

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 8, 2015 at 1:30 p.m.

1. [13-22028](#)-E-13 FAITH EVANS
[14-2105](#) BLG-1
EVANS V. MOULTON ET AL

MOTION TO COMPEL AND/OR MOTION
TO HAVE ALL REQUESTS FOR
ADMISSIONS DEEMED ADMITTED ,
MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR CHAD M. JOHNSON,
PLAINTIFFS ATTORNEY(S).
12-16-14 [[22](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Defendants on December 16, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Compel Discovery and to Have All Requests for Admissions Deemed Admitted and Request for Attorney Fees and Costs was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

The Motion to Compel Discovery and to Have All Requests for Admissions Deemed Admitted and Request for Attorney Fees and Costs is granted.

Faith Evans ("Plaintiff-Debtor") files a Motion to Compel Discovery and to Have All Requests for Admissions Deemed Admitted and Request for Attorney Fees and Costs against the Defendant Daniel Moulton ("Defendant").

On August 13, 2014, the Plaintiff-Debtor served her: (1) Plaintiff-Debtor's Fed. R. Civ. P. 26 Disclosures; (2) Plaintiff-Debtor's Interrogatories to Defendant Daniel Moulton Set One; (3) Plaintiff-Debtor's Requests for Admissions to Daniel Moulton, Set One; (4) Plaintiff-Debtor's Request for Admissions to Defendant Daniel Moulton, Set One; (5) Plaintiff-Debtor's Request for Production of Documents from Defendant Daniel Moulton, Set One. Responses were due September 15, 2014. More than thirty days have elapsed from the date responses were due.

On September 24, 2014, Plaintiff-Debtor's attorney sent a letter to the Defendant directly believing that he may actually not be represented by Mr. McCann. Defendant was given until October 24, 2014 to respond to the discovery request.

On October 22, 2014, Mr. McCann emailed Plaintiff-Debtor's attorney stating that he would like to set the disposition of the Plaintiff-Debtor and was working on the responses to the discovery and would have them completed shortly. Plaintiff-Debtor's attorney responded on October 24, 2014 asking for clarification of whether Mr. McCann is in fact representing the Defendant and agreed to give an extension for answering until Monday, November 3, 2014. To date, Mr. McCann has not responded.

The court's scheduling order required that initial disclosures be due by August 4, 2014 and discovery, including the hearing of all discovery motions, to close on December 31, 2014. Dckt. 14.

Plaintiff-Debtor requests, pursuant to Federal Rule of Bankruptcy Procedure 7037, which also applies Federal Rule of Civil Procedure 37 to these proceedings, the following orders and relief:

- a) Compelling Defendant to respond to Plaintiff-Debtor's Initial Disclosures on or before 12:00 noon January 30, 2015
- b) Compelling Defendant to respond to Plaintiff-Debtor's Interrogatories to Defendant Daniel Moulton Set One on, without objection, or before 12:00 noon January 30, 2015;
- c) Compelling Defendant to respond to Plaintiff-Debtor's Production of Documents from Defendant Daniel Moulton Set One on, without objection, or before 12:00 noon January 30, 2015;
- d) Deeming all Requests for Admission, attached as Exhibit B, be deemed admitted, or in the alternative, compelling Defendant to respond to Plaintiff-Debtor's Requests for Admissions to Daniel Moulton, Set One on or before 12:00 noon

January 8, 2015 at 1:30 p.m.

January 30, 2015;

e) All responses to discover is to be delivered by the deadline stated herein in hard copy form to the office of Bankruptcy Law Group, 1851 Heritage Lane, Suite 298, Sacramento, California 95815;

e) Defendant's Discovery period is closed as of December 30, 2014 per the court's Scheduling Order;

f) Plaintiff-Debtor's Discovery period is extended for cause with a new closure date of March 30, 2015;

g) Defendant Daniel Moulton is to pay Plaintiff-Debtor's counsel attorney fees in the amount of \$875.00 within 15 days of the date of this order.

APPLICABLE LAW

Federal Rule of Civil Procedure 37(a)(1), made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7037, requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." Federal Rule of Civil Procedure 37 Civil Rule 37(c) sanctions the failure to supplement discovery responses.

The certification requirement of Federal Rule of Civil Procedure 37(a)(1) was described in *Shuffle Master v. Progressive Games*, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

[T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2)conferred or attempted to confer. Each of these two sub components must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170. The court went further, stating that "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" 170 F.R.D. at 171.

Initial Disclosures

The Federal Rules of Civil Procedure relating to discovery during litigation, Rules 26 and 28 to 37, apply in bankruptcy cases, in both contested matters and adversary proceedings, by virtue of incorporation by reference. Fed. R. Bankr. P. 7026 to 7037 and 9014.

Subdivision (a)(1) of Civil Rule 26 narrows the required disclosures to that information that the disclosing party intends to use to support its position. The use may include support of a claim or a defense. It includes any stage of the litigation from discovery, to motion, to trial. Although the required disclosures are narrowed, the court retains the authority to order the discovery of matters relevant to the subject of the action. F. R. Civ. P. 26(b). The initial disclosures must be made within 14 days after the parties have conferred pursuant to Rule 26(f). F. R. Civ. P. 26(a)(1).

Matters Deemed Admitted

Federal Rules of Bankruptcy Procedure 7036 and 7056 provide that requests for admissions are deemed admitted unless they are denied within 30 days after service of the request. Any matter admitted under Federal Rule of Civil Procedure 36 is "conclusively established unless the court on motion permits withdrawal or amendment of the admission."

DISCUSSION

In this case, Plaintiff-Debtor's counsel has made repeated attempts to reach out to Defendant and Defendant's apparent counsel in order to rectify Defendant's failure at providing any requested discovery. Plaintiff-Debtor's counsel attempted to contact both the Defendant (who at the time was still listed as a pro se defendant) and Mr. McCann in order to "meet and confer." Plaintiff-Debtor's counsel was amicable enough to even give more than a month extension at turning over the requested documents, interrogatories, and admissions from September 15, 2014 to October 24, 2014. Defendant and Defendant's counsel, however, ignored this courtesy and waited to respond until the October 24, 2014 deadline, seeking to set deposition time and with the (unfulfilled) promise of having the discovery responses ready "shortly."

Plaintiff-Debtor and Plaintiff-Debtor's counsel have made a good faith effort in resolving this discovery dispute without the need for court intervention, making repeated attempts to contact the Defendant and Defendant's counsel.

Admissions Have Been Made by Defendant

The Defendant has not provided responses to the Plaintiff's Requests for Admissions, Request for Production of Documents from Defendant Daniel Moulton Set One, nor Plaintiff's interrogatories to Defendant Daniel Moulton Set One to date. More than 30 days have passed since the service of Plaintiff's Requests on August 13, 2014.

Since Defendant has not provided responses to these requests the matters in Plaintiff's Requests for Admissions, Exhibits B, Dckt. 25 are deemed admitted under Federal Rules of Bankruptcy Procedure 7036 and 7056. The matters will be conclusively deemed admitted for the purposes of the adversary case. Moreover, Defendant, having failed to comply with the court's scheduling order and not providing timely responses to the Plaintiff, is barred from offering opposing evidence at trial to counter that which Defendant has admitted through discovery.

Production of Documents

At the heart of the Complaint in this Adversary Proceeding is the contention that the Defendant has improperly taken and retained property of the bankruptcy estate. Complaint, Dckt. 1. In connection with the bankruptcy case some of the assets have been recovered, with the determination of ownership pending in this Adversary Proceeding. Order Granting Motion to Sell Liquor License, Dckt. 54. Others await not only this determination, but the location of the assets. Proceeds from Sale of Rhodes Lane Property and from sale of Liquor Store, Complaint, Dckt. 1.

While the Plaintiff has presented the court with a copy of the Request for Admissions (Exhibit B, Dckt. 25), the court has not been provided with a copy of the Interrogatories or Request for Production of Documents. Because the court is being requested to order that specific Responses be made and specific Documents produced, or else the court will issue sanctions (including the striking of the answer), the court must be provided with such documents so that it knows what it is ordered to occur.

Federal Rule of Civil Procedure 37(a)(3) and Federal Rule of Bankruptcy Procedure 7037 provide that upon the failure to provide a Response to Interrogatories or Production of Documents the court may compel such Responses and Productions, and order appropriate sanctions. The sanctions which may be ordered by the court include:

- (1) directing that the matters or facts which are the subject of the discovery are established for the adversary proceeding as asserted by the requesting party;
- (2) prohibiting the party failing to produce the discovery from supporting or opposing designated claims or defendants, or introducing designated matters into evidence with relate to the discovery;
- (3) Striking pleadings (including the Answer), in whole or in part;
- (4) Issuing a default judgment against the party failing to provide the Responses or Produce the Documents; or
- (5) Treating as contempt of a federal court order the failure to comply with the order to provide Responses to the Interrogatories or Produce the Documents.

The court continues the hearing to afford the Plaintiff the opportunity to file supplemental exhibits of these documents.

For any Responses required or Documents order to be produced, the court shall also order the contingent sanctions or one or more of the above for the failure to comply with the court's order compelling the Responses and Production of Documents.

Initial Disclosures

Plaintiff also requests that the court order the Defendant to comply with Federal Rule of Civil Procedure 26(a)(1) and Federal Rule of Bankruptcy Procedure 7026, and provide the required initial disclosures. Federal Rule of Civil Procedure 37(a)(3) and Federal Rule of Bankruptcy Procedure 7037 provide that upon the failure to provide Initial Disclosures the court may compel such Disclosures and order appropriate sanctions.

The Court shall order that the Defendant provide the required Rule 26(a)(1) Initial Disclosures by a date certain, and if Defendant fails to do so, order appropriate sanctions as addressed above.

REQUEST FOR ATTORNEY FEES

For a party seeking reasonable payment of expenses in bringing a motion for an order to compel discovery, Federal Rule of Civil Procedure Rule 37(a)(5) states "If the motion is granted-or if the disclosure or requested discovery is provided after the motion was filed-the Court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movement's reasonable expenses incurred in making the motion, including attorney's fees".

Plaintiff-Debtor provides the Declaration of Patricia Wilson in support of the Motion and request for attorney fees. Dckt. 24. Ms. Wilson is one of the attorneys representing Plaintiff-Debtor in the instant matter and is an attorney with Bankruptcy Law Group. The declaration states that Plaintiff-Debtor has incurred \$875.00 in attorneys fees in connection with the instant Motion. Specifically, the declaration reflects that there was a total of 6.7 hours involved in the discovery efforts of Plaintiff-Debtor and the preparation of the instant Motion to Compel. The declaration reflects that Plaintiff-Debtor's counsel is only seeking reimbursement for the 1.5 hours done to prepare draft of Motion to Compel, Declaration & Exhibits (\$525.00) and the 1.0 of the 2.0 hours done to prepare for, travel to, and attend the hearing on Motion to Compel (\$350.00). The remaining costs and services were not charged. The declaration states that the services were performed by Chad Johnson, another attorney at the Bankruptcy Law Group. Mr. Johnson charged a rate of \$350.00 for the services performed.

These court finds these fees and expenses to be reasonable and necessary in bringing the Motion to Compel for the Production of Documents, Exclusion of Evidence by Defendants, and Compensation.

The court will issue one final order compelling discovery and the granting of attorney fees following the continued January 23, 2015 hearing.

CAUSE FOR EXTENDING DISCOVERY SHOWN

The Motion before the court was filed on December 16, 2014, prior to the expiration of the Discovery Deadline in this case. The court had no hearing dates when a motion in this Adversary Proceeding could have been specially set after December 18, 2014. Due to the unavailability of hearing dates, the court also extends discovery, only for the Interrogatories, Documents, and Initial Disclosures which were requested or due prior to December 31, 2014. The court does not "reopen discovery" for either party.

ISSUANCE OF A COURT DRAFTED ORDER

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Compel filed by the Plaintiff 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 Default of Daniel Moulton in connection with the Motion is entered.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to 2:30 p.m. on January 21, 2015 (specially set to that calendar).

IT IS FURTHER ORDERED that on or before January 15, 2015, Plaintiff shall file and serve Supplemental Exhibits consisting of the Written Interrogatories and Requests for Production previously served for which the Order Compelling Discovery is presented.

The Order Compelling Discovery shall also provide that failure to comply with that Order may result in the court issuing appropriate sanctions pursuant to Federal Rule of Civil Procedure 37(a)(3) and Federal Rule of Bankruptcy Procedure 7037 provide that upon the failure to provide a Response to Interrogatories or Production of Documents the court may compel such Responses and Productions, and order appropriate sanctions. The sanctions which may be ordered by the court include: (1) directing that the matters or facts which are the subject of the discovery are established for the adversary proceeding as asserted by the requesting party; (2) prohibiting the party failing to produce the discovery from supporting or opposing designated claims or defendants, or introducing designated matters into evidence with relate to the discovery; (3) Striking pleadings (including the Answer), in whole or in part; (4) Issuing a default judgment against the party failing to provide the Responses or Produce the Documents; or (5) Treating as contempt of a federal court order the failure to comply with the order to provide Responses to the Interrogatories or Produce the Documents.

In addition to the parties and attorney(s) of record, the Clerk of the Court shall serve an informational copy of this Order on:

Robert McCann, Esq.
McCann, McCann and Associates
2100 Watt Ave, Ste 100
Sacramento, CA 95825

2. [10-23577](#)-E-11 GLORIA FREEMAN
WFH-31

AMENDED MOTION FOR ORDER
REOPENING THE PERIOD FOR
LODGING DIRECT TESTIMONY
STATEMENTS AND EXHIBITS .
12-17-14 [[1561](#)]

**APPEARANCE OF THE PARTIES/COUNSEL REQUIRED FOR THE
JANUARY 8, 2015 HEARING FOR THE COURT TO SET A
DATE FOR THE EVIDENTIARY HEARING IN LIGHT OF
ALLOWING THE FILING OF THE ADDITIONAL DOCUMENTS**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on December 17, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Order Reopening the Period for Lodging Direct Testimony Statements and Exhibits was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Chapter 11 Trustee has filed a Statement of Non-Opposition to the requested relief. Dckt. 1572. The Non-Opposition does not waive any evidentiary or other objections to such evidence, other than it not having been timely lodged with the court pursuant to the court's original scheduling order.

The Motion for Order Reopening the Period for Lodging Direct Testimony Statements and Exhibits is granted.

W. Austin Cooper filed a Motion for Order Reopening the Period for Presentation of Direct Testimony on December 11, 2014. Dckt. 1530. On December 12, 2014, the court issued an Order on the Motion stating that the December 11th Motion failed to comply with Fed. R. Bankr. P. 9013. Dckt. 1543. Instead of denying the Motion, the court ordered that on or before December 17, 2014, Cooper shall file and serve an amended motion for order reopening the period for lodging direct testimony statements and exhibits.

On December 17, 2014, Cooper filed an Amended Motion. Dckt. 1561.

In support, Cooper states that in 2011, Cooper suffered from an acute cardiac arrest and underwent open-heart surgery which has led to a medical disability which continues to date. Due to this disability, Copper retired from the practice of law in August 2013.

Cooper states that in early September 2014, his condition worsened which prevented him from preparing and lodging exhibits by September 10, 2014 as required by the court's July 9, 2014 order. On September 28, 2014, Cooper has hospitalized on September 28, 2014 after his heart rate went out of control and shut down most of his bodily functions. Cooper states that the cause remains unknown but this has severely limited his activities and requires him to undergo multiple tests and medication changes.

The Motion states that the grounds for the relief sought are

1. Cooper's failure to lodge certain documents by September 10, 2014 was not willful or negligent but instead due to a medical disability that precluded him from complying;
2. On November 12, 2014, the court granted a similar oral motion made by the Trustee to reopen the record to all the Trustee to augment the record. Cooper argues that fairness and equity dictates that Cooper should be accorded the same consideration;
3. Lack of prejudice to the parties opposing the motion;
4. No new evidence is sought to be produced that has not already been the subject of declarations or depositions or other discovery;
5. The denial of the motion would probably lead to a different result and seriously prejudice the parties seeking to reopen the periods;
6. There is no statutory bar to the granting of the motion;
7. The granting of the motion is in the sound discretion of the Court.

DISCUSSION

This case is not one that would be considered a "cut and dry" type of proceeding. The case, being active since February 16, 2010, has nearly 1600 docket entries, rivaling the Stockton bankruptcy case.

While Cooper does not cite a single statute or case in support of the relief requested, the court finds that it is in the best interest of all the parties to allow Cooper to file and lodge his direct testimony statements and exhibits. Cooper has had ample time to at least mentally prepare for the direct testimony statements and exhibits and will not need an excessive amount of time to collect and prepare the direct testimony statements and exhibits.

Therefore, the court orders that W. Austin Cooper shall lodge with the court (Attn: Janet Larson, clerk's Office, 3rd Floor) and serve direct testimony statements and exhibits on or before January 22, 2015.

Evidentiary objections to the direct testimony statements and exhibits shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served on or before January 29, 2015.

Responses to any evidentiary objections shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served on or before February 5, 2015.

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

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

The Motion for Order Reopening the Period for Lodging Direct Testimony Statements and Exhibits filed by W. Austin Cooper having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted.

IT IS FURTHER ORDERED THAT on or before January 22, 2015, W. Austin Cooper shall lodge with the court (Attn: Janet Larson, Clerk's Office, 3rd Floor) and serve direct testimony statements and exhibits.

IT IS FURTHER ORDERED THAT on or before January 29, 2015, evidentiary objections to the direct testimony statements and exhibits shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served.

IT IS FURTHER ORDERED THAT on or before February 5, 2015, responses to any evidentiary objections shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served.

3. [10-23577](#)-E-11 GLORIA FREEMAN
WFH-31

AMENDED MOTION FOR ORDER
REOPENING THE PERIOD FOR
LODGING DIRECT TESTIMONY
STATEMENTS AND EXHIBITS
12-17-14 [[1564](#)]

**APPEARANCE OF THE PARTIES/COUNSEL REQUIRED FOR THE
JANUARY 8, 2015 HEARING FOR THE COURT TO SET A
DATE FOR THE EVIDENTIARY HEARING IN LIGHT OF
ALLOWING THE FILING OF THE ADDITIONAL DOCUMENTS**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on December 17, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Order Reopening the Period for Lodging Direct Testimony Statements and Exhibits was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Chapter 11 Trustee has filed a Statement of Non-Opposition to the requested relief. Dckt. 1572. The Non-Opposition does not waive any evidentiary or other objections to such evidence, other than it not having been timely lodged with the court pursuant to the court's original scheduling order.

The Motion for Order Reopening the Period for Lodging Direct Testimony Statements and Exhibits is granted.

W. Austin Cooper, a Professional Corporation, ("Professional Corporation") filed a Motion for Order Reopening the Period for Presentation of Direct Testimony on December 11, 2014. Dckt. 1535. On December 12, 2014, the court issued an Order on the Motion stating that the December 11th Motion failed to comply with Fed. R. Bankr. P. 9013. Dckt. 1545. Instead of denying the Motion, the court ordered that on or before December 17, 2014, Cooper shall file and serve an amended motion for order reopening the period for lodging direct testimony statements and exhibits.

On December 17, 2014, Professional Corporation filed an Amended Motion. Dckt. 1564.

In support, Professional Corporation states that in 2011, W. Austin Cooper suffered from an acute cardiac arrest and underwent open-heart surgery which has led to a medical disability which continues to date. Due to this disability, Copper retired from the practice of law in August 2013.

Professional Corporation states that in early September 2014, Cooper's condition worsened which prevented him from preparing and lodging exhibits by September 10, 2014 as required by the court's July 9, 2014 order. On September 28, 2014, Cooper has hospitalized on September 28, 2014 after his heart rate went out of control and shut down most of his bodily functions. Cooper states that the cause remains unknown but this has severely limited his activities and requires him to undergo multiple tests and medication changes.

The Motion states that the grounds for the relief sought are

1. Professional Corporations's failure to lodge certain documents by September 10, 2014 was not willful or negligent since it was totally dependent on Cooper for its compliance with such obligations. At that time, Cooper suffered from a medical disability that precluded him from causing Professional Corporation to comply;
2. On November 12, 2014, the court granted a similar oral motion made by the Trustee to reopen the record to all the Trustee to augment the record. Cooper argues that fairness and equity dictates that Cooper should be accorded the same consideration;
3. Lack of prejudice to the parties opposing the motion;
4. No new evidence is sought to be produced that has not already been the subject of declarations or depositions or other discovery;
5. The denial of the motion would probably lead to a different result and seriously prejudice the parties seeking to reopen the periods;
6. There is no statutory bar to the granting of the motion;

7. The granting of the motion is in the sound discretion of the Court.

DISCUSSION

This case is not one that would be considered a "cut and dry" type of proceeding. The case, being active since February 16, 2010, has nearly 1600 docket entries, rivaling the Stockton bankruptcy case.

Part of the issues that has caused such delay has been the medical condition of Cooper. While the court has questioned the severity of Cooper's medical condition since Cooper has not been forthcoming in providing the sworn testimony of a doctor affirming Cooper's disabled status, it appears in the interest justice that reopening the period to lodge direct testimony statements and evidence is proper. While Cooper does not cite a single statute or case in support of the relief requested, the court finds that it is in the best interest of all the parties to allow Cooper to file and lodge his direct testimony statements and exhibits. Cooper has had ample time to at least mentally prepare for the direct testimony statements and exhibits and will not need an excessive amount of time to collect and prepare the direct testimony statements and exhibits.

Therefore, the court orders that W. Austin Cooper, a Professional Corporation, shall lodge with the court (Attn: Janet Larson, clerk's Office, 3rd Floor) and serve direct testimony statements and exhibits on or before January 22, 2015.

Evidentiary objections to the direct testimony statements and exhibits shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served on or before January 29, 2015.

Responses to any evidentiary objections shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served on or before February 5, 2015.

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

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

The Motion for Order Reopening the Period for Lodging Direct Testimony Statements and Exhibits filed by W. Austin Cooper having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted.

IT IS FURTHER ORDERED THAT on or before January 22, 2015, W. Austin Cooper, a Professional Corporation, shall lodge with the court (Attn: Janet Larson, Clerk's Office, 3rd Floor) and serve direct testimony statements and exhibits.

IT IS FURTHER ORDERED THAT on or before January 29, 2015, evidentiary objections to the direct testimony statements and exhibits shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served.

IT IS FURTHER ORDERED THAT on or before February 5, 2015, responses to any evidentiary objections shall be filed, copy delivered to Chambers (Attn: Janet Larson, Clerk's Office, 3rd Floor), and served.