NOEL ORLANDO STATUS CONFERENCE RE: COMPLAINT  
[14-2083](#) 3-20-14 [[1](#)]  
SNIDER LEASING CORP V. ORLANDO

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**

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Plaintiff's Atty: John A. Britton  
Defendant's Atty: unknown

Adv. Filed: 3/20/14  
Answer: none

Nature of Action:  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

**The Status Conference is continued to 2:30 p.m. on September 10, 2014.**

**MAY 28, 2014 STATUS CONFERENCE**

On May 23, 2014 the Clerk of the Court entered the default of the Defendants. The Plaintiff has been allowed thirty days to file a motion for entry of default judgment. The court continues the Status Conference to allow the Plaintiff to prosecute the entry of a default judgment in this Adversary Proceeding.

Notes:

5. [10-43410-E-13](#) MARIANN BINGHAM  
[14-2020](#)  
BINGHAM V. OCWEN LOAN  
SERVICING, LLC

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-17-14 [[1](#)]

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**

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Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: Adam N. Barasch

Adv. Filed: 1/17/14  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other - e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case

**The Status Conference is Continued to 2:30 p.m. on July 9, 2014,** to be  
conducted in conjunction with the hearing on Plaintiff's Motion for Entry of  
Default Judgment.

**MAY 28, 2014 STATUS CONFERENCE**

The Plaintiff and Defendant have stipulated to continue the hearing on  
Plaintiff's Motion for Entry of Default Judgment to allow the parties time  
to negotiate a resolution of this Adversary Proceeding.

Notes:

Continued from 3/19/14

[DBJ-1] Stipulation to Continue Hearing [motion for default judgment] filed  
4/1/14 [Dckt 18], continued by civil minute order to 5/15/14 at 1:30 p.m.

[DBJ-1] Stipulation to Continue Hearing on Mariann Bingham's Motion for  
Entry of Default filed 5/14/14 [Dckt 20]; no order submitted

Plaintiff's Status Conference Statement filed 5/16/14 [Dckt 22]

6. [11-21422-E-13](#) SHMAVON MNATSAKANYAN AND CONTINUED STATUS CONFERENCE RE:  
[13-2300](#) YERMONIYA ARTUSHYAN COMPLAINT  
MNATSAKANYAN ET AL V. BAC HOME 9-25-13 [[1](#)]  
LOANS SERVICING, LP ET AL

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**

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Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty:  
Bernard J. Kornberg [Green Tree Servicing, LLC]  
Stella Y. Kim [BAC Home Loans Servicing, LP]

Adv. Filed: 9/25/13  
Answer: none

Nature of Action:  
Declaratory judgment

**The Status Conference is continued to 2:30 p.m. on September 10, 2014, to afford the parties sufficient time to file the dismissal of this Adversary Proceeding.**

**MAY 28, 2014 STATUS CONFERENCE**

The Plaintiff reports that this Adversary Proceeding has been settled, all documents executed, and the loan modification (at the core of the settlement) approved by the court by order on April 27, 2014 (11-21422, Dckt. 153). The court continues the Status Conference to allow the Parties the time (as requested) to file the simple documents to dismiss the Adversary Proceeding.

Notes:

Continued from 3/19/14 the Parties having notified the court that they are in the process of resolving this dispute through the bankruptcy case and Bank of America, N.A. having dismissed without prejudice its motion to dismiss the Complaint.

Plaintiffs' Status Conference Statement filed 5/19/14 [Dckt 43]

7. [11-27845-E-11](#) IVAN/MARETTA LEE  
[14-2060](#)  
LEE ET AL V. SELECT PORTFOLIO  
SERVICING, INC. ET AL

STATUS CONFERENCE RE: COMPLAINT  
2-20-14 [[1](#)]

Plaintiff's Atty: Raymond E. Willis  
Defendant's Atty:  
Sanford Shatz [Select Portfolio Servicing, Inc.]  
Adam N. Barasch [Bank of America, N.A.]

Adv. Filed: 2/20/14  
Answer: none

Nature of Action:  
Injunctive relief - other  
Declaratory judgment

**The Status Conference is -----.**

**MAY 28, 2014 STATUS CONFERENCE**

The court has twice extended the time for responsive pleadings to be filed by Defendants pursuant to the Stipulation of the Parties. The second and final extension authorized by the court expired on April 21, 2014. No responsive pleadings have been filed by any Defendants.

In their Status Report Plaintiffs indicate that the Parties are working to a settlement, but does not state that a settlement has been reached. Status Report filed May 20, 2014 (Dckt. 16).

Notes:

Stipulation to Extend Responsive Pleading Deadline for Defendants Bank of America and Select Portfolio Servicing, Inc. filed 3/21/14 [Dckt 10]; Order approving filed 4/4/14 [Dckt 12]

Second Stipulation to Extend Responsive Pleading Deadline for Defendants Bank of America and Select Portfolio Servicing, Inc. filed 4/8/14 [Dckt 13]; Order approving filed 4/13/14 [Dckt 15]

Plaintiffs' Status Conference Statement filed 5/20/14 [Dckt 16]

8. [11-46148-E-7](#) ASHWINDAR KAUR  
[13-2344](#)  
EDMONDS V. SINGH

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
11-1-13 [[1](#)]

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**  
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Plaintiff's Atty: Carl W. Collins  
Defendant's Atty: Jason E. Rios; Jeffrey B. Coopersmith

Adv. Filed: 11/1/13  
Answer: 2/11/14

Nature of Action:  
Recovery of money/property - preference  
Recovery of money/property - other

**The Status Conference is continued to 2:30 p.m. on July 9, 2014.**

**MAY 28, 2014 STATUS CONFERENCE**

On May 21, 2014 the court filed an order striking the Answer which was filed in the name of Bhanjith Singh and extended the time for that Defendant to file a responsive pleading to June 13, 2014. The court continues the Status Conference to allow for the filing of responsive pleadings or entries of default if no further responsive pleadings are filed.

Notes:

Continued from 3/19/14

Stipulation to Strike Answer and Extend Time for Defendant to Respond to Complaint filed 5/6/14 [Dckt 19]; order pending

9. [10-45051](#)-E-13 RONALD/JUANITA TYESKEY  
[13-2352](#)  
TYESKEY ET AL V. JPMORGAN  
CHASE BANK N.A.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
11-6-13 [[1](#)]

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**  
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Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Joseph V. Quattrocchi

Adv. Filed: 11/6/13  
Summons Reissued: 12/18/13

Answer: 1/31/14

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

**The Status Conference is continued to 2:30 p.m. on July 9, 2014,** to allow  
the Parties to have the hearing on Motion for Approval of Settlement to be  
conducted, the Settlement implemented, and this Adversary Proceeding  
resolved.

Notes:

Continued from 3/19/14. The Parties stated they are in the process of  
completing a settlement.

[PLC-1] Motion to Approve Settlement Agreement and Release filed 5/5/14  
[Dckt 23], set for hearing 6/5/14 at 1:30 p.m.

10. [14-20352-E-11](#) PATRICK GREENWELL

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
1-9-14 [[1](#)]

Debtor's Atty: Patrick B. Greenwell

Notes:

Continued from 2/19/14

Operating Reports filed: 3/17/14, 4/15/14, 5/16/14

**The Status Conference is continue to 2:30 p.m. on -----, 2014.**

#### **STATUS CONFERENCE SUMMARY**

##### **2014 MAY 28 STATUS CONFERENCE**

In his May 22, 2014 Status Report the Debtor in Possession ("ΔIP") states that he is waiting for the Internal Revenue Service to file an amended proof of claim taking into account the filed 2013 tax returns (which reduce the IRS claim by approximately \$15,000). The ΔIP projects having a plan and disclosure statement filed withing 60 days and set for hearing.

##### **2014 FEBRUARY 19 STATUS CONFERENCE**

In his Status Conference Report, the Debtor in Possession notifies the court that there are only two general unsecured claims - the federal and state income taxing agencies. The Debtor in Possession intends to use a combined Disclosure Statement and Plan due to the very limited number of creditors and the nature of their claims. The Estate income is generated by the Debtor operating his professional corporation.

For creditors, there is one secured claim (airplane purchased as an investment). The two taxing agencies have non-priority general unsecured claims. There are no other creditors listed on the Schedules.

11. [10-51054-E-13](#) ISRAEL/MARICRUZ CARLOS  
[14-2079](#)  
CARLOS ET AL V. BANK OF  
AMERICA, N.A.

STATUS CONFERENCE RE: COMPLAINT  
3-13-14 [[1](#)]

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**  
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Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: unknown

Adv. Filed: 3/13/14  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g., other actions that would have been brought in state court if  
unrelated to bankruptcy case)

**The Status Conference is continued to 2:20 p.m. on September 10, 2014.**

**MAY 28, 2014 STATUS CONFERENCE**

The default of Defendant has been entered and Plaintiff has filed and set for hearing on July 10, 2014, a Motion for Entry of Default Judgment. The Status Conference is continued to allow the hearing for Motion for Entry of Default Judgment to be conducted, a judgment issued and the Adversary Proceeding closed, or for further orders to be issued and the Plaintiff to continue in the prosecution of this Adversary Proceeding.

Notes:

[DBF-1] Motion for Default Judgment Including an Award of \$1,982.99 in Attorney Fees and Penalties filed 5/13/14 [Dckt 12], set for hearing 7/10/14 at 1:30 p.m.

Plaintiffs' Status Conference Statement filed 5/13/14 [Dckt 17]

12. [10-30359-E-13](#) ELIZABETH LUCHINI  
[13-2321](#)  
LUCHINI V. JPMORGAN CHASE BANK  
N.A.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
10-21-13 [[1](#)]

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**  
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Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: unknown

Adv. Filed: 10/21/13  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

**The Status Conference is continued to 2:30 p.m. on September 10, 2014.**

#### **STATUS REPORT**

The court is issuing its ruling and order on Motion for Default Judgment in Favor of Plaintiff and denying relief on several other grounds. The court shall afford Plaintiff the opportunity to lodge an appropriate judgment with the court consistent with the ruling on the motion or filing a motion for leave to amend the complaint to state claims for the causes of action which relief was denied Plaintiff.

Notes:

Continued from 3/19/14

[PLC-3] Civil Minute Order dated 4/24/14 continued Motion for Entry of Default Judgment to 5/15/14 at 1:30 p.m.

13. [09-46360-E-13](#) MARGUERITE GALVEZ  
[13-2313](#)  
GALVEZ V. WELLS FARGO BANK,  
N.A.

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
3-25-14 [[31](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: David M. Newman; Matthew J. Pero

Adv. Filed: 10/9/13  
Amended Complaint: 3/25/14  
Reissued Summons: 3/25/14

Answer: 1/6/14  
Answer to Amd Complaint: 4/18/14

Counterclaim: 4/18/14

Nature of Action:  
Recovery of money/property - other  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

#### STATUS CONFERENCES

##### MAY 28, 2014 STATUS CONFERENCE

The Complaint has been answered and Defendant Wells Fargo Bank, N.A. has filed a counter-claim.

##### Summary of Amended Complaint

The First Amended Complaint filed by Plaintiff asserts the following general allegations and ten Claims for Relief. It is asserted that Defendant Wells Fargo Bank, N.A. secured claim was valued at \$0.00 in the Plaintiff's bankruptcy case, that it was so provided for in the Plaintiff's Chapter 13 Plan, and that said Plan has now been completed.

##### First Claim for Relief - Ratification of Valuation of Security

The Plaintiff's First Claim for Relief is for this court to declare that the February 12, 2010 valuing the secured claim at \$0.00 really means that the secured claim is valued at \$0.00.

##### Second Claim for Relief - Determination of Extent of Second Trust Deed Claim

The Plaintiff's Second Claim for Relief requests that the court state that the Second Trust Deed has a value of \$0.00 as requested to be redetermined in the First Claim for Relief. [Plaintiff requests that the Second Deed of Trust be determined to have a value of \$0.00, not that the claim secured by the Second Trust Deed has a value of \$0.00. Further, the Second Claim for Relief does not assert there being any case or controversy as to the value of the Claim secured by the Second Trust Deed. See Article

III, Section 2, Constitution of the United States.]

**Third Claim for Relief - Extinguishment of Second Trust Deed Claim.**

Plaintiff asserts that the Second Trust Deed is completely unsecured and is determined to be a general unsecured claim. [Complaint does not allege that any debt secured by the Second Trust Deed has been satisfied as required under the confirmed Chapter 13 Plan.] The Complaint also alleges that the plan treats the "Second Trust Deed as an unsecured creditor." [Plaintiff does not address how a security instrument is a "creditor" as defined under applicable bankruptcy law. See 11 U.S.C. § 101(10) and (5).]

It is alleged under the Third Claim for Relief that Defendant has ignored Plaintiffs requests to remove the lien, and therefore requests that the court "extinguish" the Second Trust Deed.

The Third Claim for Relief requests attorneys' fees pursuant to the terms of the Second Trust Deed and California Civil Code § 1717.

**Fourth Claim for Relief - Violation of California Civil Code § 2941(d)**

Plaintiff asserts that Defendant has failed to reconvey the Second Trust Deed within the thirty day period specified in California Civil Code § 2941 and that Plaintiff is entitled to recover \$500.00 in statutory damages.

**Fifth Claim for Relief - Rosenthal Fair Debt Collection Practices Act**

Plaintiff asserts that Defendant is a debt collector under the Rosenthal Act and has been collecting a debt subject to the provisions of that Act. The Fifth Claim for Relief extensively quotes provision of the Rosenthal Act. The following allegations are stated in the Fifth Claim for relief:

1. Defendant has repeatedly called Plaintiff, representing that the debt is valid and demanding payment.
2. Defendant is sending notice to Plaintiff after discharge stating the amount owed by Plaintiff.
3. Plaintiff seeks actual damages, statutory damages, and attorneys' fees (without citation to a contractual or statutory basis).

**Sixth Claim for Relief - Violation of California Constitutional Right to Privacy**

Plaintiff asserts that Defendant's conduct violates the California Constitutional Right to Privacy. The specific allegations for the Sixth Claim for Relief are:

1. The "continual" calling by phone after stays and injunctions "interferes with Plaintiffs [sic] intimate personal decision and interferes with Plaintiffs [sic] ability to conduct personal activities without observation, intrusion, or interference."

2. "After obtaining their [sic] rights under bankruptcy law it was reasonable that Plaintiff would expect that he/she [Plaintiff apparently unable to gender identify in this Claim for Relief] would no longer be contacted by Defendants [sic] and did not have to give concern that the Defendants [sic] would contact him [Plaintiff is named as Marguerite Galvez in the First Amended Complaint]."

3. Defendant has interfered with that expectation by "constant" telephone calls.

4. "Here, despite the stay and injunction under bankruptcy law and the letter from their counsel demanding reconveyance consistent with their lien stripping they continue to call/contact the Plaintiff, who is represented by legal counsel. This calling by telephone is no different than the Defendants coming to their door and banging on it."

5. "Since the plaintiff has extinguished the debt, the contact does not encompass any legitimate interests derived from legally authorized or socially beneficial activities of Defendants as private entities."

6. Injunctive relief is sought pursuant to the Sixth Claim for Relief.

**Seventh Claim for Relief - Violation of California Consumer Credit Reporting Act**

Plaintiff asserts that she has obtained a copy of "their" [sic] credit report and that Defendant is reporting "derogatory information" about Plaintiff to one or more consumer reporting agencies. "Defendants" [sic] have not removed the derogatory information "they" [sic] are reporting to the credit reporting agencies. Actual, Statutory Damages, and Attorneys' Fees (without reference to a contractual or statutory basis) are request pursuant to the Seventh Claim for Relief. Plaintiff also requests injunctive relief.

**Eight Claim for Relief - Violation of Federal Fair Credit Reporting Act**

It is alleged that Defendant has not provide notice of a dispute and has failed to investigate the dispute of information provided to consumer reporting agencies as required under the Federal FCRA. Plaintiff requests actual and statutory damages, and injunctive relief pursuant to the Federal FCRA.

**Ninth Claim for Relief - Intentional Infliction of Emotional Distress**

Plaintiff alleges that "Defendants" [sic] have engaged in conduct which was "extreme and outrageous and an abuse of the authority and position of Defendants [sic]." When the Plaintiff commenced her bankruptcy case she suffered from depression and was on medication for that condition. As a result of filing bankruptcy she no longer needed to take the medication. However, upon Defendant's willful failure to reconvey "her loan" [the court does not find other allegations in the First Amended Complaint that a loan was to be reconveyed or assigned back to the Plaintiff], Plaintiff has been "thrust back into a depression and has again begun taking the medication."

Further, Plaintiff asserts that she was "humiliated" by attempting to secure a car loan and learning that Defendant was "still reporting her credit in a manner that cause her to appear untrustworthy."

#### **Tenth Claim for Relief - Negligent Infliction of Emotional Distress**

Plaintiff realleges the grounds stated in the Ninth Claim for Relief as grounds for a Negligent Infliction of Emotional Distress.

#### **ANSWER TO FIRST AMENDED COMPLAINT**

The Answer admits and denies specific allegations in the First Amended Complaint. However, Wells Fargo Bank, N.A. fails to comply with the basic pleading requirements of Federal Rule of Bankruptcy Procedure 7008(a) and does not admit or deny the basis for federal court jurisdiction, whether this is a core or non-core matter, and if non-core, whether Wells Fargo Bank, N.A. consents to the determination of non-core issues by the bankruptcy judge pursuant to 28 U.S.C. § 157(c)(2).

The Answer also states nine Affirmative Defenses. The Seventh Affirmative Defense is that the California Fair Credit Reporting Act Claim is preempted by the Home Owners' Loan Act of 1933, 12 U.S.C. §§ 1461 *et seq.* and the regulations promulgated thereto.

The Eleventh Affirmative Defense alleges that the California Rosenthal Fair Debt Collection Practices Act does not apply to a creditor attempting to collect its own debt.

The Thirteenth Affirmative Defense alleges that after the entry of the court's order determining the secured claim to have a value of \$0.00, Wells Fargo Bank, N.A. entered into a loan modification to reduce the principal by \$49,674.44. Further, Wells Fargo Bank, N.A. is informed and believes that the real property subject to the Second Trust Deed has increased in value since the Plaintiff's bankruptcy case was commenced.

#### **WELLS FARGO BANK, N.A. COUNTERCLAIM**

In its Counterclaim Wells Fargo Bank, N.A. asserts that it made two loans to the Plaintiff - a \$295,000.00 loan secured by a First Deed of Trust and an Equity Line Loan in the amount of \$25,500.00 secured by a Second Deed of Trust. The Counterclaim admits that Wells Fargo Bank, N.A.'s secured claim for which the Second Deed of Trust provides collateral was valued by the court at \$0.00. However, it is asserted that the Plaintiff "never sought relief from the Court to strip, or otherwise determine the validity, extent and priority of Wells Fargo's second lien against the Property."

On June 3, 2011, sixteen months after the court determined the claim secured by the Second Deed of Trust to have a value of \$0.00, Wells Fargo Bank, N.A. and Plaintiff entered into a loan modification. Under the Loan Modification the principal balance was reduced by \$49,674.44 to \$226,294.66. (The Counterclaim does not identify which loan was being modified, but due to the magnitude of the debt it appears to be the loan secured by the First Deed of Trust.)

Wells Fargo Bank, N.A. requests a declaration that its security interest under the Second Deed of Trust has grown with the increase in the value of the Property. Further, that based on the 2011 loan modification the claim secured by the Second Deed of Trust should not be valued at \$0.00.

Notes:

Continued from 3/19/14. The Parties stated they are filing a stipulation to amend the complaint and to engage in BDRP.

Joint Stipulation Regarding Bankruptcy Dispute Resolution Program filed 3/25/14 [Dckt 30]

Joint Stipulation Regarding Plaintiff Filing Amended Complaint filed 3/25/14 [Dckt 34]

Order Appointing Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program filed 4/4/14 [Dckt 35]

[PLC-2] Application for Order Shortening Time for Hearing on Motion to Discontinue BDRP and Begin Discovery filed 4/21/14 [Dckt 41]

[PLC-4] Motion to Dismiss Counterclaim of Wells Fargo Bank filed 4/23/14 [Dckt 46], set for hearing 6/5/14 at 1:30 p.m.

[PLC-3] Notice of Withdrawal of Motion to Discontinue BDRP and to Begin Discovery filed 5/6/14 [Dckt 54]

14. [13-31975-E-13](#) JACK/LINDA GANAS  
[14-2080](#)

STATUS CONFERENCE RE: COMPLAINT  
3-14-14 [[1](#)]

GANAS ET AL V. WELLS FARGO  
BANK, N.A.

**Final Ruling: No appearance at the May 28, 2014 Status Conference is required.**  
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Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Eddie R. Jimenez

Adv. Filed: 3/14/14  
Answer: none

Nature of Action:  
Recovery of money/property - other  
Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)

**The Status Conference is continued to 2:30 p.m. on July 9, 2014.**

**STATUS CONFERENCE**

**May 28, 2014 at 2:30 p.m.**  
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**MAY 28, 2014 STATUS CONFERENCE**

Wells Fargo Bank, N.A. has filed a Motion to Dismiss the Adversary Proceeding. That Motion is set for hearing on June 5, 2014.

The Complaint alleges several claims. The First is an objection to the Wells Fargo Bank, N.A. Claim (Proof of Claim No. 4). It is asserted that the amounts stated in Proof of Claim No. 4 are internally inconsistent between the stated claim amount of \$96,957.30 and the stated principle amount of \$73,238.69 and a defaulted payment (cure) amount of \$32,856.92. FN.1.

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FN.1. A review of Proof of Claim No. 4 discloses the following. The Proof of Claim Form itself states that the total amount of the claim as of the commencement of the case was \$96,957.30. Of this amount, it is stated that the arrearage as of the filing of the case was \$32,856.92.

Attachment A to Proof of Claim No. 4 provides a breakdown of the claim, identifying the following:

Principal Due	\$73,238.69
Interest Due	<u>\$12,957.61</u>
Total Principal and Interest	\$86,196.30
Late Charges	\$474.24
Attorneys' Fees	\$413.07
Title Costs	\$350.00
Property Inspection Fees (Nine Inspections 6/2010 - 7/2012)	\$170.00
Escrow Shortage or Deficiency	\$529.34
Prior Bankruptcy Case Attorneys' Fees (The court's files indicate the Debtors having filed four prior cases since November 2011.)	<u>\$725.00</u>
Pre-Petition Fees, Expenses, and Charges	\$2,661.65
Total Pre-Petition Claim Computed From Attachment A	\$88,857.95

It is not obvious to the court from Proof of Claim No. 4 why the first page states the total amount of the Claim to be \$96,957.30 and Attachment A computes the Pre-Petition Claim to be \$88,857.95.

The cure amount is computed on Attachment A to be 24 monthly installments (principal, interest, escrow) payments of \$1,138.84 and 3 monthly installments of \$30,195.27. In addition, the cure amount includes the \$2,661.65 in Pre-Petition fees, expenses and charges. (Since the monthly installments include some principal reduction, the cure amount cannot merely be added to the principal amount and Pre-Petition fees and expenses to generate the total claim amount.

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The Second Claim for Relief is asserted under the California Rosenthal Fair Debt Collection Practices Act. It is asserted that Wells Fargo Bank, N.A. has "no legal right to file a claim as has been filed in the Plaintiff's case and that the doing so was a misrepresentation of a debt thereby a violation of the Rosenthal Fair Debt Collection Practices Act.

The Third Claim for Relief is for negligence. It is alleged that (1) Defendant has a duty to file a claim that "has some semblance of accuracy;" (2) Defendant breached that duty in that the Proof of Claim is in conflict with prior accountings; (3) Defendant's internal controls are so poor or maintained in such a reckless manner that they do not come close to the minimum standard of care for Defendant; (4) Due to Defendant's negligence, Plaintiff contends that they have expenses hours of expert assistance researching the claim, securing evidence that the claim was not valid, retain counsel, and file the present adversary proceeding; (5) Defendant's conduct is so reprehensible that it warrants punitive damages; (6) Plaintiff asserts that there are thousands of debtors who suffer from Defendant's improper proofs of claim; and (7) Plaintiff wants to be awarded attorneys' fees for the negligence claim [with no contractual or statutory basis stated].

The Fourth Claim for Relief is for Fraud and Intentional Misrepresentation (Cal. Civ. §§ 1572, 1709, and 1710). The Fifth Claim for Relief is based on the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 *et seq.* Statutory damages of \$1,000.00 and attorneys' fees are requested. The Sixth Claim for Relief is for Breach of Contract. It is asserted that Defendant applied payments made by Plaintiff in a manner not permitted by the Note and Deed of Trust. Attorneys' fees are requested under the Deed of Trust contractual provisions and California Civil Code § 1717. The Seventh and final Claim for Relief is for Conversion. It is asserted that Defendant "converted" payments made by Plaintiffs by applying them to amounts contrary to the contract between the Parties. This resulted in overcharges for late payment fees and asserted delinquency costs.

Notes:

[PD-1] Motion to Dismiss Complaint Objecting to Claim of Wells Fargo Bank, N.A.; Negligence and Related State Causes of Action filed 4/14/14 [Dckt 7]; Stipulation to Continue Hearing and Reply Deadline filed 5/9/14 to continue hearing from 5/15/14 at 1:30 p.m. to 6/5/14 at 1:30 p.m. [Dckt 18]; Civil Minute Order granting filed 5/21/14 [Dckt 26]

15. [11-48050-E-7](#) STAFF USA, INC.  
MHK-4

CONTINUED MOTION FOR ORDER TO  
SHOW CAUSE  
7-18-13 [[257](#)]

**No Tentative Ruling:** 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.  
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**CONT. FROM 12-12-13, 10-24-13, 8-29-13**

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on July 18, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Order to Show Cause 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 decision is -----.**

**MAY 28, 2014 HEARING**

**At the hearing...**

**PRIOR HEARING**

Jon Tesar, Chapter 11 Trustee requested an order that directs W. Austin Cooper, a Professional Corporation to show cause why it should not be required to disgorge a payment made to Cooper by the Debtor for legal services in this Chapter 11 case.

Trustee filed a Notice of Intent to continue the hearing on the motion, as he has received notice that attorney Cooper will be unable to make a timely appearance in regard to this matter due to health concerns.

Trustee states he will appear at the hearing to request that the hearing be continued to a date and time agreeable to interested parties and to the court. The court continued the hearing to October 24, 2013.

**OCTOBER 24, 2013 HEARING**

The parties have not filed any supplemental pleadings explaining whether an agreement was reached. Mr. Cooper has not filed a response to the Motion to date.

From reviewing the court's files, W. Austin Cooper appears to be back to the active practice of law, appearing in and having matters ruled on by the court. The following is a chart of some of those matters.

<b>Bankruptcy Case</b>	<b>Representation by W. Austin Cooper</b>	<b>Date Filed</b>	<b>Document/Pleading</b>
<b>Guong Van Nguyen 13-33040</b>	Attorney for Debtor	October 5, 2013	Chapter 13 Petition
<b>Anh Hoang Tran 13-32627</b>	Attorney for Debtor	September 27, 2013 October 10, 2013	Chapter 7 Petition Motion to Extend Time to File Schedules and Statement of Financial Affairs
<b>Justin and Tiffany Smith 13-29842</b>	Attorney for Debtor	July 26, 2013 September 4, 2013	Chapter 7 Petition, Schedules, Statement of Financial Affairs First Meeting of Creditors Completed
<b>Robert and Glalynn Baird 13-29471</b>	Attorney for Debtor	July 17, 2013 August 28, 2013	Chapter 7 Petition, Schedules, Statement of Financial Affairs First Meeting of Creditors Completed
<b>Kristan Hartman 13-27725</b>	Attorney for Debtor	July 9, 2013 July 23, 2013 July 25, 2013 August 2, 2013 August 29, 2013	Motion to Convert Chapter 7 Case to Chapter 13 Amended Chapter 7 Petition, Schedules Statement of Financial Affairs Substitution of W. Austin Cooper in as counsel for Chapter 7 Debtor Reply to Trustee's Opposition to Motion to Convert Case Notice of Unavailability of Counsel, Motion to Continue

		September 30, 2013	Motion to Continue Hearing, Debtor Having Sufficient Funds to Pay Creditor Claim
		October 1, 2013	Motion to Dismiss Chapter 7 Case
<b>Coate v. Samra</b> <b>13-02158</b>	Attorney for Defendant	June 10, 2013	Answer
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
<b>Steven Samra</b> <b>13-22486</b>	Attorney for Debtor	February 26, 2013	Chapter 12 Petition
		July 22, 2013	Motion to Confirm Plan
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
		October 8, 2013	Order Dismissing Case With Prejudice
<b>Samra v. Ag-Seeds Unlimited</b> <b>13-02011</b>	Attorney for Plaintiff	January 9, 2013	Complaint Filed
		June 19, 2013	Motion for Summary Judgment
		August 8, 2013	Response to Counter-Motion for Summary Judgment
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
		August 21, 2013	Order Denying Motion for Summary Judgment Without Prejudice
		October 10, 2013	Order Granting Counter-Motion For Summary Judgment to Defendants
<b>Reynoso v. Johnson</b> <b>13-02003</b>	Attorney for Plaintiff	January 3, 2013	Complaint Filed
		August 8, 2013	Civil Minutes, Claims Dismissed Against One Defendant
<b>Wayne v. Morison</b> <b>12-02438</b>	Attorney for Plaintiff	August 13, 2012	Complaint Filed

		August 10, 2013	Notice of Unavailability of Counsel, Motion to Continue
		October 3, 2013	Order Setting Trial for November 20, 2013
<b>Vitton Assavarungnir und 11-49125</b>	Attorney for Debtor	December 19, 2011	Chapter 11 Petition Filed
		June 26, 2013	Confirmation Hearing, Plan Confirmed
		September 12, 2013	Confirmation Order

The court continued the hearing to allow for the appointment of the Chapter 7 Trustee in the Staff USA, Inc. case, possible settlement discussions now that Mr. Cooper has recovered from his illness during the summer of 2013, and for the parties to establish a disclosure and discovery schedule and to select possible dates for the evidentiary hearing.

16. [10-23577-E-11](#) **GLORIA FREEMAN**

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-16-10 [1]**

Debtor's Atty: Pro Se  
Limited Scope Atty: Reno F.R. Fernandez III

Notes:

Continued from 12/12/13 to be heard in conjunction with other matters on calendar.

Operating Reports filed: 12/30/13,

[WFH-43] Plan Administrator's Motion to Abandon Exempt Property filed 2/4/14 [Dckt 1328]; Order granting filed 2/28/14 [Dckt 1359]

[GMF-19] Debtor's Counter Motion for an Order to Compel Abandonment of Personal Property in the Chapter 11 Estate of Gloria Freeman filed 2/13/14 [Dckt 1342]; Order denying filed 3/2/14 [Dckt 1362]

Substitution of Attorney [Plaintiff Laurence H. Freeman] filed 3/7/14 [Dckt 1376]; Order granting filed 3/10/14 [Dckt 1380]

Substitution of Counsel for Limited Scope of Representation [Debtor Gloria

Freeman] filed 3/28/14 [Dckt 1391]; Order granting filed 4/1/14 [Dckt 1395]

[WFH-42] Application by Trustee David D. Flemmer for Final Allowance of Fees and Costs as Trustee filed 4/9/14 [Dckt 1398], set for hearing 6/5/14 at 10:30 a.m.

[WFH-43] Application for Final Allowance of Fees and Costs of Gonzales & Sisto, LLP filed 4/9/14 [Dckt 1403], set for hearing 6/5/14 at 10:30 a.m.

17. [10-23577-E-11](#) GLORIA FREEMAN  
GMF-20

CONTINUED COUNTER MOTION FOR AN  
ORDER DIRECTING TRUSTEE TO (A)  
CLAIM FOR AN ADMINISTRATIVE  
EXPENSE REIMBURSEMENT FOR  
AMOUNTS EXPENDED FOR THE  
BENEFIT OF THE BANKRUPTCY  
ESTATE; (B) RETURN OF DEBTORS  
IRA FUNDS; (C) OFFSET VS. THE  
TAX REFUND  
3-5-14 [[1368](#)]

CONT. FROM 3-19-14

Local Rule 9014-1(I) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Counter Motion and supporting pleadings were served on the Plan Administrator, all creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Counter Motion for an Order Directing the Trustee to Claim a Administrative Expense Reimbursement for Amounts Expended for the Benefit of the Bankruptcy Estate; Return Debtor's IRA Funds; and Offset the Tax Refund was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(I). 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 Counter Motion.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the

matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Gloria Freeman ("Debtor") moves for an order directing the Chapter 11 Trustee, now the Plan Administrator, to claim an administrative expense reimbursement for amounts expended for the benefit of the bankruptcy estate; return Debtor's IRA funds and offset the tax refund.

#### **PROCEDURAL ISSUES**

First, Local Bankruptcy Rule 9014-1(I) allows a countermotion or other motion "related to the general subject matter of the original motion set for hearing pursuant to this Local Rule" may be filed. The motion does not reference the "original motion" to which it is countering. The court presumes since the counter motion was filed and set to be heard with the Plan Administrator's pending Objection to Exemption, that is the "original motion" to which Debtor wishes to counter. However, in addition to the other issues laid out below, the requested relief does not "relate to" the Plan Administrator's Objection to Exemption (the only issue being the tax refund). Debtor appears to be requesting an administrative expense, return of funds and an offset, none of which appear to relate to the original Objection to Exemption. Therefore, Local Bankruptcy Rule does not appear to apply to the requested relief. This is sufficient to deny the counter motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, the Motion seeks to have the court allow an administrative expense, return the Debtor's IRA funds and offset a tax refund. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant have improperly attempted to join several different types of relief in one motion.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate - proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

Notwithstanding the procedural issues, the court denies the counter motion for the following substantive issues.

#### **COUNTER MOTION**

The Motion appears to be a request for an administrative expense.

Debtor alleges that she paid the following administrative expenses in order to preserve the bankruptcy estate:

1. September 2011 Debtor paid **\$9,900** to Staff USA, Inc. for maintenance expenses by employees of Staff USA at the Moss Lane Property (Mr. Freeman's separate property residence); these were to ensure that all payroll taxes were paid off by Staff USA.
2. June 1011, Debtor paid **\$4,212.89** to the Franchise Tax Board for taxes for Laurence Freeman for the 2009 year (unstated what the taxes were regarding). Debtor states that Mr. Freeman had paid the taxes, but the estate of Gloria Freeman filed first and took all the tax payments that he had made.
3. Debtor paid (no date stated) **\$907.52** to Wells Fargo for two secured loans on the Moss Lane Property and \$248.17 to PG&E for electricity on the same property.
4. Debtor paid Stephen Berniker in 2011 two checks totaling **\$3,354.50** (for unstated work for an unstated period of time).

Motion, Dckt. 1368.

Debtor states several other "facts" that do not appear relevant to the request (allegations against the Plan Administrator, references to the Settlement Agreement from an adversary proceeding, emails regarding the tax refund, etc.) or that request any specific relief, but concludes that the court should allow as an administrative expense for the maximum amount of \$15,555.69 plus \$3,354.50 for attorneys fees (allegedly given to Mr. Berniker) and \$2,299.97 for property Debtor's IRA that was taken from her account ending in 32877.

## **DISCUSSION**

11 U.S.C. § 503 of the Bankruptcy Code provides for the "allowance" of administrative expenses. Section 503(b)(1)(A) allows as administrative expenses "the actual, necessary costs and expenses of preserving the estate." The burden of proving an administrative expense is on the claimant. *Microsoft Corp. v. DAK Indus. (In re DAK Indus.)*, 66 F.3d 1091 (9th Cir. 1995). The claimant must show that the debt asserted to be an administrative expense (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity; and (2) directly and substantially benefitted the estate. *Id.* In order to keep administrative costs to the estate at a minimum, "the actual, necessary costs and expenses of preserving the estate," § 503(1)(A), are construed narrowly. *In re Palau*, 139 Bankr. 942, 944 (9th Cir. B.A.P 1992), *aff'd*, 18 F.3d 746 (9th Cir. 1994).

### **Expenses for Home Occupied by Gloria Freeman**

Here, Debtor has not met her burden showing that the requested administrative expenses directly and substantially benefitted the estate of Gloria Freeman or were necessary to preserve the estate of Gloria Freeman. First, the taxes allegedly paid in 2011 to Staff USA, Inc. for "maintenance

expenses by employees of Staff USA at the Moss Lane Property in Granite Bay, CA" to "ensure all payroll taxes were paid by Staff USA" does not appear to directly or substantially benefit the estate of Gloria Freeman. FN.1. Further this "expense" does not appear to be necessary to preserve the estate of Gloria Freeman. It may have benefitted the Estate of Staff USA, Inc. and possibly Laurence Freeman, but no facts have been alleged or evidence presented that it directly benefitted the estate of Gloria Freeman.

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FN.1. The court is also concerned that Debtor, a fiduciary of the estate of Gloria Freeman, was paying Staff USA (also in bankruptcy) for expenses unrelated to the bankruptcy case.  
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While serving as Debtor in Possession and then after the appointment of the Chapter 11 Trustee, Gloria Freeman continued to live in and occupy the 5135 Moss Lane Property as her personal residence. This has continued after Laurence Freeman and the Chapter 11 Trustee reached a settlement by which that property was determined to be the sole and separate property of Laurence Freeman (the Chapter 11 Trustee transferring all interests of the estate, asserted to be community property, to Laurence Freeman). These "maintenance expenses" are not specified, but merely a lump sum which Gloria Freeman testifies that she paid to the related entity which she controlled. Further, "maintenance expenses" sound in the nature of the normal expenses provided for the use, wear, and tear caused by a person using property. For expenses such as Pacific Gas and Electric, the Debtor was using and consuming that gas and electricity for her comfort and to maintain her lifestyle.

Earlier in this case a dispute existed between the Trustee and Debtor for possession of the Moss Lane Property. The Debtor asserted the right to occupy and use the Property. At one point the court faced having to order the Debtor to vacate the Property and turn it over to the Trustee so that it could be marketed and sold. That ended up not being necessary because of the Settlement Laurence Freeman reached with the Trustee to have the Moss Lane Property determined to be Laurence Freeman's separate property.

As Debtor in Possession and Debtor Gloria Freeman did not pay the estate rent or otherwise compensate the estate for the use of the 5135 Moss Lane Home, the estate was not obligated to pay her for living there. From the Motion as pleaded and evidence, Gloria Freeman is requesting to have the estate pay her for living in and using the house.

Further, to the extent that the payment of the expenses preserved the value of the property, it has inured to the benefit of Laurence Freeman and his contention that the property belonged to him. No theory has been advanced as to why Laurence Freeman, through the estate or to Gloria Freeman, should be liable for expenses that Gloria Freeman voluntarily paid for the house she was living in during this bankruptcy case.

Additionally, Debtor has not provided evidence or explanation that the payments made to Wells Fargo for secured loans on Moss Lane Property and to PG&E for the property maintenance were for the direct benefit of the

estate of Gloria Freeman. Again, Gloria Freeman used and occupied the Moss Lane Property and fails to show any basis for the estate paying her to so use and occupy the Property. The Moss Lane Property ultimately was determined pursuant to the Stipulation to be the separate property of Laurence Freeman.

### **Payment of Laurence Freeman Taxes**

The same concept applies to the amount allegedly paid to the Franchise Tax Board for taxes for Laurence Freeman. There is no evidence or argument from Debtor that this payment directly or substantially benefitted the estate of Gloria Freeman. In fact, Debtor does not state what the taxes were paid for (property tax, employment taxes, etc.).

### **Berniker Attorneys' Fees**

As for the request for attorney's fees paid to Mr. Berniker, Debtor does not provide any information as to what the fees were paid for or for what period of time the fees covered. The Debtor states that the payment was made in 2011, however, Mr. Berniker was not approved as counsel for Debtor (*nunc pro tunc*) until October 24, 2013. The court does not have sufficient information or evidence regarding this alleged payment to allow an administrative expense. Therefore, this request for relief is denied.

Further, the court has approved and authorized the payment of fees to Mr. Berniker for his services provided to the bankruptcy estate. Because Gloria Freeman, as Debtor in Possession, failed to obtain authorization to employ Mr. Berniker as special counsel, he was not entitled to receive any fees for the services he provided. This led to Mr. Berniker filing a motion for the authorizing his employment *nunc pro tunc*. As stated by the court,

"It is not for the court or a bankruptcy trustee in one of the multiple related cases to provide counsel with legal advice. Gloria Freeman, as the Debtor in Possession, was represented by knowledgeable, experienced bankruptcy counsel. The authorization for a debtor in possession to employ counsel is such a fundamental and universally known (for knowledgeable bankruptcy attorneys and those who conduct even a modicum of research) it is all but unfathomable how approval for the employment was not obtained by the Debtor in Possession.

...

The court gives Mr. Berniker the benefit of the doubt, and believes that he was the innocent state court counsel who was not provided with the guidance from the Debtor in Possession and her bankruptcy counsel that authorization for the Debtor in Possession (who as the fiduciary, is a separate legal entity from the Debtor herself) to employ or continue the employment of Mr. Berniker in litigating rights and interests of the bankruptcy estate. Further, the court also considers the overall resolution of this case and neither Trustee [Gloria Freeman Estate and Staff USA Estate] opposing this motion."

Civil Minutes, Dckt. 1167. Gloria Freeman, as Debtor in Possession, and her bankruptcy counsel appear to have used monies of various bankruptcy estates to pay attorneys, who were not authorized to be employed monies that they had not been approved by the court to be paid.

In his motion for employment *nunc pro tunc*, Mr. Berniker identified payments received from the Gloria Freeman Bankruptcy Estate in the month of October 2011. Motion, Dckt. 1098; Berniker Declaration, Dckt. 1152. In approving the employment, the court expressly determined and ordered as follows,

**"IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, **are deemed to be an advance payment of fees and to be property of the estate.**

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount."

Order, Dckt. 1191.

Gloria Freeman commenced the bankruptcy case on February 16, 2010. She then subsequently spent money that was property of the bankruptcy estate to pay legal fees she and her bankruptcy counsel chose to pay. The bankruptcy estate does not reimburse Gloria Freeman for spending money of the bankruptcy estate

This court has been troubled by the ethical lapses and the fiduciary breaches by Gloria Freeman while serving as Debtor in Possession and her attorney, W. Austin Cooper (who is no longer licensed to practice law in the State of California), who represented the Debtor prior to the commencement of this case, as Debtor in Possession, and then as Debtor after the Chapter 11 Trustee was appointed. These concerns are stated in various Civil Minutes of the Court, including the following:

**Civil Minutes, Dckt. 741, Gloria Freeman Motion to Covert Case to Chapter 7.**

"The court also notes that much of the difficulties in this case have been caused by the strategies imposed by Gloria Freeman and her counsel, originally as Debtor in Possession and as Debtor. This includes her litigation against her ex-husband (or husband, depending on how they interpret their state court dissolution proceedings) and then when she allied with him after being deposed with the appointment of the Chapter 11 Trustee. The attempt to convert or dismiss this case, as is her attempt to dismiss

or convert the Staff USA case is merely thinly veiled trustee shopping, hoping that she can get rid of the current Trustee. This Chapter 11 Trustee is currently prosecuting claims against Gloria Freeman's counsel, who also has represented a series of related debtors in possession, and her ex-husband (husband) Lawrence Freeman. This is similar to the judge shopping that Gloria Freeman and her counsel engaged in when they filed the Staff USA bankruptcy case in the Northern District of California. That case was transferred to the Eastern District of California, the judge in the Northern District of California concluding that it was improperly filed in that District."

**Civil Minutes, Dckt. 823, Motion for Compensation For Counsel for Chapter 11 Trustee**

"In reviewing all of the litigation, contentions made by Lawrence Freeman, positions advanced by the Debtor and counsel while as Debtor in Possession and now as Debtor, the asserted conflicts of interest by the Debtor against her attorney, and the attorney who represented the estate while the Debtor served as Debtor in Possession now representing Lawrence Freeman against the estate, the court is convinced that a significant amount of these legal expenses are the Debtor's own doing. These have arisen not because of mistake or inadvertence, but the intentional conduct and strategy of the Debtor and her attorney representing the estate when she was Debtor in Possession and now [the Debtor's attorney] attempting to represent Lawrence Freeman against the Chapter 11 Trustee.

The court has also been reminded a number of times by the Debtor's statements under penalty of perjury, that due to illness, Lawrence Freeman is asserted not to be of sound mind and mentally capable of handling his business and legal affairs. When Lawrence Freeman fired his attorney, after allegedly meeting with the Debtor's attorney outside of the presence of Lawrence Freeman's then attorney of record, the court considered the appointment of a conservator to represent Lawrence Freeman's interests free from possible undue influence of the Debtor and her attorney. No conservator was appointed in light of Lawrence Freeman obtaining the services of Mr. Merrill, who appeared to be providing independent legal representation. When Mr. Merrill unexpectedly died, another attorney represented Lawrence Freeman. At that point, Lawrence Freeman was able to resolve his legal issues with the Trustee. It now appears that Lawrence Freeman is operating under the influence of the attorney for the estate who has represented Gloria Freeman as Debtor and Debtor in Possession. This has led to disputes and now a pending motion for the court to remove that counsel from the pending Adversary Proceeding against the estate."

In addition, the above Civil Minutes (Dckt. 823) contain a detailed history of the litigation between Gloria Freeman and Lawrence Freeman, the allegations by Gloria Freeman and Austin Cooper, her attorney as Debtor and

Debtor in Possession, that Laurence Freeman was not legally competent and that his assets were community property of Gloria Freeman, and Austin Cooper's conduct in "representing" Laurence Freeman to have the Settlement set aside, the determination that the assets were Laurence Freeman's separate property, and revive Gloria Freeman's contention that the Laurence Freeman separate property was Gloria Freeman's community property.

**Civil Minutes, Dckt. 66, Motion To Dismiss Or Convert Case,  
At Which Court Determined That Appointment Of A Trustee  
Was Necessary And In The Best Interests Of Creditors And The Estate**

"From a review of the Schedules and claims filed in this case, this Chapter 11 case involves significant assets and claims. There is significant and substantial work to be done under the Bankruptcy Code in this case for the proper administration of these assets and payment of creditor claims. That burden has fallen to the Debtor severing as the Debtor in Possession.

From reviewing the file, it appears that the Debtor has been or is unable to fulfill her obligations as Debtor in Possession. While complex in assets and claims, for purposes of advancing a plan, this case appears to be fairly straightforward. The Debtor in Possession must obtain the assets of the estate to pay creditor claims. Through a Chapter 11 the Debtor in Possession to maximize the value of the assets, use profits to pay creditors under the Chapter 11 Plan, and enhance the surplus estate to be divided in the divorce.

The Debtor, in her capacity as Debtor in Possession, has failed to advance any plan. Rather, her focus appears to be solely on the fight over UNG with Movant [Laurence Freeman]. The Schedules reflect significant other assets and businesses, but no action has been taken regarding those assets.

...

This court is also gravely concerned about the interests of the estate and creditors. It does not appear that either the Debtor nor the Movant [Laurence Freeman] have any focus on the rights of creditors. If cause exists for granting relief under 11 U.S.C. §1112(b) the court considers those interests in deciding whether to convert or dismiss the case. Additionally, 11 U.S.C. §1104(a)(3) expressly provides that if grounds exist to convert or dismiss the case under section 1112, the court may appoint a Chapter 11 trustee if the court determines such is in the best interests of the estate and creditors.

Movant has clearly demonstrated grounds for granting relief under 11 U.S.C. §1112(b). The Debtor, serving as debtor in possession, has demonstrated an inability to manage the estate, protect the assets of the Estate, and prosecute the Chapter 11 case. The court finds that:

(1) There is substantial and continuing loss to and diminution of the estate. What is represented by all parties to be a significant community property asset, UNG, has been allowed by the Debtor to be operated outside the bankruptcy case. Further, the Debtor argues that Movant and his agents are refusing to provide even information concerning the asset. Though the Debtor commenced an adversary proceeding in August 2010 to recover this asset, no action has been taken to protect the rights of the estate in UNG. The Debtor argues that a substantial community property asset, UNG, has been seized and is being run by the Movant and his agents. The named agents have been sued in the adversary proceeding for in excess of \$500,000.00, and have failed to file a proper answer or take other action to protect themselves. This lack of business world knowledge and action causes the court to infer that the UNG asset is at significant risk of further loss or diminution in value.

Further, now ten months into the case, there is no proposed plan and no indication of any reorganization effort. It appears that the case has been filed, the adversary proceeding filed, and then nothing.

(2) The Debtor, action as debtor in possession, has not properly managed the estate. This is identified as a multi-million dollar estate with related entities owned by the estate. No court authorization has been granted for the estate to engage any professionals to represent the estate. No authority to employ any lawyers, accountants, or professionals other than a real estate agent, has been sought.

The Debtor states that the Monthly Operating Reports are not complete and accurate because Movant and his agents refuse to provide her with information concerning UNG. However, the Debtor has not taken any action to obtain this information concerning this community property which is an asset of the estate.

(3) From the information provided, the Debtor has been engaged in unproductive state court litigation for dissolution of her marriage to Movant. Given the assets scheduled and as described in connection with this motion, the dissolution of the marriage is in substance a de-merger of their significant business interests. While the court does not intend to make the bankruptcy process an impediment to reconciliation, the Debtor having chosen to commence the Chapter 11 case must now fulfill her fiduciary obligation to the estate. She has not and is not fulfilling that obligation.

...

The assets in this bankruptcy estate include assets having a value of \$11,105,353.00 (taking Debtor's statements under penalty of perjury in Schedules A and B as true). The Debtor states on Schedules D and F that she has only \$5,874,401 in creditor claims. The Debtor also improperly

lists on Schedule E (unsecured priority claims) a claim of \$7,000,000 to Bank of America for debt she has guaranteed on real estate loans. This appears to relate to assets in entities owned by the Debtor.

In reviewing the proofs of claim filed in this case, the amounts asserted by Bank of America on personal guarantees is approximately half that listed by the Debtor. An unsecured creditor, Rebecca Bertancchi [Debtor's sister-in-law] has filed claims for \$230,666.04 (proof of claim no. 20) and \$585,000.00 (proof of claim no. 21). The Internal Revenue Services has filed a proof of claim for \$74,862.90 (approximately twice that alleged by the Debtor). The claim is for the 2009 tax year and states that no return has been filed.

The court has also addressed the motion purportedly by Laurence Freeman to vacate the Settlement with the Chapter 11 Trustee by which property of Laurence Freeman was determined to be Laurence Freeman's separate property and not subject to community property claims of Gloria Freeman. In ruling on the motion to vacate the order approving a settlement, which was jointly filed by Gloria Freeman and Laurence Freeman in pro se (Dckt. 1031), the court stated,

However, the court is very concerned with this request from Mr. Freeman.

As the court explained in the Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, filed September 12, 2013, Dckt. 1044, the court is very concerned that Mr. Freeman may not be understanding the documents he is purporting to sign. The court is not willing to proceed with the requested relief until Mr. Freeman is properly represented.

Further, the court has issued its order setting a hearing as to whether a personal representative needs to be appointed pursuant to Federal Rule of Civil Procedure 25 and 17, and Federal Rule of Bankruptcy Procedure 7025, 7017, and 9014. Order, Dckt. 1044. This court is not going to alter any of Laurence Freeman's rights until it is convinced that he is mentally and physically able to participate in these proceedings and that he, or his representative, has the assistance of independent legal counsel.

Civil Minutes, Motion to Vacate Settlement, Dckt. 1059. The above Civil Minutes reference the court having set a hearing on whether Laurence Freeman was legally competent to be a real party in interest or, as Gloria Freeman and W. Austin Cooper testified under penalty of perjury and alleged in pleadings (subject to the Fed. R. Bankr. P. 9011 certifications). See Order For Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, Dckt. 1044.

The court ultimately conducted an evidentiary hearing on the issue of Laurence Freeman's ability to participate as a real party in interest or whether a legal representative needed to be appointed due to a legal incompetency. The court ordered that Laurence Freeman, with the assistance of independent counsel and other independent professionals (including his accountants and doctors) was legally competent. Order, Dckt. 1333. At the evidentiary hearing, for which the court's findings of fact and conclusions of law are stated on the record, Laurence Freeman testified who advised him to set aside the Settlement and order which determined that his property was separate property and not subject to community property claims of Gloria Freeman. It was W. Austin Cooper, Gloria Freeman's attorney who sued Laurence Freeman and presented evidence that Laurence Freeman was not legally competent and that his separate property was Gloria Freeman's property.

### **Safe Credit Union Account**

Lastly, the request for the Trustee (now Plan Administrator) to turn over or "offset" \$2,299.97 from Safe Federal Credit Union that was withdrawn by on December 28, 2011, does not appear to be a request for an administrative expense. Debtor testifies that "the trustee more than likely took the funds out of the account since [she] was unable to withdraw or do anything with his 32877 account." Declaration ¶ 10, Dckt. 1370. This is not sufficient evidence that the Plan Administrator has these funds or that Debtor is entitled to them.

The court notes that on February 28, 2014, the court abandoned the asset described as "Safe Credit Union, 7475 Madison Avenue, Citrus Heights, CA 95610, IRA Account # 32877-60 and 32877-61, in the amount not to exceed \$25,865.98." Order, Dckt. 1359. The court presumes this is Debtor's "IRA ending in 32877" to which the Debtor refers. The Debtor offers no evidence that the Plan Administrator has "taken" any of the funds from the Safe Credit Union account. The court is also not certain what legal authority Debtor moves under to request these funds or "off set" from the Plan Administrator.

### **CONTINUANCE**

The court clarified that this Counter Motion is a counter motion to the Plan Administrator's Objection to Claim of Exemptions. The court continued the hearing on the Counter Motion to allow the Debtor (Movant) to file and serve Supplemental Evidence concerning the Safe Credit Union account monies paid to the Chapter 11 Trustee, the source of the monies, and tracing such monies to exempt assets, if any.

### **SUPPLEMENTAL DOCUMENTS**

Movant Gloria Freeman, *in pro per*, filed several documents to supplement her counter motion. The court notes that Movant appears to be represented in the matters concerned with the Plan Administrator's Objection to Claim of Exemptions (order dated April 1, 2014), but has filed these documents in *pro se*. FN.1.

-----  
FN.1. While appearing now in *pro se*, the Debtor was represented as the

Debtor in Possession and then the post-trustee Debtor by a well know, long time bankruptcy attorney in the Northern California and District of Nevada (Reno Division) Region. In separate rulings the court has addressed the misconduct of such counsel and the Debtor in their dealings with Laurence Freeman, the Debtor's sometimes estranged husband and their efforts to have Mr. Freeman's separate property recast as community property in which the Debtor had an interest.

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The Addendum to the Debtor's Counter Motion appears to argue much of the same arguments, which the court has extensively addressed above. The continuance was allowed only for Debtor to file supplemental evidence concerning the Safe Credit Union account monies paid to the Chapter 11 Trustee, the source of the monies and tracing such monies to exempt assets. See Order, Dckt. 1390. Debtor states the relevant information concerning the Safe Credit Union Account:

Amounts taken from the SAFE Federal Credit Union where ERISA accounts. This account was opened with funds from the ERISA and thus these funds of \$2,299.97 should be returned to the debtor as these are not property of the Estate. Exhibit 6 shows the withdrawal from the account at Safe Federal Credit Union from the new checking account. This account was opened after David Flemmer the trustee was appointed (see Exhibit 7). The funds that this account originated from are from the SAFE Federal Union Credit Union IRA dated 2-4-2011 and 6-10-201 1 (see Exhibit 8/9).

Addendum to Counter Motion, Dckt. 1408.

As part of her argument, Debtor states that "withholdings" are held in trust for the appropriate taxing agencies. However, the Debtor does not clearly identify what monies or assets were "withheld in trust" for a taxing or other agency.

The court continued the hearing to afford the Debtor to provide evidence that the monies received by the Trustee were from an exempt retirement account or other non-estate assets. The Debtor provides no testimony or authentication for five documents filed as Exhibits 6, 7, 8, and 9. Dckt. 1409. These documents are summarized as follows.

**EXHIBIT 6 - Titled "SAFE Credit Union Combined Application & Addendum"**

This document is titled "Combined Application & Addendum and purports to be for "opening a Guaranteed Checking - Suffix:09." The Member's name is listed as "Gloria Bertacchi" and has a date of February 4, 2011 handwritten in the "date" box. The signature on the document is illegible.

**EXHIBIT 7 - Titled "IRA Withdrawal Statement"**

This document is titled "IRA Withdrawal Statement" and lists the IRA Holder's name to be Gloria Bertacchi. The signature on the documents is

illegible, but appears to be similar to that on Exhibit 6. This purports to state that \$4,286.46 was distributed from an IRA account to savings account "32877." This document has the date February 4, 2011, written next to the signature block. The IRS Account Identification is 32877-61.

**EXHIBIT 8 - Titled IRA Withdrawal Statement"**

This document is titled "IRA Withdrawal Statement" and lists the IRA older's name to be Gloria Bertacchi. The signature on the documents is illegible, but appears to be similar to that on Exhibit 6. This purports to state that \$5,000.00 was distributed from an IRA account to savings account "32877-09." This document has the date June 10, 2011, written next to the signature block. The IRS Account Identification is 32877-61.

**EXHIBIT 9 - Titled "Cashier's Check"**

This document is titled "Cashier's Check", purporting to be from SAFE Credit Union. The amount is for \$2,299.97 and states Pay to the Order of "\*\*\*Bankruptcy Estate of Gloria M\*\*", AKA Gloria M. Freeman, C/O David D. Flemmer Trustee."

**PLAN ADMINISTRATOR'S OPPOSITION**

David Flemmer, Plan Administrator, opposes Debtor's Counter Motion to compel turnover of \$2,299.97 arguing that Debtor has failed to satisfy her burden of proof as to the claim of exemption on the funds.

**DISCUSSION**

First, Debtor has not properly authenticated any of the exhibits presented to the court in support of the contention that the funds. While appearing in *pro se*, Debtor has litigated a number of matters in this bankruptcy case and is not a stranger to the process.

Second, even if the court could consider the evidence provided by the Debtor, it does not actually trace funds from exempt accounts into the account turned over to the Plan Administrator. The evidence provided by the Debtor does not show monies being transferred from an IRA account to the non-IRA account. There is not evidence showing that any monies received by the Trustee are the Debtor's IRA monies.

From the evidence presented, there is no showing by the Debtor that the monies in the SAFE Credit Union account for the bankruptcy estate were IRA monies of the Debtor. In reviewing the declaration of the Debtor (Dckt. 1370) she asserts that the \$2,299.97 represents moneys in SAFE Credit Union Account 32877 which were ordered abandoned by the court by order filed on February 28, 2014. The court's order provides for the abandonment of only one Schools Federal Credit Union Account, No. 9710, with only \$457.31. Order, Dckt. 1359. The Order also provides for the abandonment of two SAFE Credit Union IRA Accounts, Nos. 32877-60 and 32877-61, in the amount not to exceed \$25,865.98. There is not ordered the abandonment of a non-IRA account "32877-09" or any other non-IRA account at SAFE Credit Union.

As for the "administrative expenses," the Debtor has not and cannot

show that they meet the requirements for administrative expenses in this case. Some she was merely paying her own living expenses. She chose to voluntarily pay a tax obligation of Laurence Freeman (by her account of it). For Staff USA, Inc., she "paid" for employees of the company to maintain her own home.

On May 20, 2012, the court ordered the appointment of a Chapter 11 Trustee in the Staff USA, Inc. case. 11-48050, Order, Dckt. 120. Up to that point in time the Debtor in this case was the responsible principal acting as the fiduciary for the Staff USA, Inc. Debtor in Possession. During this time the Debtor, as the fiduciary for Staff USA, Inc. Debtor in Possession, was represented by the same attorney who was representing her as the Debtor in Possession and Debtor in her own case. In ordering the appointment of a Trustee the court found that the Debtor's conduct was consistent with that of the fiduciary for the Staff USA, Inc. bankruptcy estate. *Id.*, Civil Minutes, Dckt. 119. The fiduciary shortcomings included: (1) not timely filing monthly operating reports; (2) Debtor not showing the ability to timely file monthly operating reports; (3) cash and accounts receivables were being depleted, with unpaid payroll taxes increasing by \$45,886; (4) though the hearing was twice continued, the Debtor failed to file copies of check registers for all bank accounts, copies of all cancelled checks, and receipts for ATM and debit card withdrawals for the February 2012 Staff USA, Inc. Monthly Operating Report; (5) cash disbursements shown on bank statements were significantly greater than the amounts shown by the Debtor on the Staff USA, Inc. Monthly Operating Reports; and (6) The Debtor failing to provide copies of post-petition tax return and payroll tax returns to the U.S. Trustee. *Id.*

Based on the evidence presented, the court denies the counter motion.

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 Counter Motion for an Order Directing the Trustee to Claim a Administrative Expense Reimbursement for Amounts Expended for the Benefit of the Bankruptcy Estate; Return Debtor's IRA Funds; and Offset the Tax Refund ("Counter Motion") 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 Counter Motion is denied.

18. [10-23577-E-11](#) GLORIA FREEMAN  
MHK-1

CONTINUED MOTION FOR  
ADMINISTRATIVE EXPENSES  
11-30-12 [[516](#)]

CONT. FROM 10-24-13, 7-11-13, 6-6-13, 5-16-13, 2-28-13

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor on November 30, 2012. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

**No Tentative Ruling:** The Motion for Administrative Expenses 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 has continued the hearing to allow the parties in interest to consider the settlement in the context of other matters in this case and related bankruptcy cases.

**The court's decision is to -----.** 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:

**MAY 28, 2014 HEARING**

At the hearing, -----.

**PRIOR HEARINGS**

**Motion for Administrative Expenses by Trustee Jon Tesar**

Thomas Aceituno, the successor Chapter 7 Trustee to Jonathan Tesar, the former Chapter 11 Trustee in case number 11-48050-E-11, Staff U.S.A., seeks an order allowing an administrative claim in the amount of \$103,792.79 in favor of the Staff Estate. FN.1. Jon Tesar stated that this claim was incurred as an administrative claim in connection with preserving the bankruptcy estate of Gloria Freeman. Jon Tesar stated that November 30, 2012 was the last day to file and serve a motion for allowance of administrative expenses in the instant case.

Because this matter has been pending for so long and was originally asserted by Jonathan Tesar as the Chapter 11 Trustee, the court has continued to use in this ruling he name "Jon Tesar" as the identifier for the person filing the Motion and asserting the claim - which is deemed a reference to the Thomas Aceitunro, as successor to Jonathan Tesar as the fiduciary of the bankruptcy estate, serving as the current Chapter 7 Trustee.

Background

Jon Tesar states that on February 16, 2010 Debtor Gloria Freeman filed a Chapter 11 petition and on January 11, 2011 David Flemmer was appointed Trustee of the Freeman Estate. Jon Tesar states that on August 1, 2011 Staff filed a Chapter 11 petition in the Northern District of

California and the case was later transferred to the Eastern District. Jon Tesar states that on June 13, 2012 the court approved his appointment as trustee of the Staff Estate, a position which he continues to hold.

Jon Tesar states that Debtor was the president of Staff, sole shareholder of Staff, the debtor in possession of Staff, and was responsible for Staff's business assets and financial affairs. Jon Tesar states that once he was appointed Trustee on June 13, 2012 Debtor's authority to control Staff ended. Jon Tesar states that after Debtor's petition date and before he was appointed Trustee of Staff, Debtor caused Staff to make disbursements for the benefit of Debtor's Estate and/or the benefit of Debtor personally.

Jon Tesar argues that the amounts disbursed total \$103,792.79 and were likely to some benefit to the Staff Estate. Jon Tesar states that it is necessary for him to further analyze the disbursements to determine the extent of the benefit and necessity of making various expenditures. Jon Tesar states that the disbursements appear to include attorneys' fees, insurance, and travel. Jon Tesar states that he will communicate with Trustee Flemmer to reach a consensus on the allowability of the administrative expenses.

Jon Tesar seeks an order allowing an administrative claim in favor of Staff Estate in the maximum amount of \$103,792.79.

**Opposition by Trustee Flemmer**

Trustee David Flemmer objects to the motion for allowance of administrative claim since Trustee Flemmer is currently filing orders to show cause why certain counsel should not be required to disgorge funds received from Staff. Trustee Flemmer requests that the court continue the hearing to a time that aligns with the briefing schedule issued for the orders to show cause.

Trustee Flemmer states that he does not dispute that transfers were made from the Staff Estate to the Freeman Estate. Trustee Flemmer states that Staff made the transfers without the knowledge or consent of the Trustee Flemmer and that presumably Debtor authorized the transfers.

Trustee Flemmer states that the transfers can be divided into four categories:

1.	Auction 10/Premium Access--	\$791.36
2.	Gloria Freeman Personal Expenses/Life, Health and Disability Insurance-----	\$41,961.02
3.	Legal Fees and Expenses----	\$56,530.97
4.	Transfers for the Benefit of Larry Freeman-----	\$4,509.44
	<u>Total</u>	<u>\$103,792.79</u>

Trustee Flemmer states that it appears that Jon Tesar's request for administrative expenses is based on two bases: (1) Jon Tesar may claim that Staff was insolvent at the time of the transfer and that the transfers constituted a prohibited dividend pursuant to California Corporations Code sections 501 and 506 or a fraudulent transfer pursuant to California Code of Civil Procedure section 3439. (2) Jon Tesar seeks an administrative claim pursuant to § 503(b)(1)(A) on the grounds that transfers constituted the actual, necessary costs and expenses of preserving the estate.

Trustee Flemmer objects to the allowance of an administrative expense except as to the "Legal Fees and Expenses" category. Trustee Flemmer states that as to the "Legal Fees and Expenses" category he is filing an application for orders to show cause why counsel should not disgorge such fees and costs. Trustee Flemmer states that Jon Tesar's motion for allowance of administrative expenses is moot to the extent that money is returned to Staff.

**Auction 10/Premium Access:** Trustee Flemmer states that Auction Ten and Premium Access are businesses owned and operated by Debtor, but which have provided no benefit to the Freeman Estate. Trustee Flemmer states that there is no evidence that the Freeman Estate benefitted from these transfers and the court should not allow an administrative expense related to these transfers. Trustee Flemmer states that, to the extent such transfers are prohibited dividends, they are offset by amounts owed to Debtor for services rendered.

**Gloria Freeman Personal Expenses/Insurance:** Trustee Flemmer states that Debtor caused Staff to transfer an amount of \$18,003.37 for payment of Debtor's personal expenses with an additional \$23,957.65 for life, health, and disability insurance. Trustee Flemmer states that Debtor was entitled to reasonable compensation for services provided to Staff, but that the expenses sought by Staff span 26 months. Trustee Flemmer states there is no evidence that Debtor was paid a salary during this time, but that Jon Tesar should be provided an opportunity to provide such evidence if it exists.

Trustee Flemmer states that transfers to Debtor from March 2010 through May 2012 are more fairly characterized as compensation for services rather than payment of an illegal dividend. Trustee Flemmer states that the transfers, which are equivalent to \$1,554 per month, are reasonable compensation for operating Staff. Trustee Flemmer states that if the transfers are considered compensation for services they are not "actual, necessary costs and expenses of preserving the estate." § 503(b)(1)(A). Trustee Flemmer requests that the court deny the request for administrative expenses.

**Legal Fees and Expenses:** Trustee Flemmer states that Staff has uncovered transfers totaling \$56,530.97 to attorneys hired to work for Debtor or her companies. Trustee Flemmer states that Staff does not have documentation supporting the services provided by these attorneys and it is unclear whether the services were performed for Debtor or for her companies. Trustee Flemmer states that of the total amount paid for legal services, \$15,000-\$20,000 was paid to Austin Cooper, \$16,933 to Steve Berniker, and smaller amounts were paid to other counsel.

Trustee Flemmer states that it is possible for Jon Tesar to recover payments for legal fees under other theories if the work was performed for one of Debtor's companies such that there is no showing of a benefit to the Freeman Estate. Trustee Flemmer states that there is no basis to recover from the Freeman Estate. Trustee Flemmer state that he and Jon Tesar have attempted, albeit unsuccessfully, to obtain information from Mr. Cooper regarding the nature of the services provided and the value to the estate.

**Transfers to Larry Freeman:** Trustee Flemmer states that the amount of 44,509.44 was transferred to Larry Freeman and it is unclear how these transfers could be considered an administrative expense.

### **Debtor's Opposition**

On May 23, 2013 Debtor filed an opposition supporting the Chapter 11 Trustee's position to deny the motion. Debtor states that she disagrees with Chapter 11 Trustee's position regarding attorney's fees and expenses and states that said fees and the fees for Berniker were for the benefit of Staff USA.

Debtor states that she deferred her salary of \$6,000 per month and \$60 per hour as a pharmacist from April 2010 to June 2012. Debtor states that in 2011 and 2012 she did not receive a salary. Debtor states that Staff USA used the premium shipping accounts of Premium Access. Debtor states that expenses characterized as "personal expenses" are not actually personal expenses and instead were expenses for the benefit of Staff USA. Debtor states that expenses for healthcare and dental were part of group employee plans. Debtor states that expenses for restaurants and travel were incurred when she was on assignments in Daly City, St. Helena, and Clearlake. FN.1.

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FN.1 Gloria Freeman's explanation does little to enhance her credibility in this or the various related proceedings. While she now states that she "deferred" her \$6,000.00 a month salary, she filed monthly operating reports in the Staff USA case in which she affirmatively stated that there were no post-petition accounts receivable owing.  
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Debtor states that Mr. Cooper was her personal attorney and received payment of \$15,000 out of her personal accounts prior to the bankruptcy filing.

### **Chapter 11 Trustee's Supplemental Opposition**

Chapter 11 Trustee states that if the court orders Mr. Berniker or Mr. Cooper to disgorge some or all of the fees paid by Staff USA, Inc. said fees should not form the basis of a further administrative claim against the estate. Chapter 11 Trustee states that if disgorgement is ordered he does not oppose payment directly to Staff USA, Inc.

Regarding fees paid by Staff USA, Inc. to Mr. Berniker, the Chapter 11 Trustee states that if disgorgement is not ordered the court should find that the estate is not liable for administrative expenses since the services provided by Mr. Berniker did not generate a direct benefit to the estate. Chapter 11 Trustee states that recover against Mr. Freeman was obtained in

separate litigation, not the litigation Mr. Berniker worked on.

Regarding fees of Austin Cooper Chapter 11 Trustee states that Mr. Cooper acknowledges that the subject fees were solely for the benefit of other entities and not for the benefit of the estate. Chapter 11 Trustee requests that the instant motion be decided in connection with the orders to show cause for Mr. Berniker and Mr. Cooper.

**Discussion**

At the hearing, the Staff USA Trustee stated that the request for administrative expenses was limited to the monies paid to attorneys or for legal fees of persons other than Staff USA. The Staff USA Trustee withdraws the request for allowance of an administrative expense for the benefits and reimbursements paid to Gloria Freeman.

The Trustee stated that since the filing of the Motion some additional amounts of attorneys' fees have been identified. The court continues the hearing on this Motion to July 11, 2013, to be heard in conjunction with the Status Conferences on the Orders to Show Cause for attorneys paid by Staff USA, Inc. for services provided to Gloria Freeman. The parties to the Orders to Show Cause will identify all of the attorneys' fees at issue, which are the attorneys' fees which are the subject of this Motion.

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

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

The Motion for Administrative Expenses having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that -----.

19. [10-23577-E-11](#) GLORIA FREEMAN  
WFH-31

PRE-EVIDENTIARY HEARING  
CONFERENCE RE: ORDER TO SHOW  
CAUSE  
3-1-13 [[571](#)]

Debtor's Atty: Pro Se  
Limited Scope Atty: Reno F.R. Fernandez III

Notes:

Plan Administrator's Pre-Evidentiary Hearing Conference Statement filed  
5/14/14 [Dckt 1411]

Plan Administrator's Amended Pre-Evidentiary Hearing Conference Statement  
filed 5/16/14 [Dckt 1417]

The court issued an Order to Show Cause Why Austin Cooper, who served as the attorney for Gloria Freeman pre-petition, as debtor in possession, and for her as debtor post-appointment of a Chapter 11 Trustee, and for Staff USA, Inc. (100% owned by Gloria Freeman) pre-petition and as the Debtor in Possession in its bankruptcy case (which Gloria Freeman serving as the fiduciary representative for the corporation to fulfill its duties and obligations as the debtor in possession).

Jurisdiction for the Order to Show Cause, Motion by the Trustee, and determination of the issues thereunder exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. This Contested Matter is a core matter arising under Title 11 and the inherent power of this court. 11 U.S.C. §§ 327, 329, 330, 331, 363; and 28 U.S.C. § 157(b)(2)(E), (H), (M), (O).

The court issued its Pre-Evidentiary Hearing Conference Order, which was filed on December 16, 2013. Dckt. 1277. The last day to file Pre-Evidentiary Hearing Statements, including witness and exhibit lists for the respective parties direct cases (excluding rebuttal witnesses and exhibits) was May 14, 2014. David Flemmer filed his Pre-Evidentiary Hearing Statement on May 14, 2014 (a corrected Statement being filed on May 16, 2014). Dckts. 1411, 1417.

No Pre-Evidentiary Hearing Statement was filed by W. Austin Cooper.

Based on the Pre-Evidentiary Hearing Statements and after conducting the Pre-Evidentiary Hearing Conference, , the court shall issue an Evidentiary Hearing Order setting the following dates and deadlines:

A. Jurisdiction for the Order to Show Cause, Motion by the Trustee, and determination of the issues thereunder exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases and

all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. This Contested Matter is a core matter arising under Title 11 and the inherent power of this court. 11 U.S.C. §§ 327, 329, 330, 331, 363; and 28 U.S.C. § 157(b)(2)(E), (H), (M), (O).

B. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

C. David Flemmer, the former Chapter 11 Trustee and current Plan Administrator under the Confirmed Chapter 11 Plan, shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2014.

D. W. Austin Cooper, the Respondent, shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2014.

E. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 2014.

F. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 2014.

G. The Trial shall be conducted at ----x.m. on -----, 2014.

The Parties in their respective Pretrial Conference Statements, Dckts. -----, -----, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

David Flemmer

W. Austin Cooper

<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>	<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Undisputed Facts:</p> <ol style="list-style-type: none"> <li>1. Payment 1 was made by check no. 2120 in the amount of \$16,000. In his statement under Federal Rule of Bankruptcy Procedure 2016 Cooper stated that a payment of \$15,000 was a payment for legal services provided to Debtor Gloria Freeman. Cooper</li> </ol>	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>

elaborated on this payment in his Response dated April 29, 2013 (Docket No. 635.) Cooper alleged that this payment was a pre-petition retainer for pre-petition services and was fully exhausted at the time of the bankruptcy filing.

Cooper acknowledges that he does not have a written engagement agreement with the Debtor, and that if he did maintain contemporaneous time sheets, he no longer has access to them. Cooper also acknowledges that he never sought nor received approval of his retention by the debtor in possession pursuant to Section 327.

Debtor's bank statement appears to show that the payment was made, and cleared Debtor's bank, prior to the commencement of the case.

2. Staff USA, Inc.'s cash disbursement journal (Docket 519, p. 4) shows Payment No. 2 in the amount of \$5,000. Plan Administrator believes that Cooper acknowledges receiving this payment, and that Cooper had no engagement letter or time sheets related to this payment.

Cooper contends that he retained \$3,000 of this amount for work in connection with a conservatorship petition filed by Gloria Freeman against Larry Freeman. The other \$2,000 was paid to a separate attorney working on the conservatorship matter.

3. No undisputed facts with respect to Payment No. 3 in the amount of \$5,000.

<p>4. The parties acknowledge that the \$7,000 payment No. 4 was made by Staff USA, Inc. to Cooper on May 12,2010. Cooper acknowledges that there was no engagement agreement created in connection with this matter, and Cooper cannot recall if time sheets were maintained. No time sheets are available.</p> <p>5. The parties agree that Payment 5 in the amount of \$2,500 was made, that there was no engagement letter regarding the engagement, and that no time sheets, if created, are available.</p> <p>6. For Payment No. 6 in the amount of \$2,500, Cooper agrees that no engagement agreement exists, and time sheets, if prepared, are not available.</p> <p>7. For Payment No. 7 in the amount of \$2,500, there is no dispute that this payment was made, or that no engagement agreement or time sheets can be produced.</p> <p>8. None with respect to Payment No. 8 in the amount of \$2,500.</p> <p>9. The parties agree that Payment No. 8 in the amount of \$6,039 appears to be a payment to Cooper for the filing fee and services in connection with the filing of the Staff USA, Inc. Chapter 11 case. No engagement agreement existed, and time sheets, if they were created, cannot be produced.</p> <p>10.</p>	
Disputed Facts:	Disputed Facts:

<ol style="list-style-type: none"> <li>1. The parties disagree on the reasonable value of the services provided by Cooper prior to the commencement of the Freeman Chapter 11 case.</li> <li>2. Plan Administrator disputes that the Chapter 11 estate of Gloria Freeman received any benefit from Payment No. 2 in the amount of \$5,000.</li> <li>3. The Staff USA, Inc. Trustee contends, based on notes in a cash disbursements journal (Docket 519, p. 4) that Payment No.3 in the amount of \$5,000 was made to Cooper. Debtor and Cooper deny that this payment was made to Cooper and contend the payment was made to Weintraub Tobin, an unrelated law firm. Plan Administrator has no evidence to dispute the contention of Cooper and Debtor.</li> <li>4. Cooper and the Debtor contend that Payment 4 constituted retainers for Cooper's services in filing Chapter 11 cases of Plazaria, LLC and Sunfair, LLC. Cooper and Debtor contend that Staff USA, Inc. guaranteed debts of Plazaria, LLC and Sunfair, LLC, and that the Chapter 11's were intended to minimize Staff USA, Inc.'s liability under such guaranties. Plan Administrator has no basis for disputing Cooper's claim that Payment 4 was for the commencement of Chapter 11's of Plazaria, LLC and Sunfair, LLC, but disputes any benefit accruing to Staff USA, Inc. or anyone else from these bankruptcy cases.</li> <li>5. Staff USA, Inc.'s bookkeeper, Safraz Hussein previously</li> </ol>	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
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testified that Payment No. 5 in the amount of \$2,500.00 this payment was for services provided by Cooper to Staff USA, Inc. in connection with embezzlement by an employee of Staff USA, Inc. (See, Docket No. 636 at 3.) Debtor's testimony corroborates this claim (Docket No. 637 at 4). Cooper's recollection was uncertain, but Cooper recalled providing some services related to this dispute.

6. Cooper contends that Payment No. 6 in the amount of \$2,500 was partial payment for the defense of Staff USA, Inc. in a lawsuit by Bank of America. Mr. Hussein and Debtor previously testified that this payment was the initial one-half of a \$5,000 retainer to Cooper to pay for a defense of an action filed against Staff USA, Inc. by Bank of America. (Docket No. 636 at 3, 637 at 6.)
7. Cooper contends that Payment NO. 7 in the amount of \$2,500 was partial payment for the defense of Staff USA, Inc. 18 in a lawsuit by Bank of America. Mr. Hussein and Debtor previously testified that this payment was the initial one-half of a \$5,000 retainer to Cooper to pay for a defense of an action filed against Staff USA, Inc. by Bank of America. (Docket No. 636 at 3, 637 at 6.)
8. The Staff USA, Inc. Trustee contends that Payment No. 8 in the amount of \$2,500 was made to Cooper. Plan Administrator cannot corroborate this claim.

<p>9. Plan Administrator questions whether Payment No. 9 in the amount of \$6,039 exceeds the reasonable value of the services provided.</p> <p>10.</p>	
<p>Disputed Evidentiary Issues:</p> <p>1. The Plan Administrator is not aware of any disputed evidentiary issues.</p>	<p>Disputed Evidentiary Issues:</p> <p>1.</p> <p>2.</p> <p>3.</p>
<p>Relief Sought:</p> <p>1. The Plan Administrator seeks an order directing Cooper to disgorge Payment No. 1 in the amount of \$15,000.</p> <p>2. Plan Administrator denies that Payment No. 2, in the amount of \$5,000, should be grounds for allowance of an administrative claim against the Gloria Freeman Chapter 11 estate. However, if such a claim is allowed, an equal sum should be disgorged by Cooper to Staff USA, Inc. to satisfy such administrative claim.</p> <p>3. For Payment No. 3 in the amount of \$5,000.00, Plan Administrator does not seek relief regarding this payment. If disgorgement is ordered, it should be ordered for the benefit of Staff USA, Inc.</p> <p>4. \$7,000 payment made on or about May 12, 2014. Plan Administrator denies that Payment 4 should be grounds for allowance of an</p>	<p>Relief Sought:</p> <p>1.</p> <p>2.</p> <p>3.</p>

administrative claim against the Gloria Freeman Chapter 11 estate. However, if such a claim is allowed, an equal sum should be disgorged by Cooper to Staff USA, Inc. to satisfy such administrative claim.

5. Plan Administrator objects to allowance of an administrative claim based on Payment No. 5 in the amount of \$2,500, as there is no basis for showing benefit to the Freeman estate. If disgorgement is ordered, Cooper should be ordered to disgorge to Staff USA, Inc.
6. Plan Administrator requests the Court to hold that there is insufficient evidence to show that this Payment 6 in the amount of \$2,500 was made for the benefit of the Freeman Chapter 11 case, and no administrative claim should be allowed.
7. Plan Administrator requests the Court to hold that there is insufficient evidence to show that Payment No. 7 in the amount of \$2,500 was made for the benefit of the Freeman Chapter 11 case, and no administrative claim should be allowed.
8. No relief is sought with respect to Payment No. 8 in the amount of \$2,500.
9. Plan Administrator requests the Court to hold that there is insufficient evidence to show that Payment No. 9 in the amount of \$6,039 was made for the benefit of the Freeman Chapter 11 case, and no administrative claim should be

allowed	
<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. 11 U.S.C. §§ 327, 329.</li> <li>2. <i>In re Monument Auto Detail, Inc.</i>, 226 B.R. 210 (B.A.P. 9th Cir. 1998).</li> <li>3. <i>In re Weibel, Inc.</i>, 176 B.R. 209 (B.A.P. 9th Cir. 1994).</li> <li>4. Federal Rule of Bankruptcy Procedure 2016.</li> </ol>	<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. Claims related to Payment No. 3 in the amount of \$5,000.</li> <li>2. Claims relating to Payment No. 6 in the amount of \$2,500.</li> <li>3. Claims relating to Payment No. 7 in the amount of \$2,500.</li> <li>4. Claims related to Payment No. 8 in the amount of \$2,500.</li> </ol>	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Gloria Freeman</li> <li>2. W. Austin Cooper</li> <li>3. David D. Flemmer</li> <li>4. Safraz Hussein</li> <li>5. Jonathan Tesar</li> </ol>	<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. Notice of Deposition of Gloria</li> </ol>	<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1.</li> </ol>

<p>Freeman and Request for Production of Documents</p>	<p>2.</p>
<p>2. Bank of America Statement Dated March 12,2010</p>	<p>3.</p>
<p>3. Check from Staff USA, Inc. dated April 5, 2010 in the amount of \$5,000</p>	
<p>4. Check from Staff USA, Inc. dated May 12,2010 in the amount of \$7,000</p>	
<p>5. Check in the amount of \$6,039 to W. Austin Cooper Law Office.</p>	
<p>6. Check No. 37284 dated August 25,2010 in the amount of \$2,500.</p>	
<p>7. Check No. 37348 dated January 18,2011 from Staff USA, Inc.</p>	
<p>8. Declaration of Gloria M. Freeman filed as Docket No. 37</p>	
<p>9. Declaration of W. Austin Cooper filed as Docket No. 614</p>	
<p>10. Supplemental Declaration of W. Austin Cooper filed as Docket no. 668.</p>	
<p>11. Debtor's Schedules and Rule 2016 statement filed as Docket No. 10.</p>	
<p>12. Exhibit 1 to Declaration of Jon Tesar filed as Docket No. 519 (and related declaration.)</p>	
<p>13. Exhibits 1,2 and 3 to Declaration of Jon Tesar filed as Docket No. 605 (and related declaration).</p>	
<p>14. Notice of Deposition of W. Austin Cooper and Request for Production of Documents.</p>	
<p>15. Declaration of Safraz Hussein</p>	

<p>filed as Docket No. 636.</p>	
<p>Discovery Documents:</p> <ol style="list-style-type: none"> <li>1. Deposition transcripts of W. Austin Cooper</li> <li>2. Deposition transcripts of Debtor Gloria Freeman</li> </ol>	<p>Discovery Documents:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"> <li>1. None</li> </ol>	<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Stipulations:</p> <ol style="list-style-type: none"> <li>1. None</li> </ol>	<p>Stipulations:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Amendments:</p> <ol style="list-style-type: none"> <li>1. Trustee suggests amendment to add W. Austin Cooper, a law corporation, as a respondent. W. Austin Cooper asserts that some payments were made to the corporation and not him personally.</li> <li>2.</li> <li>3.</li> </ol>	<p>Amendments:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Dismissals:</p> <ol style="list-style-type: none"> <li>1. None</li> </ol>	<p>Dismissals:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>

<p>Agreed Statement of Facts:</p> <ol style="list-style-type: none"> <li>1. None Presented</li> </ol>	<p>Agreed Statement of Facts:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Attorneys' Fees Basis:</p> <ol style="list-style-type: none"> <li>1. None Requested.</li> <li>2.</li> <li>3.</li> </ol>	<p>Attorneys' Fees Basis:</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Additional Items</p> <ol style="list-style-type: none"> <li>1. None</li> </ol>	<p>Additional Items</p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>
<p>Hearing Time Estimation: 3 Hours</p>	<p>Hearing Time Estimation:</p>

20. [10-23577-E-11](#) GLORIA FREEMAN  
WFH-36

CONTINUED OBJECTION TO DEBTOR'S  
CLAIM OF EXEMPTIONS  
6-21-13 [[784](#)]

**CONT. FROM 12-12-13**

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*), Chapter 11 Trustee, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

**No Tentative Ruling:** The Objection to Debtor's Claim of Exemptions 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).

**PRIOR HEARINGS**

**Initial Draft Ruling**

David Flemmer, Chapter 11 Trustee objects to portions of the assets claim exempt on each of the amended schedules filed May 23, 2013; May 31, 2013 and June 14, 2013. The Trustee objects to exemptions on the grounds that Schedule C fails to provide sufficient information to identify the interests subject to the claim of exemption. Other exemptions are objectionable because they exceed the statutory amount of exemption. The Trustee also argues that the amendment to Schedule C should be denied because of bad faith or prejudice to creditors.

Debtor has now filed an another amended schedule on July 30, 2013.

Trustee objects to a number of claimed exemptions on the grounds that the claims are not made with sufficient specificity. First, there is a category of assets that do not specifically describe the asset being claimed as exempt. For instance, a collection of exemptions is asserted in financial accounts or brokerages with no account number attached. Other assets are listed with a value of "unknown" or \$0.00. Some assets are listed, with no statement of the value of the claimed exemption at all. By not listing an amount of the exemption, the Trustee cannot determine the exact interest being claimed exempt, and the claim of exemption is objectionable.

The Trustee objects to the following accounts listed with no account numbers:

Checking, Savings or other Financial Accounts	CCP 703.140(b)(5)	Not stated
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Charles Schwab 34502814 211Main Street, SFO	CCP703.140(b)(5)	\$2,646.02
E*TRADE Sec. 5727-9969 Box 1542, Merifield, VA	CCP 703.140(b)(5)	\$0.00
Bank of America xxx07250, xxx-4632	CCP 703.140(b)(5)	\$0.00
School Employ C.U.	CCP 703.140(b)(5)	\$578.16
E*Trade Securities LLC Box 1542, Merrifield VA	CCP 703.140(b)(10)(E) 11U.S.C 541(c) SEP IRA	\$64,812.51
SEP IRA	Not in Bankruptcy Estate 11U.S.C. 541(c) SEP IRA	Not stated
SAFE Federal Credit Union	CCP 703.140(b)(10)(E)	\$25,856.98
SPS Advantage Westlake Grahl, Glover 9625 Sierra College Blvd Granite Bay, CA 95746	CCP 703.140(b)(10)(E) 11 U.S.C. 541(c) SEP IRA Qualified Pension not in	\$62,603.00
SPS Advantage (H) Westlake, Grahl, Glover	CCP 703.140(b)(10)(E) 11U.S.C 541(c) SEP IRA Qualified Pension not in	\$341,705.24
American United Life Insurance	CCP 703.140(b)(10)(E) 11U.S.C. 541(c) IRA	\$11,323.63

The Trustee argues that the claim of exemption as to these assets is insufficient. For instance, Debtor's schedule B discloses that Debtor has two accounts with E-Trade Securities, LLC. Trustee states he has located a third, undisclosed account. In her Schedule C Debtor claims an exemption in an account with E-Trade, but fails to specify which account is claimed as exempt. This description is not sufficient to inform the Trustee of the nature of the interest to which the exemption is claimed. The Trustee argues that the same flaw applies to the Charles Schwab, RiverSource Longterm Care, AAA Homeowners Ins., E\*Trade Securities, LLC, School Employ C.U., SAFE Federal Credit Union, SPS Advantage and American United Life accounts.

The Trustee argues that the Debtor has listed exemptions in the amount of \$0.00, which is nonsensical. Trustee states Debtor will receive \$0.00 if the Trustee elects to liquidate these assets and if Debtor intends a different result, the intent does not sufficiently appraise the Trustee of the claimed exemption to allow him to evaluate the claims. Trustee argues these exemptions should be disallowed.

Additionally, the Trustee argues the claims of exemptions asserted in the amount "unknown" or without stating an amount at all are objectionable because Schedule C omits at least some of the information necessary to satisfy Schwab or Section 521(1).

**Debtor's Third Amended Schedule C**

Trustee states that Debtor's Third Amended Schedule C lists the following assets not in existence on the petition date and purports to exempt these assets from the estate:

EXEMPT EARNINGS 2011/2012/2013		
Benefit Payments State of Calif (Chase, BA)	703.140(b)(10)(A)-(D) 2013	\$12,000.00
EDD State of California (AHRP)	703.140(b)(10)(A)-(D) 2012	\$12,150.00
Hartford Benefits Short Term (Wells Fargo)	703.140(b)(10)(A)-(D) 2013	\$25,000.00
Sedgwick Compensation, pending	703.140(b)(10)(A)-(D) 2012/2013 et al	
Hartford Benefits Short Term (Wells Fargo)	703.140(b)(10)(A)-(D) 2012 estimated	\$10,327.00
Payment in Compensation for Loss of Future	703.140(b)(11)(e)	Unknown
EDD (Bank of America) State of	703.140(b)(10)(A)-(D) 2013, pending	
Hartford Benefits Long Term	703.140(b)(10)(A)-(D) 2013, pending	
EDD (US Bank) State of	703.140(b)(10)(A)-(D) 2011	\$2,700.00

Trustee argues that because the claimed exemptions are asserted in post-petition assets, the objection should be granted.

Furthermore, the Trustee states California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of \$21,825 (as of February 16, 2010.) Debtor has claimed exemptions under this section in amounts in excess of \$87,652.73. Trustee states that because Debtor is not allowed to exempt more than \$21,825 under Section 703.140(b)(5), the Court should disallow all of the following claimed exemptions and require Debtor to amend her Schedule C in the aggregate amount:

Refund in Retainer from Harrison Goodwin	CCP 703.140(b)(5)	\$0.00
Tax Refunds		Not stated
Possible 2009 IRS Refund and FTB Refund	CCP 703.140(b)(5)(1)	Unknown

Tax Refunds received 2011/2012, unknown est	CCP 703.140 (b) (5) (1)	\$26,428.55
Checking, Savings or other Financial Accounts	CCP 703.140 (b) (5)	Not stated
Charles Schwab 34502814 211Main Street, SFO	CCP703.140 (b) (5)	\$2,646.02
E*Trade Sec. 5727-9969 Box 1542, Merifield, VA	CCP 703.140 (b) (5)	'
Bank of America xxx07250, xxx-4632	CCP 703.140 (b) (S)	\$0.00
School Employ C.U.	CCP 703.140 (b) (5)	\$578.16
Other Contingent and Unliquidated Claims vs. Laurence Freeman & Landmark Missionary Baptist Church for mismanagement and obtaining alleged donations over the past eight years by fraud and deceit	CCP 703.140 (b) (5)	Not Stated
Common Stock of Fortune West Enterprises, Inc.	CCP 703.140 (b) (S)	\$0.00
Common Stock Staff USA, Inc.	CCP 703.140 (b) (5)	\$0.00
LLC Interest in Sunfair LLC	CCP 703.140 (b) (5)	\$0.00
LLC Interest in Plazaria LLC	CCP 703.140 (b) (5)	\$0.00

The Trustee also objects to Debtor's exemptions in the amount of \$23,123 (plus "unknown") in life insurance policies, claimed pursuant to Cal. Code Civ. Pro. "703.140 (b) (7) (8)" and 703.140 (b) (10) (E). Trustee assumes that Debtor asserts these exemptions pursuant to Section 703.140 (b) (7). The applicable exemption amount, for cases commenced before April 1, 2010, is \$11,075. Thus, Trustee states the claimed exemptions exceed the statutory amount and are improper.

#### Bad Faith

The Trustee objects to the amendment of five (5) exemptions because they run afoul of the requirements of good faith and lack of prejudice. Trustee argues that three and a half years after the Chapter 11 case was filed, Debtor asserts exemptions in the following previously undisclosed assets:

Tax Refunds received 2011/2012, unknown est	CCP 703.140 (b) (5) (1)	\$26,428.55
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Bank of America xxx07250, xxx-4632	CCP 703.140(b) (5)	\$0.00
School Employ C.U.	CCP 703.140(b) (5)	\$578.16
American United Life Insurance	CCP 703.140(b) (10) (E) 11 U.S.C. 541(c) IRA	\$11,323.63
Tools of the Trade (Business Property)	CCP 703.140(b) (6)	\$2,200.00

### Prejudice

The Trustee also argues that the following exemptions should be denied because the amendment will prejudice creditors and the estate:

Other Contingent and Unliquidated Claims vs. Laurence Freeman & Landmark Missionary Baptist Church for mismanagement and obtaining alleged donations over the past eight years by fraud and deceit dba Ulrich, Nash and Gump (legal education company)	CCP 703.140(b) (5)	Not Stated
Common Stock of Fortune West Enterprises, Inc.	CCP 703.140(b) (5)	\$0.00
SPS Advantage (H) Westlake, Grahl, Glover	CCP 703.140(b) (10) (E) 11 U.S.C. 541(c) SEP IRA Qualified Pension not in Bankruptcy Estate	\$341,705.24

Trustee states that the exemptions set forth above now claim an interest in assets transferred to Larry Freeman pursuant to the settlement. Thus, Debtor's delay in asserting these exemptions will prejudice both Mr. Freeman and the creditors receiving the proceeds of a settlement obtained through Trustee's efforts. Trustee states he has already filed a plan and disclosure statement based on the receipt of the proceeds obtained through the settlement.

### **DEBTOR'S RESPONSES**

Debtor filed four (4) different responses to the Trustee's Objection. Debtor first responded asserting that the objections filed by the Trustee are now moot because she filed amended schedule on July 30, 2013, which address the Trustee's objections.

Debtor then filed a ten (10) page response to the objection, also stating that the amended schedules filed on July 30, 2013 address the Trustee's objections. Debtor further argues that the Statements of Financial Affairs, including the schedules, were not reviewed by debtor and signed by Debtor due to the attorney's legal mistake and therefore, there is no bad faith or prejudice on part of the Debtor.

Debtor states she in "good faith" provided answers to the Trustee at

the 2004 exam, without access to her records. Debtor states that the Trustee took her computer and personal files and had no way to amend her schedules without the records.

Debtor argues that the disputed tax returns are the separate property of Mr. Freeman and are not part of the estate. Debtor also argues that the IRS refund may be barred by *res judicata* and collateral estoppel.

Additionally, Debtor states she did disclose at the 2004 examination the Insurance IRA, the School Employee Credit Union and the Bank of America Account.

Debtor states she has not acted in bad faith but has demonstrated good faith through various actions.

Debtor's third response continues the argument of "bad faith" and Debtor argues that the Trustee has not shown sufficient "bad faith" on her part. Debtor argues if the court does find bad faith, it was due to actual inadvertence or mistake and there is no bad faith on part of the debtor concerning the exemptions in the amended schedules.

Debtor's fourth response appears to be a duplicate of the third.

## **DISCUSSION**

Subsequently to the Trustee filing this objection, Debtor filed another amended Schedule C on July 30, 2013. This is Debtor's fifth version of Schedule C. The following are the previous filings of Schedule C:

Date of Filing	Version Schedule C	DCN
March 2, 2010	Original	10
May 23, 2013	First Amended	691
May 31, 2013	Second Amended	715
June 14, 2013	Third Amended	767
July 30, 2013	Fourth Amended	888

Federal Rule of Bankruptcy Procedure 1009(a) provides that a voluntary petition, list, schedule, or statement may be amended by a debtor as a matter of course at any time before the case is closed. No court approval is required for an amendment under Federal Rule of Bankruptcy Procedure 1009(a), and amendments are and should be liberally allowed at any time absent a showing of bad faith or prejudice to third parties. *In re Magallanes*, 96 B.R. 253, 256 (B.A.P. 9th Cir. Cal. 1988)

The latest version of Amended Schedule C significantly alters the previously filed versions. Several entries which the Trustee objected, have disappeared or have been altered or no longer correspond with the previous entries.

From the objections raised, Debtor does still appear to be over the amount allowed for wildcard exemptions. California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of \$21,825 (as of February 16, 2010). Debtor has claimed exemptions under this section in amounts in excess of \$23,185.46.

### Bad Faith

Section 522(1) of the Bankruptcy Code and Rule 4003(b) of the Federal Rules of Bankruptcy Procedure permit a party in interest to object to a debtor's claim of exemption. The Supreme Court has recognized the "broad authority granted to bankruptcy judges," pursuant to § 105(a) of the Bankruptcy Code, "to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374-75 (2007); see also *Latman v. Burdette*, 366 F.3d 774, 784-86 (9th Cir. 2004) (recognizing inherent powers of bankruptcy courts to equitably surcharge a debtor's exemption to protect integrity of the bankruptcy process and to ensure debtor does not exempt amount greater than allowed under Bankruptcy Code despite lack of express Code provision for equitable surcharge of exemptions).

A party objecting to a debtor's claim of exemption must prove bad faith by a preponderance of the evidence and not by clear and convincing evidence. *Tyner v. Nicholson (In re Nicholson)*, 435 B.R. 622 (B.A.P. 9th Cir. 2010). Bad faith in claiming exemptions is determined by an examination of the "totality of the circumstances." *In re Rolland*, 317 B.R. 402, 414 (Bankr. C.D. Cal. 2004). Concealment of assets is the usual ground for a finding of "bad faith." *Id.* at 415. However, "a debtor's intentional and deliberate delay in amending an exemption for the purpose of gaining an economic or tactical advantage at the expense of creditors and the estate [also] constitutes 'bad faith.'" *Id.* at 416.

Intentional concealment can be inferred from the facts and circumstances of a case, including non-disclosure resulting from a debtor's reckless disregard for the truth of information furnished in the schedules and statements. See *Jordan v. Bren (In re Bren)*, 303 B.R. 610, 614 (8th Cir. BAP 2003) (stating that "multiple inaccuracies or falsehoods may rise to the level of reckless indifference to the truth, which is the functional equivalent of intent to deceive").

Furthermore, schedules and statements are signed under penalty of perjury. Fed. R. Bankr. P. 1008. Debtors are presumed to have read the schedules and statements before signing the documents, and are responsible for their contents. Debtors bear an independent responsibility for the accuracy of the information contained in their schedules and statements. *AT&T Universal Card Servs. Corp. v. Duplante (In re Duplante)*, 215 B.R. 444, 447 n.8 (9th Cir. BAP 1997) (noting that "schedules and statements of financial affairs are sworn statements, signed by debtors under penalty of perjury" and warning that "adopting a cavalier attitude toward the accuracy of the schedules and expecting the court and creditors to ferret out the truth is not acceptable conduct by debtors or their counsel").

### **SCHEDULING ORDER AND DISCOVERY**

The Debtor's repeated filing of amended Schedules C has created an situation of confusion and would require multiple contested matters being filed by the Trustee. One could infer from these filings is that an attempt is being made to try and trip up the Trustee into missing the deadline for objecting to one of the multiple amended Schedules C.

The court and parties have resolved this confusion by agreeing that the current objection to claim of exemption is deemed an objection to the July 30, 2013 Amended Schedule C filed by the Debtor and the Final Amended Schedule C, if any, filed by the Debtor pursuant to the Scheduling Order to be issued by the court in this contested matter. Further, the court scheduled the filing of an amended objection to claim of exemption by the Trustee, if any, and response thereto by the Debtor.

It is necessary, in light of the Debtor filing multiple amended Schedules C after the Trustee files an objection to the prior amended Schedule C, to require the Debtor to file a Final Amended Schedule C from which her exemptions can be determined. While the amending of Schedule C exemptions is allowed, such amendments must be in good faith. The repeated amending of Schedule C can be misused as an abusive litigation tactic. Further, it can be used as a device to try and hide assets of the estate, which when discovered by the Trustee, are then tried to be claimed as exempt.

Requiring the Debtor to file a final amended Schedule C provides her a fair and reasonable opportunity to identify all assets in which she desires to claim an exemption and the legal basis she asserts for those exemptions. This case was filed in 2010, so in the more than three years that it has existed the Debtor should know all of her assets and clearly disclose them to the court, creditors, Chapter 11 Trustee, and U.S. Trustee. The Debtor also has had more than 3 years to develop and understand the basis for the exemptions in assets. It is necessary and proper for this court to order the Debtor to file a Final Amended Schedule C so that the Trustee may raise and the court finally address the exemptions which the Debtor asserts and may properly be claimed in this case. 11 U.S.C. § 105(a).

The court therefore ordered that on or before September 30, 2013, the Debtor shall file and serve a Final Amended Schedule C, if any further amendments are necessary and appropriate. The court also ordered that the Trustee shall file and serve on or before October 28, 2013, an amended objection to exemptions, if he determines that any amendment is necessary for the exemption set forth in the Third Amended Schedule C, Fourth Amended Schedule C, and the Final Amended Schedule C, if any. The Debtor shall file and serve on or before November 12, 2013, a response, if any, to the amended objection to exemptions.

#### **FIFTH AMENDED SCHEDULE C**

Debtor filed the Fifth Amended Schedule C on September 19, 2013. Dckt. 1057. It appears the Trustee has not filed additional opposition to the motion.

The Fifth Amended Schedule C is substantially similar to the Fourth

Amended Schedule C, filed July 30, 2013. Dckt. 888. Debtor reduced the value and corresponding exemption in the furs and jewelry under C.C.P. § 703.140(b)(4). Debtor decreased the exemption value of the 2003-2005 tax refunds from \$19,899.06 to \$18,448.60; the 2002 Acura VIN ending in 12350 from \$5,100.00 to \$3,300.00; and the items used in business from \$2,200.00 to \$2,075.00.

The Exemptions Claimed on the Fifth Amended Schedule C are:

<b>Assets As Stated On Fifth Amended Schedule C</b>	<b>Basis for Exemption</b>	<b>Amount Exempt</b>	<b>Value of Asset</b>
Charles Schwab, 211 Main St, San Francisco, CA 94105- Acct # xxxx2814 (W) \$22,750.38 On Date of Filing, the exempted amount of 2468.09 plus any growth in the stock value remains in the account the remainder was transferred to the debtor in possession account	C.C.P. § 703.140(b)(5)	\$2,468.09	\$2,468.09
Schools Federal Credit Union, 1485 Response Rd. #126, Sacramento, CA 95815, Acct # xxxx9710 \$578.16; the balance was transferred to the debtor in possession account	C.C.P. § 703.140(b)(5)	\$457.31	\$457.31
Other Liquidated Debts Owing Debtor Including Tax Refund 2009 tax refund of appx \$24,000.00 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - this was given to the trustee and so no value to the estate	C.C.P. § 703.140(b)(5)	\$1.00	\$0.00
2003 - 2005 tax refunds of appx \$52,857.09 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - already given to non-filing spouse no value to the estate; debtor properly exempted her interest in the taxes with all remaining b(5) wildcard	C.C.P. § 703.140(b)(5)	\$19,899.06	\$0.00
Firearms and Sports, Photographic and Other Hobby Equipment Camera, exercise bike, skis, 2 bikes, tennis racket, music key board and piano total value \$360.00	C.C.P. § 703.140(b)(5)	\$360.00	\$360.00
Automobiles, Trucks, Trailers, and Other Vehicles 2002 Acura VIN JHKA9602COI 2350 Mileage 130,000-value \$3,000.00 on date of filing (February 2010) - Already abandoned back to debtor and non-filing spouse no further value to the estate	C.C.P. § 703.140(b)(2)	\$0.00	\$0.00
2006 Scion (UNG driven by husband) value \$11,000.00 on date of filing (February 2010) - Already abandoned back to debtor and non-filing spouse no further value to the estate	C.C.P. § 703.140(b)(2)	\$5,100.00	\$0.00
Boats, Motors and Accessories, row boat \$20.00	C.C.P. § 703.140(b)(3)	\$20.00	\$20.00

Household Goods and Furnishings various furniture, gardening tool, wooden lights, Misc home repair tools, bed, shelf, cabinet, small table, 11 table lamps, vacuum cleaner, two twin beds, hall rug, office table and chair, book case, VCR, coffee table, 4 stacking tables, two wooden carriers, LCD HDTV, fire place tools, home stereo system, entertainment center, two piece hutch, two clay figures, two lamp tables, two area carpets, four couches, two coffee pots, refrigerator, pots and pans, washer and dryer, telephone, microwave, dishes, silverware, three bar stools, toaster, clock, night table, dining table and either chairs, desk, side chair, mirror, two end tables, three side chairs, silver plated tray, two vases, china hutch, buffet desk, king size bed, linens, towels, drapes, 2 additional tables with chairs	C.C.P. § 703.140(b)(3)	\$3,725.00	\$3,725.00
Books, Pictures and Other Art Objects; Collectibles Family pictures, 15 framed prints, 8 small framed pictures, CD collection, book collection, no single item worth more than \$100.00 and most valued between \$5.00 and \$10.00 total value \$645.00	C.C.P. § 703.140(b)(3)	\$645.00	\$645.00
Wearing Apparel, Debtors Clothes	C.C.P. § 703.140(b)(3)	\$320.00	\$320.00
Furs and Jewelry, 2 furs, wedding ring \$1000.00 value, misc jewelry	C.C.P. § 703.140(b)(4)	\$1,525.00	\$1,525.00
Interests in Insurance Policies, State Farm Life Ins Co, 1555 Promontory Circle Greeley CO 80638 Policy # LF-1099-xxxx, current value \$4000.00 exempting maximum due to ongoing dividends	C.C.P. § 703.140(b)(10)(E)	\$11,075.00	\$4,000.00
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans, Safe Credit Union 7475 Madison Avenue Citrus Heights CA 95610, IRA Account \$25,856.98 at date of filing current value appx \$15,000.00	C.C.P. § 703.140(b)(10)(E)	\$25,856.98	\$25,856.98
E*Trade Securities LLC , P0 Box 1542 Merrifield VA 22116, SEP IRA \$64,812.51 on date of filing current value appx \$60,000.00	C.C.P. § 703.140(b)(10)(E)	\$64,812.51	\$64,812.51
Ameriprise , SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA worth on date of filing \$434,773.95 worth appx \$442,000.00 on 7/29/13 this is property of the Non-Filing Spouse and has no value to the estate	C.C.P. § 703.140(b)(10)(E)	\$442,000.00	\$442,000.00
Ameriprise , SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA from 401k \$62,203.00	C.C.P. § 703.140(b)(10)(E)	\$62,203.00	\$62,203.00
American United life Ins Company P0 Box 368 Indianapolis IN 46206-0368, Qualified Pension \$11,323.63	C.C.P. § 703.140(b)(1)(E)	\$11,323.63	\$11,323.63

Alimony, Maintenance, Support, and Property Settlements Delinquent Support from Laurence Freeman - located no court order to support this asset	C.C.P. § 703.140(b)(10)(D)	\$92,853.58	\$92,853.58
Machinery, Fixtures, Equipment and Supplies Used in Business computers, fax machines, misc machinery, fixtures, equipment and supplies located at UNG, Staff USA and Premium Access included in business valuations; debtor would like exempt the computers and desks and electronics for tools for the trade along with various other pieces of office furniture - except any office equipment and furniture already liquidated, sold, or lost to landlords / secured creditors	C.C.P. § 703.140(b)(6)	\$2,200.00	\$0.00

Debtor no longer appears to be over the amount allowed for wildcard exemptions. California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of \$21,825.00 (as of February 16, 2010). Debtor has claimed exemptions under this section in amounts in excess of \$21,375.00.

**DECEMBER 12, 2013 HEARING**

At the hearing the Trustee confirmed that there remains only one exemption as set forth in the Fifth Amended Schedule C for which there is an exemption, which exemption is described as follows:

2003 - 2005 tax refunds of appx. \$52,857.09 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - already given to non-filing spouse no value to the estate; debtor properly exempted her interest in the taxes with all remaining b(5) wildcard

C.C.P. § 703.140(b)(5)

Amount Claimed as Exempt: \$19,899.06

Value of Asset: \$0.00

The court issued an order which (1) determines that the only remaining objection to exemptions, for those as stated in the Fifth Amended Schedule C, is for the 2003-2005 tax return and (2) continuing the hearing, as the Objection is intertwined with the pending adversary proceeding between the Plan Administrator and Laurence Freeman, which includes whether the remaining asset (a tax refund) for which the Plan Administrator objections to the claim of exemption.

**FEBRUARY 27, 2014 HEARING ON DEBTOR'S MOTION TO COMPEL**

At the hearing on Debtor's Motion to Compel DCN GMF-19 (held in conjunction with the Plan Administrator's Motion to Abandon WFH-43), the parties agreed that the issues arising from this Objection to Exemptions so intertwined with the pending adversary (Case No. 13-2027) that the two

should be conducted in conjunction with the testimony presented once. See Official Transcript, Dckt. 1377.

**MARCH 19, 2014 HEARING**

At the hearing, the court continued the hearing to allow MacDonald Fernandez, LLP, proposed counsel to substitute in for Debtor on limited issues. The court approved substitution of counsel for limited scope of representation on April 1, 2014. Dckt. 1395.

**MAY 28, 2014 HEARING**

At the hearing, .... (set same schedule as ADV PRO on tax refunds).

21.	<a href="#"><u>10-23577-E-11</u></a> <b>GLORIA FREEMAN</b> <a href="#"><u>13-2027</u></a> <b>FREEMAN V. FLEMMER</b>	<b>CONTINUED STATUS CONFERENCE RE: COMPLAINT 1-29-13 [<a href="#">1</a>]</b>
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Plaintiff's Atty: Craig A. Simmermon  
Defendant's Atty: Daniel L. Egan  
Third Party Defendant's Atty: Reno F.R. Fernandez III

Adv. Filed: 1/29/13  
Answer: 2/27/13

Counterclaim Filed: 2/27/13  
Answer to Counterclaim:  
3/20/13 [Laurence Freeman]  
3/27/13 [Gloria Freeman]  
4/24/13 [Gloria Freeman - First Amended]

Nature of Action:  
Declaratory judgment  
Notes:

Continued from 3/19/14

Substitution of Counsel filed 3/26/14 [Dckt 80]; Order approving filed 4/1/14 [Dckt 84]