UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 4, 2015 at 10:30 a.m.

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1. 14-26919-E-7 HSM-2 | **RODERICK ROBBINS** / **Stephen N. Murphy** | **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR** / **4-29-15 [109]**

Final Ruling: No appearance at the June 4, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend the Time to File an Objection to Discharge is granted.

Geoffrey Richards, the Chapter 7 Trustee, seeks an extension of time to object to the entry of Debtor's discharge. This case was filed as a voluntary Chapter 13 case on July 1, 2014, but was converted to a Chapter 7 case on January 22, 2015. The Trustee was appointed as the Chapter 7 Trustee on January 22, 2015, and continues to serve in that capacity.

The deadline to file a complaint objecting to the discharge of the Debtor is set for May 4, 2015. Trustee requests that the deadline for the Trustee to

file a complaint objecting to the discharge of the Debtor be extended until July 7, 2015. This Motion was filed on April 29, 2015, which is before the expiration of the deadline for filing of objections to discharge. Dckt. 109.

The Trustee states that he is continuing to investigate the Debtor's interest in various assets, including a rental property in San Francisco, which the Trustee understands to be party of a pending probate, and a rental property in Sacramento. The Trustee has requested documents as well as information concerning these assets as well as others. The Trustee also notes that the Meeting of Creditors was continued to May 26, 2015. For those reasons, Trustee requests that the court extend the deadline to object to Debtor's discharge.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The Chapter 7 Trustee explains that he is currently investigating the assets and liabilities of the Debtor and Debtor's pre-petition use of assets of the Estate. To permit a proper investigation, especially in light of the Meeting of Creditors being continued until after the expiration of the current deadline, the Chapter 7 Trustee requests the deadline to object to the entry of discharge be extended to July 7, 2015, which is an extension of approximately 34 days.

The court finds the Trustee's need to perform further investigation of the Debtor's assets, liabilities, and pre-petition use of Estate property to be sufficient cause. Therefore, the motion is granted and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to July 7, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Time to File an Objection to Discharge filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to, and including, July 7, 2015.

2. 10-40522-E-7 JAMES/TERRI EIFFERT
SMD-2 Frank J. Ferris

MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)
5-2-15 [141]

Final Ruling: No appearance at the June 4, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on May 4, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Susan Didriksen the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October 1, 2014 through March 22, 2015. The order of the court approving employment of Applicant was entered on October 7, 2014, Dckt. 140. Applicant requests fees in the amount of $2,829.00 and costs in the amount of $130.99.

Susan Didriksen, Chapter 7 Trustee, filed a statement on May 2, 2015. Dckt. 144. The Trustee states that she has no objection to the full amount and that the fees charged and costs advanced were reasonable and necessary.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be

awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration, preparing of income tax returns, and accounting matters. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides an analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 1.5 hours in this category. Applicant assisted Client with preparing employment documents, preparing declaration of Applicant, and preparing instant Motion for Compensation.

Accounting and Tax Services: Applicant spent 6.7 hours in this category. Applicant assisted Client with initial assessment of tax issues, and preparing of 2014 Federal and California estate income tax returns.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Gabrielson, Principal	8.2	$345.00	$2,829.00
Total Fees For Period of Application			$2,829.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $130.99 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges	$0.10 FN. 1.	$41.90
Postage		$47.19
Total Costs Requested in Application		$89.09

FN.1. A review of the Applicant's expenses shows that the Applicant charged $0.20 per page. In the Eastern District of California, the maximum allowed charge for photocopies is $0.10 per page. The court has reduced the expense accordingly.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,829.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of $130.99 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$ 2,829.00
Costs and Expenses	$ 89.09

pursuant to this Application as fee of $2,829.00 and costs of $130.99 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gabrielson & Company("Applicant"), Accountant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional Employed by Trustee

Fees in the amount of $ 2,829.00
Expenses in the amount of $ 130.99,

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

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

3. 14-23348-E-7 OMAR PINGOL
KFS-5 Karl-Fredric J. Seligman

MOTION TO AVOID LIEN OF GREEN VALLEY LAKE COMMUNITY ASSOCIATION, INC.
4-8-15 [155]

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Debtor failed to file a Proof of Service. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Green Valley Lake Community Association, Inc. ("Creditor") against property of Omar Pingol ("Debtor") commonly known as 509 Lakespring Court, Fairfield, California (the "Property").

However, the Debtor failed to file a Proof of Claim to the Motion. Without a Proof of Claim, the court cannot determine whether all necessary parties were properly served. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES

ALTERNATIVE RULING

This Motion requests an order avoiding the judicial lien of Green Valley Lake Community Association, Inc. ("Creditor") against property of Omar Pingol ("Debtor") commonly known as 509 Lakespring Court, Fairfield, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,408.00. An abstract of judgment was recorded with Solano County on September 24, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $258,352.00 as of the date of the petition. The unavoidable consensual liens total $562,585.70 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) 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 judgment lien of Green Valley Lake Community Association, Inc., California Superior Court for Solano County Case No. FSC058327, recorded on September 24, 2012, Document No. 201200096488 with the Solano County Recorder, against the real property commonly known as 509 Lakespring Court, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4. 13-20051-E-7 CAB-8 — TYRONE BARBER, Cory A. Birnberg — OBJECTION TO CLAIM OF ROSE MAGNO, CLAIM NUMBER 11 AND/OR OBJECTION TO CLAIM OF ROSE MAGNO, CLAIM NUMBER 12 — 4-26-15 [330]

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor on November 12, 2014. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 11-1 of Rose Magno is overruled without prejudice.

Tyrone Barber, the Debtor ("Objector") requests that the court disallow the claim of Rose Magno ("Creditor"), Proof of Claim No. 11-1 and 12-1 ("Claim"), Official Registry of Claims in this case.

The Objection states the Debtor is not justly and truly indebted to said claimant. The Objector asserts that the amounts claimed for past due child support have been paid. The Objector states that it is the Creditor who owed the Objector child support.

The Objector states that based on lawsuit filed by Creditor against Objector and Objector's former counsel, Mr. Hannon, in Alameda Superior Court,

the Creditor was paid in full. The Objector asserts that he paid Mr. Hannon all that was owing but Mr. Hannon did not pay over the funds to Creditor. However, Creditor asserts that following the Superior Court action, Creditor was paid in full as $10,000.00 in interest and $15,000.00 to her. Due to this, the Objector asserts that the Creditor has been paid in full and should be denied the opportunity to bring the same claim twice.

The Objector further asserts that any claims the Objector has regarding child support or claims decided by the family law arbitrator should be decided by a specialized court. The Objector argues that this court lacks jurisdiction over the claim because it is not a core matter.

The crux of the Objector's objection is that the court should abstain from determining the amount of Creditor's claim because the underlying issue is a state family law matter. The Objector then argues that because the issue of the amount owed is a state law issue yet to be determined, the court should disallow the claims.

SUPPLEMENTAL DECLARATION

Objector's counsel, Cory Birnberg, filed a supplemental declaration on May 23, 2015. Dckt. 338. The Declaration states that on May 12, 2015, he appeared in the Alameda Superior Court case no. RG 11 57023 concerning Creditor's breach of contract claim. Mr. Birnberg asserts that the Creditor proceeded to trial despite the automatic stay on April 17, 2015. Mr. Birnberg declares that he informed the court of the stay and the state court ordered briefing on the bankruptcy issue.

Mr. Birnberg asserts that the state court action concerning breach of contract claim was discharged with the Objector's discharge since there was no motion for nondischargeability under 11 U.S.C. § 523. Mr. Birnberg also asserts that Creditor's claims only lie in her two claims in the instant bankruptcy case.

For Proof of Claim No. 12-1, Mr. Birnberg states that the family court is the best court to enforce the claim which may be offset by what the Objector claims the Creditor's owes him (namely $93,000.00 in child support). Mr. Birnberg asserts that the abstention doctrine should apply or the court apply an offset.

As to Proof of Claim 11-1, Mr. Birnberg asserts that, in essence that the claim should be disallowed because Objector paid the amount pursuant to a Good Faith Settlement. As such, Mr. Birnberg asserts that Creditor should not be allowed to "double dip." Further, Mr. Birnberg asserts that the contractual claim has been discharged and that the estate has little to no assets to satisfy the claim.

Attached to Mr. Birnberg's supplemental declaration is:

1. Exhibit A - copy of the briefs filed with the state court in connection with Creditor's breach of contract claim. Total number of pages = 162 pages

2. Exhibit B - a copy of the Order granting ex parte application to produce settlement release.

REVIEW OF PROOF OF CLAIM NO. 11

Proof of Claim No. 11 filed by Creditor asserts the obligation against Objector:

A. Creditor is owed $93,500.00 by Objector (Debtor).

B. The obligation is based on a 2007 Stipulation in lieu of child support.

C. A summary is attached to the Proof of Claim in which Creditor alleges,

1. On April 11, 2011, Creditor filed a complaint against attorney Eugene Hannon and the Objector (Debtor) seeking a recovery of $55,000.00, plus interest and attorneys' fees. Civil Case RG11-570236.

2. On April 11, 2007, Creditor and Objector entered into a global settlement agreement resolving all support obligation disputes arising out of the 2004-2007 family law case between Creditor and Objector.

3. It is alleged that in lieu of the payment of child support, the Objector was to put $55,000.00 into trust for the Creditor's three minor children. The Objector was then to make monthly payments into the trust account commencing in March 2007 and continuing thereafter until fully funded. Eugene Hannon, the Objector's family law attorney was to act as trustee for the monies.

4. In February 2011 the Objector and his attorney sought to nullify and void the stipulation on the grounds that the statute of limitations to enforce the settlement had expired.

5. The Objector asserted that he was entitled to the $55,000.00 provided for in the Stipulation.

6. In March 2011, Creditor hired an attorney to enforce the asserted rights under the Stipulation.

7. In 2012 Eugene Hannon was disbarred by the California State Bar. FN.2.

FN.2. This allegation is consistent with the information reported by the California State Bar on its website concerning the only attorney with the name Eugene Hannon listed by the State Bar, with the exception that it is report that in August 2012 Mr. Hannon was "Not Eligible to Practice Law" and his disbarment date is show to be February 14, 2013. http://members.calbar.ca.gov/fal/Member/Detail/85632.

Also attached to the Proof of Claim is a Stipulation with an Alameda County Superior Court filed date of April 15, 2009. The Stipulation has signatures for Creditor, Creditor's attorney, the Objector, and Objector's state court attorney at the time. On its face, the Stipulation provides,

A. Pending establishment of a different trust account for the benefit of three minor children, the beneficiaries of a Revised Settlement Agreement reached between the Creditor and Objector on December 13, 2006, Objector shall deposit $9,166.66 into an interest bearing trust account in the name of the Objector and Creditor, with Eugene M. Hannon the Trustee. The payments shall commence March 2008 and continue until the full $55,000 has been funded or the guardian trust account has been established.

B. Eugene M. Hannon shall be the trustee of the trust account, which will be opened at Union Bank of California.

No copy of the asserted December 13, 2006 Settlement Agreement is attached to Proof of Claim No. 11.

REVIEW OF PROOF OF CLAIM NO. 12

In Proof of Claim No. 12 Creditor asserts a claim of $22,885.23 for "unpaid arrears." The Attachment to Proof of Claim No. 12 states that on February 5, 2013, the Special Master in the State Court action recommended that the Objector pay creditor $16,233.24. No reference is made to any such recommendation being adopted by the court and the payment ordered. The Attachment does state that the Special Master has suspended his work due to non-payment of fees and that Creditor intends to seek a re-review of the findings and recommendation.

DISCUSSION

Objection to Proof of Claim is a Core Matter

Objection to Claim is a core matter pursuant to 28 U.S.C. § 157, for which jurisdiction in this bankruptcy exists pursuant to 28 U.S.C. § 1334 and the reference to this bankruptcy court by the United States District Court for the Eastern District of California.

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

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations

> of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

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

Here, the Objector asserts in the motion that the "court lacks jurisdiction over the claim as it is not a core matter." Dckt. 330, pg. 2, line 16. The sole justification for this conclusion is that because it is a support claim, it does not arise under bankruptcy law, and is thus, non-core. This is an improper statement of law. Pursuant to 28 U.S.C. § 157, an objection to claim is a core matter. While the court may abstain to a state court for purposes of, for example, expertise and judicial economy, the ability to abstain does not translate to the objection to claim being non-core. The Objector here seems to convolute the idea of determination of the amount owed under a claim with the ability to determine the validity of a claim.

Therefore, the Objector's objection that the court lacks jurisdiction because the Objection is not a core matter is overruled.

The Objector Does Not Have Standing to Object to the Claims in This Bankruptcy Case

If there is not a surplus estate, then Debtor does not have standing to object to Creditor's claim.

As addressed in Collier on Bankruptcy, Sixteenth Edition, ¶ 502.02[c],

> "[c] Objection by Debtor
>
> The debtor may be a party in interest with standing to object to a proof of claim. [FN.17 - discussing that objecting debtor must have a pecuniary interest in outcome, such as when there is a surplus estate] Particularly in chapter 12 and chapter 13 cases, the success of the debtor's plan may depend upon the debtor's being able to argue successfully that the debt asserted as a priority claim or a secured claim, which must often be paid in full, 18 is excessive or invalid. Typically, the trustee in such cases does not view it as his

> or her role to object to particular claims except, perhaps, if they have been tardily filed.
>
> In a chapter 7 case, or a chapter 11 case in which the debtor is not in possession, the debtor usually has no pecuniary interest that would justify objecting to a claim unless there could be a surplus after all claims are paid. An individual debtor, however, in such a case may sometimes have an interest in objecting to particular claims. For example, the debtor may wish to object to an excessive dischargeable claim whose holder would receive distributions that otherwise would be made to the holder of a nondischargeable claim. To the extent that a nondischargeable claim is satisfied in some measure by a distribution, it is in the debtor's interest to maximize the distribution, thereby relieving the debtor from some or all of the claim of that creditor which would survive the bankruptcy case. The debtor also has an interest if there is any chance that a disallowance will yield a solvent estate that would provide a return to the debtor. The same reasoning applies to equity holders of the debtor. Thus, a debtor may be afforded standing, in certain instances, to object to claims."

Here, Mr. Birnberg's declaration indicates that the instant bankruptcy estate may be a non-surplus Chapter 7 estate. Mr. Birnberg states:

> c. There are 19 claims in this bankruptcy and the estate has only $30,000.00. It is likely that the costs of administration, attorney's fees, and trustee's fees will leave no recovery for the claimants. It is not economically variable to litigate a claim for $2,500.
>
> d. From Pacer, the claims filed in this case amount to $4,360,293.10. $149,143.91 is secured, $3,300,673.25 is priority. In addition there are Trustee's fees and the Trustee's attorney's fees. There is only $30,000 in the bankruptcy estate. There is really no point in litigating this claim as the unsecured contract claim is unsecured and has no priority.

Dckt. 338, pgs. 3-4.

Since this does not appear to be a surplus Chapter 7 case, there is no pecuniary interest in which the Objector has standing to object to the claim. In disclosing the fact that the estate, based on the substantial claims filed in connection with the case, leaving nothing for the Objector, the Objector admitted to the lack of standing.

Abstention is Not Proper Here

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). However, recognizing this broad reach of federal court jurisdiction, Congress also provided that federal judges may, and in some situations are required to,

abstain from hearing matters though federal court jurisdiction under § 1334 may exist. *See* 28 U.S.C. § 1334(c).

As provided in 28 U.S.C. § 1334(c),

> (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
>
> (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

A bankruptcy judge's exercise of the federal judicial power is considered in light of core and non-core (related to) jurisdiction created by Congress and limited by the United States Constitution. *See Stern v. Marshall*, 564 U.S. ____ , 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011). This court has previously addressed the issue of when a bankruptcy court judge should utilize federal bankruptcy jurisdiction to adjudicate issues between parties which determination will have no bearing on the bankruptcy case and do not concern Bankruptcy Code issues. *See Pineda v. Bank of America, N.A. (In re Pineda)*, 2011 Bankr. LEXIS 5609 (Bankr. E.D. Cal 2011), *affrm. Pineda v. Bank of America, N.A. (In re Pineda)*, 2013 Bankr. LEXIS 1888 (B.A.P. 9th Cir. 2013). Such jurisdiction should be carefully used by the federal courts to the extent necessary and appropriate to effectuate the goals, policies, and rights relating to bankruptcy cases, and not as a device to usurp state courts of general jurisdiction or the district as the trial court for federal matter and diversity jurisdiction.

Even outside of bankruptcy the Supreme Court has recognized that there are areas of state law that federal courts should not unnecessary intrude upon. One of the principal areas of law in which the Supreme Court has directed that the lower courts carefully consider the exercise of federal court jurisdiction arises with respect to domestic relation (family law) matters. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 12 (2004). "Thus, while rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, see, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 432-434, 80 L. Ed. 2d 421, 104 S. Ct. 1879 (1984), in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts." *Id.* at 13.

Here, the Objector bases his abstention argument solely on the basis that it deals with family law matters. However, as admitted by the Objector, the heart of Proof of Claim No. 12-1 is a breach of contract claim. As can be expected this court is on a daily basis hearing and adjudicating breach of contract claims, whether it be in the contexts of mortgages, employment, etc.

The fact that the breach of contract claim relates to a family law matter does not automatically make abstention proper.

The Objector has failed to provide sufficient facts that would make abstention proper. As noted supra, the Objection itself is a core matter pursuant to 28 U.S.C. § 157. There is a dispute that directly relates to the administration of the estate. The Objector merely makes conclusory statements in his Objection that the determination of the validity of the claims have "little or no effect on the efficient administration of the bankruptcy estate, as the claims have been paid in whole or in part, all within the issues now pending before the family law court." Dckt. 337. The Objector does not state sufficient grounds to justify the court abstaining and, therefore, the request is denied without prejudice.

RULING

The minimalistic allegations in the Objection to Claim do not sufficiently rebut Proof of Claim No. 11 and 12.

With respect to Proof of Claim No. 12, both the Objection and the Proof of Claim are short on stating grounds for either. As the court reads Proof of Claim No. 12, there were Recommendations made by a Special Master, but no court order actually ordering such amounts to be paid has been filed. However, in his declaration the Objector (Debtor) fails to affirmatively state under penalty of perjury that no such obligation exists. He merely states that he is owed child support from Creditor. The declaration is pregnant with the implication that such an order exists and there is an obligation owing. The Objection merely alleges that the Objector (Debtor) "is not justly and truly indebted to said claimant." While alleging that the documentation provided by Creditor is incomplete, Objector fails to allege the true, sufficient facts and grounds upon which an objection could be sustained.

As discussed supra, the court does not find that the Objector has standing to object to the claims when there is not a surplus in the estate and, furthermore, does not find that the Objector has pleaded sufficient grounds to justify abstention. While the instant Objection provides more detail than that provided for at Objector's first attempt, the Objector still does not provide sufficient basis to sustain an objection.

Therefore, the Objection is overruled, without prejudice to the Trustee or any other party in interest as authorized by the court (which includes the Debtor if appropriate) or Debtor defending himself from any such claims in the state court proceedings.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Rose Magno, Creditor filed in this case by Tyrone Barber, 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 Objection to Proof of Claim Number 11-1 and 12-1 of Rose Magno is overruled, without prejudice.

The Objection is overruled without prejudice to the Trustee or any other party in interest as authorized by the court (which includes the Debtor if appropriate) or Debtor defending himself from any such claims in the state court proceedings. The court has determined that Debtor does not having standing to file the Objection due to this not being a surplus bankruptcy estate.

5. 14-29361-E-7 WALTER SCHAEFER
DNL-4 Douglas B. Jacobs

MOTION TO SELL AND/OR MOTION TO EMPLOY ASHMAN COMPANY AUCTIONEERS AND APPRAISERS, INC. AS AUCTIONEER(S)
4-30-15 [107]

Final Ruling: No appearance at the June 4, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Employ Auctioneer and Sell Property is continued to 10:30 a.m. on June 18, 2015.

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

A. four Amada CNC Turret Punch Presses,
B. three Amada CNC Press Brakes,
C. an Amada Sheer,
D. an Amada Corner Notcher,
E. two Diacro Press Breaks,
F. three Hager Insertion Presses,
G. Fedal and Kitamura CNC Machining Centers,
H. a Miyano CNC Lathe,
I. a HYDMECH Automatic Horizontal Band Saw,
J. Bridgeport Mills,
K. a Victor Lathe,
L. Atlas Capo and Kaeser Air Compressors,
M. Miller Welders,
N. a Welding Department,
O. a Paint Department,
P. Trucks,
Q. Support Equipment, and
R. Perishable Tooling

The Movant proposes selling the Property at auction to be conducted by Ashman Company Auctioneers and Appraisers, Inc. ("Ashman").

The Movant also seeks authorization to employ Ashman as auctioneer pursuant to 11 U.S.C. § 327.

The Trustee states that Bank of the West asserts a first lien against the Property and the Equipment in the amount of $448,864.31 (almost $100,000.00 greater than listed by Debtor on Schedule D).

Mr. Bauer asserts a second lien against the Equipment based on a settlement with the Debtor on an insured occupational injury in the amount of $42,893.12.

The Trustee reports that on February 9, 2015, without court authority or consent of the Trustee, Bank of the West, or Mr. Bauer, the Debtor agreed to sell the equipment to Ashman Company Auctioneers and Appraiser, Inc. for $220,00.00 and permit Ashman Company Auctioneers and Appraiser, Inc. to use the Property to conduct an in place auction.

On February 17, 2015, the Trustee states that the Debtor received from Ashman Company Auctioneers and Appraiser, Inc. a $220,000.00 wire transfer and used the funds to pay scheduled and unscheduled obligation other than the obligations of Bank of the West and Mr. Bauer.

On February 25, 2015, Ashman Company Auctioneers and Appraiser, Inc. removed one of the Amada CNC Turret Punches and sold it to Manufacturing Solutions fo $23,500.00. The Trustee states that she is in possession of the Property and the Equipment, with the exception of the Punch.

Ashman Company Auctioneers and Appraiser, Inc. asserts claims against the Equipment (except the Punch), the $220,000.00, the Debtor and his transferees.

EMPLOYMENT OF ASHMAN COMPANY AUCTIONEERS AND APPRAISER, INC.

The court first addresses the Movant's request for the employment of Ashman as the auctioneer. As discussed at the hearing on the Motion to Approve the Liquidation Agreement, the Debtor, without court authority, sold equipment to Ashman. The court, in its civil minutes, stated:

> As the court reads the proposed "Liquidation Agreement," the Trustee having caught the Debtor improperly purporting to sell to Ashman Company Auctioneers and Appraiser, Inc. property of the estate, the two creditors agree to a "compromise" in which they will get paid in full on their claims, including interest, and Ashman Company Auctioneers and Appraisers will be "bonused" by now getting to sell the property recovered from it by the Trustee and to be paid monies for the equipment it "purchased" from someone who had no right, power, or interest in selling property of the bankruptcy estate – the Debtor. No reference is made with respect to how the Trustee intends to address the improper conduct of the Debtor and how this settlement impacts those rights.
>
> Bankruptcy is not a process by which the law is ignored, and when caught violating the law, the "terrible consequences" are merely that one will then have to comply with the law, be paid everything they demanded, be paid monies for entering into invalid contracts, and be "bonused" by being given additional work by the Trustee. The Trustee has not provided the court with any basis for Ashman Company Auctioneers and Appraisers can have any claim against the bankruptcy estate from apparently being defrauded by Walter Schaefer, the bankruptcy debtor, who purported to sell property of the estate.
>
> The sum and substance of the Trustee's Motion is that there is no settlement, there is no compromise, and there is no enforcement of the rights of the bankruptcy estate. Rather, if Bank of the West and Mr. Bauer (who may have no claim in this case) will allow the Trustee to sell the equipment and generate monies from which the Trustee may be paid fees and her professionals paid, the Trustee will pay whatever Bank of the West and Mr. Bauer demand. That is not consistent with the fiduciary duties of a bankruptcy trustee.
>
> If this is a situation in which a dispute exists as to whether the estate owns the equipment or it is owned by AMI Precision, Inc., then another set of issues exist. Merely because the Trustee, Bank of the West, and Mr. Bauer agree to ignore the fact that AMI Precision, Inc. is a separate legal entity and they want to loot that entities assets, such is not the basis for a "looting order" from the court. Taking another legal entities assets is not one of the powers of a bankruptcy trustee. AMI Precision, Inc. is not a party to the "Liquidation Agreement." As the Trustee surely knows, federal judicial power may be exercise only against the parties who

> have an actual claim or controversy, there is a basis for federal court jurisdiction, and that all parties have been properly served for the court to have in personam jurisdiction. U.S. Const. Art. III, Sec. 2. If such a bona fide, disputed exits, then the Trustee must address that issue (whether substantive consolidation, litigation, changing corporate management, and notification of AMI Precision, Inc.'s creditors). Failure to do so could cause the court to be mislead into entering a void order and the Trustee committing the same wrongful act as Walter Schaefer, the Debtor in this case, in purporting to sell assets in which the Trustee had no interest or right.

Dckt. 130.

First, the court notes that the Movant improperly moves the court for multiple forms of relief in a single motion, namely to employ Ashman then also authorization to sell property. This violates Fed. R. Civ. P. 18 and is independent grounds to deny the Motion. However, even in light of this violation, the court will analyze the merits.

Second, the court is not convinced that given the improper selling of the equipment to Ashman that Ashman is or can be a disinterested person for purposes of employment under 11 U.S.C. § 327 to work for, and as, a fiduciary of the bankruptcy estate.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Here, the Debtor and Ashman entered into an authorized sale of property. As the court noted previously, the court is unsure if the property purporting to be sold by the estate is actually property of the Debtor's estate or whether it is property held by the Debtor's company AMI Precision, Inc. While the Trustee notes that there was a post-petition purchase of equipment by Ashman, the Trustee states that she "believes that Ashman's interests are not adverse to the bankruptcy estate in that it has an interest in liquidating the Equipment for the highest possible price." Dckt. 107. However, the mere fact that the interests may align for purposes of selling the property at the highest price does not equate to Ashman being a disinterested party. The underlying issues of whether the Property is actually assets of the estate and whether Ashman's purchase of equipment from the Debtor is valid are still unresolved.

The declaration of Ryan Ashman, in support for the employment, does not provide any justification or explanation as to Ashman being a disinterested party for purposes of 11 U.S.C. § 327. Dckt. 109. The Declaration merely notes the post-petition sale but that no conflicts exist. In fact, Mr. Ashman states under penalty of perjury:

> "7. I have caused a conflicts check to be conducted to determine whether any conflicts of interest exist in this case between Special Counsel and interested parties. The names checked include the names of the Debtor, United States Trustee, and the names of all of the persons or entities listed on the creditors' mailing matrix.
>
> 8. Ashman has a connection to the bankruptcy estate by its post~petition purchase of the Equipment from the Debtor, which resulted in a liquidation agreement which I understand has been submitted for the Court's approval.
>
> 9. Other than the connection noted above, Ashman has no connections to the bankruptcy estate. Except as set forth above, no members of Ashman have connections with the Debtor, creditors, or any party in interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee."

While Mr. Ashman lightly passes over a competing, adversarial ownership claim to the property which the Trustee asserts is property of the estate, the court does not, and cannot, just "let it slide." The court has not approved any settlement between Mr. Ashman's company and the Trustee. As of the prior hearing, the court had not been shown a basis by the Trustee for Ashman Company Auctioneers & Appraisers, Inc. to be asserting that a fraudulent bill of sale issued by the Debtor transferred any interest to property of the bankruptcy estate. Possibly when the new motion is filed and evidence is presented to the court, then some issues may exist whereby the court can approve a resolution of the dispute, fix everyone's interests so that there is not a conflict, and the auction company can work as a fiduciary of the bankruptcy estate and trustee.

Without there being an authorized settlement agreement between the parties concerning the Debtor's unauthorized sale of property to Ashman, the court does not find that Ashman is a disinterested party that may be employed by the estate.

AUTHORIZATION TO SELL PROPERTY

Similar to the reasoning why the court will not authorize employment of Ashman, the court will not authorize the selling of Property when none of the parties have offered evidence that the Property is actually assets of the estate and not the Debtor's business. The concerns of the court are only further exasperated because the Movant is seeking authorization for Ashman to perform the public auction, when Ashman appears to hold a "maybe" interest in some of the Property. Without determining the actual interests of the estate in the Property, the court will not authorize the sale of the Property. The court will not issue an order authorizing the sale of Property which, in the

end, may not end up being property of the estate under 11 U.S.C. § 541 and end with the order being a void order.

The court notes that a new motion to approve a compromise has been set for hearing on June 18, 2014. To facilitate the Trustee's prompt administration of the estate the court is:

A. Continue the hearing on the Motion to Sell and Motion to Employ Auctioneer to 10:30 a.m. on June 18, 2015.

B. On or before June 11, 2015, Ryan Ashman, Ashman Company Auctioneers & Appraisers, Inc., and Kimberly Husted, the Chapter 7 Trustee, shall file and serve supplemental declarations, if any, they deem appropriate in the court determining whether the auction company can satisfy the disinterestedness standard for 11 U.S.C. § 327. (Supplemental pleadings are not being required by the court.)

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kimberly Husted, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Authorize the Sale of Property and Employ Auctioneer is continued to 10:30 a.m. on June 18, 2015.
>
> **IT IS FURTHER ORDERED** that on or before June 11, 2015, Ryan Ashman, Ashman Company Auctioneers & Appraisers, Inc. shall file and serve any supplemental declarations, if any, they deem appropriate in the court determining whether the auction company can satisfy the disinterestedness standard for 11 U.S.C. § 327. (Supplemental pleadings are not being required by the court.)
>
> **IT IS FURTHER ORDERED** that the Trustee shall be prepared to provide the court and parties in interest at the June 18, 2015 hearing with a short status report concerning the conduct of the Debtor, whether the Trustee is investigating the conduct and reporting to the property agencies and departments, the status of monies paid to creditors by Debtor other than as authorized by the Bankruptcy Code, and the anticipated outcome of the case for creditors.