

2. [11-31811](#)-E-7 GEORGE KELLOGG CONTINUED MOTION TO REDEEM
RPH-4 Robert P. Huckaby VEHICLE
11-3-13 [[94](#)]

CONT. FROM 11-19-13

Local Rule 9014-1(f)(2) - Continued Hearing.

Correct Notice Provided. No proof of service was provided in support of the Motion to Redeem. However, Wells Fargo Bank, N.A. appeared at the prior hearing and advised the court it would accept service and assert its opposition after continued hearing.

Tentative Ruling: The Motion for Redemption of Personal Property not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 1007(b)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion for Redemption of Personal Property. 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:

PRIOR HEARING

Debtor seeks to redeem a 2007 Subaru vehicle from Wells Fargo Dealer Services pursuant to 11 U.S.C. § 722.

However, the no proof of service has been filed with the court in support of the motion. A proof of service was filed around the date of the filing of the motion, but it states that a Notice of the Chapter 13 case, a Notice of Motion to Value Collateral and a Chapter 13 plan were served on Wells Fargo Dealer Services, Lawrence J. Loheit and the Office of the U.S. Trustee on May 27, 2011 (well over three years ago). Dckt. 97. The Chapter 7 Trustee in this Chapter 7 case is Douglas M. Whatley. This Proof of Service does not appear to apply to the present motion.

Furthermore, on the California Secretary of State's website, Wells Fargo Dealer Services, Inc. appears to be "merged out." Wells Fargo Dealer Services website states "Wells Fargo Dealer Services is a division of Wells Fargo Bank, N.A. Member FDIC and Equal Credit Opportunity Lender." FN.1.

Therefore, service to this creditor must be pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

FN.1. <http://www.wellsfargodealerservices.com/>

Counsel for Wells Fargo Bank, N.A. appeared at the hearing and advised the court that Wells Fargo Dealer Services, Inc. has been merged into Wells Fargo Bank, N.A. which had not been served and was not named in the Motion. However, the Bank would accept being the real party in interest and requested setting a briefing schedule so it could assert its opposition. Wells Fargo Bank, N.A. is substituted in as the real party in interest whose rights are the subject of this motion.

The court continued the hearing to allow Wells Fargo Bank, N.A. to file written opposition and for Debtor to respond.

CREDITOR'S OPPOSITION

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") filed opposition to the motion to redeem on the grounds that Debtor has failed to satisfy the requirements of 11 U.S.C. § 722 and that Debtor's valuation of the vehicle is not realistic.

Creditor argues Debtor has not claimed an exemption in the Vehicle as Debtor's Schedule C does not provide a value to be exempted. Creditor states by listing a \$0.00 exemption, Debtor has not claimed an exemption and is not eligible to redeem the vehicle. Creditor states the Trustee has not abandoned the vehicle under section 554.

Creditor also argues that based on the *N.A.D.A. Official Used Car Guide* the valuation of the vehicle is \$9,750.00.

DEBTOR'S REPLY

Debtor states that the case has been converted to a Chapter 7, the Trustee filed a finding of no assets to distribute to creditors and the debtor's discharge has been entered. Debtor states this means that all of debtor's assets have been abandoned to him. Debtor states that the Creditor can either repossess and sell the collateral or can accept a payment from debtor to redeem the collateral for its liquidation value.

Debtor argues that the valuation of the vehicle is the liquidation value at the time of the motion to redeem the property. Debtor testifies that he tried to trade in or sell the vehicle and the only offers he could get were less than \$5,000.00. Debtor seeks to redeem the 2007 Subaru vehicle from its lien by paying Wells Fargo Bank, N.A. the amount of \$5,000.

DISCUSSION

Debtor seeks to redeem a 2007 Subaru from Wells Fargo Bank, N.A. pursuant to 11 U.S.C. § 722. Under the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt,

so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the property, not just to the Debtor's exempt interest in it. See H.R. Rep. No. 95-595, at 381 (1977). To redeem the property, the Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). FN.1. To determine the amount of the secured claim, the court looks to 11 U.S.C. § 506.

FN.1. § 722. Redemption

"An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title [11 USCS § 522] or has been abandoned under section 554 of this title [11 USCS § 554], by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

Under 11 U.S.C. § 506(a)(2) the replacement value for the vehicle is statutorily defined as follows,

"(2) If the debtor is an individual in a case under chapter 7 or 13 [11 USCS §§ 701 et seq. or 1301 et seq.], such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

The motion is accompanied by the Debtor's declaration. The Debtor seeks to value the property at a replacement value of \$5,000. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The lien on the vehicle's title secures a loan with a balance of approximately \$7,452.24 (while Creditor states the present balance is more than \$9,000).

In the declaration the Debtor provides the following information concerning the condition of the vehicle.

"7. Kelly Blue Book reports a trade-in value of this vehicle in fair condition of \$6,221.

8. The tires on the vehicle are worn to the point of not having legal tread depth on them, and the tire store quoted me \$1,637.40 for new tires, balancing and alignment (they are a special size).

9. I believe that my car is less than fair condition because it has problems with the transmission, does not have legal tires, has significant body damage, and has a modified interior for ham radios and no back seat."

Declaration, Dckt. 96.

Wells Fargo Bank, N.A. provides the court with evidence that the retail sale value, if the Debtor sought to replace the vehicle, is \$9,750.00, as set forth in the NADA Used Car Guide (which the court accepts as a guide used in the automobile industry for the determination of value of vehicle, in the same manner as the Kelley Blue Book). However, this does not take into account any of the repairs or work which must be made to the vehicle to get it to a "retail replacement value." On its face, the NADA valuation is for "Clean Retail" value. The "Rough Trade-In" Value is \$5,650.00 and the "Clean Trade-In" Value is \$7,375.00 stated in the NADA report provided by Wells Fargo Bank, N.A. Exhibit C, Dckt. 103. Wells Fargo Bank, N.A. excludes from its exhibit the definition of these terms. From the evidence provided by the Bank, the court concludes that these value represent what the value of the vehicle is without the necessary repairs to get it to the "retail replacement value."

Between Wells Fargo Bank, N.A. providing no repair or condition information, unrealistically believing that the vehicle is in pristine retail sale value and the Debtor providing only general condition descriptions, the court makes its value determination based on the evidence provided. Given all of the time the parties have had to prepare declarations, the court believes that the best evidence they could prepare (in light of the value of the vehicle and issues before the court) for the court.

The court concludes that the vehicle has a "retail replacement value," in its current condition to be \$6,925.00. This is computed by the court as follows: Clean Retail Value of \$9,750.00, less (\$850) for tires, alignment, and balancing, (\$825) for paint and body damage repairs, (\$525) for interior repairs, and (\$725) for transmission repairs.

A review of the docket shows that Debtor did not claim an value to exempt for the vehicle, nor has the Trustee abandoned the vehicle. "Claiming" \$0.00 as exempt in a vehicle is claiming nothing as exempt. An exemption in a vehicle is a dollar value amount, not claiming the vehicle itself as exempt.

Though the Debtor and counsel have been "tipped off" to this defect in Schedule C, no action has been taken to exempt even \$1.00 of value in the vehicle. Instead, the Debtor replies that the creditor can either take the vehicle or the amount that the Debtor and creditor agree as to the value. Reply, Dckt. 108. While Wells Fargo Bank, N.A. argues what may be legally, technically correct - while the Trustee states that it is a no asset case

and there clearly is no value in the vehicle for the estate - it has not been abandoned by the Trustee.

The court accepts the parties approach - they can either agree to a value or Wells Fargo Bank, N.A. can have the "financial pleasure" of taking this bald tire, interior damaged, dented, interior modified vehicle to the auto auction. (No pretense should be made that Wells Fargo Bank, N.A. will obtain the "retail replacement value" for its collateral.)

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

IT IS ORDERED that the motion is denied without prejudice.

3. [13-28039-E-7](#) SOHAIL AZIZ MOTION TO COMPEL ABANDONMENT
Richard E. Oriakhi 11-20-13 [58]

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 23 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Abandon Real Property has not been correctly set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion to Abandon Real Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion to Abandon was noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1). According to Local Bankruptcy Rule 9014-1(f)(1), 28 days'

notice is required. By the court's calculation, only 23 days' notice was provided. Incorrect service is sufficient ground to deny the Motion. The Motion to Compel Abandonment is denied.

OPPOSITION

The Chapter 7 Trustee also opposes the motion on several grounds. First, the Trustee notes that the Debtor did not give 28 days notice of the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Second, the Trustee has employed West Auctions, Inc. to sell certain vehicles listed in the schedules to which the Debtor has taken no exemption. Trustee states there are additional vehicles the Trustee will be selling since she has received information from West Auctions, Inc. that the values listed in the schedules do not accurately reflect what they could be sold for at auction.

Third, the Trustee states the miscellaneous tools referred to in the motion have not been exempted and the Trustee intends to sell those items.

Lastly, the Trustee argues that the motion does not state which vehicles he is seeking to abandon. The Trustee believes that there is value in at least thirteen of the vehicles listed plus the tools and the accounts receivable for three vehicles the debtor previously sold on payment schedules. The Trustee opposes the blanket abandonment of all vehicles and business assets.

DISCUSSION

The Debtor moves the court for an order abandoning certain business vehicles and miscellaneous shop tools and equipment. However, Debtor does not provide the specific assets to be abandoned. Based on the failure to provide sufficient service pursuant to Local Bankruptcy Rule 9014-1(f)(1) and the failure to provide the court with the specific assets to be abandoned, the motion is denied without prejudice.

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

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

The Motion to Abandon Property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied without prejudice.

4. [13-20051-E-7](#) TYRONE BARBER MOTION FOR COMPENSATION FOR RP
CAB-5 Cory A. Birnberg TAX & BOOKKEEPING,

ACCOUNTANT(S), FEES: \$3,360.00,
EXPENSES: \$0.00
10-25-13 [[131](#)]

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, all creditors, and Office of the United States Trustee on October 25, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Second Interim Application for 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).

The court's tentative decision is to continue the Second Interim Application for Fees to 10:30 a.m. on January 23, 2013. 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:

PROCEDURAL ISSUES

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

FEES REQUESTED

Cory A. Birnberg, Counsel for the Tyrone Barber, Debtor, makes a Second Interim Request for the Allowance of Accountancy Fees and Expenses in this case for Accountant, Renato Pempengco. The period for which the fees are requested is for the period August 31, 2013. The order of the court approving employment of counsel was entered on March 18, 2013.

However, this case was recently converted to one under Chapter 7 of the Bankruptcy Code, with interim trustee, Gary Farrar, being appointed on November 25, 2013. Therefore, the court continues the hearing on the fee

application in order for the Trustee to have reasonable time to review the documents.

Counsel for Debtor shall serve notice of the continued hearing on the Chapter 7 Trustee and U.S. Trustee.

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 Allowance of Fees and Expenses filed by 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 the hearing on the Motion is continued to 10:30 a.m. January 23, 2013.

IT IS FURTHER ORDERED that Counsel for Debtor shall serve notice of the continued hearing on the Chapter 7 Trustee, with the motion with supporting pleadings, and the U.S. Trustee on or before December 19, 2013.

5. [13-20051-E-7](#) TYRONE BARBER MOTION FOR COMPENSATION FOR
CAB-6 Cory A. Birnberg JOHN GUTHRIE, SPECIAL
COUNSEL(S), FEES: \$10,000.00,
EXPENSES: \$0.00
10-29-13 [[136](#)]

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, all creditors, and Office of the United States Trustee on October 29, 2013. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Application for 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).

The court's tentative decision is to deny the Motion for Disbursement of Fees to Family Law Counsel. 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:

PROCEDURAL ISSUES

Proof of Service & Notice

The Counsel did not provide Certificate of Service of Motion for Compensation for Fees. Local Bankruptcy Rule 9014-1(e)(1) requires that service of all pleadings filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court. Additionally, Local Bankruptcy Rule 9014-1(e)(1) requires a proof of service, in a form of a certificate of service, to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three(3) days after they are filed. Without a Certificate of Service, the Court left to speculate whether or not relevant parties received notice of the hearing. Defective service is grounds for denial of the motion.

Evidence in Support

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

FEES REQUESTED

Cory A. Birnberg, Counsel for the Tyrone Barber, Debtor, makes a Request for the Disbursement of Fees to Family Law Counsel, John Guthrie, who has been pursuing the Debtor's child support matter in Case No. RF04-134-982 in Alameda Superior Court.

Description of Services for Which Fees Are Requested

Counsel described tasks performed as preparing a motion to modify child support, and preparing income and expense declaration. Counsel also discusses a settlement conference regarding the child support issues. This work was performed in June and July 2013 and these services are described to retrieve the past due balance. Debtor requests the entry of an order authorizing the disbursement of \$10,000.00 from the family law counsel's trust account to pay the balance.

DISCUSSION

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).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney 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). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab 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 is obligated to consider:

(a) Is the burden of the probable cost of legal 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.

After reviewing the application, it is unclear what benefits the Counsel provided to the estate. From the brief description provided by Counsel in his Declaration, there appears to be a motion to modify child support, preparation of income and expense declaration and a declaration for mediation and to set aside an order.

Furthermore, while counsel provides several paragraphs of relevant case law on approval of attorney's fees, there is no legal analysis on how the fees charged by Mr. Guthrie are reasonable, how his rate is reasonable, what benefit he has provided to the estate, or any of the other factors stated above in determining whether to award attorney fees. The only information given is that Mr. Guthrie worked on a child support matter and a brief description is given of what occurred in June and July.

U.S. TRUSTEE'S OPPOSITION

The U.S. Trustee opposes the motion on the grounds that counsel paid himself without court authorization. The Trustee states that on September 30, 2013, the services bill shows the "new balance of client funds" to be \$2,000.00, not the \$10,000 retainer in addition to the \$2,000 authorized by the court's employment order of July 25, 2013. Trustee states it is unclear if counsel has the \$10,000 retainer in addition to the \$2,000, but Debtor's March 2013 monthly operating report bank statement shows March 11, 2013 "check paid" for \$10,000.00 with no payee identified. Trustee states counsel appears to have already paid himself \$6,167.80 from amounts received each month from Debtor without filing an application. Trustee states that Counsel should produce an accounting of funds received and disbursed and return unauthorized funds.

The Trustee also argues that Counsel charges \$350 per hour for all tasks on his professional services bills but most tasks listed lack sufficient detail to determine what was being accomplished. Most entries reference correspondence and telephone calls without any suggestion of what purpose each served.

The Trustee also argues that nothing has been provided from the family court file, or from Counsel's file, as evidence to support that the services rendered by Counsel were reasonably likely to benefit the debtor's estate or necessary to the administration of the case. There are only vague assertions of the existence of such evidence in the Motion, which cites (1) the existence of "an award of child support which has not been paid for the last 8 months," (2) that Counsel "recovered some of the outstanding child support owed," (3) "there was a motion to modify Child Support" (without identifying whose motion), (4) that "Barber was required to prepare an income and expense declaration," (5) that "Counsel filed a declaration for medication and to set aside the order" (without identifying what order), (6)

that "Counsel prepared income and expense declarations," (7) "prepared findings after hearing," and (8) "Counsel continued to prosecute the child support issue, and confer with the bankruptcy attorney re effect of stay, prepare child support calculations, settlement conference statement and requested a continuance of the settlement conference." Trustee argues that redaction may be appropriate, but evidence to support these tasks would be appropriate since the Court and parties in interest cannot merely check the bankruptcy court docket for such support as could be done when assessing the bankruptcy counsel's fees.

The court agrees that Counsel has not provided sufficient evidence that these fees benefitted the estate. Section 330(a)(4) only allows compensation for professionals that is reasonably likely to benefit the debtor's estate or is necessary to the administration of the case. Further, Counsel does not provide that \$350.00 is a reasonable rate for his services. No mention of similar rates for family law attorneys is provided nor is any experience by Mr. Guthrie. The Court is unable to determine whether the pleadings were properly served and whether the fees requested are reasonable under the circumstances. Therefore, the motion is denied without prejudice.

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

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

The Motion for Disbursement of Fees to Family Law Counsel filed by the 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 Motion is denied without prejudice.

6. [13-20051](#)-E-7 TYRONE BARBER OBJECTION TO CLAIM OF INTERNAL
CAB-7 Cory A. Birnberg REVENUE SERVICE, CLAIM NUMBER
3-1 NUMBER 4-1
11-1-13 [[139](#)]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Patricia Berry at the Internal Revenue Service on November 1, 2013. By the court's calculation, 41 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has not been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d).

The court's tentative decision is to overrule the Objection to Proof of Claim number 3-1 of Internal Revenue Service. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor objects to the allowance of the Internal Revenue Service Claim No. 3-1 and Amended Claim 4-1 on the grounds that he is not truly indebted to said claimant, that the claim was paid by the Debtor and that the Debtor filed the required returns.

However, there are several deficiencies with the motion.

SERVICE

First, Local Bankruptcy Rule 3007-1(c)(1) requires the motion and supporting pleadings be filed with 44 days' notice. Here, Debtor provided only 41 days' notice.

Second, Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1 Notice Requirements

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

For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

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

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a)
above; and,
- (3) Internal Revenue Service at the addresses specified
on the roster of governmental agencies maintained by
the Clerk.

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

PATRICIA BERRY
Internal Revenue Service
Insolvency Group 5
300 North Los Angeles St. M/S 5022
Los Angeles, CA 90012

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

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

PLEADINGS

The moving party filed the Notice and Proof of Service (the only documents filed for this matter) as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies,

declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

MOTION

There does not appear to be a motion tied with the Notice and Proof of Service filed together. Dckt 139. As the court does not have a proper motion before it, the relief requested cannot be considered.

EVIDENCE

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).

Here, Debtor has filed no evidence to support its motion. No declaration or exhibits appear on the docket in connection with this motion. Even if the court waived the service and the procedural defects of the filings, Debtor did not meet his burden of presenting substantial factual basis to overcome the prima facie validity of the Internal Revenue Service proof of claim.

Based on the evidence before the court, the Debtor's objection is overruled.

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

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

The Objection to Claim of Internal Revenue Service filed in this case 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 objection to Proof of Claim number 3-1 and 4-1 of Internal Revenue Service is overruled without prejudice.

7. [13-20051](#)-E-7 TYRONE BARBER MOTION TO CHANGE DESIGNATION
CAB-8 Cory A. Birnberg FROM SMALL BUSINESS DESIGNATION
11-6-13 [[147](#)]

Final Ruling: The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Change Designation, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Change Designation, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Change Designation.**

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.

A Motion to Change Designation having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Change Designation is dismissed without prejudice.

8. [10-23577](#)-E-11 GLORIA FREEMAN CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-16-10 [[1](#)]

Debtor's Atty: Pro Se

Notes:

Continued from 11/13/13 to be heard in conjunction with other matters on the calendar.

9. [10-23577](#)-E-11 GLORIA FREEMAN CONTINUED STATUS CONFERENCE RE:
WFH-31 ORDER TO SHOW CAUSE
3-1-13 [[571](#)]

Debtor's Atty: Pro Se

Notes:

Continued from 10/24/13 to allow for the appointment of the Chapter 7 Trustee in the Staff USA, Inc. case; possible settlement discussions; for the parties to establish a disclosure; and, discovery schedule and select possible dates for evidentiary hearing.

10. [10-23577-E-11](#) GLORIA FREEMAN CONTINUED OBJECTION TO DEBTOR'S
WFH-36 Pro Se CLAIM OF EXEMPTIONS
6-21-13 [[784](#)]

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 HEARING

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.

December 12, 2013 at 10:30 a.m.

- Page 18 of 49 -

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
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:

Assets As Stated On Fifth Amended Schedule C	Basis for Exemption	Amount Exempt	Value of Asset
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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 barstools, 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.

11. [12-30992-E-11](#) **MACHELLE HOLLOWAY** **MOTION TO USE CASH COLLATERAL**
RAS-7 **Scott D. Schwartz** **11-27-13 [299]**

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

Notice and Service appear to be correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on November 27, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 3707 N. California Street, Stockton, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period December 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through November 30, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently \$1,865 per month and the value of the Real Property was determined by stipulation with Indymac/Onewest Bank to be \$119,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through October 31, 2013 are summarized below:

Item	Amount
Rents collected	\$34,710.00
Insurance	\$1,197.00
Property taxes	\$1,988.00
Monthly payments to OneWest Bank	\$20,003.00
Total Payments	\$23,188.00

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to OneWest Bank at \$909.00 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through November 30, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor’s interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Debtor-in-Possession proposes the following budget:

	November	December	January	February	March
BEGINNING CASH BALANCE (U.S. BANK ACCT. 2 \$999		\$1,688	\$2,377	\$3,066	\$3,755
RECEIPTS					
Rents	\$1,865	\$1,865	\$1,865	\$1,865	\$1,865
Total Receipts	\$1,865	\$1,865	\$1,865	\$1,865	\$1,865
EXPENSES					
Reserve for repairs	\$100	\$100	\$100	\$100	\$100
Property Insurance	\$63	\$63	\$63	\$63	\$63
Property Taxes	\$104	\$104	\$104	\$104	\$104
Payments to OneWest Bank, N.A	\$909	\$909	\$909	\$909	\$909
Total Expenses	\$1,176	\$1,176	\$1,176	\$1,176	\$1,176
ENDING BALANCE THIS PERIOD	\$1,688	\$2,377	\$3,066	\$3,755	\$4,444

The court authorizes the use of cash collateral as requested through March 31, 2014, including the adequate protection payment to OneWest Bank. No objection has been raised to the use and the payments are reasonable and necessary to maintain Debtor's operations. The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Here, the adequate protection payment protects OneWest Bank's interests.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion to use cash collateral for the payment of the expenses is granted and the cash collateral may be used to pay the following expenses:

	November	December	January	February	March
BEGINNING CASH BALANCE (U.S. BANK ACCT. 2 \$999		\$1,688	\$2,377	\$3,066	\$3,755

RECEIPTS	\$1,865	\$1,865	\$1,865	\$1,865	\$1,865
Rents					
Total Receipts	\$1,865	\$1,865	\$1,865	\$1,865	\$1,865
EXPENSES	\$100	\$100	\$100	\$100	\$100
Reserve for repairs					
Property Insurance	\$63	\$63	\$63	\$63	\$63
Property Taxes	\$104	\$104	\$104	\$104	\$104
Payments to OneWest Bank, N.A	\$909	\$909	\$909	\$909	\$909
Total Expenses	\$1,176	\$1,176	\$1,176	\$1,176	\$1,176
ENDING BALANCE THIS PERIOD	\$1,688	\$2,377	\$3,066	\$3,755	\$4,444

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

12. [12-30992-E-11](#) **MACHELLE HOLLOWAY** **MOTION TO USE CASH COLLATERAL**
RAS-8 **Scott D. Schwartz** **11-27-13 [295]**

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on November 27, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 4535-4541-4547 Flint Avenue, Salida, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period January 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through November 30, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently \$3,180 per month and the value of the Real Property was determined by stipulation with Wells Fargo Bank, N.A. to be \$204,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through November 31, 2013 are summarized below:

Item	Amount
Rents collected	\$62,600
Insurance	\$2,717

Property taxes	\$6,327
Utilities	\$2,565
Building Maintenance and Repair	\$4,180
Monthly payments to Wells Fargo Bank, N.A	\$24,673
<hr/>	
Total Payments	\$37,219

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Wells Fargo Bank, N.A at \$1,127 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through November 30, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Debtor-in-Possession proposes the following budget:

BEGINNING CASH BALANCE (U.S. BANK ACCT. 2	November	December	January	February	March
	\$1,199	\$2,442	\$3,685	\$4,928	\$6,171
RECEIPTS	\$3,180	\$3,180	\$3,180	\$3,180	\$3,180
Rents					
Total Receipts	\$3,180	\$3,180	\$3,180	\$3,180	\$3,180
EXPENSES	\$200	\$200	\$200	\$200	\$200
Reserve for repairs					
Property Insurance	\$143	\$143	\$143	\$143	\$143
Property Taxes	\$333	\$333	\$333	\$333	\$333
Payments to Wells Fargo Bank, N.A	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126
Utilities	\$135	\$135	\$135	\$135	\$135
Total Expenses	\$1,937	\$1,937	\$1,937	\$1,937	\$1,937
ENDING BALANCE THIS PERIOD	\$2,442	\$3,685	\$4,928	\$6,171	\$7,414

The court authorizes the use of cash collateral as requested through March 31, 2014, including the adequate protection payment to Wells Fargo Bank, N.A. No objection has been raised to the use and the payments are reasonable and necessary to maintain Debtor's operations. The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Here, the adequate protection payment protects Wells Fargo Bank, N.A.'s interests.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion to use cash collateral for the payment of the expenses is granted and the cash collateral may be used to pay the following expenses:

BEGINNING CASH BALANCE (U.S. BANK ACCT. 2	November	December	January	February	March
	\$1,199	\$2,442	\$3,685	\$4,928	\$6,171
 RECEIPTS					
Rents	\$3,180	\$3,180	\$3,180	\$3,180	\$3,180
Total Receipts	\$3,180	\$3,180	\$3,180	\$3,180	\$3,180
 EXPENSES					
Reserve for repairs	\$200	\$200	\$200	\$200	\$200
Property Insurance	\$143	\$143	\$143	\$143	\$143
Property Taxes	\$333	\$333	\$333	\$333	\$333
Payments to Wells Fargo Bank, N.A	\$1,126	\$1,126	\$1,126	\$1,126	\$1,126
Utilities	\$135	\$135	\$135	\$135	\$135
Total Expenses	\$1,937	\$1,937	\$1,937	\$1,937	\$1,937
 ENDING BALANCE THIS PERIOD					
	\$2,442	\$3,685	\$4,928	\$6,171	\$7,414

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition

proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

13. [12-30992-E-11](#) MACHELLE HOLLOWAY MOTION TO USE CASH COLLATERAL
RAS-9 Scott D. Schwartz 11-27-13 [[282](#)]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on November 27, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 2890 E. Huntington Blvd #159, Fresno, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period December 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through November 30, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently \$895 per month and the value of the Real Property is \$105,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through November 30, 2013 are summarized below:

Item	Amount
Rents collected	\$17,005.00
Insurance	\$380.00
Property taxes	\$2,204.00
Home Owner's Association Dues	\$5,415.00
Payments to Chase Bank, N.A.	\$16,055.00
Total Payments	\$24,054.00

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Chase Bank, N.A. at \$845.00 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through November 30, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. §

363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Debtor-in-Possession proposes the following budget:

	November	December	January	February	March
BEGINNING CASH BALANCE (U.S. BANK ACCT. 1	\$1,000	\$1,047	\$1,094	\$1,141	\$1,188
RECEIPTS					
Rents	\$895	\$895	\$895	\$895	\$895
Deposit from retirement account	\$400	\$400	\$400	\$400	\$400
Total Receipts	\$1,295	\$1,295	\$1,295	\$1,295	\$1,295
EXPENSES					
Property Insurance	\$20	\$20	\$20	\$20	\$20
Property Taxes	\$116	\$116	\$116	\$116	\$116
Reserve for repairs	\$100	\$100	\$100	\$100	\$100
Payments to Chase Bank, N.A.	\$844	\$844	\$844	\$844	\$844
Homeowner's Dues	\$285	\$285	\$285	\$285	\$285
Utilities	\$19	\$19	\$19	\$19	\$19
Total Expenses	\$1,248	\$1,248	\$1,248	\$1,248	\$1,248
ENDING BALANCE THIS PERIOD	\$1,047	\$1,094	\$1,141	\$1,188	\$1,235

The court authorizes the use of cash collateral as requested through March 31, 2014, including the adequate protection payment to Chase Bank, N.A. No objection has been raised to the use and the payments are reasonable and necessary to maintain Debtor's operations. The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Here, the adequate protection payment protects Chase Bank, N.A.'s interests.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion to use cash collateral for the payment of the expenses is granted and the cash collateral may be used to pay the following expenses:

	November	December	January	February	March
BEGINNING CASH BALANCE (U.S. BANK ACCT. 1 \$1,000	\$1,047	\$1,047	\$1,094	\$1,141	\$1,188
RECEIPTS	\$895	\$895	\$895	\$895	\$895
Rents					
Deposit from retirement account	\$400	\$400	\$400	\$400	\$400
Total Receipts	\$1,295	\$1,295	\$1,295	\$1,295	\$1,295
EXPENSES	\$20	\$20	\$20	\$20	\$20
Property Insurance					
Property Taxes	\$116	\$116	\$116	\$116	\$116
Reserve for repairs	\$100	\$100	\$100	\$100	\$100
Payments to Chase Bank, N.A.	\$844	\$844	\$844	\$844	\$844
Homeowner's Dues	\$285	\$285	\$285	\$285	\$285
Utilities	\$19	\$19	\$19	\$19	\$19
Total Expenses	\$1,248	\$1,248	\$1,248	\$1,248	\$1,248
ENDING BALANCE THIS PERIOD	\$1,047	\$1,094	\$1,141	\$1,188	\$1,235

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

14. [12-30992-E-11](#) MACHELLE HOLLOWAY
RAS-10 Scott D. Schwartz

MOTION TO USE CASH COLLATERAL
11-27-13 [[287](#)]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on November 27, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 3212 Ingalls Street, San Francisco, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period December 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through November 30, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently \$2,800 per month and Debtor-in-Possession values the Real Property at approximately \$375,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages

maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through November 30, 2013 are summarized below:

Item	Amount
Rents collected	\$53,200
Insurance	\$1,843
Property taxes	\$2,204
Building Maintenance and Repair	\$1,500
Payments to Wells Fargo Bank	\$47,519
<hr/> Total Payments	<hr/> \$53,066

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Wells Fargo Bank, N.A at \$2,501 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through November 30, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Debtor-in-Possession proposes the following budget:

	November	December	January	February	March
BEGINNING CASH BALANCE (U.S. BANK ACCT. 2	\$2,229	\$2,240	\$2,251	\$2,262	\$2,273
RECEIPTS					
Rents	\$2,800	\$2,800	\$2,800	\$2,800	\$2,800
Total Receipts	\$2,800	\$2,800	\$2,800	\$2,800	\$2,800
EXPENSES					
Reserve for repairs	\$75	\$75	\$75	\$75	\$75
Property Insurance	\$116	\$116	\$116	\$116	\$116
Property Taxes	\$97	\$97	\$97	\$97	\$97
Payments to Wells Fargo Bank, N.A	\$2,501	\$2,501	\$2,501	\$2,501	\$2,501
Total Expenses	\$2,789	\$2,789	\$2,789	\$2,789	\$2,789
ENDING BALANCE THIS PERIOD	\$2,240	\$2,251	\$2,262	\$2,273	\$2,284

The court authorizes the use of cash collateral as requested through March 31, 2014, including the adequate protection payment to Wells Fargo Bank, N.A. No objection has been raised to the use and the payments are reasonable and necessary to maintain Debtor's operations. The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Here, the adequate protection payment protects Wells Fargo Bank, N.A.'s interests.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion to use cash collateral for the payment of the expenses is granted and the cash collateral may be used to pay the following expenses:

	November	December	January	February	March
BEGINNING CASH BALANCE (U.S. BANK ACCT. 2	\$2,229	\$2,240	\$2,251	\$2,262	\$2,273
RECEIPTS					
Rents	\$2,800	\$2,800	\$2,800	\$2,800	\$2,800
Total Receipts	\$2,800	\$2,800	\$2,800	\$2,800	\$2,800
EXPENSES					
Reserve for repairs	\$75	\$75	\$75	\$75	\$75
Property Insurance	\$116	\$116	\$116	\$116	\$116
Property Taxes	\$97	\$97	\$97	\$97	\$97

Payments to Wells Fargo Bank, N.A	\$2,501	\$2,501	\$2,501	\$2,501	\$2,501
Total Expenses	\$2,789	\$2,789	\$2,789	\$2,789	\$2,789
ENDING BALANCE THIS PERIOD	\$2,240	\$2,251	\$2,262	\$2,273	\$2,284

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

15. [12-30992-E-11](#) **MACHELLE HOLLOWAY** **MOTION TO USE CASH COLLATERAL**
RAS-11 **Scott D. Schwartz** **11-27-13 [291]**

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on November 27, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 3428 Ladd Tract Ct, Stockton, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period December 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through November 30, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently \$1,150 per month and Debtor-in-Possession values the Real Property at approximately \$90,500. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through November 30, 2013 are summarized below:

Item	Amount
Rents collected	\$21,850
Insurance	\$874
Property taxes	\$2,204
Monthly payments to Seterus, Inc.	\$10,925
Total Payments	\$14,003

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Seterus, Inc. Servicing Agent for Federal National Mortgage Association (Fannie Mae) at \$575 per month up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through November 30, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Debtor-in-Possession proposes the following budget:

BEGINNING CASH BALANCE (U.S. BANK ACCT. 2	November	December	January	February	March
	\$2,229	\$2,542	\$2,855	\$3,168	\$3,481
RECEIPTS					
Rents	\$1,150	\$1,150	\$1,150	\$1,150	\$1,150
Total Receipts	\$1,150	\$1,150	\$1,150	\$1,150	\$1,150
EXPENSES					
Property Insurance	\$46	\$46	\$46	\$46	\$46
Property Taxes	\$116	\$116	\$116	\$116	\$116
Reserve for repairs	\$100	\$100	\$100	\$100	\$100
Payments to Seterus, Inc. Servicing Agent for Federal National Mortgage Association (Fannie Mae)	\$575	\$575	\$575	\$575	\$575
Total Expenses	\$837	\$837	\$837	\$837	\$837
ENDING BALANCE THIS PERIOD	\$2,542	\$2,855	\$3,168	\$3,481	\$3,794

The court authorizes the use of cash collateral as requested through March 31, 2014, including the adequate protection payment to Seterus, Inc. Servicing Agent for Federal National Mortgage Association (Fannie Mae). No objection has been raised to the use and the payments are reasonable and necessary to maintain Debtor's operations. The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Here, the adequate protection payment protect Seterus, Inc. Servicing Agent for Federal National Mortgage Association (Fannie Mae)'s interests.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion to use cash collateral for the payment of the expenses is granted and the cash collateral may be used to pay the following expenses:

BEGINNING CASH BALANCE (U.S. BANK ACCT. 2	November	December	January	February	March
	\$2,229	\$2,542	\$2,855	\$3,168	\$3,481
RECEIPTS					
Rents	\$1,150	\$1,150	\$1,150	\$1,150	\$1,150
Total Receipts	\$1,150	\$1,150	\$1,150	\$1,150	\$1,150
EXPENSES					
Property Insurance	\$46	\$46	\$46	\$46	\$46
Property Taxes	\$116	\$116	\$116	\$116	\$116
Reserve for repairs	\$100	\$100	\$100	\$100	\$100
Payments to Seterus, Inc. Servicing Agent for Federal National Mortgage Association (Fannie Mae)	\$575	\$575	\$575	\$575	\$575
Total Expenses	\$837	\$837	\$837	\$837	\$837
ENDING BALANCE THIS PERIOD	\$2,542	\$2,855	\$3,168	\$3,481	\$3,794

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

16. [12-30992-E-11](#) MACHELLE HOLLOWAY CONTINUED MOTION TO USE CASH
RAS-12 Scott D. Schwartz COLLATERAL
10-23-13 [[221](#)]

Final Ruling: The court having entered an Order approving the Stipulation for Use of Cash Collateral as to the Real Property Located at 2120 Quaker Ridge Court, Stockton, California, Dckt. 281, the Stipulation signed between the parties containing the pertinent terms, Dckt. 276, the hearing on this matter is **removed from the calendar**. No appearance required at the December 12, 2013 hearing.

17. [11-48050-E-7](#) STAFF USA, INC. CONTINUED MOTION FOR ORDER TO
MHK-4 W. Austin Cooper SHOW CAUSE
7-18-13 [[257](#)]

CONT. FROM 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.

No Tentative Ruling: 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 -----. 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:

PRIOR HEARING

Jon Tesar, Chapter 11 Trustee requests 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.

Bankruptcy Case	Representation by W. Austin Cooper	Date Filed	Document/Pleading
Guong Van Nguyen 13-33040	Attorney for Debtor	October 5, 2013	Chapter 13 Petition
Anh Hoang Tran 13-32627	Attorney for Debtor	September 27, 2013 October 10, 2013	Chapter 7 Petition Motion to Extend Time to File Schedules and Statement of Financial Affairs
Justin and Tiffany Smith 13-29842	Attorney for Debtor	July 26, 2013 September 4, 2013	Chapter 7 Petition, Schedules, Statement of Financial Affairs First Meeting of Creditors Completed
Robert and Glalynn Baird 13-29471	Attorney for Debtor	July 17, 2013 August 28, 2013	Chapter 7 Petition, Schedules, Statement of Financial Affairs First Meeting of Creditors Completed
Kristan Hartman 13-27725	Attorney for Debtor	July 9, 2013 July 23, 2013 July 25, 2013 August 2, 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

		August 29, 2013	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
Coate v. Samra 13-02158	Attorney for Defendant	June 10, 2013	Answer
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
Steven Samra 13-22486	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
Samra v. Ag-Seeds Unlimited 13-02011	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
Reynoso v. Johnson 13-02003	Attorney for Plaintiff	January 3, 2013	Complaint Filed
		August 8, 2013	Civil Minutes, Claims Dismissed Against One Defendant

Wayne v. Morison 12-02438	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
Vitton Assavarungnir und 11-49125	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.

DECEMBER 12, 2013 HEARING

No updates have been filed to date.