

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JULY 27, 2016
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-13412](#)-A-7 BASILA CONSTRUCTION, CONTINUED MOTION FOR
WJH-5 INC. EXAMINATION AND/OR MOTION FOR
GREG SMITH/MV SANCTIONS
5-27-16 [[114](#)]
- RILEY WALTER/Atty. for dbt.
KURT VOTE/Atty. for mv.
RESPONSIVE PLEADING

[This matter will be called at the end of the 9:00 a.m. calendar.]

Tentative

Motion: Compel Further 2004 Examination and for Sanctions

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: granted in part, denied in part

Order: Civil minute order

Creditors Greg Smith and Lori Smith move for further 2004 examination of Tina Schulte and Sam Basila and for monetary sanctions of \$17,535.05 against Schulte, Basila and their counsel, Brian Whelan. Respondents Schulte and Basila oppose the motion. This motion arises out of particularly acrimonious 2004 examinations of Schulte and Basila that occurred on February 17, 2016. In dispute is the scope of the examination and the alleged obstructionist conduct of Schulte and Basila's counsel, Brian Whelan.

DISCUSSION

Applicable Law

Federal Rule of Bankruptcy Procedure 2004 empowers the court to authorize the examination of an entity. Fed. R. Bankr. P. 2004(a). "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b).

"The scope of a Rule 2004 examination is "unfettered and broad" and the rule itself is "peculiar to bankruptcy law and procedure because it affords few of the procedural safeguards that an examination under Rule 26 of the Federal Rules of Civil Procedure does." In re GHR Energy Corp., 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983); In re GHR Companies, Inc., 41 B.R. 655, 660 (Bankr. D. Mass. 1984). Examinations under Rule 2004 are allowed for the "purpose of discovering assets and unearthing frauds" and have been compared to "a fishing expedition." In re GHR Energy Corp., 33 B.R. 451, 453 (Bankr. D. Mass. 1983) (citing In re Foerst, 93 F. 190, 191 (S.D.N.Y. 1899)). There are limits to the scope of a 2004 examination. It may not be used for "purposes of abuse or harassment" and it "cannot stray into matters which are not relevant to the basic inquiry." In re Mittco, Inc., 44 B.R. 35, 36 (Bankr. E.D. Wis. 1984)." Collier on Bankruptcy ¶ 2004.02[1] (Alan N. Resnick & Henry J. Somme reds., 16th ed.).

But a broad scope of examination is not an unlimited scope. Collier on Bankruptcy continues by noting:

"When the debtor or a third party believes that the Rule 2004 examination is beyond the scope allowed under Rule 2004(b), the

affected debtor or entity may move to quash the examination. Such motions are committed to the discretion of the bankruptcy court and are interlocutory. Grounds include abuse or harassment and matters unrelated to the basic inquiry of the examination. Some courts limit use of Rule 2004 when an adversary proceeding or contested matter is pending, since Rule 2004 is broader in scope than the ordinary rules of discovery. Conversely, use of Rule 2004 to prepare for the initiation of litigation is allowed.

Examination should be limited to matters involving the debtor. Examination of a witness about "matters having no relationship to the bankrupt's affairs or the administration of his estate is improper." However, where a dispute exists as to whether or not the witness was involved with the debtor, the examination should be allowed. . .

Courts are generally reluctant to allow escape from a Rule 2004 examination unless the party can show that the examination is oppressive and burdensome. For example, the movant should not be allowed to proceed if the disruption or cost to the debtor far out weighs any benefits to the creditor. Other courts may limit discovery under Rule 2004 where, they feel, discovery interferes with other bankruptcy or non-bankruptcy policies." *Id.* at ¶ 2004.02[2].

The witness retains applicable privileges. "A Rule 2004 examination is subject to the doctrine of privileged communications, if applicable. The doctrine of privilege is governed by Federal Rule of Evidence 501.

The Fifth Amendment privilege against self incrimination clearly applies in a Rule 2004 examination. The district court may grant immunity if the privilege is properly asserted. The proper procedure is to request the United States Attorney to apply for a grant of immunity.

When the debtor testifies at a section 341 meeting, the privilege may be waived as to any subsequent examination under Rule 2004. In *re Connelly* is an excellent primer on the scope of the Fifth Amendment in bankruptcy cases.

Invoking a privilege does not automatically jeopardize the debtor's discharge, nor does it generally justify dismissal of the case unless the debtor's silence somehow makes administration of the case impossible." *Id.* at ¶ 2004.02[4].

Obstructionist Behavior of Counsel as Basis for A Second 2004 Examination of the Witness

Creditors Greg Smith and Lori Smith alleged that Schulte and Basila's counsel Brian Whelan inappropriately interfered with the examination by interposing "groundless objections," coaching the witness and taking breaks to confer with the witness between the question and the answer.

Though less defined than the law pertinent to depositions, the court retains the power to control the scope of the examination and the conduct of counsel at a Rule 2004 Examination. Once again, *Collier on Bankruptcy* provides guidance. ". . . Where the discovery sought is too broad, the court can protect the party summoned to the examination. Where necessary, the court can fashion a remedy to prevent an unjust result. An examination set only to oppress the witness or to further

state court litigation, for example, should not be permitted." *Id.* at ¶ 2004.02[12].

Though not directly applicable, case law construing Federal Rule of Civil Procedure 30 (depositions) provides guidance. "An objection must be stated concisely and in a nonargumentative and nonsuggestive manner." [FRCP 30(c)(2)] Of course, it is not enough to preserve grounds for objection simply by stating, "Objection." Counsel must also state the grounds for the objection (without explanation or argument). (See Jones, Rosen, Wegner & Jones, Rutter Group Prac. Guide: Federal Civil Trials & Evidence (TRG), Ch. 8J.) (a) [11:1560] No "coaching" witness: Counsel may not use "speaking objections" to "coach" the deponent. (E.g., defending attorney interrupts mid-question to ask for a "clarification"; or in the course of objecting attempts to suggest the "right" answer or to warn the witness of potentially harmful answers.) [See *Security Nat'l Bank of Sioux City, Iowa v. Abbott Laboratories* (ND IA 2014) 299 FRD 595, 604—"the law clearly prohibits a lawyer from coaching a witness during a deposition"; *Specht v. Google, Inc.* (ND IL 2010) 268 FRD 596, 598—"speaking objections" that are argumentative or suggest an answer to the deponent are improper under FRCP 30(c)(2)] For example, "(i)nstructions to a witness that they may answer a question 'if they know' or 'if they understand the question' are raw, unmitigated coaching, and are never appropriate." [*Security Nat'l Bank of Sioux City, Iowa v. Abbott Laboratories*, *supra*, 299 FRD at 607; see also ¶11:1562 re sanctions]" *California Practice Guide: Federal Civil Procedure Before Trial*, Disclosures and Discovery, Depositions §§ 11:559-560 (Rutter Group 2016)."

In deciding the appropriate penalty for attorney or other party who disrupts an examination, the court again draws on penalties associated with depositions. "If the court finds objections have frustrated a "fair examination" or unreasonably prolonged the examination, it may impose an "appropriate sanction" on the persons responsible. [FRCP 30(d)(2); see *Van Pilsum v. Iowa State Univ. of Science & Technology* (SD IA 1993) 152 FRD 179, 180]. The sanctions may include costs resulting from the obstructive tactics, including the opposing party's attorney fees and expenses in adjourning the deposition, obtaining a court order, etc. [FRCP 30(d)(2); Adv. Comm. Notes to 1993 Amendments to former FRCP 30(d)(3)] . . .

This sanction may be imposed on a *nonparty witness* as well as a party or attorney. [Adv. Comm. Notes to 1993 Amendments to former FRCP 30(d)(3)].

Another "appropriate" sanction may be to *reopen the deposition* and allow questioning beyond the one-day limit. [FRCP 30(d)(2); see *Antonino-Garcia v. Shadrin* (D OR 2002) 208 FRD 298, 300—permitting renewed deposition after deponent refused to answer question and brought along a "supporter" who disrupted the proceedings]" *Id.* at 11:562-562.1.

Because the witnesses were partially examined (Schulte for 3.5 hours and Basila for .5 hours) and some satisfactory answers received, the court will review questions and the allegedly inappropriate conduct on a case-by-case basis, rather than make a blanket ruling.

Questions for Which Further Responses Are Sought

Unless otherwise indicated, the court refers to the questions using

the numbering system of creditors Greg and Lori Smith's Separate Statement in Support of Motion, filed July 6, 2016, ECF # 137.

Question No. 1

Creditors Smith asked Schulte's understanding of Schulte's understanding of company policy on accumulation of vacation. Examination of Schulte 26:15-21. Schulte answered the question, when she said "Well, it's—it says that you can't accumulate it." Examination of Schulte 27:9-10. Between the question and the answer, attorney Whelan interposed three objections, e.g. meaning of the question, timeframe covered and assumption of facts not in evidence. While only the timeframe objection was likely permissible, Fed. R. Civ. P. 32(d)(3)(B) (form of the question), Smiths only complaint is that Whelan "coached the witness's answer." Creditors Separate Statement, p. 3, line 8, filed July 6, 2016, ECF 137. An objection improperly "coaches" a witness when it suggests the desired answer. That did not occur here. The witnesses gave a response that it not tied to any of attorney Whelan's objections and the motion will be denied as Question No. 1.

Question No. 2

Creditor's Smith asked whether contrary to written company policy could be "rolled over" from one year to the next. Examination of Schulte 28:12. Schulte answered the question affirmatively. Examination of Schulte 29:9. Smiths only complaint is that Whelan "coached the witness's answer." Creditors Separate Statement, p. 4, line 9, filed July 6, 2016, ECF 137. Review of the transcript indicates that Schulte's answer does not cue on any objection made by her counsel and the motion will be denied as to Question No. 2.

Question No. 3

Creditors Smith asked whether accumulated vacation was cashed out at full or one-half value. Examination of Schulte 29:23. While Smith's only complaint is that attorney Whelan coached Schulte's answer, Creditors Separate Statement, p. 5, line 8, filed July 6, 2016, ECF 137, in actuality Schulte's answer was non-responsive. Examination of Schulte 30:14. Rather than providing a rate at which vacation pay was cashed out, she responded that "Everybody employed is eligible because you're accruing vacation as you're working." The motion will be granted as Question No. 3 and reasonable follow up questions that were foreclosed by a non-sequitur response.

Question No. 4

Creditors Smith asked Schulte's understanding of company written policy regarding cash out vacation pay. Examination of Schulte 32:7. Attorney Whelan asked for a break prior to Schulte answering; Smith's attorney, Kurt Vote, objected stating he wanted the witness to answer prior to taking a break. The examination broke before an answer was received. After the break, Schulte responded the handbook to which attorney Vote referred was old, creating confusion in the deposition, and then provided her understanding, including offering an opinion as to the legality of the company's then policy in cashing out vacation pay. Because a break was taken between the question and the answer and because the witness (apparently not an attorney) offered an opinion on the legality of the then policy, the court infers that Schulte's answer was, in fact, coached during the break. Such actions

by Basila Construction, Inc. might sound under 11 U.S.C. § 547 or 11 U.S.C. § 548. The motion will be granted as to Question No. 4 and reasonable follow up questions.

Question No. 5

Creditors Smith asked how much money Schulte paid attorney Whelan for his representation of her to date. Examination 34:2. Smith contend that the debtor's funds may be funding attorney Whelan's representation and that this information is necessary for establish Schulte's credibility. Creditors Separate Statement, p. 8, lines 4-9, filed July 6, 2016, ECF 137. Attorney Whelan objected, citing attorney-client privilege and harassment.

Motion will be denied as to Question No. 5. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated and exceeds the scope of Rule 2004(b).

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Somme eds., 16th ed.). The possibility that some funds paid to attorney Whelan might be traced to the debtor or insiders of the debtor is insufficient and the possible impact of payment on the witness' credibility is too tangential. The court finds this question oppressive and burdensome.

Question No. 6

Creditors Smith asked whether she had an understanding that someone other than herself was paying attorney Whelan's fees. Examination of Schulte 36:8-10. Attorney Whelan instructed Schulte not to answer. Examination of Schulte 36:11-16. Smiths contend that the debtor's funds may be funding attorney Whelan's representation and that this information is necessary for establish Schulte's credibility. Creditors Separate Statement, p. 8, lines 23, through p. 9, line 2, filed July 6, 2016, ECF 137.

The court disagrees and the motion will be denied as to Question No. 6. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated and exceeds the scope of Rule 2004(b).

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Somme reds., 16th ed.). The possibility that some funds paid to attorney Whelan might be traced to the debtor or insiders of the debtor is insufficient and the possible impact of payment on the witness' credibility is too tangential.

Question No. 7

Creditors Smith asked whether Schulte expected an invoice from attorney Whelan for services rendered the day of the examination. Examination of Schulte 36:25-37:2. Whelan instructed Schulte not to answer the question. Examination of Schulte 37:3. Smiths contend that the debtor's funds may be funding attorney Whelan's representation and that this information is necessary for establish Schulte's credibility. Creditors Separate Statement, p. 9, lines 18-32, filed July 6, 2016, ECF 137.

The court disagrees and the motion will be denied as to Question No. 7. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated and exceeds the scope of Rule 2004(b).

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Somme reds., 16th ed.). The possibility that some funds paid to attorney Whelan might be traced to the debtor or insiders of the debtor is insufficient and the possible impact of payment on the witness' credibility is too tangential. The court finds this question oppressive and burdensome.

Question No. 8

Creditors Smith asked whether Schulte expected to be repaid by Jon Basila, Sam Basila or anyone for attorneys fee paid to attorney Whelan. Examination of Schulte 37:5-7. Schulte declined to answer. Examination of Schulte 37:8-13. Smiths contend that the debtor's funds may be funding attorney Whelan's representation and that this information is necessary for establish Schulte's credibility.

Creditors Separate Statement, p. 10, lines 10-15, filed July 6, 2016, ECF 137.

The court disagrees and the motion will be denied as to Question No. 8. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated.

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Sommers, 16th ed.). The possibility that some funds paid to attorney Whelan might be traced to the debtor or insiders of the debtor is insufficient and the possible impact of payment on the witness' credibility is too tangential.

Question No. 9

After Schulte admitted that she had a relationship with [Sam] Basila, they asked her "[h]ow long have you had such a relationship [with Sam Basila]?" Examination of Schulte 37:17 et seq. Attorney Whelan instructed her not to answer, citing privacy concerns. Smiths contend the answer might show that Schulte, Basila Construction, Inc.'s bookkeeper, violated company policy in cashing out vacation or that Schulte might be biased in Sam Basila's favor. Creditors Separate Statement, p. 12, lines 1-9, filed July 6, 2016, ECF 137.

Though of minor probative value, the question is of insufficient relevance to justify examination. The witness has admitted a relationship with Sam Basila, which establishes the fact the Smiths seek. But the length of that relationship is too far afield. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b).

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Sommers

reds., 16th ed.). The existence of the relationship was a permissible question, its length steps outside the scope of permissible inquiry.

The motion will be denied as to Question No. 9.

Question No. 10

Creditors Smith asked whether Schulte whether she was involved in a personal relationship with [Sam] Basila in the one year prior to the date Basila Construction, Inc. filed bankruptcy. Examination of Schulte 39:19. Basila is a principal of the debtor. Attorney Whelan instructed her not to answer. Smiths contend the answer might show that Schulte, Basila Construction, Inc.'s bookkeeper, violated company policy in cashing out vacation or that Schulte might be biased in Sam Basila's favor. Creditors Separate Statement, p. 12, line 19, through p. 13, line 3, filed July 6, 2016, ECF 137.

The court agrees that the existence of a personal relationship between Schulte and Basila in the one year prior to the bankruptcy is within the scope of Federal Rule of Bankruptcy Procedure 2004(b). The motion will be granted as to Question No. 10 and the Smiths may also inquire whether during that the one year prior to Basila's Construction, Inc.'s bankruptcy the relationship was of a romantic nature. No other inquiries in this area will be allowed.

Question No. 11

Creditors Smith asked whether Schulte spent time with Sam Basila at his residence in the year prior to Basila Construction, Inc.'s bankruptcy as a part of a non-business relationship. Examination of Schulte 40:-17. Attorney Whelan instructed her not to answer. Smiths contend the answer might show that Schulte, Basila Construction, Inc.'s bookkeeper, violated company policy in cashing out vacation or that Schulte might be biased in Sam Basila's favor. Creditors Separate Statement, p. 13, lines 16-25, filed July 6, 2016, ECF 137.

Though of minor probative value, the question is of insufficient relevance to justify examination. The witness has admitted a relationship with Sam Basila, which establishes the fact the Smiths seek. But the length of that relationship is too far afield. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b).

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[.]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Somme reds., 16th ed.). The existence of the relationship was a permissible question, whether the witness spent time at Sam Basila's home is outside the permissible scope of inquiry.

The motion will be denied as to Question No. 11.

Question No. 12

Creditors Smith asked whether Jon Basila knew that Schulte and Sam Basila were involved in a romantic relationship in the one year period leading up to Basila Construction's bankruptcy. Examination of Schulte 40:8. Attorney Whelan instructed Schulte not to answer the question.

The motion will be denied as to Question No. 12. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). Jon Basila's knowledge of any relationship between the witness and Sam Basila does not fall within that scope.

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Sommers eds., 16th ed.). This information falls outside that scope and the motion will be denied. The court finds this question oppressive and burdensome.

Question No. 13

Creditors Smith asked whether Schulte ever volunteered to have someone else assume her duties for payroll and bookkeeping at Basila Construction because of her relationship with Sam Basila. Examination of Schulte 40:15-19. Attorney Whelan instructed Schulte not to answer.

Smiths contend the answer might show that Schulte, Basila Construction, Inc.'s bookkeeper, violated company policy in cashing out vacation or that Schulte might be biased in Sam Basila's favor. Creditors Separate Statement, p. 15, lines 9-20, filed July 6, 2016, ECF 137.

The court agrees that this question is sufficiently linked to the existence of assets available to pay creditors that it should be granted. Fed. R. Bankr. P. 2004(b). The motion will be granted as to Question No. 13 and to reasonable follow up questions that were foreclosed by attorney Whelan.

Question No. 14

Creditors Smith asked how Schulte and Sam Basila agreed that personal charges would be "handled" by Basila Construction. Examination of Schulte 50:7-9. Whelan objected and Schulte answered "That it would be paid back [by Sam Basila to the Basila Construction, Inc.]"

The motion will be granted because the answer is not responsive. Schulte was asked how the issue would be handled by Basila Construction, Inc., not by Sam Basila. She answered the question as to how Sam Basila, personally, would handle the situation. The motion will be granted as to Question No. 14 and to reasonable follow up questions.

Question No. 15

Creditors Smith asked Schulte "Wasn't there a personal tax payment by Sam Basila on the company credit card." Examination of Schulte 69:12. Whelan objected stating ". . . [C]alls for speculation. If you know, you can answer. If you don't know, you don't know." Schulte responded, "I don't know for sure." Smith's contend the answer was coached. Creditors Separate Statement, p. 17, lines 13-14, filed July 6, 2016, ECF 137.

The court agrees. Attorney Whelan made a speaking objection that suggests the answer to the witness. The motion will be granted as to Question No. 15 and to reasonable follow up questions.

Question No. 16

Creditors Smith asked Schulte whether Basila made efforts to account for fuel that was used for business, as against fuel personally used. Examination of Schulte 76:13. Whelan objected stating ". . . [C]alls for speculation. If you know, you can answer." Dutifully, Schulte answered, "I don't know." Smith's contend the answer was coached. Creditors Separate Statement, p. 18, lines 5-6, filed July 6, 2016, ECF 137.

The court agrees. Attorney Whelan made a speaking objection, which suggested to Schulte that she should answer that she lacked knowledge of the subject. The motion will be granted as to Question No. 16 and to reasonable follow up questions.

Question No. 17

Creditors Smith asked Schulte whether there was a contemporaneous writing documenting the existence of other business associates at meals charged to Basila Construction, Inc. Examination of Schulte 81:25-82:2. Whelan objected stating ". . . [C]alls for speculation. If you know, you can answer." Schulte responded, "I don't know." Examination of Schulte 82:6. Smith's contend the answer was coached. Creditors Separate Statement, p. 19, line 1, filed July 6, 2016, ECF 137.

The court agrees. Attorney Whelan made a speaking objection, which suggested to Schulte that she should answer that she lacked knowledge of the subject. The motion will be granted as to Question No. 17 and to reasonable follow up questions.

Question No. 18

Creditors Smith asked Schulte whether she was in a personal relationship with Sam Basila when he cashed out his first vacation pay in 2015. Examination of Schulte 89:17-19. Attorney Whelan instruct her not to answer. Examination of Schulte 89:20-21. Smith contend that the existence of such a relationship while serving as a

bookkeeper might show that Schulte would be willing to violate company policy.

The court agrees. This question is sufficiently tied to a possible asset of the estate, e.g. vacation cash out, that it falls within the scope of a 2004 examination. The motion will be granted as to Question No. 18 and to reasonable follow up questions.

Question No. 19

Creditors Smith asked Schulte whether she was an agreement between Jon Basila or Sam Basila by which Adam Basila could make charges against Basila Construction, Inc.'s credit card for Adam Basila's personal business. Examination of Schulte 91:8-10. Whelan objected stating ". . . [C]alls for speculation. Lacks foundation. If you know, you can answer. If you don't know, you don't know." Schulte responded, "I have no knowledge." Smith's contend the answer was coached. Creditors Separate Statement, p. 19, line 6, filed July 6, 2016, ECF 137.

The court agrees. Attorney Whelan made a speaking objection that suggests the answer to the witness. The motion will be granted as to Question No. 19 and to reasonable follow up questions.

Question No. 20

Creditors Smith asked Schulte whether anyone other than Schulte made entries into American Contractor at Basila Construction. Examination of Schulte 102:8-9. Whelan objected stating "Objection, calls for speculation, lacks foundation. You can answer, if you know." Schulte responded, "My knowledge, Sam didn't." When pressed she also denied that neither Jon or Delilah made those entries. Smiths contend the answer was coached. Creditors Separate Statement, p. 19, line 6, filed July 6, 2016, ECF 137.

The court disagrees. If Whelan attempted to suggest that Schulte should answer that she lacked knowledge, she didn't pick up the signal. Instead she answer that neither Sam Basia, nor Jon [last name unknown], nor Delilah [last name unknown] did so. But to the extent that Schulte failed to respond about persons other than those specified, the answer is non-responsive. The motion will be granted as to Question No. 20 and to reasonable follow up questions.

Question No. 21

Creditors Smith asked Schulte, Basila Construction, Inc.'s bookkeeper, to explain a nearly \$900,000.00 reduction in asset value between October 31, 2014, and February 28, 2015. Examination of Schulte 103:23-104:4. Whelan objected stating "Objection. . .calls for speculation. If you can answer, go ahead." Schulte answered, "You would have to talk to the accountant, Monty Schutlz." Smiths contend the answer was coached. Creditors Separate Statement, p. 22, line 1, filed July 6, 2016, ECF 137.

The court agrees. Attorney Whelan made a speaking objection, which suggested to Schulte that she should answer that she lacked knowledge of the subject. The motion will be granted as to Question No. 21 and to reasonable follow up questions.

Question No. 22

Creditors Smith asked Schulte whether a particular bookkeeping entry was intended to represent an accrued payable for April 2013, through August 2015, for unpaid office rent. Examination of Schulte 109:21. Whelan objected, "Objection, lacks foundation, calls for speculation. If you know." Schulte answered, "It is for unpaid rent. For the time period, I can't tell you." Attorney Vote attempted to refresh her recollection and she reaffirmed her lack of knowledge. Smiths contend the answer was coached. Creditors Separate Statement, p. 22, line 22, filed July 6, 2016, ECF 137.

The court disagrees. The witness gave a substantive answer, apparently not influenced by the speaking objection. The motion will be denied as to Question No. 22.

Question No. 23

Creditors Smith asked Schulte how Basila Construction was able to write a petty cash check after a bank levy. Examination of Schulte 113:10. Whelan objected, "Objection, lacks foundation, calls for speculation. You can answer if you know." Schulte responded, "I don't' recall the history to say. It just shows that money's coming out of the account." Smiths contend the answer was coached. Creditors Separate Statement, p. 23, line 16, filed July 6, 2016, ECF 137.

The court agrees. Attorney Whelan made a speaking objection, which suggested to Schulte that she should answer that she lacked knowledge of the subject. The motion will be granted as to Question No. 23 and to reasonable follow up questions.

Question No. 24

Creditors Smith asked Sam Basila when the process server served Schulte at Basila's residence, was she present for business or non-business reasons. Examination of Basila 7:5-16. Whelan objected as an invasion of privacy and harassment.

The question exceeds the appropriate scope of a 2004 examination. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). The reason Schulte was at Basila's residence is not sufficiently related to that inquiry to justify further responses. The motion will be denied as to Question No. 24.

Question No. 25

Creditors Smith asked Sam Basila whether he was in more than a business relationship with Tina Schulte. Examination of Basila 7:17-20. Whelan instructed Basila not to answer.

The court finds that the existence of a romantic relationship between the debtor's principal and the debtor's bookkeeper, particularly where-as has been alleged here-there are financial improprieties between the entity and its principal. Such a relationship might be

probative of collusive behavior or bias. But beyond the existence of such a relationship there court does not believe the question to be within the scope of Rule 2004(b). The motion will be granted as to Question No. 25, without follow up questions.

Question No. 26

Creditors Smith asked Sam Basila the hourly rate paid attorney Whelan for his services. Examination of Basila 7:21. Attorney Whelan objected on relevance grounds. Smith contend that the monies paid to attorney Whelan might be estate funds. Creditors Separate Statement, p. 26, line 10, filed July 6, 2016, ECF 137.

Motion will be denied as to Question No. 26. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated. It does not to source of the funds, and whether those funds came from the debtor, but the hourly rate.

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Somme eds., 16th ed.). This is unrelated to the scope of a Rule 2004(b) examination.

The motion will be denied as to Question No. 26.

Question No. 27

Creditors Smith asked Sam Basila how much he has personally paid attorney Whelan for the representation. Whelan instructed Basila not to answer. Smiths contend that the monies paid to attorney Whelan might be estate funds. Creditors Separate Statement, p. 26, lines 25-26, filed July 6, 2016, ECF 137.

Motion will be denied as to Question No. 27. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated. It does not to source of the funds, and whether those funds came from the debtor, but to total funds paid.

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville

Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Sommers, 16th ed.). This is unrelated to the scope of a Rule 2004(b) examination.

The motion will be denied as to Question No. 27.

Question No. 28

Creditors Smith asked whether Jon Basila has paid Sam Basila's fees to attorney Whelan with regard to the proceedings. Examination of Basila 9:37. Whelan instructed Basila not to answer. Smiths contend that the monies paid to attorney Whelan might be estate funds or show bias. Creditors Separate Statement, p. 26, lines 25-26, filed July 6, 2016, ECF 137.

The court disagrees and the motion will be denied as to Question No. 28. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated.

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[.]" citing "*Keene Corp. v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Sommers, 16th ed.). The possibility that some funds paid to attorney Whelan might be traced to the debtor or insiders of the debtor is insufficient and the possible impact of payment on the witness' credibility is too tangential.

Question No. 29

Creditors Smith asked whether Sam Basila paid Tina Schulte's legal fees due attorney Whelan. Examination of Basila 9:9. Whelan instructed the witness not to answer. Smiths contend that the monies paid to attorney Whelan might be estate funds or show bias. Creditors Separate Statement, p. 27, line 24, through p. 28, line 8, filed July 6, 2016, ECF 137.

The court disagrees and the motion will be denied as to Question No. 29. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b).

This question is not so calculated.

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Somme reds., 16th ed.). The question was not phrased as to Basila Construction, Inc., the debtor, but as to Sam Basila and, therefore, is improper inquiry.

Question No. 30

Creditors Smith asked whether Jon Basila paid Tina Schulte's legal fees due attorney Whelan. Examination of Basila 9:14. Whelan stated that he felt the question were harassment. Smiths contend that the monies paid to attorney Whelan might be estate funds or show bias. Creditors Separate Statement, p. 29, line 20, through p. 30, line 5, filed July 6, 2016, ECF 137.

The court disagrees and the motion will be denied as to Question No. 30. First, the question exceeds the scope of permissible inquiry. "The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). This question is not so calculated.

Second, case law is clear the examination should be "limited to matters involving the debtor. Examination of a witness about 'matters having no relationship to the bankrupt's affairs or the administration of his estate is improper[,]" citing "Keene Corp. v. Johns-Manville Corp. (*In re Johns-Manville Corp.*), 42 B.R. 362, 364 (S.D.N.Y. 1984); *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *In re Financial Corp. of Am.*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990); *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Express One Int'l, Inc.*, 217 B.R. 215, 216 (Bankr. E.D. Tex. 1998)." Collier on Bankruptcy ¶ 2004.02[2] (Alan N. Resnick & Henry J. Somme reds., 16th ed.). The question was not phrased as to Basila Construction, Inc., the debtor, but as to Jon Basila and, therefore, is improper inquiry. The motion will be denied.

Question No. 31

Creditors Smith asked whether Sam Basila was in a personal relationship with Tina Schulte when he cashed out vacation. Examination of Schulte 12:15. Whelan instructed Schulte not to answer the question. Smiths contend that the existence of a personal relationship between Basila Construction bookkeeper Tina Schulte and Sam Basila's its principal might support a finding that accrued vacation was cashed out and that in violation of company policy. Such acts might sound under 11 U.S.C. § 547 or 11 U.S.C. § 548. And if pursued these might yield assets for the estate and, thus, is within

the scope of Rule 2004(b). The motion will be granted as to Question No. 31 and reasonable follow up questions.

Question No. 32

Creditors Smith asked whether Sam Basila was in a personal relationship with Tina Schulte when he took a "final cash out." vacation. Examination of Schulte 13:8. Whelan instructed Schulte not to answer the question. Smiths contend that the existence of a personal relationship between Basila Construction bookkeeper Tina Schulte and Sam Basila's its principal might support a finding that accrued vacation was cashed out and that in violation of company policy. Such acts might sound under 11 U.S.C. § 547 or 11 U.S.C. § 548. And if pursued these might yield assets for the estate and, thus, is within the scope of Rule 2004(b). The motion will be granted as to Question No. 32 and reasonable follow up questions.

Sanctions

The parties make cross requests for attorney's fees. Attorney's fees in Rule 2004 examinations are governed by Federal Rule of Civil Procedure 37(b)(2). In re Lincoln N. Assocs., Ltd. Partnership, 163 B.R. 403, 408-409, 1993 Bankr. LEXIS 2010, *13-15, 26 Fed. R. Serv. 3d (Callaghan) 1356 (Bankr. D. Mass. 1993).

Justice would not be well served in this case by shifting the costs of this dispute from one side to the other. Each side prevailed on 16 of the 32 disputed questions. By that measure, each side prevailed and lost equally with respect to this motion. Each sides' request for attorneys fees will be denied.

Other Orders Regarding the Continued 2004 Examinations

But because the parties have not been able to complete this discovery without acrimony this court will issue the civil minute order below to facilitate the conclusion of these 2004 examinations.

Prior to the hearing on this matter, the parties are ordered to meet and confer on the amount of time necessary to complete these examinations.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Creditors Greg Smith and Lori Smiths' motion to compel and for sanctions has been presented to the court. Having considered the well-pleaded facts of the motion,

It is hereby ordered that the motion is granted as to Separate Statement in Support of Motion, filed July 6, 2016, ECF # 137, Questions Nos. 3, 4, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 25, 31, and 32.

It is hereby ordered that reasonable follow up on each of these questions will be allowed except as to questions Nos. 10 (but Smiths

may inquire whether the relationship was of a romantic nature) and 25.

It is hereby ordered the each side's request for attorney's fees is denied.

It is further ordered that the 2004 examinations be completed on a mutually agreed date at the Robert Coyle Federal Courthouse, 2500 Tulare Street, Fresno, California. The examination shall occur on one of the court's regularly scheduled law and motion calendar days (to ensure the availability of the court); said date to be approved in advance by Kathy Torres, Judicial Assistant to Honorable Fredrick E. Clement. Further discovery disputes (including requests for sanctions) shall be resolved on oral motion contemporaneously with the examination in Department A, 5th Floor of the Robert Coyle Courthouse, 2500 Tulare Street, Fresno, California.

It is further ordered that all other relief is denied.

2. [16-11421](#)-A-7 CANDELARIO SANCHEZ
THA-1
CARMEN MCDOWELL/MV
TIMOTHY SPRINGER/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-29-16 [[12](#)]

Final Ruling

Motion: Stay Relief to Pursue State-Court Litigation

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted only to the extent specified in this ruling

Order: Civil minute order

Subject: Action related to auto accident liability and recovery of proceeds from insurance company, filed in Superior Court of California, County of Fresno, bearing case no. 15CECG03055 (as more fully completely described on the stay relief summary sheet)

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). The debtor has filed a non-opposition to the relief sought. No opposition has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to pursue the pending state court litigation identified in the motion through judgment. The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Carmen McDowell and Rodolfo Martinez's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to pursue through judgment the pending state court litigation described as an action related to auto accident liability and recovery of proceeds from debtor's insurance company, filed in the Superior Court of California, County of Fresno, bearing case no. 15CECG03055. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case. No other relief is awarded.

3. [11-17165](#)-A-7 OAKHURST LODGE, INC., A CONTINUED MOTION TO DISMISS
 [15-1017](#) CALIFORNIA CORPORATION ADVERSARY PROCEEDING/NOTICE OF
 AJM-4 REMOVAL
 OAKHURST LODGE, INC. V. 5-17-16 [[176](#)]
 FIRST-CITIZENS BANK & TRUST
 AARON MALO/Atty. for mv.
 CIVIL MINUTES #196

Final Ruling

This matter is continued to August 31, 2016, at 10:00 a.m. The record in support of this motion is closed and, absent leave of court, no party may augment the record with respect to this motion. Notwithstanding paragraph 4 of the Order Regarding First-Citizens Motion to Dismiss, filed April 29, 2016, ECF # 174 or any similar order, plaintiff Oakhurst Lodge, Inc. shall not seek, nor shall the Clerk of the Court enter, any default against any defendant herein. A civil minute order will issue.

4. [11-17165](#)-A-7 OAKHURST LODGE, INC., A CONTINUED MOTION TO STRIKE
[15-1017](#) CALIFORNIA CORPORATION 5-17-16 [[179](#)]
AJM-5
OAKHURST LODGE, INC. V.
FIRST-CITIZENS BANK & TRUST
AARON MALO/Atty. for mv.
CIVIL MINUTES #197

Final Ruling

This matter is continued to August 31, 2016, at 10:00 a.m. The record in support of this motion is closed and, absent leave of court, no party may augment the record with respect to this motion. Notwithstanding paragraph 4 of the Order Regarding First-Citizens Motion to Dismiss, filed April 29, 2016, ECF # 174 or any similar order, plaintiff Oakhurst Lodge, Inc. shall not seek, nor shall the Clerk of the Court enter, any default against any defendant herein. A civil minute order will issue.

5. [11-17165](#)-A-7 OAKHURST LODGE, INC., A CONTINUED STATUS CONFERENCE RE:
[15-1017](#) CALIFORNIA CORPORATION AMENDED COMPLAINT
DMS-13 4-6-16 [[151](#)]
OAKHURST LODGE, INC. V.
FIRST-CITIZENS BANK & TRUST
DONNA STANDARD/Atty. for pl.
CMO #201, RESPONSIVE
PLEADING

Final Ruling

The status conference is continued to August 9, 2016, at 10:00 a.m. Having reviewed the status reports of the parties, the court is aware that the debtor has expressed an unwillingness to proceed with the resolution described in Exhibit B to the Report of Resolution Advocate Michael Wilhelm, filed June 6, 2016, ECF # 193. The court intends to resolve the question of whether the debtor may do so prior to addressing any of the defendant's motions. A civil minute order will issue.

6. [11-17165](#)-A-7 OAKHURST LODGE, INC., A CONTINUED MOTION TO DISMISS
[15-1017](#) CALIFORNIA CORPORATION CASE
NLG-5 5-17-16 [[182](#)]
OAKHURST LODGE, INC. V.
FIRST-CITIZENS BANK & TRUST
NICHOLE GLOWIN/Atty. for mv.
CIVIL MINUTES #198

Final Ruling

This matter is continued to August 31, 2016, at 10:00 a.m. The record in support of this motion is closed and, absent leave of court, no party may augment the record with respect to this motion. Notwithstanding paragraph 4 of the Order Regarding First-Citizens

Motion to Dismiss, filed April 29, 2016, ECF # 174 or any similar order, plaintiff Oakhurst Lodge, Inc. shall not seek, nor shall the Clerk of the Court enter, any default against any defendant herein. A civil minute order will issue.

7. [11-17165](#)-A-7 OAKHURST LODGE, INC., A CONTINUED MOTION TO STRIKE
[15-1017](#) CALIFORNIA CORPORATION 5-17-16 [[188](#)]
NLG-6
OAKHURST LODGE, INC. V.
FIRST-CITIZENS BANK & TRUST
NICHOLE GLOWIN/Atty. for mv.
CIVIL MINUTES #199

Final Ruling

This matter is continued to August 31, 2016, at 10:00 a.m. The record in support of this motion is closed and, absent leave of court, no party may augment the record with respect to this motion. Notwithstanding paragraph 4 of the Order Regarding First-Citizens Motion to Dismiss, filed April 29, 2016, ECF # 174 or any similar order, plaintiff Oakhurst Lodge, Inc. shall not seek, nor shall the Clerk of the Court enter, any default against any defendant herein. A civil minute order will issue.

8. [16-10469](#)-A-7 JEFFREY BOHN MOTION TO SELL
JES-1 6-29-16 [[55](#)]
JAMES SALVEN/MV
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: Cessna 172M aircraft

Buyer: Pacific Aviation

Sale Price: \$15,000 cash

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the

Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

9. [05-60471](#)-A-7 JOSEPHINE BELLARDITA AMENDED MOTION FOR SANCTIONS,
JOSEPHINE BELLARDITA/MV AMENDED MOTION TO RECOVER
DAMAGES FOR VIOLATION OF THE
DISCHARGE INJUNCTION
7-7-16 [[78](#)]
RESPONSIVE PLEADING

Final Ruling

This matter is continued to August 31, 2016, at 10:00 a.m.

10. [05-60471](#)-A-7 JOSEPHINE BELLARDITA MOTION FOR CONTEMPT
JOSEPHINE BELLARDITA/MV 6-20-16 [[73](#)]

Final Ruling

This matter is continued to August 31, 2016, at 10:00 a.m.

11. [10-12576](#)-A-7 SHERMAN FUJIOKA CONTINUED MOTION TO DETERMINE
RH-5 TRUSTEE'S ADMINISTRATIVE TAX
PETER FEAR/MV LIABILITY 11 U.S.C. 505
5-4-16 [[142](#)]
RICHARD HARRIS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

By stipulation of the parties, the matter is dropped from calendar.

12. [11-19687](#)-A-7 ROBERT SCARPITTO
SAS-3
SHERYL STRAIN/MV
STEVEN SIEVERS/Atty. for dbt.

MOTION FOR COMPENSATION FOR
SHERYL A. STRAIN, ACCOUNTANT(S)
6-29-16 [[111](#)]

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Sheryl A. Strain, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2533.50 and reimbursement of expenses in the amount of \$216.63.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Sheryl A. Strain's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2533.50 and reimbursement of expenses in the amount of \$216.63.

IT IS FURTHER ORDERED that the trustee is authorized without further

order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

13. [16-12487](#)-A-7 LUCIANO/MANDY GALVEZ MOTION TO EXTEND AUTOMATIC STAY
TCS-1 7-13-16 [7]
LUCIANO GALVEZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.