

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 9, 2014 at 2:30 p.m.

1. [13-33903-E-7](#) **JAMES/GINA MOORE**
[14-2086](#)
COUNTY OF SACRAMENTO V. MOORE
ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-24-14 [[1](#)]

Plaintiff's Atty: Robert P. Parrish
Defendant's Atty: Peter Cianchetta

Adv. Filed: 3/24/14
Reissued Summons: 4/1/14
Reissued Summons: 5/19/14

Answer: 6/11/14

Nature of Action:
Dischargeability - other

Notes:

Continued from 5/28/14

Joint Status Conference Report - Discovery Plan filed 6/26/14 [Dckt 26]

SUMMARY OF COMPLAINT

The County of Sacramento has filed the present Complaint seeks to have fines and penalties determined non-dischargeable pursuant to 11 U.S.C. § 523(a)(7). The amount at issue is \$17,920.00, for which the court obtained a civil judgment.

SUMMARY OF ANSWER

Defendants admit and deny specific allegations in the Complaint. Defendants assert seventeen affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶ 1, Dckt. 1. In their Answer, James Moore and Gina Moore admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 24. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred**

to the bankruptcy court.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶ 1, Dckt. 1. In their Answer, James Moore and Gina Moore admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 24. To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before -----, 2014.
- c. Expert Witnesses shall be disclosed on or before November 1, 2014, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

2. [10-36505](#)-E-13 DONNA VICKS
[14-2022](#)
MICHAEL VICKS, JR., SUCCESSOR
IN INTEREST TO DONNA V. WELLS

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

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

Judgment having been entered, the Status Conference is removed from the calendar

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

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

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

Notes:

Continued from 5/28/14 to allow the Parties to have the hearing on Motion for Entry of Default Judgment to be conducted, the judgment issued for Plaintiff to comply with further orders of this court if the Motion for Entry of Default Judgment is not granted, and this Adversary Proceeding resolved or continued to be diligently prosecuted by Plaintiff.

Order granting Motion for Entry of Default Judgment filed 6/5/14 [Dckt 23]

Judgment for Quiet Title and Award of Fees and Costs filed 6/30/14 [Dckt 24]

3. [10-43410](#)-E-13 MARIANN BINGHAM
[14-2020](#)
BINGHAM V. OCWEN LOAN
SERVICING, LLC

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

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

The Status Conference is continued to 1:30 p.m. on July 10, 2014, to be conducted in conjunction with the hearing on Plaintiff-Debtor's motion for entry of default judgment.

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

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

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

Notes:

Continued from 5/28/14 to be conducted in conjunction with the hearing on Plaintiff's Motion for Entry of Default Judgment.

4. [12-35521](#)-E-13 CHRISTOPHER DEAN
[13-2289](#)
DEAN V. COLLEGE GREENS EAST
HOMEOWNER ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-12-13 [[1](#)]

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

The Adversary Proceeding having been dismissed, the Status Conference is removed from the calendar.

Dismissed 7/1/14

Plaintiff's Atty: Peter G. Macaluso

Defendant's Atty:

Joshua B. Clark [College Greens East Homeowner; Eugene Burger Management Corp.]

Brian A. Paino [Cenlar F.S.B.; San Francisco Fire Credit Union]

Adv. Filed: 9/12/13

Answer: none

Nature of Action:

Other - e.g. other actions that would have been brought in state court if unrelated to bankruptcy case

Declaratory judgment

Notes:

Continued from 5/6/14

Plaintiff's Status Conference Statement filed 6/30/14 [Dckt 86]

Stipulation to Dismiss Defendants College Greens East Homeowner and Eugene Burger Management Corporation filed 6/30/14 [Dckt 88]; order granting filed 7/1/14 [Dckt 89]

5. [11-21422-E-13](#) SHMAVON MNATSAKANYAN AND CONTINUED STATUS CONFERENCE RE:
[13-2300](#) YERMONIYA ARTUSHYAN COMPLAINT
MNATSAKANYAN ET AL V. BAC HOME 9-25-13 [[1](#)]
LOANS SERVICING, LP ET AL

No Tentative Ruling.

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

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

Nature of Action:
Declaratory judgment

JULY 9, 2014 STATUS CONFERENCE

On June 30, 2014 the Plaintiff-Debtors filed a Status Report, stating that the matter has been resolved. The loan modification, upon which the settlement is based was approved by the court in April 2014 in the Plaintiff-Debtors' bankruptcy case. However, this Adversary Proceeding has not been dismissed or a stipulated judgment entered because,

"[t]he Parties encountered issues with the recording state of the loan modification, causing a delay in resolving this case. The parties expect that the complications have been resolved and anticipate having a recorded loan modification in short order."

Status Report, Dckt. 46.

Notes:

Continued from 5/28/14 to afford the Parties sufficient time to file the dismissal of this Adversary Proceeding.

Plaintiffs' Status Conference Statement filed 6/30/14 [Dckt 46]

6. [13-22028-E-13](#) FAITH EVANS
[14-2105](#)
EVANS V. MOULTON ET AL

STATUS CONFERENCE RE: COMPLAINT
4-16-14 [[1](#)]

Plaintiff's Atty: Patricia Wilson
Defendant's Atty: Pro Se
Real Parties in Interest: unknown

Adv. Filed: 4/16/14
Answer: 5/14/14 [Daniel Moulton]

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

Notes:

SUMMARY OF COMPLAINT

The Plaintiff-Debtor states in the Complaint that the parties were formerly married, separated, and commenced a divorce action in 2009. Defendant was represented by Harrison L. Goodwin, Esq. ("Goodwin") in the dissolution proceeding. It is asserted that Goodwin is holding \$3,289.07 in his trust account, which money is owed to Plaintiff-Debtor. Daniel L. Brown, Esq., the attorney for Plaintiff-Debtor in the dissolution proceeding, is holding \$2,375.72 in his trust account which is asserted to belong to Plaintiff-Debtor.

A dispute existed in the dissolution proceeding concerning real property known as 2025 Rhodes Lane, Roseville, California, and personal property identified as a business known as Discount Mart Liquor, Inc., which had a California liquor license.

Plaintiff-Debtor asserts that an issue exists as to whether the Plaintiff-Debtor and Defendant were ever married to each other. This issue has not been determined by a court.

The Rhodes Lane property was sold by the parties, but a dispute between the parties has not been resolved. The Family Court judge allocated a community interest in the Rhodes Lane Property to the Defendant.

At or about the time Plaintiff-Debtor commenced her Chapter 13 bankruptcy case it is alleged that Defendant sold the Liquor Store business. No accounting of the sale has been provided to Plaintiff-Debtor. Plaintiff-Debtor asserts that she is entitled to all of the Liquor Store sales proceeds. The court has not approved the sale of any interests of the estate in the liquor license by Defendant.

The court subsequently, upon motion of the Plaintiff-Debtor, approve the sale of the liquor license, and the \$75,000.00 in sales proceeds are being held by the Chapter 13 Trustee.

It is further alleged that Defendant has retained all of the proceeds of the Liquor Store business, including property of the estate in

violation of the automatic stay.

First Cause of Action - Judgment for Attorneys Goodwin and Brown to turn over funds held in their client trust account to the Chapter 13 Trustee.

Second Cause of Action - judgment authorizing the Chapter 13 Trustee to release the liquor license sales proceeds to the bankruptcy estate, upon determination of the estate's interest in said proceeds.

Third Cause of Action - judgment ordering Defendant to turn over the proceeds from the sale of the Rhodes Lane Property.

Fourth Cause of Action - Accounting for monies from the sale of the Liquor Store.

Fifth Cause of Action - Turn over all proceeds from the sale of the Liquor Store.

Sixth Cause of Action - Violation of the automatic stay for selling property of the estate (liquor store assets).

SUMMARY OF ANSWER

Defendant filed an answer in pro se admitting and denying specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(E). Complaint, ¶ 19, Dckt. 1.

In his Answer, Dan Moulton responds that he denies the allegations of jurisdiction and venue based on the lack of "information and belief." Answer ¶ 1.17. A party cannot deny jurisdiction and core/non-core matter determination based on "lack of information and belief." Fed. R. Bankr. P. 7008(a) [complaint and answer must contain a statement of whether it is a core or non-core proceeding, and if non-core, whether the party consents to the bankruptcy judge issuing all final orders and judgment.

At the hearing xxxxxxxxxxxxxxxxxxxx

To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(E). Complaint, ¶ 19, Dckt. 1. ~~The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X.~~ To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before -----, **2014**.

c. Expert Witnesses shall be disclosed on or before -----, 2014, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.

d. Discovery closes, including the hearing of all discovery motions, on **[December 31, 2014]**.

e. Dispositive Motions shall be heard before -----, 201**X**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 201**X**.

7. [13-24745](#)-E-13 LORI SWAIN
[14-2055](#)
SWAIN V. GREEN TREE SERVICING,
LLC ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-17-14 [[1](#)]

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 2/17/14
Answer: none

Nature of Action:
Declaratory judgment
Notes:

Continued from 4/16/14

Plaintiff's Second Status Conference Statement filed 6/30/14 [Dckt 11]

The Status Conference is continued to 2:30 p.m. on September 4, 2014.

Plaintiff's Second Status Conference Statement (Dckt. 11) states that this Adversary Proceeding has been settled, with the written agreement signed. Plaintiff states that the Adversary Proceeding will be dismissed shortly.

8. [11-27845-E-11](#) IVAN/MARETTA LEE
[14-2060](#)
LEE ET AL V. SELECT PORTFOLIO
SERVICING, INC. ET AL

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

No Tentative Ruling:

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

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

Nature of Action:
Injunctive relief - other
Declaratory judgment

Notes:

Continued from 5/28/14

Plaintiffs' Status Conference Statement filed 6/30/14 [Dckt 19]; Exhibits
filed 6/30/14 [Dckt 20]

JULY 9, 2014 STATUS CONFERENCE

The Plaintiff Plan Administrators and Debtors state in their Status Report that the parties have been unable to create a settlement agreement. Factual statements are made concerning communications between the parties, stipulation drafts, and the non-responsiveness of one of the Defendants (which is the agent for a creditor).

This Adversary Proceeding was commenced on February 20, 2014. Pursuant to the Stipulation of the Parties the court extended the time for Defendants to respond to the Complaint to April 21, 2014. No answers have been filed as of the court's July 7, 2014 review of the Docket.

The Parties not having resolved the Adversary Proceeding, the court shall set discovery and other deadlines for the prosecution of this Adversary Proceeding.

9. [11-46148-E-7](#) ASHWINDAR KAUR
[13-2344](#)
EDMONDS V. SINGH

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

**TELEPHONIC APPEARANCES FOR THIS
STATUS CONFERENCE ENCOURAGED**

No Tentative Ruling:

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: Jason E. Rios; Jeffrey B. Coopersmith

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

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

Notes: Continued from 5/28/14

Second Stipulation to Extend Time for Defendant to Respond to Complaint
filed 6/3/14 [Dckt 27]; Order approving filed 6/3/14 [Dckt 29]

JULY 9, 2014 STATUS CONFERENCE

The Chapter 7 Trustee commenced this Adversary Proceeding on November 1, 2013 asserting claims under 11 U.S.C. §§ 547, 548, 550). An answer was originally filed in this Adversary Proceeding for the Defendant, which was stricken as a forgery. Stipulation and Order, Dckts. 19, 21.

On July 2, 2014, the Chapter 7 Trustee filed a Notice of Voluntary Dismissal, which states that it is a dismissal with prejudice. Dckt. 31. Unless otherwise stated, a dismissal is without prejudice. Fed. R. Civ. P. 41(a)(1)(B), Fed. R. Bankr. P. 7041. However, when a party elects to dismiss with prejudice, such a dismissal operates as an adjudication on the merits. MOORE'S FEDERAL PRACTICE, THIRD EDITION, ¶ 41.33[6][c].

If the Trustee seeks to give up rights of the estate (presumably such rights exist if a dismissal with prejudice, such as by dismissing with prejudice, the question arises as to whether any agreement for such dismissal is in the nature of a "Compromise" for which the Trustee must seek approval pursuant to Federal Rule of Bankruptcy Procedure 9019. If such approval was required for the Trustee to voluntarily dismiss the case with prejudice, the parties shall address the effect of the Dismissal filed by Plaintiff Trustee.

Additionally, the parties have stated in their Stipulation that a forged answer was filed in this Adversary Proceeding in the name of the Defendant. The parties shall address whether this forgery has been reported to the U.S. Attorney.

10. [10-45051](#)-E-13 RONALD/JUANITA TYESKEY CONTINUED STATUS CONFERENCE RE:
[13-2352](#) COMPLAINT
TYESKEY ET AL V. JPMORGAN 11-6-13 [[1](#)]
CHASE BANK N.A.
ADV. CASE DISMISSED 6/12/14

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

Dismissed 6/12/14

The Adversary Proceeding having been dismissed, the Status Conference is removed from the calendar.

11. [08-24574](#)-E-13 EARL/CATHERINE BROWN CONTINUED STATUS CONFERENCE RE:
[14-2029](#) COMPLAINT
BROWN ET AL V. CHASE HOME 1-22-14 [[1](#)]
FINANCE, LLC

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 1/22/14
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment

Notes:

Continued from 4/16/14

Order dismissing Request for Entry of Default filed 4/23/14 [Dckt 24]

SUMMARY OF COMPLAINT

In the Complaint Plaintiff-Debtor asserts that having completed her Chapter 13 Plan, Chase Home Finance, LLC must reconvey a deed of trust which secured its claim in her bankruptcy case. Bankr. E.D. Cal. No. 08-24574.

A search of the California Secretary of State's database reveals that Chase Home Finance, LLC's status is listed cancelled. See California Secretary of State, Business Search, <http://kepler.sos.ca.gov/>. This listing also states that the jurisdiction of Chase Home Finance, LLC is Delaware. The Delaware Secretary of State's database requests fees in order to view the status of Chase Home Finance, LLC. See Delaware Secretary of State, Entity Search, <https://delecorp.delaware.gov/tin/GINameSearch.jsp>.

In *Rhodes v. JPMorgan Chase Bank, N.A.*, 2012 U.S. Dist. LEXIS 158988 n1 (S.D. Fla. Nov. 6, 2012) the court noted that Defendant JPMorgan

Chase Bank, N.A. stated that it is successor by merger to Chase Home Finance, LLC, doing business as Chase Home Mortgage. Similarly, in *JPMorgan Chase Bank, N.A. v. Romine*, 2013-Ohio-4212 (Ohio Ct. App., Sept. 26, 2013) the court noted that "Chase Home Finance, LLC thereafter merged with [JPMorgan Chase Bank, N.A.]." In *JPMorgan Chase Bank, NA v. Carroll*, 2013-Ohio-5273 (Ohio Ct. App., Dec. 2, 2013) Plaintiff JPMorgan Chase Bank, N.A. filed the affidavit of Michael Brown, JPMorgan Chase Bank, N.A.'s Vice President, in which he stated,

In my capacity as Vice President, I have access to [JPMorgan's] business records, maintained in the ordinary course of regularly conducted business activity, including the business records for and relating to [Glenn Carroll's] loan. These records include the historic records of Chase Home Finance LLC, which merged with [JPMorgan] effective May 1, 2011.

More recently in *Reynolds v. JPMorgan Chase Bank, N.A.*, 2014 U.S. Dist. LEXIS 4503 (M.D. Ga. Jan. 14, 2014), the court noted that "[a]mong the defendants in that case was Chase Home Finance, LLC, which was succeeded by merger with JPMorgan. See, e.g., Doc. 4-4 at 2; *Harris v. Chase Home Finance, LLC*, 524 F. App'x 590, 591 (11th Cir. 2013)."

MOTION TO EXTEND TIME FOR JPMORGAN CHASE BANK, NA TO RESPOND

On April 11, 2014, JPMorgan Chase Bank, N.A., identifying itself as a "Defendant," filed a Motion for an enlargement of time for it to file a responsive pleading to the Complaint. In the Motion JPMorgan Chase Bank, N.A. asserts that it is the successor by merger to Chase Home Finance, LLC.

NO SUBSTITUTION OF PARTY

It appears that Plaintiff-Debtor, having named the incorrect party as a defendant, and JPMorgan Chase Bank, N.A., not a party named to the Adversary Proceeding, are content with proceeding with litigation on an inaccurate Complaint. No Party has requested that JPMorgan Chase Bank, N.A. be joined as the real party in interest pursuant to Federal Rule of Civil Procedure 19(a) and Federal Rule of Bankruptcy Procedure 7019, the dismissal of Chase Home Finance, LLC, or the amendment of the Complaint to state a claim against JPMorgan Chase Bank, N.A.

As drafted, JPMorgan Chase Bank, N.A. is left litigating in an Adversary Proceeding in which no claims are stated against it. There is no reason for the Parties to conduct such "tentative" litigation, and then after the fact decide that they want, or oppose, a *post hoc* amendment of the Complaint or substitution of a real party in interest.

The potential for such "disagreements" appears to be a real possibility in this case. Already JPMorgan Chase Bank, N.A.'s counsel is accusing Plaintiff's counsel of reneging on a agreement. Motion to Extend Time, Pg. 5:9-10 Dckt. 20.

12. [14-25376-E-13](#) KEVIN/BREE SEARS
[13-2284](#)
ADAMS V. SEARS

PRE-TRIAL CONFERENCE RE:
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
9-4-13 [[1](#)]

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

Plaintiff's Atty: Arthur J. Pollock
Defendant's Atty: Douglas B. Jacobs

Adv. Filed: 9/4/13
Answer: 9/24/13

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:

Scheduling Order -
Initial disclosures by 11/30/13
Close of Discovery 3/31/14
Dispositive motions heard by 5/16/14

Order Transferring Adversary Proceeding filed 6/16/14 [Dckt 15]

Stipulation to Modify Pretrial Scheduling Order filed 6/27/14 [Dckt 18];
Amended Pretrial Scheduling Order setting pretrial conference for 12/3/14 at
2:30 p.m. filed 7/2/14 [Dckt 19]

The court has previously ordered that the Status conference
is continued to 2:30 p.m. on December 3, 2014.

13. [11-48050](#)-E-7 STAFF USA, INC.
MHK-4

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

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

CONT. FROM 12-12-13, 10-24-13, 8-29-13

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

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

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

The court's decision is -----.

JULY 1, 2014 HEARING

At the hearing,-----.

MAY 28, 2014 HEARING

At the hearing it was asserted by W. Austin Cooper that it is his professional corporation which must be a party to this matter, as he asserts that it is the Corporation which received all payments and that W. Austin Cooper did not personally receive any of the monies at issue.

Pursuant to the concurrence of the Trustee and W. Austin Cooper, pursuant to Federal Rule of Civil Procedure 19 and Federal Rules of Bankruptcy Procedure 7019, 9014; the court joins W. Austin Cooper, a Professional Corporation, as a respondent to the Order to Show Cause and the Trustee's Motion requesting the Order to Show Cause. In each place in the Motion and the Order to Show Cause where the reference is made to "W. Austin Cooper," it is deemed to also state that it also applies to W. Austin Cooper, a Professional Corporation."

At the hearing W. Austin Cooper confirmed that he is the agent for

service of process for W. Austin Cooper, a Professional Corporation. The California Secretary of State website provides the same information, with an address of 2150 River Plaza Dr., Ste 164, Sacramento, California 95833 for the agent.

PRIOR HEARING

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

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

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

OCTOBER 24, 2013 HEARING

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

14. [10-23577](#)-E-11 GLORIA FREEMAN

CONTINUED ORDER TO SHOW CAUSE
3-1-13 [[571](#)]

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

Notes:

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

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

JULY 9, 2014 HEARING

At the hearing, xxxxxxxxxxxxxxxxxxxx

MAY 28, 2014 HEARING

At the hearing it was asserted by W. Austin Cooper that it is his professional corporation which must be a party to this matter, as he asserts that it is the Corporation which received all payments and that W. Austin Cooper did not personally receive any of the monies at issue.

Pursuant to the concurrence of the Trustee and W. Austin Cooper, pursuant to Federal Rule of Civil Procedure 19 and Federal Rules of Bankruptcy Procedure 7019, 9014; the court joins W. Austin Cooper, a

Professional Corporation, as a respondent to the Order to Show Cause and the Trustee's Motion requesting the Order to Show Cause. In each place in the Motion and the Order to Show Cause where the reference is made to "W. Austin Cooper," it is deemed to also state that it also applies to W. Austin Cooper, a Professional Corporation."

At the hearing W. Austin Cooper confirmed that he is the agent for service of process for W. Austin Cooper, a Professional Corporation. The California Secretary of State website provides the same information, with an address of 2150 River Plaza Dr., Ste 164, Sacramento, California 95833 for the agent. This is the same address provided on the Pre-Evidentiary Hearing Statement filed by W. Austin Cooper, individually, in this contested matter. Dckt. 1424.

MOTION AND ORDER TO SHOW CAUSE

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

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

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

David Flemmer

W. Austin Cooper

Jurisdiction and Venue: 1. 2. 3.	Jurisdiction and Venue: 1. 2. 3.
Undisputed Facts: 1. Payment 1 was made by check no. 2120 in the amount of	Undisputed Facts: 1.

<p>\$16,000. In his statement under Federal Rule of Bankruptcy Procedure 2016 Cooper stated that a payment of \$15,000 was a payment for legal services provided to Debtor Gloria Freeman. Cooper elaborated on this payment in his Response dated April 29, 2013 (Docket No. 635.) Cooper alleged that this payment was a pre-petition retainer for pre-petition services and was fully exhausted at the time of the bankruptcy filing.</p> <p>Cooper acknowledges that he does not have a written engagement agreement with the Debtor, and that if he did maintain contemporaneous time sheets, he no longer has access to them. Cooper also acknowledges that he never sought nor received approval of his retention by the debtor in possession pursuant to Section 327.</p> <p>Debtor's bank statement appears to show that the payment was made, and cleared Debtor's bank, prior to the commencement of the case.</p> <p>2. Staff USA, Inc.'s cash disbursement journal (Docket 519, p. 4) shows Payment No. 2 in the amount of \$5,000. Plan Administrator believes that Cooper acknowledges receiving this payment, and that Cooper had no engagement letter or time sheets related to this payment.</p> <p>Cooper contends that he retained \$3,000 of this amount for work in connection with a conservatorship petition filed by Gloria Freeman against Larry Freeman. The other \$2,000 was paid to a separate attorney working on the</p>	<p>2.</p> <p>3.</p>
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<p>conservatorship matter.</p> <p>3. No undisputed facts with respect to Payment No. 3 in the amount of \$5,000.</p> <p>4. The parties acknowledge that the \$7,000 payment No. 4 was made by Staff USA, Inc. to Cooper on May 12, 2010. Cooper acknowledges that there was no engagement agreement created in connection with this matter, and Cooper cannot recall if time sheets were maintained. No time sheets are available.</p> <p>5. The parties agree that Payment 5 in the amount of \$2,500 was made, that there was no engagement letter regarding the engagement, and that no time sheets, if created, are available.</p> <p>6. For Payment No. 6 in the amount of \$2,500, Cooper agrees that no engagement agreement exists, and time sheets, if prepared, are not available.</p> <p>7. For Payment No. 7 in the amount of \$2,500, there is no dispute that this payment was made, or that no engagement agreement or time sheets can be produced.</p> <p>8. None with respect to Payment No. 8 in the amount of \$2,500.</p> <p>9. The parties agree that Payment No. 8 in the amount of \$6,039 appears to be a payment to Cooper for the filing fee and services in connection with the filing of the Staff USA, Inc. Chapter 11 case. No engagement agreement existed, and time sheets, if they were</p>	
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<p>created, cannot be produced.</p> <p>10.</p>	
<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. The parties disagree on the reasonable value of the services provided by Cooper prior to the commencement of the Freeman Chapter 11 case. 2. Plan Administrator disputes that the Chapter 11 estate of Gloria Freeman received any benefit from Payment No. 2 in the amount of \$5,000. 3. The Staff USA, Inc. Trustee contends, based on notes in a cash disbursements journal (Docket 519, p. 4) that Payment No.3 in the amount of \$5,000 was made to Cooper. Debtor and Cooper deny that this payment was made to Cooper and contend the payment was made to Weintraub Tobin, an unrelated law firm. Plan Administrator has no evidence to dispute the contention of Cooper and Debtor. 4. Cooper and the Debtor contend that Payment 4 constituted retainers for Cooper's services in filing Chapter 11 cases of Plazaria, LLC and Sunfair, LLC. Cooper and Debtor contend that Staff USA, Inc. guaranteed debts of Plazaria, LLC and Sunfair, LLC, and that the Chapter 11's were intended to minimize Staff USA, Inc.'s liability under such guaranties. Plan Administrator has no basis for disputing Cooper's claim that Payment 4 was for the commencement of Chapter 11's of Plazaria, LLC and Sunfair, LLC, but disputes any benefit 	<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. 2. 3.

accruing to Staff USA, Inc. or anyone else from these bankruptcy cases.

5. Staff USA, Inc.'s bookkeeper, Safraz Hussein previously testified that Payment No. 5 in the amount of \$2,500.00 this payment was for services provided by Cooper to Staff USA, Inc. in connection with embezzlement by an employee of Staff USA, Inc. (See, Docket No. 636 at 3.) Debtor's testimony corroborates this claim (Docket No. 637 at 4). Cooper's recollection was uncertain, but Cooper recalled providing some services related to this dispute.
6. Cooper contends that Payment No. 6 in the amount of \$2,500 was partial payment for the defense of Staff USA, Inc. in a lawsuit by Bank of America. Mr. Hussein and Debtor previously testified that this payment was the initial one-half of a \$5,000 retainer to Cooper to pay for a defense of an action filed against Staff USA, Inc. by Bank of America. (Docket No. 636 at 3, 637 at 6.)
7. Cooper contends that Payment NO. 7 in the amount of \$2,500 was partial payment for the defense of Staff USA, Inc. 18 in a lawsuit by Bank of America. Mr. Hussein and Debtor previously testified that this payment was the initial one-half of a \$5,000 retainer to Cooper to pay for a defense of an action filed against Staff USA, Inc. by Bank of America. (Docket No. 636 at 3, 637 at 6.)
8. The Staff USA, Inc. Trustee contends that Payment No. 8 in

<p>the amount of \$2,500 was made to Cooper. Plan Administrator cannot corroborate this claim.</p> <p>9. Plan Administrator questions whether Payment No. 9 in the amount of \$6,039 exceeds the reasonable value of the services provided.</p> <p>10.</p>	
<p>Disputed Evidentiary Issues:</p> <p>1. The Plan Administrator is not aware of any disputed evidentiary issues.</p>	<p>Disputed Evidentiary Issues:</p> <p>1.</p> <p>2.</p> <p>3.</p>
<p>Relief Sought:</p> <p>1. The Plan Administrator seeks an order directing Cooper to disgorge Payment No. 1 in the amount of \$15,000.</p> <p>2. Plan Administrator denies that Payment No. 2, in the amount of \$5,000, should be grounds for allowance of an administrative claim against the Gloria Freeman Chapter 11 estate. However, if such a claim is allowed, an equal sum should be disgorged by Cooper to Staff USA, Inc. to satisfy such administrative claim.</p> <p>3. For Payment No. 3 in the amount of \$5,000.00, Plan Administrator does not seek relief regarding this payment. If disgorgement is ordered, it should be ordered for the benefit of Staff USA, Inc.</p> <p>4. \$7,000 payment made on or</p>	<p>Relief Sought:</p> <p>1.</p> <p>2.</p> <p>3.</p>

about May 12, 2014. Plan Administrator denies that Payment 4 should be grounds for allowance of an administrative claim against the Gloria Freeman Chapter 11 estate. However, if such a claim is allowed, an equal sum should be disgorged by Cooper to Staff USA, Inc. to satisfy such administrative claim.

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

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

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

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

<p>Agreed Statement of Facts:</p> <p>1. None Presented</p>	<p>Agreed Statement of Facts:</p> <p>1.</p> <p>2.</p> <p>3.</p>
<p>Attorneys' Fees Basis:</p> <p>1. None Requested.</p> <p>2.</p> <p>3.</p>	<p>Attorneys' Fees Basis:</p> <p>1.</p> <p>2.</p> <p>3.</p>
<p>Additional Items</p> <p>1. None</p>	<p>Additional Items</p> <p>1.</p> <p>2.</p> <p>3.</p>
<p>Hearing Time Estimation: 3 Hours</p>	<p>Hearing Time Estimation:</p>

15. [10-23577](#)-E-11 GLORIA FREEMAN
MHK-1

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

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

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

The Motion for Administrative Expenses has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has continued the hearing to allow the parties in interest to consider the settlement in the context of other matters in this case and related bankruptcy cases.

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

JULY 1, 2014 HEARING

At the hearing, -----.

MAY 28, 2014 HEARING

It is reported to the court that as part of the settlement between the Trustee/Plan Administrator and Laurence Freeman, the Trustee/Plan Administrator anticipates being able to resolve this Motion and several other disputes with Gloria Freeman.

PRIOR HEARINGS

Motion for Administrative Expenses by Trustee Jon Tesar

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

Because this matter has been pending for so long and was originally asserted by Jonathan Tesar as the Chapter 11 Trustee, the court has

continued to use in this ruling he name "Jon Tesar" as the identifier for the person filing the Motion and asserting the claim - which is deemed a reference to the Thomas Aceituno, as successor to Jonathan Tesar as the fiduciary of the bankruptcy estate, serving as the current Chapter 7 Trustee.

Background

Jon Tesar states that on February 16, 2010 Debtor Gloria Freeman filed a Chapter 11 petition and on January 11, 2011 David Flemmer was appointed Trustee of the Freeman Estate. Jon Tesar states that on August 1, 2011 Staff filed a Chapter 11 petition in the Northern District of California and the case was later transferred to the Eastern District. Jon Tesar states that on June 13, 2012 the court approved his appointment as trustee of the Staff Estate, a position which he continues to hold.

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

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

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

Opposition by Trustee Flemmer

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

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

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

1. Auction 10/Premium Access-- \$791.36

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

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

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

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

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

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

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

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

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

Debtor's Opposition

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

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

FN.1 Gloria Freeman's explanation does little to enhance her credibility in this or the various related proceedings. While she now states that she "deferred" her \$6,000.00 a month salary, she filed monthly operating reports in the Staff USA case in which she affirmatively stated that there were no post-petition accounts receivable owing.

Debtor states that Mr. Cooper was her personal attorney and received payment of \$15,000 out of her personal accounts prior to the bankruptcy filing.

Chapter 11 Trustee's Supplemental Opposition

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

estate. Chapter 11 Trustee states that if disgorgement is ordered he does not oppose payment directly to Staff USA, Inc.

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

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

Discussion

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

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

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

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

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

IT IS ORDERED that -----.

16. [10-23577](#)-E-11 GLORIA FREEMAN
WFH-42

MOTION FOR COMPENSATION FOR
DAVID D. FLEMMER, CHAPTER 11
TRUSTEE
4-9-14 [[1398](#)]

Final Ruling: At the request of the parties and pursuant to the Notice of Continuance of Hearing, the hearing on this matter is continued to **10:30 a.m. on August 7, 2014**. No appearance required at the July 9, 2014 hearing.

17. [13-21878-E-7](#) THOMAS EATON
[14-2106](#)
RICE V. EATON

STATUS CONFERENCE RE: COMPLAINT
4-16-14 [[1](#)]

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown

Adv. Filed: 4/16/14
Summons Reissued: 4/30/14
Answer: none

Nature of Action:
Dischargeability - domestic support
Recovery of money/property - preference
Objection/revocation of discharge
Validity, priority or extent of lien or other interest in property

Notes:

SUMMARY OF COMPLAINT

Plaintiff Lorain Rice, in pro se, has filed the present complaint which is titled "Complaint to Determine Non Dischargeability, Revoke Discharge and 2004 Exam." Dckt. 1. Plaintiff asserts that she is a creditor of the Debtor, having a claim of \$125,000.00 for delinquent child support payments, and that there are current payments which continue to come due. Plaintiff asserts that Defendant-Debtor did not list her claim and hid the existence of the child support obligation from the court.

It is alleged that there is a settlement agreement by which the \$100,000.00 remains to be paid in four \$25,000.00 annual payments. Plaintiff further alleges that Defendant-Debtor failed to truthfully and accurately disclose his assets on Schedules filed in this case.

First Count - The debt owed to Plaintiff is for child support and should be determined non-dischargeable and paid in priority to other claims. Plaintiff, having learned of the bankruptcy case, has filed her Proof of Claim.

Second Count - Judgment is requested for the court to order the \$100,000 paid pursuant to the settlement.

Third Count - The court should order the Trustee to examine the Defendant-Debtor concerning his alleged failure to disclose assets. Further, Plaintiff should be allowed to conduct a Rule 2004 examination.

Fourth Count - The court should order an investigation into the discrepancies in the Schedules and omission of Plaintiff's child support claim in the Defendant-Debtor's bankruptcy case.

Fifth Count - The court should not allow the Trustee to abandon the Defendant-Debtor's dental equipment.

SUMMARY OF ANSWER

In the Answer, Thomas Eaton (the Defendant-Debtor) asserts that this Adversary Proceeding is a core matter, admits being indebted to Plaintiff, and denies each and every other allegation of the Complaint (other than "procedural facts" regarding the filing of the bankruptcy petition).

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint states that Plaintiff seeks a determination of nondischargeability under 11 U.S.C. § 523(a)(5) and revoke the Defendant-Debtor's discharge pursuant to 11 U.S.C. § 727(d)(1). Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2). This is a , and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint introduction and ¶ 4 Dckt. 1. In his answer, Thomas Eaton, the Defendant-Debtor admits the allegations of jurisdiction and that this is a core matter. Answer Introduction (the court construing the allegation that this is a "core proceeding" to also be an allegation or admission that the underlying jurisdiction for this bankruptcy court exists pursuant to 28 U.S.C. §§ 1334 and 157, and the reference to this bankruptcy court by the United States District Court for the Eastern District of California. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. The Complaint that Plaintiff seeks a determination of nondischargeability under 11 U.S.C. § 523(a)(5) and revoke the Defendant-Debtor's discharge pursuant to 11 U.S.C. § 727(d)(1). Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2). This is a , and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint introduction and ¶ 4 Dckt. 1. In his answer, Thomas Eaton, the Defendant-Debtor admits the allegations of jurisdiction and that this is a core matter. Answer Introduction (the court construing the allegation that this is a "core proceeding" to also be an allegation or admission that the underlying jurisdiction for this bankruptcy court exists pursuant to 28 U.S.C. §§ 1334 and 157, and the reference to this bankruptcy court by the United States District Court for the Eastern District of California. To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before ----, 2014.

c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.

d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.

e. Dispositive Motions shall be heard before -----, 2014.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

18. [08-35291](#)-E-13 VICTOR/PATRICIA GUZMAN
[10-2141](#)
GUZMAN ET AL V. ONEWEST BANK,
FSB ET AL

CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT
5-29-12 [[87](#)]

Plaintiff's Atty: Mark A. Wolff

Defendant's Atty:

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

Adv. Filed: 3/15/10

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

Amd Cmplt filed: 5/29/12

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

Nature of Action:

Injunctive relief - other

Recovery of money/property - other

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

Notes:

Continued from 5/28/14

19. [13-32494](#)-E-13 THEODORE/MOLLY MCQUEEN
[14-2004](#)
G & K HEAVEN'S BEST, INC. V.
MCQUEEN ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-4-14 [[1](#)]

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

Plaintiff's Atty: Peter G. Macaluso

Defendant's Atty: C. Anthony Hughes

July 9, 2014 at 2:30 p.m.

- Page 36 of 38 -

Adv. Filed: 1/4/14
Answer: 2/5/14

Crossclaim Filed: 2/5/14
Answer: 2/24/14

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:

Continued from 3/25/14

Statement Regarding Attorney Fees from non-debtor Corporation filed 3/28/14
[Dckt 36]

Statement Regarding Attorney Fee for Representation in Adversary Proceeding
filed 3/28/14 [Dckt 40]

Plaintiffs' Second Status Conference Statement filed 6/30/14 [Dckt 47]

The Status Conference is continued to 2:30 p.m. on October 15, 2014.

JULY 9, 2014 STATUS CONFERENCE

Plaintiffs provide a Second Status Conference Report (Dckt. 47) which states that a Stipulation was reached with the Creditor defendant for its claim and treatment under a confirmed Chapter 13 Plan. The Plaintiff-Debtors are proceeding with making the amendments to the proposed Chapter 13 Plan and prosecuting confirmation of the amended plan.

Plaintiffs requests that the status conference be continued to allow them to prosecute the amended Chapter 13 Plan as provided in the Stipulation which has resolved Creditor Defendant's claim and plan treatment.

The court having presided over the Evidentiary Hearing at which the Stipulation was reached between the parties, the Stipulated Order having been filed by the court on June 23, 2014, the confirmation hearing having been continued to September 16, 2014, and the parties manifesting (and having the joint economic incentive) that they are actively prosecuting the Chapter 13 case for a plan confirmation in September, it is proper to continue the Status Conference.

20. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN
[14-2027](#)
MCQUEEN ET AL V. G & K
HEAVEN'S BEST, INC.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-21-14 [[1](#)]

Final Ruling: No appearance at the July 9, 2014 Status Conference is required.

Plaintiff's Atty: C. Anthony Hughes
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14
Answer: 2/17/14
Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - preference

Notes:
Continued from 3/25/14

Statement Regarding Attorney Fee for Representation in Adversary Proceeding
filed 3/28/14 [Dckt 31]

Statement Regarding Attorney Fees from non-debtor Corporation filed 3/28/14
[Dckt 32]

Defendants' Second Status Conference Statement filed 6/30/14 [Dckt 42]

The Status Conference is continued to 2:30 p.m. on October 15, 2014.

JULY 9, 2014 STATUS CONFERENCE

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