

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

July 9, 2015 at 10:30 a.m.

- 
1. [11-36470](#)-E-13 WASIF/IRUM ASGHAR CONTINUED OBJECTION TO CLAIM OF  
WW-3 Mark A. Wolff STATE BOARD OF EQUALIZATION,  
CLAIM NUMBER 29 AND/OR MOTION  
TO CONDITIONALLY DETERMINE THE  
VALUE OF THE CLAIM PENDING  
RESOLUTION OF THE APPEAL  
7-15-13 [[73](#)]

No Tentative Ruling  
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**The Evidentiary Hearing Scheduling Conference is ~~XXXXXX~~.**

**PROCEDURAL HISTORY**

At the September 10, 2013 hearing on the Objection to Claim, the court continued the hearing so that the Objection could be heard after the State Board of Equalization's review of Debtor's appeal. Dckt. No. 85. The court further stated that if the review had not been completed in a timely manner, this court would have to determine the issue as a necessary proceeding for the administration of federal law.

At the March 4, 2014 hearing, the parties reported that an offer for settlement in being reviewed by the State Board of Equalization and requested an additional 60 day continuance. The court continued the hearing.

A review of the case docket for the May 6, 2014 hearing showed that nothing was filed by either the Debtors or the Board of Equalization, to show whether the determination on the appeal has been made. The court continued the Objection to Proof of Claim No. 29 of the State Board of Equalization to this hearing date to bring the objection to conclusion pursuant to 11 U.S.C. § 505.

**REVIEW OF OBJECTION**

The Proof of Claim at issue, listed as claim number 29 on the court's official claims registry, asserts a \$37,470.60 claim alleging a priority tax debt for the tax period of July 1, 2007 through June 30, 2008 and indicates the debt is contingent upon dual determination from account no. SR KH 100-713773.

The Debtor objects to the Proof of Claim on the basis that he was not the responsible party during the time period for which the tax claim is asserted. Debtor Wasif Asghar asserts that he was involved in an accident and due to the

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illness relating thereto was not involved in the operation of the business during that period.

Debtor asserts that the former business partner Qamaruddin Shaikh was in fact operating the business during the relevant time period. Debtor states that the State Board of Equalization has not yet completed its review and investigation with respect to the dual determination but that their claim should be disallowed in its entirety as Debtor was not the responsible party and should not be held liable for the claim.

#### **CREDITOR'S OPPOSITION**

Creditor California State Board of Equalization ("SBE") states that Debtors scheduled a disputed SBE 2008 tax claim in Schedule "E," in the amount of \$1.00 allegedly incurred by QS Ventures, Inc., for which Debtor, Wasif Asghar, disclosed an ownership interest in Paragraph 18 of his Statement of Financial Affairs. SBE timely filed its Proof of Claim No. 29-1 in the amount of \$37,470.60 (the "Claim"), which is asserted as a priority, but contingent, tax claim.

Although SBE does not oppose Debtors' request in Paragraph 11 of the Claim Objection for a six-month temporary suspension in Chapter 13 plan distributions on SBE's Claim pending administrative review, SBE questions and opposes Debtors' concurrent request in Paragraph 11 of the Claim Objection for a bankruptcy court adjudication of SBE's tax-based Claim on its merits under Federal Rule of Bankruptcy Procedure 9014.

#### **DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). 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).

Debtor seeks the this court to disallow the claim of SBE through a determination that he was not the "responsible party" and his therefore not personally liable for the tax obligation. Both parties agree that the tax appeal is currently pending, which addresses the same issues.

#### **AUGUST 8, 2014 STATUS REPORT BY THE STATE BOARD OF EQUALIZATION**

Tax creditor, the California State Board of Equalization (identified as the "SBE") submits a Status Report on the Debtors' Objection to Claim of State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal.

On July 15, 2013, the Debtors filed their Claim Objection against the SBE. This was because Chapter 13 Trustee, in compiling a list of timely filed claims, indicated that the plan may not be feasible, and that case dismissal

may be warranted. Dckt. No. 51. The Court continued the original September 10, 2013 hearing on the Claim Objection to March 4, 2014. Dckt. No. 87, then to May 6, 2014, Dckt No. 90, then to August 19, 2014, Dckt. No. 93, so that the Debtors may engage in out of court settlement discussions with the SBE, and pursue their administrative appeals rights with the SBE's Appeals Division for a re-determination of tax.

On April 13, 2012, the contested tax was billed to Debtor, Wasif Asghar, in his capacity as a "responsible person" for the now-ceased QS Ventures, Inc., because its tax debts to the SBE remain outstanding. Cal. Rev. & Tax. Code § 6829; Cal. Code Regs., tit. 18 § 1702. The federal counterpart "responsible person" tax statute is at 26 U.S.C. § 6672, and is frequently litigated in bankruptcy courts. 11 COLLIER ON BANKRUPTCY TAXATION §TX15.02 (2014).

SBE states that on or about April 2, 2014, the SBE informed the Debtors' counsel that the SBE rejected the Debtors' written tax settlement proposal under the guidelines of Cal. Rev. & Tax. Code § 7093.5(c).

The Debtors currently have a scheduled conference with a hearing officer with the SBE's Appeals Division on September 4, 2014, designated as Case Id. 611390. See Cal. Code Regs., tit. 18 § 5264. Because this multi-level appeals process has not yet concluded, this contested "responsible person" tax remains contingent for bankruptcy purposes. Notwithstanding this upcoming conference, the SBE states that it concurs with the Court's discussion in its previous minute orders that the Court has permissive jurisdiction under 11 U.S.C. § 505(a) for a determination of a contingent state tax liability, as a necessary proceeding for the administration of federal law.

Creditor again asserts that the Debtors have not met their burden of proof in objecting to the state tax claim. As briefed in the SBE's August 22, 2013 Opposition to the Debtors' Objection to the Claim of the California State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal ("Opposition"), Dckt. No. 82, in the context of a claim objection to a state tax, the burden of proof is determined by state tax law. *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000).

Under California law, a tax assessment billing by a revenue agency is presumed to be correct, and the burden of proof to show otherwise stays with the taxpayer. *Flying Tiger Line v. State Bd. of Equalization*, 157 Cal. App. 2d 85, 99 (1958); 67B AM. JUR. 2D Sales and Use Taxes § 214 (2013). A taxpayer who objects to his or her "responsible person" tax liability bears the burden of proof. *Latin v. State Bd. of Equalization (In re Latin)*, 2009 Bankr. LEXIS 4523 \*23-24 (B.A.P. 9th Cir. 2009) (explaining that Sales and Use Tax Regulation 1702.5 requires that a taxpayer provide evidence that he or she lacked responsibility or willfulness).

SBE argues that Debtor Wasif Asghar has not sufficiently controverted the contention that he was the responsible person for taxes of the QS Ventures, Inc, during the relevant time period. As explained in SBE's Opposition to the Objection, Debtors' proof consisted only of a single Kaiser Permanente doctor's visit on or about July 31, 2007. SBE asserts that his in and of itself does not demonstrate that Debtor, Wasif Asghar, at all relevant times, was not a person responsible for payment of California sales taxes on behalf of QS Ventures, Inc. The Debtors have not met their burden of proof. Thus, SBE

requests that the Objection be overruled.

**SCHEDULING OF AN EVIDENTIARY HEARING**

This bankruptcy case was filed on July 1, 2011 (three years ago). Creditor filed its proof of claim on November 30, 2011 (two years and eight months ago). Proof of Claim No. 29. This Objection to Creditor's Claim was filed on July 15 2013 (now more than one year ago).

The parties, now more than three years into this case, have been unable to resolve this dispute. The court has continued and re-continued the hearing to afford good faith, bona fide settlement discussions to be conducted. After such good faith efforts, there is no resolution. Therefore, the court determines that it is necessary for the claims objection process to proceed and this court determine what claim, if any, is allowed in this case.

**NOVEMBER 18, 2014 SCHEDULING CONFERENCE**

The California State Board of Equalization filed a Status Report on November 12, 2014. Dckt. 99. The Board reports that written discovery has been exchanged with the Debtors' tax counsel. Further, that the discovery and ongoing communications have narrowed the issues and the parties believe that discovery should be completed by November 24, 2014.

The Board requests that the court set a further status conference, rather than setting the matter for an evidentiary hearing, to allow the parties to continue their good faith negotiations and focus on settling this matter.

The Parties are represented by their respective knowledgeable counsel. Affording these Parties and their counsel the opportunity to attempt and achieve an agreed resolution of this dispute is warranted as part of the diligent prosecution of this objection.

**JANUARY 21, 2015 SCHEDULING CONFERENCE**

At the hearing, the court continued the Scheduling Conference to 2:30 p.m. on April 1, 2015. Dckt. 112.

**APRIL 1, 2015 SCHEDULE CONFERENCE**

Pursuant to a stipulation filed by the parties, the court issued an order granting a continuance of the Scheduling Conference to 10:30 a.m. on May 14, 2015. Dckt. 126. The court also ordered that the deadline for filing and service of any discovery motions in connection with the Debtors' Objection is April 16, 2015.

**MAY 11, 2015 STIPULATED STATUS REPORT**

The parties filed a stipulated status report in connection with the instant Objection. Dckt. 135. The status report states that the parties have continued to engage in good faith settlement discussions and have recently reached an agreement. The parties request that the court continue the hearing to allow the parties to complete drafting the settlement.

**MAY 14, 2015 HEARING**

The court continued the hearing to 10:30 a.m. on July 9, 2015 based on the stipulated status report filed by the parties. Dckt. 137.

**STIPULATION - Filed July 6, 2015**

On July 6, 2015, the parties filed a Stipulation Resolving the Debtors' Objection to the Claim of the State Board of Equalization (No. 9). Dckt. 140. The Stipulation provided for the following:

1. Debtors will withdraw their objection to State Board of Equalization's claim
2. Debtors will timely seek post-confirmation modification of their Chapter 13 plan to provide for interim monthly \$100.00 payment to the State Board of Equalization on the State Board of Equalization Claim.
3. Debtors and State Board of Equalization will submit to the court a proposed "Order on Stipulation Related to State Board of Equalization's Claim Number 29-2," which will provide that:
  - a. Debtors' discharge in this case, if entered, shall not discharge any unpaid balance remaining on State Board of Equalization's Claim; and
  - b. State Board of Equalization, as a Class 5 creditor, accepts the terms of the Debtors' proposed modification of their Chapter 13 plan pursuant to 11 U.S.C. § 1322(a)(2).

**JULY 9, 2015 HEARING**

At the hearing, the court addressed with the parties the following issues:

- A. The Objection to Claim has not been dismissed.
- B. If the Objection to Claim is dismissed, to what motion or objection would an order titled "Order on Stipulation Related to Board of Equalization's Claim Number 29-2" relate?
  1. See Federal Rule of Bankruptcy Procedure 9013 requiring that, except when the Rules authorize an application, any request for an order shall be by motion.

In addressing these issues, the parties reported xxxxxxxxxxxxxxxxxx.

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 Evidentiary Hearing Scheduling Conference 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 Evidentiary Hearing Scheduling

Conference is **xxxxxx**

2. [10-20293-E-7](#) LLOYD/KATRINA DOUGLAS MOTION TO SELL, MOTION FOR  
HCS-2 Mikalah R. Liviakis COMPENSATION FOR LYON REAL  
ESTATE, REALTOR(S) AND MOTION  
FOR COMPENSATION FOR CAPITAL  
WEST REAL ESTATE, REALTOR(S)  
6-3-15 [[95](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Internal Revenue Service, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

Geoffrey Richards, the Chapter 7 Trustee, filed the instant Motion to sell on June 3, 2015. Dckt. 95

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

A. 3635 Bass Street, West Sacramento, California

The proposed purchasers of the Property are Matthew Villarreal, Colleen Villarreal, and Mary Colburn ("Buyer") and the terms of the sale are:

1. Sale price of \$460,000.00;
2. Sale is "as is," without warranties;
3. Buyer shall pay a Buyer's premium of \$28,000.00, to the bankruptcy estate;
4. Buyer shall pay the costs of sale in the amount of \$2,297.00;
5. The sale is subject to overbidding at the hearing to approve the sale; and
6. The sale proceeds will be applied as such:
  - a. 6% brokers commission to be shared as follows:
    - i. 3.5% to Ms. McKee of Lyon Real Estate (\$16,100.00), and
    - ii. 2.5% to Capital West Real Estate (\$11,500.00);
  - b. Estimated closing costs - (\$5,429.00);
  - c. Property Taxes - 2nd Installment - (\$3,757.08);
  - d. Wells Fargo Lien No. 1 - (\$413,690.92);
  - e. Wells Fargo Lien No. 2 - (\$12,000.00); and
  - f. Federal Tax Lien - (\$4,376.42)

The proposed distribution results in a remaining balance of \$23,623.58 for the bankruptcy estate.

The Trustee notes that Wells Fargo has claimed it paid the Property Taxes - 2nd Installment and has requested reimbursement through escrow as a condition of approval of the short sale. The Trustee proposes to reimburse Wells Fargo for the payment through escrow, or alternatively pay the Property Tax to the County, according to proper proof made to the escrow company.

As to the Internal Revenue Service lien, the Trustee states that the Internal Revenue Service file Proof of Claim No. 10 in the amount of \$8,137.42. Of this claimed amount, only \$4,376.42 is listed as secured. Therefore, the Trustee proposes to only pay the secured amount through the sale proceeds.

The Trustee further requests that the 14-day stay pursuant to Fed. R. Bankr. P. 6004(h) be waived so that the sale can close as quickly as possible for the benefit of the estate and the Buyers.

The Trustee also requests in the Motion for final approval of, and authorization to pay, to Katherine L. McKee of Lyon Real Estate the agreed real



proposed sale is in the best interest of the Estate.

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 Geoffrey Richards the 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 Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Matthew Villarreal, Colleen Villarreal, and Mary Colburn ("Buyer"), the Property commonly known as 3635 Bass Street, West Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$460,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 97, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, real property taxes, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 7 Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Chapter 7 Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's realtor, Lisa K. McGee of Lyon Real Estate who will split the commission with the selling agent, Capital West Real Estate, who shall receive 2.5% of the commission and Lyon Real Estate shall receive 3.5%.

3. 13-21893-E-7 STANISLAV LAZUTKINE  
HLC-4 Walter R. Dahl

CONTINUED MOTION FOR TURNOVER  
OF PROPERTY  
4-13-15 [[142](#)]

**No Tentative Ruling:** The Motion for Turnover was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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Local Rule 9014-1(f)(3) 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, parties requesting special notice, and Office of the United States Trustee on April 13, 2015. By the court's calculation, 15 days' notice was provided.

The Motion for Turnover was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The Motion for Turnover is ~~XXXXXX~~.**

John Roberts, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to:

1. Stanislav Lazutkine's ("Debtor") passports
2. 100% of the stock certificates or equivalent in all of the entities which compromise the "Metprom" group of companies which are as follows: 000 Metpromproekt; 000 Metprom; ZAO Metpromproekt; 000 Metpromservice; 000 Metpromstal; 000 Metpromukraina; Steel Power Trade.

3. All financial records of Metprom including an accounting of all incomes and expenses of Metprom since the filing of Debtor's bankruptcy case on February 13, 2013.

The Movant states that the Debtor is a citizen of both the United States and of Russia. The Movant requests the passports based on the alleged implicit finding in the state court divorce proceeding that Debtor is a flight risk. The Movant relies on transcripts from the state court proceeding to support this allegation.

#### **DEBTOR'S RESPONSE**

The Debtor filed a response to the instant Motion on April 14, 2015. Dckt. 156. The Debtor states that he did not and does not assert any legal, financial, or other beneficial ownership in any of the entities which are subject of the Motion. The Debtor states that at the continued Meeting of Creditors he testified that his stepfather may have designated Debtor as "nominal holder of shares" in the entities in the Motion. Debtor states that he further testified that he did not have possession or control of the shares or stock certificates or other indica of ownership in such entities, and thus had nothing to turnover.

Debtor states that he has executed and attached Quitclaim Assignment and that Debtor's counsel will deliver the "wet signature" original of such to the Trustee or his counsel.

#### **DEBTOR'S SUPPLEMENTAL OPPOSITION**

The Debtor filed a supplemental opposition to the instant Motion on April 24, 2015. Dckt. 158. The Debtor restates that the he has never had possession or control of any shares or stock certificates or other indicia of ownership in the entities. The Debtor states he has no objection to the Trustee's intent to take possession of whatever right, title, and interest Debtor may have in the shares and agrees that such shares would likely be property of the estate. On April 16, 2015, the Debtor states that he executed another Quitclaim Assignment in the presence of a Notary Public which the Debtor will bring the "wet signature" to at the hearing.

The Debtor argues that the Quitclaim Assignment should suffice since it is legally sufficient to transfer to the Trustee and the estate any and all right, title and interest which the Debtor may have.

As to the Trustee's request for turnover of the passports, the Debtor objects stating that the Trustee fails to prove that the passports could be used, soled, or leased or why such passports are not inconsequential or benefit to the estate. The Debtor argues that the turnover of the passports would, in fact, be a sanction.

Furthermore, the Debtor states that while his current primary residence is in Russia, he has continued to maintain and monitor a mailing address in the Eastern District of California and has continued to be represented in his bankruptcy case. The Debtor argues that the surrender of his passports would adversely affect his ability to earn a living.

**APRIL 28, 2015 HEARING**

At the hearing, the court ordered the following:

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

**IT IS FURTHER ORDERED** that the court shall conduct a further hearing on the status of the turnover at 10:30 a.m. on July 9, 2015. On or before June 29, 2015, Stanislav Lazutkine, shall file a status report.

**IT IS FURTHER ORDERED** that Stanislav Lazutkine, the Debtor, shall deliver on or before noon on June 29, 2015, possession of the following property to John Roberts, the Chapter 7 Trustee, at c/o George Hollister, Attorney for the Trustee, 655 University Ave., Ste. 200, Sacramento, CA, during normal business hours:

1. 100% of the stock certificates or equivalent in all of the entities which comprise the "Metprom" group of companies which are as follows: 000 Metpromproekt; 000 Metprom; ZAO Metpromproekt; 000 Metpromservice; 000 Metpromstal; 000 Metpromukraina; Steel Power Trade
2. all financial records of Metprom including an accounting of all incomes and expenses of Metprom since the filing of Debtor's bankruptcy case on February 13, 2013.

(the "Property"), with all rights and interests of the Estate, Debtor, and all other persons in the Property to continue in full force and effect while in the possession of the Trustee. It is this federal court, with exclusive jurisdiction over all property of the estate pursuant to 28 U.S.C. § 1334(e), which determines whether property is property of the bankruptcy estate. All persons who assert any interest in or ownership of such Property at issue may have their rights and interests adjudicated in this court. Debtor has the responsibility to turn possession over such assets, even if he now states that he was the "nominal holder of the shares" to turn over such shares to the Trustee.

**IT IS FURTHER ORDERED** that the request for Debtor to turn over his passport as property of the estate is denied without prejudice.

Dckt. 164.

**DISCUSSION**

To date, the Debtor has not filed any supplemental papers in connection with this Motion, as ordered by the court.

At the hearing, -----

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 Turnover of Property filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Turnover of Property is ~~xxxxxxx~~

4. [15-21393-E-11](#) RICKIE WALKER  
Pro se

MOTION FOR AN EXTENSION OF TIME  
TO PAY THE UNPAID FILING FEE  
AND ADMINISTRATIVE FEE  
6-17-15 [[43](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors and Office of the United States Trustee on June 17, 2015. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for an Extension of Time to Pay the Unpaid Filing Fee and Administrative Fee was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The Motion for an Extension of Time to Pay the Unpaid Filing Fee and Administrative Fee is granted.**

Rickie Walker ("Debtor-in-Possession") filed the instant Motion for an Extension of Time to Pay the Unpaid Filing Fee and Administrative Fee on June 17, 2015. Dckt. 43.

The Debtor-in-Possession is requesting the court to extend the time until July 14, 2015 for Debtor-in-Possession to make his final bankruptcy petition payment. The Debtor-in-Possession states that he owes the final installment of \$429.00 which was due on June 24, 2015. Dckt. 5.

The Debtor-in-Possession states that a change of circumstances has caused him to miss his final installment payment. The Debtor-in-Possession states that he had to travel to Los Angeles to pick up his elderly aunt and bring her back to Sacramento to care for her due to her ailing health. Due to this travel, Debtor-in-Possession missed one week of work which caused the financial hardship.

The Debtor-in-Possession requests the relief pursuant to 11 U.S.C. § 105(a) and on the ground that such extension would not cause any prejudice to creditors.

Pursuant to Fed. R. Bankr. P. 1006(b)(2), a debtor's total number of installment payments cannot exceed four, and the final installment payment must be made on or before 120 days from the date of filing. Fed. R. Bankr. P. 1006(b)(2). However, for cause shown, the court may extend the time of any installment to on or before 180 days from the date of filing. *Id.*

According to the court's calculation, 180 days from the day of filing the petition falls on August 23, 2015.

The court finds that the unexpected financial hardship due to the care of the Debtor-in-Possession's ailing aunt is sufficient cause to extend the time for the final installment payment. Because it is less than 180 days from the filing of this case and cause shown, the Motion for an Extension to Pay the Unpaid Filing Fee and Administrative Fee is granted and the Debtor-in-Possession shall pay the final installment fee of \$429.00 on or before July 14, 2015. FN.1.

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FN.1. In reviewing Amended Schedule D, the court notes that the only "creditors" having secured claims is the entity "Specialized Loan Servicing, LLC." Dckt. 31. Specialized Loan Servicing, LLC and other similar entities (many with the word "servicing" in their name) regularly appear in bankruptcy courts across the country and make it clear that they are merely the loan servicer (agent) for the actual creditor. It has also been made clear by such servicer and the actual creditors that the loan servicer is not the agent for service of process for the creditor.

Proof of Claim No. 9 filed in this case is for U.S. Bank, N.A., Trustee, asserting a secured claim in the amount of \$505,085.67 in this case. The collateral for the claim is the 3830 Whitney Oaks Dr. Property. Specialized Loan Servicing, LLC is listed as the place where notices (which are not service of process) and payments are to be sent. Proof of Claim No. 9 clearly lists U.S. Bank, N.A., Trustee, as the creditor, as that term is defined in the Bankruptcy Code. 11 U.S.C. § 101(10) and (5).

Proof of Claim No. 10 has been filed, naming Wilmington Trust, N.A., Trustee, as a creditor having a \$1,692,111.72 secured claim. The collateral for this claim is also stated to be the 3830 Whitney Oaks Dr. Property. Again, Specialized Loan Servicing, LLC is listed in the portion of the proof of claim form where notices and payments are to be sent.

Neither of the above two entities asserting claims are listed by the Debtor in his Schedules or on the Mailing Matrix filed by the Debtor.

The court flags this issue to avoid a situation where the Debtor in

Possession believes he is engaging in litigation with a "creditor," the whole time merely litigating with an entity (the servicer) who is not the creditor and may well not have rights to be adjudicated in the contested matter or adversary proceeding.

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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 an Extension of Time to Pay the Unpaid Filing Fee and Administrative Fee filed by Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the Debtor-in-Possession shall pay the final installment payment of \$429.00 on or before July 14, 2015.