UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 29, 2013 at 10:30 a.m.

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1. 12-39515-E-11 WATSON COMPANIES, INC. CONTINUED ORDER TO SHOW CAUSE
RHS-2 W. Steven Shumway 6-21-13 [88]

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Clifton Inohara, Ford Motor Credit Company, and Office of the United States Trustee on June 24, 2013. 31 days notice of the hearing was provided.

Tentative Ruling: The court's tentative decision is to discharge the Order to Show Cause.

PRIOR HEARING AND ORDER

The court issued an Order to Show Cause on June 21, 2013 after a court review of the case file disclosed that the following "Stipulated Orders Granting Relief From Automatic Stay" have been filed in this case:

a. Ford Motor Credit Company, LLC "Stipulated Order Granting Relief From Automatic Stay" filed May 8, 2013, Docket 60, no Docket Control Number.

i. Persons signing the "Stipulated Order Granting Relief From Automatic Stay"

(1) W. Stephen Shumway

(2) Greg Watson

(3) Clifton Inohara

ii. Relief Granted by "Stipulated Order"

(1) Modification of automatic stay to allow Ford Motor Credit Corporation, LLC to obtain possession of and dispose of a 2007 Ford F450 with a VIN ending in 8691.

b. Ford Motor Credit Company, LLC "Stipulated Order Granting Relief From Automatic Stay" filed May 8, 2013, Docket 61, no Docket Control Number.

i. Persons signing the "Stipulated Order Granting Relief From Automatic Stay"

(1) W. Stephen Shumway

(2) Greg Watson

(3) Clifton Inohara

ii. Relief Granted by "Stipulated Order"

(1) Modification of automatic stay to allow Ford Motor Credit Corporation, LLC to obtain possession of and dispose of a 2007 Ford F450 with a VIN ending in 2176.

c. Ford Motor Credit Company, LLC "Stipulated Order Granting Relief From Automatic Stay" filed May 8, 2013, Docket 62, no Docket Control Number.

i. Persons signing the "Stipulated Order Granting Relief From Automatic Stay"

(1) W. Stephen Shumway

(2) Greg Watson

(3) Clifton Inohara

ii. Relief Granted by "Stipulated Order"

(1) Modification of automatic stay to allow Ford Motor Credit Corporation, LLC to obtain possession of and dispose of a 2007 Ford F150 with a VIN ending in 1882.

d. Ford Motor Credit Company, LLC "Stipulated Order Granting Relief From Automatic Stay" filed May 8, 2013, Docket 63, no Docket Control Number.

i. Persons signing the "Stipulated Order Granting Relief From Automatic Stay"

(1) W. Stephen Shumway

(2) Greg Watson

(3) Clifton Inohara

ii. Relief Granted by "Stipulated Order"

(1) Modification of automatic stay to allow Ford Motor Credit Corporation, LLC to obtain possession of and dispose of a 2007 Ford F450 with a VIN ending in 8690.

e. Ford Motor Credit Company, LLC "Stipulated Order Granting Relief From Automatic Stay" filed May 8, 2013, Docket 64, no Docket Control Number.

i. Persons signing the "Stipulated Order Granting Relief From Automatic Stay"

(1) W. Stephen Shumway

(2) Greg Watson

(3) Clifton Inohara

ii. Relief Granted by "Stipulated Order"

(1) Modification of automatic stay to allow Ford Motor Credit Corporation, LLC to obtain possession of and dispose of a 2008 Ford F150 with a VIN ending in 1281.

f. Ford Motor Credit Company, LLC "Stipulated Order Granting Relief From Automatic Stay" filed May 8, 2013, Docket 65, no Docket Control Number.

i. Persons signing the "Stipulated Order Granting Relief From Automatic Stay"

(1) W. Stephen Shumway

(2) Greg Watson

(3) Clifton Inohara

ii. Relief Granted by "Stipulated Order"

(1) Modification of automatic stay to allow Ford Motor Credit Corporation, LLC to obtain possession of and dispose of a 2007 Ford F150 with a VIN ending in 6110.

No motion seeking the issuance of an order from the court modifying the automatic stay for any of the "Stipulated Orders Granting Relief From Automatic Stay" has been filed by Ford Motor Credit Company, LLC. The "Stipulated Orders Granting Relief From Automatic Stay" are not signed by a bankruptcy judge. The "Stipulated Orders Granting Relief From Automatic Stay" are signed by the attorney for the Debtor in Possession, the representative of the Debtor in Possession, and the attorney for Ford Motor Credit Company, LLC.

The filing of the "Stipulated Orders Granting Relief From Automatic Stay" by the Debtor in Possession and Ford Motor Credit create the false impression that orders modifying the automatic stay have been issued by the court. The attorney for the Debtor, attorney for Ford Motor Credit Company,

LLC, and Ford Motor Credit Company, LLC are not judicial officers empowered to exercise the Article III judicial power of the United States of America.

The court finding that false orders existed in the files in this case, the false orders having been "issued" by the Debtor in Possession, Ford Motor Credit Company, LLC, the attorney for the Debtor in Possession, and the attorney for Ford Motor Credit Company, LLC, the court ordered W. Stephen Shumway, the attorney for the Debtor in Possession; Clifton Inohara, and such other representative of Nelson & Kennard, and Ford Motor Credit Company, LLC, to appear and provide the court with the legal authority for the filing of the above identified "Stipulated Orders Granting Relief From Automatic Stay" executed by the attorneys and their clients, which response shall include,

A. Ford Motor Credit Company, LLC, providing an accounting of all such "Stipulated Orders Granting Relief From Automatic Stay" it has executed and filed in bankruptcy cases, directly or through any attorneys or representatives, which have not been signed by a United States Bankruptcy Judge, during the period January 1, 2012, through May 31, 2013;

B. The basis for Ford Motor Company, LLC and the Debtor in Possession requesting relief from the court without complying with Federal Rule of Bankruptcy Procedure 9013 and 4001(d).

C. The basis for Ford Motor Credit Company, LLC and the Debtor in Possession failing to comply with Federal Rule of Bankruptcy Procedure 4001(d)(1)(C) and not disclosing the stipulation and "Stipulated Order" to the parties as required under that subparagraph.

The court also ordered that W. Stephen Shumway, Nelson & Kennard, and Ford Motor Credit shall show cause why the court does not,

A. Issue an order expunging each of the "Stipulated Orders Granting Relief From Automatic Stay" as fraudulent orders from the record in this case;

B. Order W. Stephen Shumway to pay $600.00 in corrective sanctions ($100 per "Stipulated Order Granting Relief From Automatic Stay") for his conduct in filing such "Stipulated Orders Granting Relief From the Automatic Stay" in this case;

C. Order Nelson & Kennard to pay $600.00 in corrective sanctions ($100 per "Stipulated Order Granting Relief From Automatic Stay") for the conduct of said law firm, acting through its attorney Clifton Inohara, in filing such "Orders" in this case; and

D. Order Ford Motor Credit Company, LLC to pay $5,556.00 ($176.00 + $750.00 per "Stipulated Order Granting Relief From Automatic Stay") for its conduct in having its attorneys filing such "Orders" in this case.

DEBTOR'S RESPONSE

Attorney for Debtor-in-Possession, Steven Shumway, filed a response to the Order to Show Cause. Mr. Shumway states that Ford Motor Credit requested that the Debtor-in-Possession stipulate to relief from the automatic stay for vehicles that were returned to Watson Roofing, Inc. Mr. Shumway asserts that the vehicles were not part of the bankruptcy estate and were not going to be used by the Debtor-in-Possession. Mr. Shumway states that he agreed to have his client sign the stipulation and agreed to sign the stipulation himself on the condition that Ford Motor Credit file the necessary motions for relief from the automatic stay and the singed stipulations were to be filed in support of the motions.

Mr. Shumway states he had no knowledge that Ford Motor Credit did not file the motions for relief until he was served with the Order to Show Cause. Mr. Shumway states that he spoke to the attorney for Ford Motor Credit and it was an oversight of the firm that the motions were not filed and agreed to file them.

The court is concerned by Mr. Shumway's statements under penalty of perjury that the vehicles which were the subject of the Stipulated Orders executed by the parties "[w]ere not property of the bankruptcy estate...." Declaration ¶ 8, Dckt. 97. It is explained in the preceding paragraphs of the declaration by Mr. Shumway, under penalty of perjury, that the vehicles and financing were originally obtained by Watson Roofing, Inc., which entity stopped doing business in 2010. Further, that the Debtor entered into an agreement with Ford Motor Credit, LLC to assume the obligations owed on or lease some of the vehicles which were originally owned or leased by Watson Roofing, Inc. The vehicles which were not being transferred to the Debtor were returned to Ford Motor Credit, LLC.

The contention that these vehicles are not property of the bankruptcy estate is belied by (1) Ford Motor Credit, LLC filing claims in this case for the obligations secured by the vehicles, (2) the Stipulated Orders filed by the parties modifying the automatic stay, (3) Ford Motor Credit, LLC being listed on Schedule D as having secured claims for vehicle loans, and (4) the Ford vehicles listed on the Equipment List to the Schedules. Dckt. 1 at 35-38.

Though counsel's explanation and apparent ruling that the vehicles are not property of the estate because the Debtor in Possession chooses not to use them as part of the reorganization are lacking in legal substance, they are responses. Further, Mr. Shumway testifies that he believed Ford Motor Credit, LLC would be filing motions for approval of the Stipulation. While Mr. Shumway does not provide any explanation as to why he would sign a document to be filed with the court which is titled "Stipulated Order" which is not a document signed by a judge, he has substantially complied with the Order to Show Cause. The court discharged the Order to Show Cause as to W. Steven Shumway, no corrective sanctions ordered.

CREDITOR'S RESPONSE

Clifton Inohara, attorney at Nelson & Kennard, attorneys for Ford Motor Credit Company, LLC, filed a response to the Order to Show Cause. Mr.

Inohara states that he inadvertently misnamed and filed the Stipulations. Counsel asserts that this was an error on the part of counsel and creditor is not at fault or has no knowledge of the filing error.

Counsel asserts that a situation like this has not occurred before and that procedures have been implemented to ensure that it will not happen again. Counsel states that the intent was never to deceive anyone or to create more work for the parties or for the court. Counsel states that the intent was to reduce time and costs for all parties and apologizes for the filing error. Counsel requests that the court not impose sanctions on any party.

DISCUSSION AT PRIOR HEARING

The court remains concerned with the response of Clifton Inohara. Counsel asserts that both the naming of the Stipulation and the failure to file them with motions were mistake on his firm's part. While Counsel testifies that a "situation like this" has not occurred before, he does not directly address the questions raised by the court, such as whether there were other "Stipulated Orders" filed in any bankruptcy case during the period January 1, 2012, through May 31, 2013. Further, Mr. Inohara does not provide a basis for the other questions raised by the court, other than that the naming and filing of these "Stipulated Orders" was a mistake.

Further, the court has ordered Ford Motor Credit, LLC to provide an accounting of all such "Stipulated Orders Granting Relief From Automatic Stay which it has executed and filed in bankruptcy cases, directly or through any attorneys or representative, which have not been signed by a United States Bankruptcy Judge, during the period January 1, 2012, through May 31, 2013. Order to Show Cause, Dckt. 88. Ford Motor Credit, LLC has failed to provide such accounting. Rather, it appears that is has merely sent its attorney in this case to plead that he, the attorney, has not done this before. The court's order was not limited to merely the individual attorney, in this individual case, advising the court what that individual attorney has done.

Additionally, counsel's explanation for using this process was intended to "avoid the filing of six (6) motions for relief from stay." Declaration ¶ 7, Dckt. 99. The Order to Show Cause required counsel and Ford Motor Credit, LLC to provide the court with any legal authorities for filing the Stipulated Orders or merely filing a stipulation and lodging an order with the court, failing to comply with Federal Rule of Bankruptcy Procedure 4001(d). No such legal authorities have been provided, and the response by counsel confirms that the requirements of Federal Rule of Bankruptcy Procedure 4001(d) were intentionally violated in an attempt to save paying the required filing fees.

BANKRUPTCY COURT AUTHORITY TO ISSUE CORRECTIVE SANCTIONS

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with

its lawful judical orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowerd to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

The court has afforded Ford Motor Credit Company, LLC the opportunity to provide an accounting of the pleadings in question that it has filed since January 1, 2012. The court has afforded Ford Motor Credit Company, LLC and Nelson & Kennard the opportunity to provide the legal authorities by which a stipulation could be filed and ordered granting relief from the automatic stay entered without compliance with the requirement of a noticed motion pursuant to Federal Rule of Bankruptcy Procedure 4001(d). Though each had the opportunity to provide the court with such information and explanation, thereby avoiding the imposition of corrective sanctions, neither have done so.

The court ordered Nelson & Kennard to pay a corrective sanction of $600.00 to the Clerk of the Bankruptcy Court on or before August 22, 2013.

The court ordered Ford Motor Credit, LLC to pay a corrective sanction of $5,556.00 to the Clerk of the Bankruptcy Court on or before August 22, 2013.

The court also ordered Nelson and Kennard to file and serve on the United States Trustee on or before August 22, 2013, the legal authorities for the filing of a stipulation and seeking an order of the court granting relief from the automatic stay without complying with the requirements of Federal Rule of Bankruptcy Procedure 4001(d).

The court further ordered that on or before August 22, 2013, Ford Motor Credit, LLC shall file with the court, and serve on the United States Trustee, an accounting of all "Stipulated Orders Granting Relief From Automatic Stay" and all orders obtained in bankruptcy cases for which Ford Motor Credit, LLC and its counsel failed to comply with Federal Rule of Bankruptcy Procedure 4001(d) during the period January 1, 2012 through May 31, 2013. Ford Motor Credit, LLC shall also provide the court with the legal authority by which it asserts Federal Rule of Bankruptcy Procedure 4001(d) does not apply to stipulations seeking orders granting relief from the automatic stay for Ford Motor Credit, LLC. A senior management employee of Ford Motor Credit, LLC with personal knowledge of the procedures and requirements of Ford Motor Credit, LLC and its counsel for seeking relief from the automatic stay in Chapter 11 cases and counsel of Ford Motor Credit, LLC shall appear at the continued hearing on this Order to Show Cause. No telephonic appearances are permitted.

AUGUST 29, 2013 FURTHER HEARING - ADDITIONAL ORDER TO SHOW CAUSE

The hearing on the Order to Show Cause for Ford Motor Credit was continued. If the corrective sanctions ordered by the court were not sufficient to induce compliance with the order of the court, the court provided that an additional corrective sanction of $15,500.00 will be ordered and the matter continued to afford Ford Motor Credit, LLC the opportunity to comply with the order of the court.

FORD MOTOR CREDIT COMPANY'S RESPONSE

Ford Motor Credit Company LLC ("FMCC") filed a supplemental response, arguing that it did not intentionally ignore the court's OSC. FMCC states its counsel advised and represented that he could satisfy the court's concerns raised in the OSC with his own declaration and appearance on its behalf. FMCC states it was under the false impression that the issue was relatively minor, that it was a product of counsel's own error and that he was capable of resolving it without FMCC's further involvement. FMCC accepts the blame for its failure to comply with the court's order and has paid the sanctions against it as provided in the prior order.

FMCC states that in response to the court's order to file an accounting of all "Stipulated Orders Granting Relief from the Automatic Stay" obtained in bankruptcy cases for which FMCC and its counsel failed to comply with Federal Rule of Bankruptcy Procedure 4001(d) during the period of January 1, 2012 through May 31, 2013, it tasked each seventy-three (73) law firms in its national bankruptcy attorney network to perform internal audits of the cases assigned to them. None of the seventy-three law firms reported having filed "Stipulated Order" similar to the ones filed in this case without supplying a proposed order or the appropriate space on its pleading for the court to affix an order as the local rules in the given jurisdiction require.

FMCC reports that forty-nine (49) of the seventy-three (73) law firms reported not having obtained orders on stipulations without a prior motion for relief from stay or later motion to approve the stipulations pursuant to Rule 4001(d). Twenty four (24) of the law firms reported having done so. Counsel states he undertook a case by case secondary review of

each instance where attorneys reported having obtained an order without a prior or later motion.

The results of FMCC's audit and the undersigned counsel's secondary review reveal that twenty-one (21) law firms located in sixteen (16) states on one hundred and forty-four (144) occasions during the relevant year and a half period obtained orders terminating the stay or for adequate protection by stipulation without either filing a prior motion for such relief or a subsequent motion to approve the stipulation. The bulk of those instances occurred in three (3) states. Twenty-five (25) reported instances occurred in Alabama. Twenty-two (22) reported instances occurred in California. Sixty (60) reported instances occurred in Michigan.

FMCC argues that it has never instructed or asked any of its counsel who represent FMCC in bankruptcy matters nationwide to proceed in the manner as occurred in this case and all of the law firms in FMCC's legal network reported that they were not directed, advised, or requested by FMCC to file a stipulated order without filing a motion under Rule 4001(d). FMCC states that it does make clear its expectation that counsel not only be knowledgeable of substantive law and procedural rules applicable in bankruptcy matters, but also that, as FMCC's representative, counsel follow both the letter and the spirit of the law and rules.

FMCC states after learning of this practice, FMCC issued a written directive to its national network of bankruptcy counsel on August 21, 2013 instructing counsel to comply with Rule 4001(d) in each instance where it applies, except as explicitly modified in a given jurisdiction by a local rule that is consistent with Rule 4001(d).

FCC also states that as a further corrective measure, FMCC has changed its procedures for the handling of documents sent to its post office box to ensure timely deliver and escalation of any document referencing the words "show cause."

FMCC does not assert that FMCC or its counsel are not required to comply with Rule 4001 (d) when an agreement for relief from the automatic stay or for any other category of relief described in the rule is reached. FMCC believes that in instances where an agreement is reached with respect to any of the five categories of relief described in Rule 4001(d)(l)(A), the rule requires that a motion for approval of the agreement must be filed accompanied by a copy of the agreement and a proposed form of order. The motion must contain the infmmation described in Rule 4001(d)(l)(B) and must be served as provided in Rule 4001(d)(1)(C). FMCC believes that it and its counsel are required to comply with Rule 4001(d) where it applies.

FMCC is unaware of any authority that would allow a party or its attorney to avoid complying with Rule 4001(d) where the rule applies and would not expect any such authority to exist. The Federal Rules of Bankruptcy Procedure are promulgated by the United States Supreme Court under the authority of 28 U.S.C. § 2075.

Lastly, FMCC does not believe that the "Stipulated Orders" are orders at all and agrees with the Court that they give the false and misleading impression that they are, in fact, orders given how they are

captioned. FMCC agrees that each of the "Stipulated Orders" should be expunged because they are misleading and have no legal force and effect as orders.

NELSON & KENNARD'S RESPONSE

Clifton Inohara and Nelson & Kennard ("N&K") respond stating that N&K has represented Ford Motor Credit Company LLC with respect to bankruptcy matters for over thirty years and at no time during that representation has anyone at Ford Motor Credit Company LLC instructed anyone at N&K to "cut corners," avoid the payment of filing fees or perform any act in a manner inconsistent with applicable law, Rules of Court and/or the individual attorney's professional responsibilities.

Mr. Inohara, as an employee of N&K, communicated with counsel for the Debtor on behalf of Ford Motor Credit Company LLC and negotiated agreed Stipulations and Orders for Relief from Stay with respect to each of the six vehicles in question. The forms of the Stipulations were drafted by Mr. Inohara and submitted to counsel for the Debtor for review and approval. N&K is informed that counsel for the Debtor and the Debtor's authorized representative approved the Stipulations, signed them and returned them to N&K for further processing.

Without necessary research or peer consultation, the attorney handling the matter for N&K mistakenly assumed that it would be appropriate to submit the Stipulations and proposed Orders to the Court for signature without the notice required pursuant to Bankruptcy Rule 4001. Moreover, N&K then uploaded the forms of Stipulations only, without the proposed Orders, using the court's electronic filing system under an improper docketing category. Rather than loading the documents as motions and proposed Orders, the documents were incorrectly loaded as "initiating" documents which N&K is informed resulted in the immediate docketing of the Stipulations as Orders of the Court.

N&K states that it did not intend to lodge the Stipulations and proposed Orders in a manner that bypassed judicial review. To the contrary, N&K states that it was, at all times, N&K's intent to lodge the Stipulations and proposed Orders in a manner that would provide for judicial review and execution if appropriate.

Mr. Inohara and Donald G. Nelson of N&K state they have reviewed Bankruptcy Rule 4001 and have confirmed that there exists no authority, to their knowledge, that allows for the docketing of an Order for Relief from Stay without judicial review, approval and execution. They state Bankruptcy Rule 4001 expressly provides for and requires notice upon those parties set forth in the statute as a condition to execution of an order by the Court for relief from the automatic stay.

N&K states that it is solely responsible for the erroneous manner in which the Stipulations were lodged with the Court for review. N&K states its customary form stipulation is entitled "Stipulated Order Granting Relief from Automatic Stay." The pleading typically contains the language "It is so ordered" at the end of the stipulation and provides a line for the Bankruptcy Judge to sign the order. As such, the document combines the

stipulation and the order on the stipulation into a single pleading. N&K states that the language "It is so ordered" was removed from the stipulations because the intent was to file separate orders with respect to each stipulation. The intent was also to re-label the documents as "Stipulation for Order Granting Relief from Automatic Stay." However, these revisions were not made as an unintentional mistake.

N&K states that never before this case has N&K filed a Stipulated Order Granting Relief from Automatic Stay or other similar document without including thereon or in a separate pleading an order with space for the Judge's signature on the document, nor did N&K ever fail to obtain a Judge's signature on such a document. N&K states they have reviewed their internal records and have determined that within the last eighteen months, nine relief from stay matters handled by their office were resolved by stipulation filed with the court and signed by a bankruptcy judge.

N&K argues that it has been unable to locate any matters where a purported order was obtained without a judge's review and signature. With respect to each of the nine matters described above, N&K states the procedure for seeking and obtaining the relief from stay was initiated by N&K and was not requested or directed in any manner by any personnel of Ford Motor Credit Company LLC.

DISCUSSION

After a review of the thorough responses of Ford Motor Credit Company, LLC and Nelson & Kennard, the court discharges the Order to Show Cause. To the extent that staff at Ford Motor Credit Company, LLC believed that an order for a response from their company could be delegated to a third-party attorney, it appears that such issue has been addressed. It has been unfortunate, but necessary for the court to address this issue. The court has been faced with other situations where loan service companies and third-party attorneys have attempted to masquerade as the creditor and purport to provide competent, first-hand, non-hearsay testimony. Based on the prior response, the conduct of the creditor and counsel appeared to be in that nature.

The Order to Show Cause is discharged, no further corrective sanctions are ordered.

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 hearing on the Order to Show Cause having been conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged.

2. 13-27216-E-7 GEORGE UPTON — CONTINUED MOTION TO DISMISS CASE
UST-1 Pro Se — 5-30-13 [20]

CONT. FROM 7-25-13, 7-11-13, 6-20-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and the Chapter 7 Trustee on May 30, 2013. By the court's calculation, 42 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(4). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

PRIOR HEARING

U.S. Trustee seeks dismissal of the Chapter 7 case based on 11 U.S.C. § 707(a). Second, U.S. Trustee states that Debtor has not complied with the credit counseling requirement of section 109(h)(1).

U.S. Trustee states that Debtor commenced this case on May 28, 2013 and has not submitted evidence that he participated in a credit counseling course during the 180 days prior to the petition date. U.S. Trustee states that Debtor has not requested a waiver of this requirement and has not filed Exhibit D to the Petition, which is the Statement of Compliance with Credit Counseling. Finally, U.S. Trustee states Debtor has not filed schedules or a statement of financial affairs.

Motion to Change Venue

On July 1, 2013, the Debtor filed a motion to change venue of this bankruptcy case to the Central District of California based upon an allege post-petition change of address. Dckt. 52. The court has denied the motion, citing both substantive legal reasons and concerns that the Debtor may be the subject of improper manipulation in a continuing effort to abuse the bankruptcy laws and federal courts.

In denying the motion to change venue, the court also directed the U.S. Trustee to address whether further discovery is required and if more serious action (such as a dismissal with prejudice or an order imposing a

pre-filing review requirement) is appropriate for, and to protect, this Debtor.

Analysis

The Bankruptcy Code requires that the credit counseling course be taken within the 180-day period ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Debtor has not show that an exception from the requirement applies or otherwise explained why Debtor has not with the requirement.

Here, Debtor has not provided evidence that he completed credit counseling as required by the code, nor had Debtor applied for an exception to the § 109(h)(1) requirement.

Pursuant to § 521(i)(1) a debtor in a voluntary Chapter 7 case is required to file a schedule of assets and liabilities and statement of financial affairs, among other documents. 11 U.S.C. § 521(a)(1). If the debtor has not filed the requisite documents within 45 days after the date of filing of the petition, the case will be automatically dismissed effective the 46th day after the petition date.

Here, Debtor has not filed the required documents.

Debtor's Request for Extension

On June 11, 2013 Debtor filed a motion for more time for filing forms. Debtor requested an additional two weeks to complete the forms stating that he was forced out of his house and had to move into a hotel. Dckt. 42. Debtor states that he has not had the resources to complete and file the forms due to his relocation. *Id.*

On June 12, 2013 the court granted the motion ordering the following documents to be filed on or before June 25, 2013.

1. Verification and Master Address List;
2. Means Test-Forms 22A;
3. Schedules A-J;
4. Statement of Financial Affairs;
5. Statistical Summary;
6. Summary of Schedules; and
7. Other required documents.

Debtor failed to comply with the court's order and file the above documents on or before June 25, 2013.

Cause exists to dismiss this case. However, the court was unwilling to just dismiss the case in light of the prior repeated filings by April Dawn Gianelli, the Debtor's significant other, the attempted filing of a petition in the name of the Debtor with a forged signature, the Debtor's failure to file the basic pleadings (Schedules and Statement of Financial Affairs), and the possible improper filing of motions in this case. See Order Denying Motion to Transfer Venue Dismiss, Dckt. 53.

The hearing on the Motion to Dismiss was continued to allow the U.S. Trustee, Chapter 7 Trustee, the Debtor, and other parties in interest to provide the court with information as to whether they believe this case should be dismissed, if further discovery is required, or if other proceedings are appropriate.

U.S. TRUSTEE'S RESPONSE

The United States Trustee ("UST") filed a response, asserting that he has filed a Motion for Order Compelling Debtor to appear at the meeting of creditors, scheduled for August 8, 2013. The UST also asserts that he filed an application to conduct a Rule 2004 examination of April Gianelli. The UST argues that he needs to question the Debtor at the meeting and examine Ms. Gianelli in order to adequately address the Court's concerns about the appropriate disposition of this case.

The UST requests that the hearing be continued to a date after the meeting of creditors (which is to be held August 19, 2013). The UST suggests that it would be wise to extend the discharge objection deadline to coincide with the continued hearing.

CONTINUANCE

Based on the response from the UST, the court continued the hearing on the Motion to Dismiss to allow the UST to properly examine the Debtor.

STATUS REPORT

The UST filed a status report, stating that he sent a proposed stipulation resolving the Motion, which provides that the Debtor would consent to the dismissal of this case with prejudice and to a 180-day bar to filing a new case pursuant to 11 U.S.C. § 109(g)(1).

The UST confirmed that he spoke to the Debtor by telephone on August 9, 2013, confirming that he signed the declaration, that he understood the nature of the remedies that the stipulation contemplated and that he does not intend to file a new bankruptcy in the near future.

The Stipulation is filed as Docket No. 79.

Based on the foregoing Stipulation between the UST and Debtor, the court grants the Motion to Dismiss with prejudice and providing for a 180-day bar to filing a new case pursuant to 11 U.S.C. § 109(g)(1).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, the Debtor and the U.S. Trustee having filed a Stipulation addressing the issues in the Motion, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted with prejudice pursuant to 11 U.S.C. § 349(a) and the Stipulation filed by the United States Trustee and the Debtor, Document No. 79.

IT IS FURTHER ORDERED that Debtor George Dallas Upton, III is barred for 180 days from filing a new bankruptcy case pursuant to 11 U.S.C. § 109(g)(1) and the Stipulation filed by the United States Trustee and the Debtor, Document No. 79.

3. 12-36419-E-11 KFP-LODI, LLC — **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 9-10-12 [1]**

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 8/8/13 to be heard in conjunction with other related matters in this case.

Operating Report filed: 8/14/13

Amendment to Debtor's Second Amended Plan of Reorganization, Dated August 8, 2013 filed 8/15/13 [Dckt 299]

4. 12-36419-E-11 KFP-LODI, LLC — **CONTINUED AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY 6-24-13 [245]**

RPG-1

SGB1, LLC VS.

Tentative Ruling: The Parties have notified the calendaring department for the court that they will Stipulate to continuing the hearing to **3:00 p.m.** on **September 18, 2013,** the hearing date for approval of the Debtor in Possession's disclosure statement. No stipulation had been filed when the court was preparing this item for posting the tentative and final rulings.

5. 12-36419-E-11 KFP-LODI, LLC **CONTINUED MOTION TO APPROVE FIRST AMENDED DISCLOSURE STATEMENT FILED BY DEBTOR 4-16-13 [181]**
SAC-6

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Notice of Hearing, Plan, Disclosure Statement, and supporting pleadings were served on the Office of the United States Trustee and all creditors on April 16, 2013. By the court's calculation, 65 days' notice was provided. 42 days' notice is required.

Final Ruling: The Motion to Approve the Disclosure Statement was properly set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1).

The Motion to Approve First Amended Disclosure Statement is denied as moot. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a second Amended Disclosure Statement and Plan on August 9, 2013. The filing of a new disclosure statement and plan is a *de facto* withdrawal of the pending disclosure statement and plan. The motion is denied as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve First Amended Disclosure Statement filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion is denied as moot.

6. 12-36419-E-11 KFP-LODI, LLC **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 6-27-13 [249]**
TMG-2

TERRACOTTA REALTY FUND, LLC
VS.

Tentative Ruling: The Parties have notified the calendaring department for the court that they will Stipulate to continuing the hearing to **3:00 p.m.** on **September 18, 2013,** the hearing date for approval of the Debtor in Possession's disclosure statement. No stipulation had been filed when the court was preparing this item for posting the tentative and final rulings.

7. 11-25921-E-11 HENRY/CARMEN APODACA
CAH-4 Douglas A. Crowder

MOTION FOR COMPENSATION FOR C. ANTHONY HUGHES, DEBTORS' ATTORNEY(S), FEES: $8,865.00, EXPENSES: $0.00
7-19-13 [247]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Final Ruling: The Final Application for Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Final Application for Fees is granted. No appearance required.

FEES REQUESTED

C. Anthony Hughes, court-appointed counsel to the Debtors-in-Possession, makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period August 30, 2012 through July 11, 2013, for total fees of $8,865.00. The order of the court approving employment of counsel was entered on August 30, 2012.

Description of Services for Which Fees Are Requested

Case Administration: Counsel spent 2.6 hours in this category for total fees of $450.00 (discounted to $330). Counsel discussed with Debtor the procedures regarding settlement payments with US Bank, possible sale of other property as part of the settlement, represented Debtors at Status Conference, met with Debtors to give introduction to post-confirmation responsibilities of Debtors-in-Possession.

Closing Case or Discharge: Counsel spent 1.4 hours in this category for total fees of $210.00. Counsel provided services in closing the case after the Order of Confirmation.

Fee and Employment Application: Counsel spent 17.8 hours in this category for total fees of $2,535.00. Counsel prepared and filed a motion to employ special counsel and prepared this application for fees.

Plan and Disclosure Statement: Counsel spent 21.00 hours in this category for total fees of $5,340.00. Counsel formulated, presented and confirmed with the tentatively approved Disclosure statement order Debtor's proposed Chapter 11 plan; communicated with Debtors to achieve a workable budget and feasible plan; and negotiated with secured creditors regarding treatment of their claims.

Status Report and Conference: Counsel spent 1.0 hours in this category for total fees of $300.00. Counsel prepared and reviewed status conference statements and attending hearings.

Vote Solicitation: Counsel spent .1 hours in this category for total fees of $30.00. Counsel discussed with Debtors the ballot/voting process, status of vote solicitation and followed up with Creditors to meet the voting deadline.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

> (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that Counsel’s services rendered a successful confirmation of Debtor’s Chapter 11 Plan for the benefit of the Estate. The court finds the services were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are $300.00/hour for counsel and $150.00/hour for a paralegal. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys’ fees in the amount of $8,865.00 are approved and authorized and the debtor in possession is authorized to pay such fees from funds of the Estate as they are able.

Counsel is allowed, and the Debtor-in-Possession is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees $8,865.00

For a total final allowance of $8,865.00 in Attorneys' Fees in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by [Counsel, Accountant] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that C. Anthony Hughes is allowed the following fees and expenses as a professional of the Estate:
>
> C. Anthony Hughes, Counsel for the Estate
> Applicant's Fees Allowed in the amount of $ 8,865.00.
>
> **IT IS FURTHER ORDERED** that this is a final allowance of fees pursuant to 11 U.S.C. § 330 and the Plan Administrator under the Confirmed Plan is authorized to pay such fees, after credit for any retainer held by counsel for the services provided as provided under the Chapter 11 Plan.

8. 11-48050-E-11 STAFF USA, INC. MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
GMF-17 W. Austin Cooper 8-8-13 [274]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not 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 August 8, 2013. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Convert Case has not 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 determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion to Convert Case is denied. No appearance required.

Gloria Freeman seeks conversion or dismissal of this Chapter 11 case. However, the Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. *See* Local Bankr. R. 9014-1(d)(3). Here, the notice provided here stated that written opposition was required under Federal Rule of Bankruptcy Procedure 901-1(f)(1). This requires 28 days notice. Ms. Freeman only provided 21 days notice. The moving party is reminded that failure to comply with the local rules is grounds to deny the motion. *See* Local Bankr. R. 9014-1(l).

GROUNDS STATED IN MOTION

Gloria Freeman is the principal of this Debtor, the debtor in her own Chapter 11 case, and the principal for sever other debtors which she owns or has an interest and for which she had bankruptcy cases commenced. W. Austin Cooper served as the pre-petition attorney for these various entities, represented Gloria Freeman, served as counsel for filing bankruptcy cases for Gloria Freeman and the entities, and then served as counsel for the various debtors in possession (without obtaining court authorization to be employed pursuant to 11 U.S.C. § 327. Gloria Freeman ultimately sought to have W. Austin Cooper removed as her counsel in her Chapter 11 case because of his conflicts with all of her related entities.

In the present Motion Gloria Freeman states with particularity (Fed. R. Bank. P. 9013) the following grounds upon which relief is requested:

A. In June 2012, Jon Tesar was appointed as the Chapter 11 Trustee. FN.1.

FN.1. Gloria Freeman, while referencing Mr. Tesar being appointed as Trustee, fails to reference that he was appointed for cause based on the conduct of the Debtor in Possession. Gloria Freeman, as the president of the Debtor in Possession was responsible for the actions taken, or not taken, by the Debtor in Possession. The court found that the Debtor in Possession, with Gloria Freeman as the responsible person and W. Austin Cooper as counsel, (1) failed to timely file monthly operating reports, (2) untimely payment of U.S. Trustee fees, (3) allowing unpaid payroll taxes of $45,886 to accrue, (4) failure to provide fo the payment of rent or management salary, (5) Gloria Freeman stating that she did not list a salary for herself to prevent the Chapter 11 Trustee in her case from claiming any portion of such monies, (6) the payroll check register did not provide detail relating to withholdings, including taxes, which prevented the U.S. Trustee from determining the accuracy of the aging of the post-petition taxes which were due, and (7) the April 2011 cash disbursements shown on the bank statements of ($70,474.25) was significantly higher then the amount of ($55,107)disclosed by the Debtor in possession on the April Monthly Operating Report. Civil Minutes, Dckt. 119.

B. Staff USA has been fined by the California Workers' Compensation Board for $30,000.00 due to the failure of the Trustee to pay for workers' compensation insurance.

C. Staff USA was charged liquidated damages by the FCI Terminal Island, California and Fairchild Air Force Base. It is asserted that the Trustee low bid on contracts that Staff USA lacked the expertise to perform.

D. Since the Trustee was appointed, Staff USA has failed to pay wages, taxes, rent, file taxes, and pay ERISA monies.

E. Since the Trustee was appointed, Staff USA showed a continuing loss of $40,383 to date, with a loss of $17,480 for November 30, 2012.

F. The Trustee has stated that he intends to convert the case to one under Chapter 7.

Motion, Dckt. 274.

The evidence in support of the Motion is the Declaration of Gloria Freeman. Dckt. 277. In her declaration she repeats the allegations set forth in the Motion, but does not state what basis she has for any such knowledge. Merely parroting the Motion does not provide the court with testimony from which the court can make findings of fact. Rather, it merely seeks to have the court parrot the witness parroting the Motion. Gloria Freeman makes reference to unidentified third-parties, for which she want to repeat what she contends they told her. Fed. R. Evid. 801, 802; there is little credibility to such hearsay testimony, to the extent that it could be admissible. The Gloria Freeman declaration then devolves into a points and authorities.

Gloria Freeman makes various arguments that this case should be converted. What has been demonstrated to the court is that the costs and expenses she complains of will be incurred whether the case is converted now or is converted later. The July 2013 Monthly Operating Report shows total expenditures of $325 for U.S. Trustee Fees. There is no income for the month. Dckt. 265. The June 2013 Monthly Operating Report discloses $3.00 in disbursements (bank charge) and no income. Dckt. 252. The May Monthly Operating Report shows total expenditures of $0 and income of $0. Dckt. 247. There is little ongoing loss to the estate.

While Gloria Freeman is correct that there appears to be little likelihood of a plan and that this case will be converted to one under Chapter 7, the present motion appears to have been filed for her litigation strategy reasons. The Trustee is currently locked in battle with W. Austin Cooper, Gloria Freeman's former attorney and the attorney for Gloria Freeman's related entities. The Trustee, and the Trustee in the Gloria Freeman's Chapter 11 case, are attempting to have monies recovered from W. Austin Cooper which were paid from Staff USA, prior to the commencement of this bankruptcy case, to pay for Gloria Freeman's Debtor in Possession post-petition bankruptcy attorneys' fees. No fees were approved by the court.

It appears that Gloria Freeman is operating under the mistaken belief that if she can convert the case the Trustee will be removed and the action against W. Austin Cooper will cease. She also appears to erroneously believe that the U.S. Trustee would not appoint the current Trustee to continue as the Chapter 7 Trustee.

The present Motion is essentially a copy of the prior motion by Gloria Freeman. The court addressed this issue of whether the court should be converted in its Civil Minutes filed on June 6, 2013:

> A Chapter 11 case may only be converted for cause. 11 U.S.C. § 1112(b)(1). The Bankruptcy Code provides a list of causes, which are sufficient to support dismissal or conversion. *Id.* at § 1112(b)(4). Generally, such lists are viewed as illustrative rather than exhaustive; the court should "consider other factors as they arise, and use its equitable powers to reach the appropriate result in individual cases." *Pioneer Liquidating Corp. V. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (citation omitted).
>
> Here, based on the evidence provided by the Trustee, the court does not find sufficient cause to dismiss or covert the Chapter 11 case. The Debtor has not offered sufficient evidence to justify dismissal or conversion. The court finds Dr. Freeman's arguments regarding filing taxes without merit, as the Trustee testified that he filed them timely. Further, filing Monthly Operating Reports a few days late is not in itself sufficient for conversion or dismissal. The Trustee has addressed many of the issues raised by Dr. Freeman, including the workers' compensation, liability insurance, attempt to sell the business, using

> business assets and paying employees to the court's satisfaction.
>
> The court also notes that many of the complaints raised by Gloria Freeman arise from her own management of this case with the assistance of her counsel. Rather than seeking to do what is in the best interests of the estate, Gloria Freeman is merely "trustee shopping," hoping that if she can get the case converted, she can get a new trustee and counsel for the trustee. This is not proper grounds to convert the case. FN.1.
>
> ---
> FN.1. Gloria Freeman and her husband (or ex-husband, as the record and her contentions are not clear), as well as the attorney who attempted to represent Gloria Freeman and all of her related entities as debtors in possession are embroiled with this trustee and the Chapter 11 trustee in the Gloria Freeman bankruptcy case. This is not the first "judicial shopping" attempt by Gloria Freeman. This bankruptcy case was originally filed in the bankruptcy court for the Northern District of California by Gloria Freeman and the counsel attempting to represent all of the debtors in possession. This was after the Gloria Freeman case and related cases had begun going badly for Gloria Freeman and the various debtors in possession. The bankruptcy judge in the Norther District of California determined that it was improperly filed in that district and transferred the case to the Eastern District of California.
> ---
>
> The court finds that cause does not exist to dismiss or convert this Chapter 11 case pursuant to 11 U.S.C. § 1112(b)

Civil Minutes, Dckt. 249. The court maintains the same response to this Motion to Convert or Dismiss.

In light of the conduct of Gloria Freeman, her motives are suspect. If the case need to be converted or dismissed at this time, Chapter 11 Trustee, U.S. Trustee or creditors can bring such a 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 to Convert or Dismiss filed by Gloria Freeman having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

9. 11-48050-E-11 STAFF USA, INC. TRUSTEE'S MOTION FOR ORDER TO SHOW CAUSE
MHK-4 W. Austin Cooper 7-18-13 [257]

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.

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

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

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

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

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

The hearing on the motion is continued to xxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Order to Show Cause filed by Trustee having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the motion is continued to xxxx.

10. 11-48050-E-11 STAFF USA, INC.
MHK-5 W. Austin Cooper

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DAVID D. FLEMMER AND STEVEN H. BERNIKER
8-7-13 [267]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 22 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Jon Tesar, Chapter 11 Trustee, moves the court for approval of a compromise with David D. Flemmer, as trustee of the related bankruptcy case of Gloria Freeman, Case No. 10-23577-E-11, and Steven H. Berniker, Esq. Trustee seeks approval of a written settlement agreement under which Trustee would receive and retain a total of $3,500 from Berniker to satisfy all claims of Trustee and Trustee Flemmer against Berniker for recovery of payments made to Berniker. The agreement includes a general release of claims and Trustee Flemmer would receive no part of the $3,500.00.

The following are the material terms of the settlement agreement:

A. Berniker is to pay the sum of $2,000.00 to Trustee, which is to be held in his counsel's client trust account pending the court's ruling on this motion;

B. Berniker is to pay Trustee another $1,500.00 within sixty days of court approval of this agreement;

C. Upon receipt of the total of $3,500.00, Berniker is deemed to be released from all claims of Trustee and Trustee Flemmer, including claims for recovery of the payments made prior to the filing, and Berniker is deemed to have released all claims against both the Debtor's estate and the Freeman estate.

D. The order approving the agreement is to represent a judgment against Berniker in the amount of $3,500.00; and

E. The agreement is subject to court approval.

The Trustee argues that the terms of the agreement are fair and equitable and merits approval by the court.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Here, the Trustee argues that the four factors have been met.

Probability of Success

The Trustee argues that the outcome of the litigation is unclear and that this element weighs in favor of settlement. Trustee argues Berniker admitted to receipt of payments from the Debtor and Freeman after Freeman filed her Chapter 11 petition, he did not obtain court approval of his

employment and that the Trustee is likely to disgorge fees. However, he states that Berniker could approve his employment retroactively, and this would prevent recovery of the fees and for an administrative expense claim in favor of Trustee.

Difficulties in Collection

The Trustee states that Berniker's current financial is poor and collection of any judgment would be difficult and subject to delays. Trustee argues this factor weighs in favor of settlment.

Expense, Inconvenience and Delay of Continued Litigation

The Trustee argues that litigation would result in significant costs, and Debtor's estate has limited funds to finance such litigation.

Paramount Interest of Creditors

The Trustee argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

At the hearing, the court shall announce the proposed settlement and request any other parties interested in making an offer to the Trustee for the claims or interests in the property to state their offers in open court.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compromise filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compromise Controversy against Jon Tesar, Chapter 11 Trustee, David D. Flemmer, as trustee of the related bankruptcy case of Gloria Freeman, Case No. 10-23577-E-11, and Steven H. Berniker, Esq. is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the motion on August 7, 2013(Docket Number 270).

11. 13-27771-E-11 ANGELA CATARATA
BNF-1 Mark Lapham

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
8-5-13 [90]

CONT. FROM 7-25-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 1st, 2013. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The court's tentative decision is to deny the Motion without prejudice, with leave to amend after the appointment of the Chapter 11 Trustee. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

Seterus, Inc. seeks relief in the form of an order confirming that there is no automatic stay in effect with respect to the real property commonly known as 107 Roundtree Court, Sacramento, California. The moving party has provided the Declaration of Brandye Foreman to introduce evidence upon which it bases its claims.

DEBTOR'S INITIAL RESPONSE

Debtors respond that the service of process was defective as inadequate notice was given to Debtors. Debtors argue that any Motion for Relief from Automatic Stay, under Local Rule 4001-1, must be filed under Local Rule 9014(f)(1), and give 28 days notice. An examination of Creditor's Notice of Hearing [Dckt 37] shows that this motion was in fact filed under Local Rule 9014-1 (f)(2). Yet a closer reading of Local Rule 4004-1 reveals

that it is comprised of two different sentences with two different meanings. Local Bankruptcy Rule 4004-1 simply states that Motions for Relief From Automatic Stay "shall be set for hearing in accordance with LBR 9014-1." This includes both Local Bankruptcy Rule 9014-1 (f)(1) and (f)(2). As such, Debtor is incorrect in their characterization of the local rules and the Creditor did in fact provide correct notice.

STIPULATION

The parties filed a stipulation to continue the motion for relief to August 8, 2013. To correct the defect in the pleadings, if Movant desired to proceed with the present Motion and not voluntarily dismiss it, Movant was required to file a supplement to the motion on or before August 5, 2013 which clearly states the grounds with particularity upon which relief is requested and a notice of continued hearing, setting the hearing for August 29, 2013, at 10:00 a.m. Fed. R. Bankr. P. 9013. Any points and authorities shall be set forth in a separate pleading. Local Bankruptcy Rule 9004-1(a) and the Revised Guideline for Preparation of Pleadings in this District. If the supplement and notice of continued hearing are not filed and served on or before August 5, 2013, then the court shall deny the present Motion without prejudice. Order, Dckt. 83.

SUPPLEMENTAL MOTION

The Movant filed a supplemental motion and supporting pleadings on August 5, 2013. Creditor argues that the automatic stay is not in effect in the present case based on Debtor's filing of three prior bankruptcy petitions, each of which was dismissed within 365 days of the filing of the current position.

The Debtor has filed three prior bankruptcy cases.

Case Number Chapter	Date Filed: Date Dismissed:	
13-22883 Chapter 11 Counsel	Date Filed: March 3, 2013 Date Dismissed: May 10, 2013	Case Dismissed pursuant to the Debtor's motion to dismiss. Order, 13-22883 Dckt. 64.
13-40475 Chapter 13 *Pro Se*	Date Filed: November 26, 2012 Date Dismissed: January 8, 2013	Case dismissed due to failure of Debtor to timely file Schedules and Statement of Financial Affairs.
12-34580 Chapter 7 *Pro Se*	Date Filed: August 9, 2012 Date Dismissed: August 27, 2012	Case dismissed due to failure of Debtor to timely file Schedules and Statement of Financial Affairs.

The present bankruptcy case was filed on June 6, 2013. The Debtor has had pending and dismissed three prior cases within the one-year period prior to the June 6, 2013 commencement of the present case.

As part of the 2005 BAPCA amendments, Congress created provisions for the termination of the automatic stay and for the stay not to go into effect in the subsequently filed case. First, 11 U.S.C. § 362(c)(3)(A) provides,

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--
>
> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;...

If the Debtor had only one case dismissed within the one-year period prior to the commencement of the present case, then the automatic stay would go into effect upon commencement of this case. However, the Debtor has had more than only one prior case which was pending and dismissed during the one-year period prior to the June 6, 2013 commencement of the present case. FN.1.

FN.1. If there had been only once prior case pending that was dismissed in the one-year period prior to the commencement of the present case, the Bankruptcy Code provides that the stay terminates on the 30th day, unless,

> (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

11 U.S.C. § 362(c)(3)(B). However, the hearing must be completed within 30-days of the commencement of the case. The present bankruptcy case having been filed on June 6, 2013, the hearing for relief requested under § 362(c)(3)(B) would have to have been completed by July 6, 2013. The hearing on the present motion having been set for August 6, 2013, the Debtor cannot comply with the time limits of § 362(c)(3)(B).

Congress has provided in 11 U.S.C. § 362(c)(4)(A) that if a debtor has had two or more cases which were pending and dismissed within one year of the commencement of a subsequent case, then the automatic stay does not go into effect upon the filing of the subsequent case.

> (4) (A) (I) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [11 USCS § 707(b)], the stay under subsection (a) shall not go into effect upon the filing of the later case; and
>
> (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

11 U.S.C. § 362(c)(4)(A).

Here, Debtor has had pending and dismissed three prior cases within the one-year period prior to the June 6, 2013 commencement of the present case. No order imposing the automatic stay in this case has been entered by the court.

However, the court has noted in connection with another Motion, the Debtor in Possession did file a motion to impose the automatic stay on June 7, 2013. While that appears to be more than 30-days after the commencement of this bankruptcy case (the time limit for filing a motion pursuant to 11 U.S.C. § 362(c)(4)(B)), the period for filing was extended to Monday June 8, 2013. This is because June 6, 2013 was a Saturday and pursuant to Federal Rule of Bankruptcy Procedure 9006(a)(1)(C), the period is extended from that Saturday to the next non-weekend, non-legal holiday.

Though the court denied the Debtor in Possession's motion for several other grounds relating to how counsel prepared the motion and the declaration (Civil Minutes 104), the motion was timely. The court has also determined that it is necessary and proper to appoint a Chapter 11 Trustee in this case. That Trustee and his or her bankruptcy counsel may well determine that there is merit to the timely motion to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B), notwithstanding the Debtor in Possession's shortcoming in presenting it and not raising the Rule 9006(a)(1)(C) extension of time.

Therefore, the court denies the Motion without prejudice to allow the Chapter 11 Trustee a reasonable time to evaluate the prior motion, property of the estate, and determine whether relief should be sought from the order denying the motion.

To avoid creating further otherwise unnecessary cost and expense for the movant, rather than having to file a new motion, the movant may file a motion to amend the order denying the motion based on the Chapter 11 Trustee not seeking relief from the order denying the motion to impose the automatic stay. That motion may be filed anytime at least 30 days after the appointment of the Chapter 11 Trustee.

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm Termination or Absence of Stay is denied without prejudice.

IT IS FURTHER ORDERED that Movant may seek to amend this order to grant the relief requested on the grounds that the Chapter 11 Trustee has not sought to vacate the order denying the motion to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B), or any other grounds, with such motion to amended filed any time following 30 days after the appointment of the Trustee.

12. 13-27771-E-11 MWL-1 **ANGELA CATARATA** **Mark Lapham** **MOTION TO EMPLOY MARK LAPHAM AS ATTORNEY** **7-18-13 [68]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2013. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

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

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

Debtor-in-Possession Angela Gay Catarata seeks to employ The Law Offices of Mark Lapham to assist with the preparation of Debtor's Chapter 11

petition and schedules, provide advice and counseling as to the bankruptcy proceedings, respond to court documents and pleadings, prepare a Chapter 11 plan and disclosure statement, and to attend court hearings on Debtors-in-Possession behalf.

U.S. TRUSTEE'S OPPOSITION

August B. Landis, the Acting United States Trustee for the Eastern and Northern Districts of California ("UST") opposes the motion on the grounds that the applicant failed to make full disclosure, the declaration supporting the application contains inaccurate statements, the applicant holds an adverse interest to the estate, and the applicant is not disinterested. UST states that Debtor has filed three previous bankruptcy cases, with applicant representing Debtor in two prior bankruptcy cases.

The UST argues that applicant failed to make full disclosure in his application, as he did not disclose the post-petition transfer of $4,700.00 from Debtor. Further, the UST states that the statements concerning the amount and timing of payments the Debtor made to Lapham in the Employment Application, the Declaration and the Rule 2016(b) statement ($35,000.00) conflict with Debtor's statements in the Statement of Financial Affairs ($27,000.00). UST argues that these statements are unreliable.

Additionally, the UST argues that the Declaration supporting the application contains inaccurate statements, as the Debtor's June 2013 monthly operating report shows the post-petition transfer was made to Lapham, which represents a transfer of property of the bankruptcy estate. UST argues that at the time Lapham signed the employment application and Declaration, he had a stake in the debtor's assets.

The UST also argues that Lapham was not authorized to receive the post-petition transfer. The Declaration states that the balance of the retainer fee $4,500.00 is due when he commences adversary proceedings for the Debtor. The UST states the post-petition transfer represents the payment of the $4,500 balance. However, no adversary proceedings have been commenced in connection with this case. The UST state the post-petition transer is a transfer avoidable under 11 U.S.C. § 549(a)(1) and (2)(B), meaning Lepham holds or represents an interest adverse to the estate.

Lastly, the UST argues that Lapham's receipt of the post-petition transfer creates a conflict of interest and makes him not "disinterested." UST argues that it is unlikely Lapham would recommend litigation against himself to avoid the post-petition transfer.

DEBTOR'S RESPONSE

Counsel responds in an opposition, stating that the check to which the Trustee refers in his motion was written on June 3, deposited on June 6 and cleared on June 7. Counsel states he is in the process of preparing and filing the adversary proceedings. Counsel states the discrepancies in the various statements were errors which are cured via amendment and made in good faith.

Counsel also contends that the prior Chapter 11 case was voluntarily dismissed "at the suggestion of the court." This attempt to "blame the court" for multiple bankruptcy filings does not suggest that counsel is seasoned in bankruptcy. The Civil Minutes for the April 25, 2013 Status Conference in that Chapter 11 case include the following:

> **STATUS CONFERENCE SUMMARY**
>
> **APRIL 25, 2013 STATUS CONFERENCE**
>
> Though the Debtor in Possession is working to fulfill her fiduciary duties, no automatic stay went into effect pursuant to 11 U.S.C. § 362(c)(4). The Debtor has failed to file a motion to impose an automatic stay within the 30 day time period required by 11 U.S.C. § 362(c)(4)(B).
>
> The Debtor states that she will dismiss this case, file a new case, and promptly file a motion to impose the automatic stay.

Civil Minutes, 13-22883 Dckt. 60. Though represented by the same counsel in the filing of the prior Chapter 11 case, no relief was sought to obtain the imposition of the automatic stay pursuant in the limited time period permitted under 11 U.S.C. § 362(c)(4)(B).

Though the Debtor and counsel were tipped off to the operation of 11 U.S.C. § 362(c)(4)(A) and there being no automatic stay in effect due to the multiple prior bankruptcy cases filed by the Debtor, no motion to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B) has been filed in the present bankruptcy case. The present bankruptcy case was filed on June 6, 2013. In the prior one-year period the Debtor had pending and dismissed the following bankruptcy cases:

Case Number	**Date Filed**	**Date Dismissed**	**Pending and Dismissed Prior to Current Filing**
Current Case	June 6, 2013		
13-22883 Filed: Mark Lapham	March 4, 2013	May 10, 2013	26 days
12-40475 Filed *Pro Se*	November 26, 2012	January 1, 2013	4 months, 6 days
12-34580 Filed *Pro Se*	August 9, 2012	August 27, 2012	9 months, 10 days

On July 7, 2013, the Debtor in Possession filed a motion to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B). This followed the July 1, 2013 filed by Seterus, Inc. of its motion for an order from this court confirming that there was no automatic stay in this case. Motion, Dckt. 36. The only opposition from the Debtor in Possession was that the

motion had not been set on 28 days notice. Opposition, Dckt. 51. The parties stipulated to continue the hearing to August 8, 2013. Dckt. 57.

At the August 8, 2013, hearing on the motion to impose the automatic stay, the court denied the motion. Civil Minutes, Dckt. 104. The motion was denied for several reasons. First, the hearing had not been properly noticed. Second, the motion failed to comply with the basic pleading rules in this District. Third, the declaration filed by the Debtor in Possession failed to comply with the basic requirements of 28 U.S.C. § 1746. The Debtor in Possession's testimony was based on "information and belief," not actual knowledge. Fourth, the Debtor in Possession failed to timely file the motion within the 30-day time period required by 11 U.S.C. § 362(c)(4)(B). The motion was filed on July 7, 2013, 31-days after the June 6, 2013 filing of the current bankruptcy case. For this fourth element, the court notes that such a computation may be in error. This judge was not at the hearing and does not know if the issue of correctly computing days was raised at the hearing. Federal Rule of Bankruptcy Procedure 9006 provides the rule for computing time. For periods stated in days, the day the event is triggered (here the June 6, 2013 filing) is not counted, and the last day of the period is counted, including all of the intervening Saturdays, Sundays, and legal holidays. Rule 9006(a)(1). However, when the last day falls on a Saturday, Sunday or legal holiday, the time continues to run until the next day that is not a Saturday, Sunday, or legal holiday. Rule 9006(a)(1)(C). July 6, 2013 was a Saturday, so the period continued to run until July 8, 2013, a Monday. The motion was filed on Sunday July 7, 2013, so it appears that the 30-day limit was not violated with respect to the filing of the motion. This section does not contain the express language of 11 U.S.C. § 362(c)(3)(B) requiring that the motion be filed and hearing held by the court within the 30-day period.

On July 18, 2013, 42 days after the case was commenced, the Debtor in Possession filed a motion for authorization to use cash collateral. The hearing on the motion was set by the Debtor in Possession for August 29, 2013, 84 days after the June 6, 2013 filing of this case. No order authorizing the use of cash collateral in the interim has been issued, nor has there been any showing that consent of a creditor has been given for the use of cash collateral in which it has an interest.

Counsel has been representing the Debtor in Chapter 11 cases since the March 4, 2013 filing of the prior Chapter 11 case. Reference has been previously made to the Debtor in Possession commencing adversary proceedings against persons who assert they have liens against property of the estate. In seeking to dismiss or convert the case, the U.S. Trustee noted that though promised, counsel and the Debtor in Possession had not prosecuted such actions. On August 26 and August 27, 2013 counsel and the Debtor in Possession filed eight adversary proceedings. This prosecution of the claims appears to have been done in response to the pending hearing on the motion to covert or dismiss the case. Most, if not all, of the claims asserted in the complaints do not arise under the Bankruptcy Code and do not arise in the bankruptcy case.

DISCUSSION

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must (1) not hold or represent an interest adverse to the estate, and (2) be a disinterested person. *In re Tevis*, 347 B.R. 679, 687 (9th Cir. BAP 2006).

Here, it is questionable whether Counsel for Debtor-in-Possession can fulfill that role. First, Counsel does not provide any evidence in support of his opposition. Counsel asserts that the post-petition payment and inaccuracies in the documents filed were errors. Counsel does not provide a copy of the check or any admissible evidence for the proposition that the check was signed pre-petition. Furthermore, there is no explanation provided by counsel as to why the check was deposited on the day the petition was filed, knowing that checks can take several days to process. Lastly, counsel does not disagree that the payment was made for filing adversary proceedings. However, no adversary proceedings were filed until the eve of the hearing on the motion to convert or dismiss the case.

The motion to impose the automatic stay was not filed until the last possible minute. While it may be timely upon the application of Rule 9006(a), the court questions the wisdom of waiting until the last possible moment when counsel was made aware of this issue 73 days earlier (April 25, 2013 Status Conference in the prior case).

The court is also concerned when counsel fails to obtain for a debtor in possession authorization to use cash collateral. Experienced bankruptcy counsel obtain such authorization immediately upon the commencement of the case. The Federal Rules of Bankruptcy Procedure expressly provide for the issuance of such emergency orders. Fed. R. Bankr. P. 4001(b)(2).

Based on the foregoing, counsel has not provided sufficient evidence that he is disinterested or does not hold or represent an interest adverse to the estate. Further, the court is not convinced that counsel is the proper general bankruptcy counsel for prosecuting a Chapter 11 case. Though counsel may be an attorney who could successfully litigate the adversary proceedings, that does not necessarily equate to successfully prosecuting a Chapter 11 case and obtaining confirmation of a Chapter 11 Plan. The court denies the 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 to Employ filed by Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

13. 13-27771-E-11 ANGELA CATARATA
UST-1 Mark Lapham

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-7-13 [97]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 22 days' notice was provided. 28 days' notice is required. Movant filed an ex parte Motion to Shorten Time, which was granted on August 2, 2013. Dckt. 87.

Tentative Ruling: The Motion to Convert or Dismiss Case 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 grant the Motion and order the appointment of a Chapter 11 Trustee. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

August B. Landis, the Acting United States Trustee ("UST") submits this motion to convert or dismiss this Chapter 11 case on the grounds that the debtor's schedules and Statement of Financial Affairs are inaccurate and incomplete, as well as Debtor admitted that in the first month of the case she used cash collateral and made at least one post-petition transfer without court approval. The UST also states that debtor failed to file financial information and reports required under the Bankruptcy code and rules. Additionally, the UST states debtor failed to provide information reasonably requested by the UST. UST argues that this demonstrates "gross mismanagement" of the bankruptcy estate and other "cause" to convert or dismiss a Chapter 11 case. The UST states that this case should be converted to one under Chapter 7.

The UST argues that Debtor failed to describe the amount of secured claims in Schedule A and in the amended Schedule A, which such information was clearly known by the Debtor.

The UST states that Debtor did not disclose her interest in an entity named Black Hills Group, LLC, nor did she provide complete information about this group in the amended Statement of Affairs.

The UST also states Debtor did not disclose her transfer of real property to her daughter, Cherise Evangelista, within the two years prior to the commencement of this case.

The UST states that he sent a letter to Debtor's attorney requesting the schedules and Statement of Financial Affairs be amended, among other things. Debtor has not provided corrected versions of the requested documents.

Additionally, the UST states that in the monthly operating report filed for June 2013, Debtor described $5,721 for "Administrative," $3,036 for "Capital Expenditures," and $4,700 to "Mark Lapham." The UST states that the court has not authorized payment of professional fees or the use of cash collateral in this case.

Lastly, the Trustee argues that cause exists to convert this case to one under Chapter 7, as there appears to be equity in the Debtor's real property assets, as well as non-exempt, unencumbered property that can be administered for the benefit of the creditors.

BANK OF NEW YORK MELLON'S RESPONSE

The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Psas-Through Trust 2004-16, Mortgage Pass Through Certificates, Series 2004-16 ("BNYM") filed a response in support of the UST's motion. BNYM asserts additional grounds for dismissal, including:

1. Debtor has failed to maintain post-petition payments to BNYM;

2. There is no equity in their collateral for the estate;

3. Debtor has not been payment taxes and/or insurance on their collateral;

4. Debtor has filed a Motion to Use Cash Collateral, but the budget is insufficient;

5. Debtor has not filed a plan or disclosure statement;

6. This is the fourth bankruptcy case involving their collateral and Debtor's Motion to Impose Stay was denied.

BANK OF NEW YORK MELLON'S RESPONSE - Second Claim, Represented by Different Counsel

The Bank of New York Mellon, fka The Bank of New York successor in interest to JPMorgan Chase Bank, N.A., as Trustee for Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A-Trustee, Mortgage Pass-Through Certificates, Series 2005-7 ("BNYM II") filed a non-opposition fully supporting the UST's motion to dismiss.

DEBTOR'S OPPOSITION

An opposition has been filed for the Debtor in Possession by her counsel. The opposition consists of only arguments made in the opposition, with no declaration being filed by the Debtor in Possession. Mere arguments of counsel in an opposition do not constitute evidence. The UST has raises serious non-disclosure issues and the Debtor in Possession has chosen not to provide any testimony to quell these concerns.

Debtor in Possession's opposition asserts she has acted in good faith at all times. Debtor in Possession argues that dismissing the case for errors and items that can reasonably be resolved by amendments is contrary to the best interests of the estate. However, the Debtor in Possession offers no evidence of how she has acted in good faith or addressed the "errors" in the disclosure of assets, transfers, and claims.

The Opposition can be summarized to the following points:

A. Debtor and Debtor in Possession have at all times come to the bar in good faith.

B. The request to dismiss the case for "administrative errors and items that can be reasonably resolved by amended [sic]" is contrary to the best interests of the estate.

C. The Debtor in Possession has provided loan modification requests and packages to creditors.

D. The Debtor built the estate for the benefit of her family legacy.

E. Debtor filed bankruptcy to reasonably administer her estate and provide a plan of reorganization which is both satisfactory to creditors and benefits the estate.

F. The Trustee misrepresents the position of counsel for the Debtor in Possession. There were only a "few errors" in preparing the forms. [Which "few errors" being referred to is not specified.]

G. The Debtor in Possession did "not misuse cash collateral." The cash collateral was used by the Debtor in Possession for what she believed was routine maintenance of property of the estate.

H. The use of cash collateral was based on a "good faith misunderstanding."

I. The Debtor in Possession can "cure this defect" and show that the monies were expended for the sole benefit of the estate.

J. The case should not be converted to Chapter 7 because that is not what the Debtor wants. If cause exists for relief under 11 U.S.C. § 1112, the Debtor in Possession requests that the court dismiss the case.

DISCUSSION

A Chapter 11 case may only be dismissed or converted for cause. 11 U.S.C. § 1112(b)(1). The Bankruptcy Code provides a list of causes, which are sufficient to support dismissal or conversion. *Id.* at § 1112(b)(4). Generally, such lists are viewed as illustrative rather than exhaustive; the court should "consider other factors as they arise, and use its equitable powers to reach the appropriate result in individual cases." *Pioneer Liquidating Corp. V. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (citation omitted).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

The court finds sufficient cause for relief to be granted under 11 U.S.C. § 1112. First, this is not the Debtor's first bankruptcy case and is the second case in which the current counsel has been representing the Debtor. Second, the Debtor in Possession offers no explanation for the errors in the Schedules, the failure to provide information, or the failure to disclose the transfers to her daughter and the interest in Black Hills Group, LLC. A debtor's "unexcused failure to satisfy timely any filing or reporting requirement established under this title or by any rule applicable to this case under this chapter …" constitutes "cause" to convert or dismiss a Chapter 11 case. See 11 U.S.C. § 1112(b)(4)(F).

The Debtor's previous bankruptcy cases are: Case Nos. 13-28833 (Chapter 11, dismissed); 12-40475 (Chapter 13, dismissed); and 12-34580 (Chapter 7, dismissed). These cases were filed within the last eight years. Local Rule 1015-1 requires the Debtor to file a Notice of Related Cases. See LBR 1015-1 (Bankr. E.D. Cal., May 1, 2012). The Debtor failed to file a Notice of Related Cases.

Additionally, Debtor has not shown the court she is appropriately managing the estate. "Gross mismanagement of the estate" constitutes "cause" to convert or dismiss a Chapter 11 case. See 11 U.S.C. § 1112(b)(4)(B). Here, according to Debtor's monthly operating report filed for June 2013, Debtor paid $5,721 for "Administrative," $3,036 for "Capital

Expenditures," and $4,700 to "Mark Lapham." The court has not authorized payment of professional fees or the use of cash collateral in this case.

Again, this is Debtor's fourth bankruptcy case filed in this bankruptcy court and both counsel and debtor should know that Debtors-in-Possession cannot use cash collateral without court authorization. While Debtor argues that she did not misuse cash collateral because it was used for the routine maintenance of the properties of the estate, Debtor misses one major requirement: authorization by the court. These unauthorized transactions, along with the Debtor's neglect of her duties as a debtor-in-possession as discussed above, demonstrate the Debtor in Possession's gross mismanagement of the bankruptcy estate. The Debtor in Possession's argument that violating the Bankruptcy Code prohibiting the use of cash collateral should be excused because "the Debtor in Possession used it for the right expenses" is not sufficient. The law is not followed only when the Debtor in Possession chooses to or when she is "caught" by the UST or creditors.

The Debtor in Possession has been represented by counsel which she wanted to be approved as her counsel in this case. Based on the prosecution of this case and the prior case, the court denied that motion. Between the combination of counsel and this Debtor, the Debtor is not able to fulfill the duties and obligations of a debtor in possession.

A review of the Debtor's schedules discloses that there appears to be a possible equity in the Debtor's real property assets, as well as non-exempt, unencumbered property. While the Debtor's purpose in filing these multiple bankruptcy cases was to preserve her family legacy, those assets must be properly administered under the Bankruptcy Code for the estate, not a debtor's own purpose.

The UST requests that the case be converted to one under Chapter 7 and the Chapter 7 Trustee fulfilling the fiduciary obligations owing to the bankruptcy estate. The Debtor in Possession argues that the case should not be converted, but dismissed. The Debtor in Possession does not state what she would do if the case were dismissed. One could speculate that she would file her sixth bankruptcy case. There are now pending eight adversary proceedings asserting what the Debtor in Possession are rights and claims of the estate. The Debtor in Possession does not state what will happen to these claims if the bankruptcy case is dismissed.

The Bankruptcy Code provides that the court shall either convert or dismiss the Chapter 11 case for cause, unless the court determines that the appointment of a Chapter 11 trustee or examiner is in the best interests of creditors or the estate. 11 U.S.C. § 1112(b)(1).

The latest Amended Schedule A discloses that if the liens are valid against the property, neither the Debtor nor the estate have any equity in the real property. Amended Schedule A, Dckt. 128. However, in the latest Amended Statement of Financial Affairs the Debtor discloses that in 2012 she had $38,224 in rental income, in 2011 she had $61,709.00 in rental income, and in 2010 she had $51,217.00 in rental income. Though the bankruptcy case was filed on June 6, 2013, the Statement of Financial Affairs fails to disclose the rental income (even if $0.00) received in 2013. Dckt. 64. The

Debtor also has an interest, of some sort, in properties commonly known as 6908 Alleghany Way, Stockton, California and 8505 Center Parkway, Sacramento, California. These properties are disclosed in response to Question 14 of the Statement of Financial Affairs, with the Debtor's interest stated to be, "Debtor on title for the interests of their children." *Id.*

On Amended Schedule G the Debtor lists five rental contracts for real property, which presumably are producing rent for the estate. The July 2013 monthly operating report (untimely filed on August 23, 2013) includes the qualifier "There may be a few discrepancies in reporting Properties #8 and #9." Dckt. 130. The nature of the "discrepancies" is not disclosed or why the Debtor in Possession, the fiduciary to the bankruptcy estate, would be providing such information with "discrepancies." However, the Monthly Operating Report discloses receiving $3,815.00 in rent for July and $9,313 for the case to date (June and July 2013). Statement of Cash Receipts and Disbursements, pg. 2 to July 2013 Monthly Operating Report.

The latest Amended Schedule F filed by the Debtor lists $218,734.42 for general unsecured claims. Some, including credit cards, are listed as "unknown." Every unsecured claim is listed as "disputed," with the exception of the debt owed to the Debtor's 401K retirement account. In her prior Chapter 11 case, an unsecured claim for a credit card debt in the amount of $61,758.76 was filed by Cavalry SPV I, LLC as assignee of Bank of America/FIA Card Services, N.A. Bankr. E.D. Cal. No. 13-22883, Proof of Claim No. 1. In the present case the Internal Revenue Services has a filed a Proof of Claim for a $10,014.97 priority claim. Proof of Claim No. 1. The attachment to the proof of claim states that it is for the 2010 tax year (assessed February 25, 2013) and for 2012 tax year (unassessed-No Return).

It may well be that a Chapter 11 Plan can be structured, by a trustee following the Bankruptcy Code, to administer encumbered assets (with the secured claims valued pursuant to 11 U.S.C. § 506(a)) and unencumbered assets to save some of the properties and to provide for a substantial payment to creditors holding general unsecured claims. Further, to the extent that the eight adversary proceedings have value, the litigation of all or some of those proceedings could be made part of a Chapter 11 Plan. A Chapter 11 trustee could choose to employ Debtor's litigation counsel as special counsel for the estate if he is the right attorney, or could chose to employ such other counsel as best serves the estate.

Appointment of a Chapter 11 Trustee would also afford the Debtor, with the assistance of knowledgeable bankruptcy counsel, to work with the trustee to propose her own plan or propose a plan jointly with the Chapter 11 trustee.

Finally, appointment of a Chapter 11 Trustee puts in place a fiduciary for the estate who can make a realistic assessment of the property of the estate, determine what undisclosed assets exist, determine which (if any) transfers by the Debtor should be avoided, and provide a knowledgeable opinion as to whether the case should continue as a Chapter 11 or be promptly converted to one under Chapter 7. The court is confident that a Chapter 11 Trustee, the U.S. Trustee, and creditors can promptly identify

and establish for the court grounds for conversion of the case to one under Chapter 7 if that is appropriate.

The motion is granted and the court orders the appointment of a Chapter 11 Trustee.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert or Dismiss filed by the U.S. Trustee having been presented to the court, 11 U.S.C. § 1112(b) providing for the appointment of a Chapter 11 Trustee as an alternative to conversion or dismissal of the case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the court orders the appointment of a Chapter 11 Trustee.

14. 10-23577-E-11 GLORIA FREEMAN **MOTION TO COMPEL ABANDONMENT**
GMF-12 Pro Se **7-31-13 [896]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Abandon Real Property has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to grant the Motion to Compel Abandonment of the Household Goods and Furnishings, Books, Pictures and other Art Objects, Wearing Apparel, Furs and Jewelry, Firearms and Sports, photographic and other hobby equipment, Boats, Motors and Accessories, and Machinery, Fixtures, Equipment and Supplies used in Business, listed on Schedule C filed on July 30, 2013, Dckt. 888, property, and deny without prejudice the balance of the relief requested. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary

and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor moves for an order authorizing the abandonment of certain personal property described as:

1) Debtor's wages and disability payments originating from Cardinal Health in 2012 to 2013. Short Term Disability was paid through Cardinal Health from October 11, 2012 to April 9, 2013 in the amount of $6,933.34 per month (deductions for state disability made). Total on W2 for 2012 is gross pay $51,338.72 which includes both disability and wages;

2) Debtor's claims vs. Cardinal Health for the industrial accident(s) and other incidents that took place during her employment from July 2012 to April 2013;

3) Debtor's claims vs Hartford Insurance for Long and Short Term Disability. Currently debtor is receiving $6933.34 per month for long term disability which was approved April 9, 2013;

4) Debtor's claims against Sedgwick Insurance, the Workers Compensation Carrier with a claim pending against them;

5) Income from the Employment Development Department for the State of California of $1950 per month beginning April 26, 2013 and previously was $540 per week from October 11, 2012 to April 4, 2013;

6) Federal Social Security Disability Insurance in the amount of $2166.00 per month;

7) 401k/IRAs post-petition holding disability and wages in accounts at Wells Fargo Bank IRA, AHRP, and Chase Bank;

8) Tax Refunds from February 16, 2010 to December 31, 2010 from Debtor's personal earnings;

9) Tax Refunds from 2011, 2012 from Debtor's personal earnings;

10) All amounts paid by Staff USA Inc post-petition in 2011, 2012 from Staff USA Inc including expense payments or reimbursements for services or expenses rendered by debtor;

11) All amounts received from Employment as a Pharmacist at Adventist Health received in 2011 and kept at the AHRP retirement fund;

12) All prepetition IRAS and 401Ks including Safe Federal Credit Union, Etrade, American United Life Insurance, and Ameriprise

13) All and any other lists of assets listed that are exempt or that have no or little value as listed on the attached Schedule for the Wildcard Exemptions including Etrade, Personal Property, State Farm Insurance Policy, all Insurance Policies, and the portion of the Tax Refund received in 2011; and

14) P0 Box 2699, Granite Bay, California 95746.

TRUSTEE'S OPPOSITION

David D. Flemmer, Chapter 11 Trustee opposes the motion arguing that Debtor's motion seeks two separate forms of relief: abandonment of her post-petition earnings to her personally and abandonment of certain pre-petition assets that have been claimed as exempt, but are currently subject to a pending objection to exemption.

The pending objection to claim of exemption (DCN:SFH-36) relates to allegedly undisclosed tax refunds. The Debtor's husband, Laurence Freeman, also claims an interest in the tax refunds. The court has stayed discovery pending Mr. Freeman substituting in counsel to represent him. W. Austin Cooper, the Debtor's attorney who sued Mr. Freeman and alleged that Mr. Freeman was mentally incompetent, withdrew from attempting to represent Mr. Freeman.

The Trustee is unclear as to the relief sought by Debtor with respect to postpetition income. Trustee argues that postpetition income is part of an individual Chapter 11 bankruptcy estate. Trustee states what Debtor really seeks is retroactive absolution for failing to turn over to the Trustete property of the Chapter 11 estate, which is not warranted at this time.

The Trustee also argues that the request to abandon assets which Debtor has claimed as exempt is premature because a plan has not yet been confirmed and the time for the Trustee's time for objecting to the exemptions has not yet run. Trustee has objected to Debtor's exemptions and has begun efforts at discovery, but has not litigated his objections to date.

However, the Trustee consents to abandonment of the Chapter 11 estate's interests in the assets listed on Debtor's Schedule C filed on July 30, 2013, Dckt. 888, under the titles Household Goods and Furnishings, Books, Pictures and other Art Objects, Wearing Apparel, Furs and Jewelry, Firearms and Sports, photographic and other hobby equipment, Boats, Motors and Accessories, and Machinery, Fixtures, Equipment and Supplies used in Business.

DEBTOR'S RESPONSE

Debtor agrees to the abandonment of the items set forth in the Trustee's objection. Debtor also argues that other funds are also exempt as IRAs, ERISA disability policies or 401k.

DISCUSSION

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Here, the court is unclear as to the relief sought by the Debtor. It appears Debtor seeks the abandonment of her postpetition earnings. However, pursuant to 11 U.S.C. § 1115 postpetition income of an individual Chapter 11 Debtor is property of the bankruptcy estate. Debtor has not provided evidence or argument for the court to find otherwise.

It also appears Debtor is seeking abandonment of assets that she has claimed as exempt and are currently subject to a pending objection by the Trustee, which the court addresses below. The court agrees that this request is premature, as the Trustee's time for objecting to exemptions has not yet run and the Trustee is currently in discovery to litigate these matters. Further, the Debtor has not provided sufficient evidence or legal authority for the court to abandon assets in which she has claimed as exempt.

Additionally, though the Debtor makes reference to exhibits, only the exhibit cover page is available on the court's docket.

As both the Debtor and the Trustee have agreed to the abandonment of the assets set forth in his objection, the court grants the motion as to these assets.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted in part and that the personal property identified as:
>
> Household Goods and Furnishings, Books, Pictures and other Art Objects, Wearing Apparel, Furs and Jewelry, Firearms and Sports, photographic and other hobby equipment, Boats, Motors and Accessories, and Machinery, Fixtures, Equipment and Supplies used in Business;
>
> on Schedule C filed on July 30, 2013, Dckt. 888, by the Debtor are abandoned to Gloria Freeman, the Debtor, by this order, with no further act of the Trustee required.

15. 10-23577-E-11 GLORIA FREEMAN
GMF-13 Pro Se

MOTION TO CLAIM EXEMPT PROPERTY OF CHAPTER 11 DEBTOR GLORIA FREEMAN
7-31-13 [892]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, respondent creditor, and Office of the United States Trustee on July 31, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

Debtor seeks to "set aside" certain property as exempt on her schedules filed July 30, 2013. It is always beneficial to summarize the actual relief requested in a motion and the grounds stated with particularity (Fed. R. Bankr. P. 9013) in the Motion. Here, the Debtor asserts:

A. The Debtor moves to "set aside the property claimed as exempt on my schedules."

B. The property was claimed exempt on her schedules in the Amended Schedule C filed on July 30, 2013, Dckt. 888.

C. The property should be set aside (1) due to lack of value, (2) previously sold, or (3) one dog died.

D. The following assets are listed:

1. Safe Credit Union Account -61, IRA.

2. E*Trade Account -4088, Qualified Pension, Not in Bankruptcy

3. Ameriprise SPS Advantage SEP IRA, Qualified Pendion, Not in Bankruptcy.

4. Ameriprise, SPS Advantage SEP IRA, Qualified Pension, Not in Bankruptcy

5. American United Life Insurance -0368, Qualified Pension, Not in Bankruptcy.

6. State Farm Automobile Insurance

7. State Farm Life Insurance - Husband's Policy transferred by settlement. FN.1.

FN.1. As the court recalls, the Debtor is again asserting that Laurence Freeman, her husband, is mentally incompetent and any settlement he entered into with the Trustee and approved by the court should be set aside.

---

8. State Farm Life Insurance - Wife's Policy.

9. AAA Homeowners Insurance - Transferred with ownership of the house. (Again, this transfer was part of the Settlement which the Debtor may well be seeking to set aside based on her renewed contention that Laurence Freeman is mentally incompetent.)

10. RiverSource Long Term Care Plan Insurance

11. RiverSource Long term Care Plan Insurance - Husband's Policy

12. RiverSource Variable Universal Life Insurance – Husband's Policy, transferred pursuant to settlement agreement. (Again, this transfer was part of the Settlement which the Debtor may well be seeking to set aside based on her renewed contention that Laurence Freeman is mentally incompetent.)

13. Charles Schwab Cash Account

14. School Employees Credit Union Cash Account.

15. Spousal support to be claimed as exempt in the amount of $1,200.00 and past due amounts.

16. Household goods, etc.

17. Books, Pictures, etc.

18. Wearing Apparel

19. Furs and Jewelry

20. Firearm, etc.

21. Premium Access/Tools of the Trade

22. Tax Refund

23. Animal, ½ bag of dog food

24. Small boat.

Motion, Dckt. 892. The Points and Authorities provides the court with no basis for granting a motion to "set aside" these assets. In reality, these pleadings appear to be an attempt to circumvent the objection to exemption process and preempt an objection to exemption how before this court.

The court has separately addressed some of these assets on a motion to compel abandonment. The court has denied, without prejudice, the request to compel abandonment of some of these assets.

TRUSTEE'S OPPOSITION

Furthermore, the Trustee filed opposition asserting the motion is both procedurally and substantively flawed. The Trustee argues that Debtors unusual procedure in this case causes three problems. First, Trustee's time to investigate and object to the claimed exemptions is shortened from 30 days to 14 days. Second, the motion fails to include the information required of the Debtor under Schedule C, as it does not set forth the statutory basis for the claim of exemption. Third, the relief sought in Debtor's Motion is inconsistent with Schedule C and a person reviewing Schedule C would not be placed on notice of this court's ruling allowing a different set of exemptions.

The Trustee also makes several substantive issues against the requests for exemption.

The Debtor has claimed exemptions on Amended Schedule C. The Trustee or other parties in interest may timely object to such exemptions. Since the vast majority of exemptions are for dollar amounts, the assets belong to the estate with the Debtor being entitled only to the dollar amount of the exemption upon the administration of that asset. See Cal. Civ. Pro. § 703.140; *Schwab v. Reilly*, 130 S.Ct. 2652, 2667, 177 L. Ed. 2d 234 (2010); *Gebhart v. Gaughan (In re Gebhart)*, 621 F.3d 1206, 1210 (9th Cir. 2010).

No relief is granted pursuant to the present motion. The Motion is denied.

The Debtor may seek the abandonment of any specific assets which she deems proper under applicable law. This Debtor's propensity to combine multiple claims (for various assets) into one motion is not permitted under the Federal Rule of Bankruptcy Procedure. While it is permissible in an adversary proceeding to combine multiple claims against one person or multiple persons pursuant to Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7081 in an adversary proceeding, the combining of claims is not permitted in contested matter. See Fed. R. Bank. 9014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Claim Exempt Property filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

16. 10-23577-E-11 GMF-16 — GLORIA FREEMAN, Pro Se — MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE, 8-8-13 [921]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not 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 August 8, 2013. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Convert Case has not 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 Motion to Convert Case is denied. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Gloria Freeman seeks conversion or dismissal of this Chapter 11 case. However, the Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. *See* Local Bankr. R. 9014-1(d)(3). Here, the notice provided here stated that written opposition was required under Federal Rule of Bankruptcy Procedure 901-1(f)(1). This requires 28 days notice. Ms. Freeman only provided 21 days notice. The moving party is reminded that failure to comply with the local rules is grounds to deny the motion. *See* Local Bankr. R. 9014-1(l).

Furthermore, the court addressed this issue in its Civil Minute Order on June 6, 2013:

A Chapter 11 case may only be converted for cause. 11 U.S.C. § 1112(b)(1). The Bankruptcy Code provides a list of causes, which are sufficient to support dismissal or conversion. *Id.* at § 1112(b)(4). Generally, such lists are viewed as illustrative rather than exhaustive; the court should "consider other factors as they arise, and use its equitable powers to reach the appropriate result in individual cases." *Pioneer Liquidating Corp. V. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (citation omitted).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

Here, Debtor has not provided sufficient evidence to demonstrate cause for conversion. Debtor makes vague allegations and references to documents that have not been filed and provides no evidence, other than her declaration, to warrant the requested relief. Further, Chapter 11 Trustee filed a motion plan and disclosure statement after Debtor filed the instant motion to convert. Debtor has not filed a response to Chapter 11 Trustee's opposition, has not addressed the terms of the proposed plan, and has not withdrawn the instant motion.

The court also notes that much of the difficulties in this case have been caused by the strategies imposed by Gloria Freeman and her counsel, originally as Debtor in Possession and as Debtor. This includes her litigation against her ex-husband (or husband, depending on how they interpret their state court dissolution proceedings) and then when she allied with him after being deposed with the appointment of the Chapter 11 Trustee. The attempt to convert or dismiss this case, as is her attempt to dismiss or convert the Staff USA case is merely thinly veiled trustee shopping, hoping that she can get rid of the current Trustee. This Chapter 11 Trustee is currently prosecuting claims against Gloria Freeman's counsel, who also has represented a series of related debtors in possession, and her ex-husband (husband) Lawrence Freeman. This is similar to the judge shopping that Gloria Freeman and her counsel engaged in when they filed the Staff USA bankruptcy case in the Northern District of California. That case was transferred to the Eastern District of California, the judge in the Northern District of California concluding that it was improperly filed in that District.

> The court finds that it is in the best interests of creditors to allow the case to proceed to plan confirmation and deny Debtor's request for conversion.

Civil Minutes, Dckt. 741. The court maintains the same response to this Motion to Convert or Dismiss.

Additoinally, the court suspects that Mrs. Freeman is using this motion as a litigation gambit. The court finds it interesting that Debtor seeks to stay the bankruptcy proceedings and simultaneously files several motions, including one to convert or dismiss the case. It seems odd that one would want to simultaneously stay bankruptcy proceedings and dismiss/convert the case.

A Bankruptcy Court is empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court, including parties appearing in pro per. *Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); *see also Lehtinen*, 564 F.3d at 1058. The court's authority to regulate the practice of law is broad, allowing the court to punish bad faith or willful misconduct. Lehtinen, 564 F.3d at 1058.

As with her attempts to convert the Staff USA bankruptcy case (an entity she owned, controlled and filed the Chapter 11 bankruptcy case for), this debtor cannot try and get rid of a "pesky trustee" because it interferes with her plans in the case. The court has identified significant legal and ethical concerns with the conduct of the Debtor's counsel, W. Austin Cooper. While litigation on behalf of the Debtor in Possession in this case (prior to the appointment of the Trustee), W. Austin Cooper and the Debtor under penalty of perjury and subject to Federal Rule of Bankruptcy Procedure 9011 asserted that her husband, Laurence Freeman, was mentally incompetent. These contentions continued until the Debtor was removed as Debtor in Possession. W. Austin Cooper, as counsel for the Debtor, then met with Laurence Freeman outside the presence of his counsel in the Adversary Proceeding. From Mr. Cooper's office Laurence Freeman terminated his independent counsel in the adversary proceeding.

Subsequently, W. Austin Cooper attempted to represent Laurence Freeman to sue the Chapter 11 Trustee in connection with the adversary proceeding that W. Austin Cooper, as the attorney for the then Debtor in Possession, as the attorney for Laurence Freeman. Mr. Cooper withdrew from that representation when challenged by the Chapter 11 Trustee (as the successor to the Debtor in Possession).

Further, W. Austin Cooper is defending claims by the Trustee in this case and the Chapter 11 Trustee in the Staff USA case to recover monies he was paid by Staff USA for work done post-petition for the Debtor in Possession. W. Austin Cooper has not been authorized by the court (and he did not apply) pursuant to 11 U.S.C. § 327 to be counsel for either the Debtor in Possession in this case or the Debtor in Possession in the Staff USA case.

Even more troubling are the statements under penalty of perjury that Laurence Freeman is mentally incompetent and that various assets he has should be turned over to the Debtor. These contentions disappeared when the Trustee was appointed and took over the litigation against Laurence Freeman. At that point the Debtor and W. Austin Cooper became "allied" with Laurence Freeman, claiming that he clearly was competent. Now, the Debtor has indicated in pleadings that Laurence Freeman is mentally incompetent and that the Settlement Agreement he entered into with the Trustee, while represented by independent legal counsel (not W. Austin Cooper) should be set aside.

Though Laurence Freeman has appeared before this court and stated that he has engaged independent legal counsel, David Chandler of Santa Rosa, Mr. Chandler has not substituted into this case. The court is familiar with Mr. Chandler from cases over the years, and it would appear that David Chandler could provide independent legal representation and not be subject to the control or direction of either the Debtor or W. Austin Cooper. The failure of David Chandler to substitute into this case causes the court great concern, especially in light of the Debtor's latest contention that Laurence Freeman is not mentally competent.

No bona fide, good faith basis for converting this case to one under Chapter 7 has been provided by the Debtor. Her repeated filing of motions for which no legal authority exists causes the estate to waste time, money, and resources.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert or Dismiss filed by Gloria Freeman having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

17. 10-23577-E-11 GLORIA FREEMAN **MOTION FOR STAY PENDING APPEAL**
GMF-9 Pro Se **8-8-13 [927]**

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 11 Trustee, respondent creditor, and Office of the United States Trustee on August 8, 2013. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

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

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

Debtor Gloria Freeman seeks to stay this Chapter 11 case pending the appeal of the order denying the removal of Trustee David Flemmer. However, the Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. *See* Local Bankr. R. 9014-1(d)(3). Here, the notice provided here stated that written opposition was required under Federal Rule of Bankruptcy Procedure 901-1(f)(1). This requires 28 days notice. Ms. Freeman only provided 21 days notice. The moving party is reminded that failure to comply with the local rules is grounds to deny the motion. *See* Local Bankr. R. 9014-1(l). However, the court considers the merits of the Motion.

REVIEW OF MOTION

Debtor seeks an order staying enforcement of all actions in this case pending appeal of this court's order of July 15, 2013 in which the court denied the motion to remove David Flemmer as Trustee for this bankruptcy case. Debtor argues that if Mr. Flemmer is removed from as the Trustee, the settlement agreement of July 19, 2012 between Laurence Freeman and the Trustee is null and void due to the "fraud upon the court" by the Trustee in his failure to disclose his connections and conflicts of interest.

As always, clearly stating the grounds which are set forth with particularity in a motion (Fed. R. Civ. P. 7(b), Fed. R. Bank. P. 7007, Fed. R. Bank. 9013) helps to identify what is before the court. The Motion sets forth the following grounds:

A. While the Debtor appeals the decision of the court not to remove the Chapter 11 Trustee, the Debtor requests a stay "of all orders of the bankruptcy court whose outcome would affect the distribution of funds of the Estate of Gloria Freeman, including the proposed plan of reorganization, adversary proceedings, payment to the trustee, attorneys, and accountants."

B. The Debtor asserts that cause exists to remove the Chapter 11 Trustee.

C. The Trustee engaged Flemmer & Associates as accountant for the estate.

D. Flemmer and Associates have resigned as accountants for the estate.

E. The Trustee has a conflict of interest.

F. If the Trustee is removed than the settlement with Laurence Freeman (the Debtor's husband whom she sued to recover assets from as Debtor in Possession, alleging that he was mentally incompetent) may be null and void.

G. Debtor asserts that the Settlement with Laurence Freeman should be null and void because of the Trustee's "failure to disclose his connections with and conflicts of interest, due to the rescission notice by Mr. Laurence Freeman of the Settlement Agreement of Jluy 19, 2012 due to fraud, undue influence, lack of attorne licensing and vasiour other issues (doc 816)." FN.1.

FN.1. Doc 816 is docket entry 816, a declaration of Laurence Freeman which appears to have been prepared by the Debtor (her name is listed in the upper left-hand corner). At a prior hearing Laurence Freeman expressed concern to the court about being able to understand written documents presented to him due to aphasia. The Mayo Clinic web site provides the following description for aphasia:

> Aphasia is a condition that robs you of the ability to communicate. Aphasia can affect your ability to express and understand language, both verbal and written.
>
> Aphasia typically occurs suddenly after a stroke or a head injury. But it can also come on gradually from a slowly growing brain tumor or a degenerative disease. The amount of disability depends on the location and the severity of the brain damage.

http://www.mayoclinic.com/health/aphasia/DS00685. The court does not purport to be a doctor or have specialized medical knowledge, though does note that this definition is consistent with the court's understanding based upon personal family medical history.

The court accepts Laurence Freeman's statement in open court that he suffers from Aphasia and has trouble with written documents. The court has stressed that it is critical for Mr. Freeman to obtain independent legal counsel. Recently, W. Austin Cooper who served as the pre-petition counsel for the Debtor and her related entities, and then as debtor in possession counsel for the Debtor and the related entities that she controlled after they each filed bankruptcy cases (until trustees were appointed in the cases or the cases were dismissed). In a troubling set of circumstances, W. Austin Cooper, as counsel for the Debtor, who was serving as the Debtor in Possession in this case, sued Laurence Freeman to recover assets from him for the Debtor, asserting that Laurence Freeman was mentally incompetent. These contentions disappeared when the Trustee was appointed and took over the litigation against Laurence Freeman. At that point the Debtor and W. Austin Cooper became "allied" with Laurence Freeman, claiming that he clearly was competent. Now, the Debtor has indicated in pleadings that Laurence Freeman is mentally incompetent and that the Settlement Agreement he entered into with the Trustee, while represented by independent legal counsel (not W. Austin Cooper) should be set aside.

Though Laurence Freeman has appeared before this court and stated that he has engaged independent legal counsel, David Chandler of Santa Rosa, Mr. Chandler has not substituted into this case. The court is familiar with Mr. Chandler from cases over the years, and it would appear that David Chandler could provide independent legal representation and not be subject to the control or direction of either the Debtor or W. Austin Cooper. The failure of David Chandler to substitute into this case causes the court great concern, especially in light of the Debtor's latest contention that Laurence Freeman is not mentally competent.

Based on the Debtor's previous statements under penalty of perjury and the pleadings subject to Federal Rule of Bankruptcy Procedure 9011 by W. Austin Cooper as counsel for the then Debtor in Possession attesting to and asserting Laurence Freeman's mental incompetency, the court give little weight to declarations and pleadings prepared by the Debtor for Laurence Freeman.

Motion, Dckt. 933.

DISCUSSION

Federal Rule of Bankruptcy Procedure 8005 states (emphasis added),

> A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, **the bankruptcy judge may suspend or order the continuation of**

> **other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest.** A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.

A stay pending appeal is in the nature of a preliminary injunction. The accepted standards for discretionary stays are described in *Schwartz v. Covington*, 341 F2d 537 (9th Cir 1965):

> 1. Appellant is likely to succeed on the merits of the appeal.
>
> 2. Appellant will suffer irreparable injury.
>
> 3. No substantial harm will come to appellee.
>
> 4. The stay will do no harm to the public interest.

"The party moving for a stay has the burden on each of these elements." *In re Shenandoah Realty Partners, L.P.*, 248 B.R. 505, 510 (W.D. Va. 2000). "Movant's failure to satisfy one prong of the standard for granting a stay pending appeal dooms the motion." *In re Deep*, 288 B.R. 27, 30 (N.D.N.Y. 2003) (citations omitted).

The "conflict" which the Debtor has been trumpeting is one identified by the court. One of the partners of Flemmer & Associates also engaged in business with another company that put on professional educational programs similar to that of Ulrich and Nash, an entity which Laurence Freeman claimed was his sole property and which the Debtor asserted was community property. Flemmer & Associates had a representative of the partner work as a Flemmer & Associates representative to review the Ulrich and Nash business. It was reported that Laurence Freeman, while polite, did not allow the partner representative to obtain trade secrets and business information (other than financial information). This court pointed out that for professionals representing the trustee or bankruptcy estate, the appearance of impropriety is an important as actual impropriety. Though the business between the partner in Flemmer & Associates and the entity which put on similar programs as Ulrich and Nash, this court commented that the appearance of the situation did not sit well with the court. It appears that upon further reflection, Flemmer & Associates found discretion to be

the better part of value and the Trustee is obtaining amount firm to provide accounting services.

Here, Debtor argues she is likely to succeed on the merits of her appeal because the Trustee did not disclose the conflicts of interest in the appointment of his accountant, who was not "disinterested." Debtor also states she will suffer irreparable injury to her estate because she is experiencing substantial and continuing loss and diminution of the estate as cumulative receipts disclosed are exceeded by cumulative expenses. Debtor also argues that Trustee failed to file tax returns for 2013 or pay priority tax claims for taxes.

Debtor also argues that no substantial harm will come to David Flemmer because she provided reasonable notice of the motion to all parties. Also, Debtor argues the actions of David Flemmer are not in the best interests of the estate and it would be in the public's best interest for the court to grant the motion for stay pending appeal.

First, the court notes that the parties did not receive proper notice of this motion, as the notice provided for Federal Rule of Bankruptcy Procedure 9013-1(f)(1) notice, with opposition to be filed fourteen days before the hearing. However, only 21 days notice was provided. Further, the court is not persuaded by the evidence presented and arguments of Debtor.

The only evidence provided by the Debtor is her Declaration, which states that she believes that this appeal is likely to succeed, will do not harm to the public interest, will cause no substantial harm to appellee and she will suffer irreparable injury if the stay pending appeal is not issued. The court does not find this evidence persuasive.

Even if the court considered that the appeal was likely to succeed on the merits, none of the other factors have been met. Debtor has not shown that she or the estate will suffer irreparable injury by her bankruptcy proceeding with David Flemmer as Trustee. In fact, both the estate, creditors and the interested parties will be substantially harmed if the bankruptcy proceeds are stayed, as their interests will not be protected. This case was filed February 16, 2010, over three years ago and on the eve of the hearing of the Chapter 11 plan proposed by the Trustee, the Debtor seeks to stay proceedings. The court finds that if the bankruptcy proceedings were stayed, the estate as well as the creditors would be substantially harmed.

In furtherance of the court suspecting that Debtor is using this motion as a litigation gambit, it is interesting that Debtor seeks to stay the bankruptcy proceedings and simultaneously files several motions, including one to convert or dismiss the case. It seems odd that one would want to simultaneously stay bankruptcy proceedings and dismiss/convert the case on the eve of the Trustee's Motion to Confirm Chapter 11 Plan.

In substance, the Debtor is attempting to use this one instance in which an asset that Laurence Freeman asserted was his separate asset and in which the Debtor had no interest as the reason to bring the bankruptcy case to a halt. She seeks to stop the Trustee from objecting to her claim of

exemption. She seeks to stop the Trustee from attempting to confirm a Plan. She seeks to have the Trustee stop in his efforts to recover monies received by W. Austin Cooper for representing the Debtor in Possession when he was not approved to so represent the Debtor in Possession and which monies were transferred from a related entity that the Debtor controlled, with the monies being paid shortly before the Debtor had the related entity commence its own Chapter 11 case (for which a trustee has been appointed). W. Austin Cooper was the attorney for the related entity, controlled by the Debtor, during the period in which it was Debtor in Possession.

The Debtor has not provided sufficient evidence or credible arguments for the court to grant a stay pending appeal. Furthermore, as the court finds that harm will occur to the bankruptcy estate and the creditors in this case, a stay of all bankruptcy actions pending appeal of the order of July 15, 2013 in which the court denied the motion to remove David Flemmer as Trustee.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Stay Pending Appeal filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

18. 10-23577-E-11 GLORIA FREEMAN **CONTINUED MOTION FOR**
MHK-1 Pro Se **ADMINISTRATIVE EXPENSES**
11-30-12 [516]

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

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

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

Tentative Ruling: The Motion for Administrative Expenses has not 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).

Tentative Ruling: The hearing on this matter is continued to 10:30 a.m. on **xxxx, 2013, to be heard after the Evidentiary Hearing set on the Order to Show Cause.**

On May 16, 2013 the court continued the hearing to June 6, 2013 per stipulation of the parties.

On March 6, 2013 the court continued the hearing to May 16, 2013.

On January 24, 2013 the court continued the hearing to facilitate Trustee's ongoing investigations.

On January 10, 2013 Trustee Jon Tesar filed a notice of continued hearing continuing the hearing to February 28, 2013 at 10:30 a.m.

The Proofs of Service filed on November 30, 2012 and December 6, 2012 indicate that only the Debtor was served with notice of the hearing. On January 10, 2013 Trustee also filed a Proof of Service indicating that the U.S. Trustee, Debtor's Counsel, Chapter 11 Trustee, Counsel for Chapter 11 Trustee, and Debtor have been served with the notice of continued hearing. (Dckt. 533).

Motion for Administrative Expenses by Trustee Jon Tesar

Jon Tesar, 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. Jon Tesar states that this claim was incurred as an administrative claim in connection with preserving the bankruptcy estate of Gloria Freeman. Jon Tesar states that November 30, 2012 was the last day to file and serve a motion for allowance of administrative expenses in the instant case.

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 about 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
	Total	$103,792.79

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 state 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 cases. 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.

Compensation to Mr. Cooper

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 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.

Continuance

As the attorneys' fees are being disputed in an evidentiary hearing, the court continues this Motion for Administrative Expenses until these amounts can be determined. The hearing on the motion is continued to 10:30 a.m. on xxxx, 2013.

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 the hearing on the Motion is continued to 10:30 a.m. on xxxx, 2013.

19. 10-23577-E-11 GLORIA FREEMAN **CONTINUED STATUS CONFERENCE RE:**
WFH-31 **ORDER TO SHOW CAUSE**
3-1-13 [571]

Debtor's Atty: Pro Se

Notes:

Continued from 7/11/13. David Flemmer, the Chapter 11 Trustee, is to file and serve on or before August 2, 2013, a statement of the specific attorneys' fees which are the subject of the Order to Show Cause. The Chapter 11 Trustee in the Staff U.S.A. Inc. case is to file and serve any motions or other proceedings relating to fees paid to Austin Cooper relating to Staff U.S.A., Inc. or the Staff U.S.A., Inc. bankruptcy case which are not the subject of Order to Show Cause, DCN WFH-31, on or before July 19, 2013. The hearing for which shall be set for 10:30 a.m. on August 29, 2013. Austin Cooper is to file responsive pleadings to any such contested matter filed by the Staff U.S.A., Inc. Chapter 11 Trustee on or before August 2, 2013.

[WFH-31] Trustee's Statement of Payments in Dispute Re: Order to Show Cause Why Attorney Austin Cooper Should Not be Ordered to Disgorge Fees filed 8/2/13 [Dckt 902]

20. 10-23577-E-11 GLORIA FREEMAN **CONTINUED STATUS CONFERENCE RE:**
WFH-32 **ORDER TO SHOW CAUSE**
3-1-13 [572]

Debtor's Atty: Pro Se

Notes:

Continued from 7/11/13. David Flemmer, the Chapter 11 Trustee, is to file and serve on or before August 2, 2013, a statement of the specific attorneys' fees which are the subject of the Order to Show Cause. The Chapter 11 Trustee in the Staff U.S.A. Inc. case is to file and serve any motions or other proceedings relating to fees paid to Steven H. Berniker relating to Staff U.S.A., Inc. or the Staff U.S.A., Inc. bankruptcy case which are not the subject of Order to Show Cause, DCN WFH-31, on or before July 19, 2013. The hearing for which shall be set for 10:30 a.m. on August 29, 2013. Steven H. Berniker is to file responsive pleadings to any such contested matter filed by the Staff U.S.A., Inc. Chapter 11 Trustee on or before August 2, 2013.

21. 10-23577-E-11 GLORIA FREEMAN
WFH-36 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-21-13 [784]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral Argument

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in the draft ruling set forth below.

Draft Ruling

David Flemmer, Chapter 11 Trustee objects to portions of the assets claim exempt on each of the amended schedules filed May 23, 2013; May 31, 2013 and June 14, 2013. The Trustee objects to exemptions on the grounds that Schedule C fails to provide sufficient information to identify the interests subject to the claim of exemption. Other exemptions are objectionable because they exceed the statutory amount of exemption. The Trustee also argues that the amendment to Schedule C should be denied because of bad faith or prejudice to creditors.

Debtor has now filed an another amended schedule on July 30, 2013.

Trustee objects to a number of claimed exemptions on the grounds that the claims are not made with sufficient specificity. First, there is a category of assets that do not specifically describe the asset being claimed as exempt. For instance, a collection of exemptions is asserted in financial accounts or brokerages with no account number attached. Other assets are listed with a value of "unknown" or $0.00. Some assets are listed, with no statement of the value of the claimed exemption at all. By not listing an amount of the exemption, the Trustee cannot determine the exact interest being claimed exempt, and the claim of exemption is objectionable.

The Trustee objects to the following accounts listed with no account numbers:

Checking, Savings or other Financial Accounts	CCP 703.140(b)(5)	Not stated
Charles Schwab 34502814 211Main Street, SFO	CCP703.140(b)(5)	$2,646.02
E*TRADE Sec. 5727-9969 Box 1542, Merifield, VA	CCP 703.140(b)(5)	$0.00
Bank of America xxx07250, xxx-4632	CCP 703.140(b)(5)	$0.00
School Employ C.U.	CCP 703.140(b)(5)	$578.16
E*Trade Securities LLC Box 1542, Merrifield VA	CCP 703.140(b)(10)(E) 11U.S.C 541(c) SEP IRA	$64,812.51
SEP IRA	Not in Bankruptcy Estate 11U.S.C. 541(c) SEP IRA	Not stated
SAFE Federal Credit Union	CCP 703.140(b)(10)(E)	$25,856.98
SPS Advantage Westlake Grahl, Glover 9625 Sierra College Blvd Granite Bay, CA 95746	CCP 703.140(b)(10)(E) 11 U.S.C 541(c) SEP IRA Qualified Pension not in	$62,603.00
SPS Advantage (H) Westlake, Grahl,Glover	CCP 703.140(b)(10)(E) 11U.S.C 541(c) SEP IRA Qualified Pension not in	$341,705.24
American United Life Insurance	CCP 703.140(b)(10)(E) 11U.S.C. 541(c) IRA	$11,323.63

The Trustee argues that the claim of exemption as to these assets is insufficient. For instance, Debtor's schedule B discloses that Debtor has two accounts with E-Trade Securities, LLC. Trustee states he has located a third, undisclosed account. In her Schedule C Debtor claims an exemption in an account with E-Trade, but fails to specify which account is claimed as exempt. This description is not sufficient to inform the Trustee of the nature of the interest to which the exemption is claimed. The Trustee argues that the same flaw applies to the Charles Schwab, RiverSource Longterm Care, AAA Homeowners Ins., E*Trade Securitie s, LLC, School Employ C.U., SAFE Federal Credit Union, SPS Advantage and American United Life accounts.

The Trustee argues that the Debtor has listed exemptions in the amount of $0.00, which is nonsensical. Trustee states Debtor will receive $0.00 if the Trustee elects to liquidate these assets and if Debtor intends a different result, the intent does not sufficiently appraise the Trustee of the claimed exemption to allow him to evaluate the claims. Trustee argues these exemptions should be disallowed.

Additionally, the Trustee argues the claims of exemptions asserted in the amount “unknown” or without stating an amount at all are objectionable

because Schedule C omits at least some of the information necessary to satisfy Schwab or Section 521(1).

Trustee states that Debtor's Third Amended Schedule C lists the following assets not in existence on the petition date and purports to exempt these assets from the estate:

EXEMPT EARNINGS 2011/2012/2013		
Benefit Payments State of Calif (Chase, BA)	703.140(b)(10)(A)-(D) 2013	$12,000.00
EDD State of California (AHRP)	703.140(b)(10)(A)-(D) 2012	$12,150.00
Hartford Benefits Short Term (Wells Fargo)	703.140(b)(10)(A)-(D) 2013	$25,000.00
Sedgwick Compensation, pending	703.140(b)(10)(A)-(D) 2012/2013 etal	
Hartford Benefits Short Term (Wells Fargo)	703.140(b)(10)(A)-(D) 2012 estimated	$10,327.00
Payment in Compensation for Loss of Future	703.140(b)(11)(e)	Unknown
EDD (Bank of America) State of	703.140{b)(10)(A)-(D) 2013, pending	
Hartford Benefits Long Term	703.140(b)(10)(A)-(D) 2013, pending	
EDD (US Bank) State of	703.140(b)(10)(A)-(D) 2011	$2,700.00

Trustee argues that because the claimed exemptions are asserted in post-petition assets, the objection should be granted.

Furthermore, the Trustee states California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of $21,825 (as of February 16, 2010.) Debtor has claimed exemptions under this section in amounts in excess of $87,652.73. Trustee states that because Debtor is not allowed to exempt more than $21,825 under Section 703.140(b)(5), the Court should disallow all of the following claimed exemptions and require Debtor to amend her Schedule C in the aggregate amount:

Refund in Retainer from Harrison Goodwin	CCP 703.140(b)(5)	$0.00
Tax Refunds		Not stated
Possible 2009 IRS Refund and FTB Refund	CCP 703.140(b)(5)(1)	Unknown

Tax Refunds received 2011/2012, unknown est	CCP 703.140(b)(5)(1)	$26,428.55
Checking, Savings or other Financial Accounts	CCP 703.140(b)(5)	Not stated
Charles Schwab 34502814 211Main Street, SFO	CCP703.140{b)(5)	$2,646.02
E*Trade Sec. 5727-9969 Box 1542, Merifield, VA	CCP 703.140(b)(5)	'
Bank of America xxx07250, xxx-4632	CCP 703.140(b)(S)	$0.00
School Employ C.U.	CCP 703.140(b)(5)	$578.16
Other Contingent and Unliquidated Claims vs. Laurence Freeman & Landmark Missionary Baptist Church for mismanagement and obtaining alleged donations over the past eight years by fraud and deceit dBA	CCP 703.140(b)(5)	Not Stated
Common Stock of Fortune West Enterprises, Inc.	CCP 703.140(b)(S)	$0.00
Common Stock Staff USA, Inc.	CCP 703.140(b)(5)	$0.00
LLC Interest in Sunfair LLC	CCP 703.140(b)(5)	$0.00
LLC Interest in Plazaria LLC	CCP 703.140(b)(5)	$0.00

The Trustee also objects to Debtor's exemptions in the amount of $23,123(plus "unknown") in life insurance policies, claimed pursuant to Cal. Code Civ. Pro. "703.140(b)(7)(8)" and 703.140(b)(10)(E). Trustee assumes that Debtor asserts these exemptions pursuant to Section 703.140(b)(7). The applicable exemption amount, for cases commenced before April 1, 2010, is $11,075. Thus, Trustee states the claimed exemptions exceed the statutory amount and are improper.

Bad Faith

The Trustee objects to the amendment of five (5) exemptions because they run afoul of the requirements of good faith and lack of prejudice. Trustee argues that three and a half years after the Chapter 11 case was filed, Debtor assets exemptions in the following previously undisclosed assets:

Tax Refunds received 2011/2012, unknown est	CCP 703.140(b)(5)(1)	$26,428.55

Bank of America xxx07250, xxx-4632	CCP 703.140(b)(5)	$0.00
School Employ C.U.	CCP 703.140(b)(5)	$578.16
American United Life Insurance	CCP 703.140(b)(10)(E) 11 U.S.C. 541(c) IRA	$11,323.63
Tools of the Trade (Business Property)	CCP 703.140(b)(6)	$2,200.00

Prejudice

The Trustee also argues that the following exemptions should be denied because the amendment will prejudice creditors and the estate:

Other Contingent and Unliquidated Claims vs. Laurence Freeman & Landmark Missionary Baptist Church for mismanagement and obtaining alleged donations over the past eight years by fraud and deceit dba Ulrich, Nash and Gump (legal education company)	CCP 703.140(b)(5)	Not Stated
Common Stock of Fortune West Enterprises, Inc.	CCP 703.140(b)(5)	$0.00
SPS Advantage (H) Westlake, Grahl, Glover	CCP 703.140(b)(10)(E) 11 U.S.C 541(c)SEP IRA Qualified Pension not in Bankruptcy Estate	$341,705.24

Trustee states that the exemptions set forth above now claim an interest in assets transferred to Larry Freeman pursuant to the settlement. Thus, Debtor's delay in asserting these exemptions will prejudice both Mr. Freeman and the creditors receiving the proceeds of a settlement obtained through Trustee's efforts. Trustee sates he has already filed a plan and disclosure statement based on the receipt of the proceeds obtained through the settlement.

DEBTOR'S RESPONSE(S)

Debtor filed four (4) different responses to the Trustee's Objection. Debtor first responded asserting that the objections filed by the Trustee

are now moot because she filed amended schedule on July 30, 2013, which address the Trustee's objections.

Debtor then filed a ten (10) page response to the objection, also stating that the amended schedules filed on July 30, 2013 address the Trustee's objections. Debtor further argues that the Statements of Financial Affairs, including the schedules, were not reviewed by debtor and signed by Debtor due to the attorney's legal mistake and therefore, there is no bad faith or prejudice on part of the Debtor.

Debtor states she in "good faith" provided answers to the Trustee at the 2004 exam, without access to her records. Debtor states that the Trustee took her computer and personal files and had no way to amend her schedules without the records.

Debtor argues that the disputed tax returns are the separate property of Mr. Freeman and are not part of the estate. Debtor also argues that the IRS refund may be barred by *res judicata* and collateral estoppel.

Additionally, Debtor states she did disclose at the 2004 examination the Insurance IRA, the School Employee Credit Union and the Bank of America Account.

Debtor states she has not acted in bad faith but has demonstrated good faith through various actions.

Debtor's third response continues the argument of "bad faith" and Debtor argues that the Trustee has not shown sufficient "bad faith" on her part. Debtor argues if the court does find bad faith, it was due to actual inadvertence or mistake and there is no bad faith on part of the debtor concerning the exemptions in the amended schedules.

Debtor's fourth response appears to be a duplicate of the third.

DISCUSSION

Subsequently to the Trustee filing this objection, Debtor filed another amended Schedule C on July 30, 2013. This is Debtor's fifth version of Schedule C. The following are the previous filings of Schedule C:

Date of Filing	Version Schedule C	DCN
March 2, 2010	Original	10
May 23, 2013	First Amended	691
May 31, 2013	Second Amended	715
June 14, 2013	Third Amended	767
July 30, 2013	Fourth Amended	888

Federal Rule of Bankruptcy Procedure 1009(a) provides that a voluntary petition, list, schedule, or statement may be amended by a debtor as a matter of course at any time before the case is closed. No court approval is

required for an amendment under Federal Rule of Bankruptcy Procedure 1009(a), and amendments are and should be liberally allowed at any time absent a showing of bad faith or prejudice to third parties. *In re Magallanes*, 96 B.R. 253, 256 (B.A.P. 9th Cir. Cal. 1988)

The latest version of Amended Schedule C significantly alters the previously filed versions. Several entries which the Trustee objected, have disappeared or have been altered or no longer correspond with the previous entries.

From the objections raised, Debtor does still appear to be over the amount allowed for wildcard exemptions. California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of $21,825 (as of February 16, 2010). Debtor has claimed exemptions under this section in amounts in excess of $23,185.46.

Bad Faith

Section 522(l) of the Bankruptcy Code and Rule 4003(b) of the Federal Rules of Bankruptcy Procedure permit a party in interest to object to a debtor's claim of exemption. The Supreme Court has recognized the "broad authority granted to bankruptcy judges," pursuant to § 105(a) of the Bankruptcy Code, "to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374-75 (2007); *see also Latman v. Burdette*, 366 F.3d 774, 784-86 (9th Cir. 2004)(recognizing inherent powers of bankruptcy courts to equitably surcharge a debtor's exemption to protect integrity of the bankruptcy process and to ensure debtor does not exempt amount greater than allowed under Bankruptcy Code despite lack of express Code provision for equitable surcharge of exemptions).

A party objecting to a debtor's claim of exemption must prove bad faith by a preponderance of the evidence and not by clear and convincing evidence. *Tyner v. Nicholson (In re Nicholson)*, 435 B.R. 622 (B.A.P. 9th Cir. 2010). Bad faith in claiming exemptions is determined by an examination of the "totality of the circumstances." *In re Rolland*, 317 B.R. 402, 414 (Bankr. C.D. Cal. 2004). Concealment of assets is the usual ground for a finding of "bad faith." *Id.* at 415. However, "a debtor's intentional and deliberate delay in amending an exemption for the purpose of gaining an economic or tactical advantage at the expense of creditors and the estate [also] constitutes 'bad faith.'" *Id.* at 416.

Intentional concealment can be inferred from the facts and circumstances of a case, including non-disclosure resulting from a debtor's reckless disregard for the truth of information furnished in the schedules and statements. *See Jordan v. Bren (In re Bren)*, 303 B.R. 610, 614 (8th Cir. BAP 2003) (stating that "multiple inaccuracies or falsehoods may rise to the level of reckless indifference to the truth, which is the functional equivalent of intent to deceive").

Furthermore, schedules and statements are signed under penalty of perjury. Fed. R. Bankr. P. 1008. Debtors are presumed to have read the schedules and statements before signing the documents, and are responsible

for their contents. Debtors bear an independent responsibility for the accuracy of the information contained in their schedules and statements. *AT&T Universal Card Servs. Corp. v. Duplante (In re Duplante)*, 215 B.R. 444, 447 n.8 (9th Cir. BAP 1997) (noting that "schedules and statements of financial affairs are sworn statements, signed by debtors under penalty of perjury" and warning that "adopting a cavalier attitude toward the accuracy of the schedules and expecting the court and creditors to ferret out the truth is not acceptable conduct by debtors or their counsel").

Here, the court finds that Debtor is intentionally filing multiple schedules to conceal assets and confuse the parties in this case. Entries appear and then disappear on schedules filed weeks apart. Debtor's cavalier attitude of filing amended schedule after amended schedule with incomplete entries and partial disclosures does not bode well. The Trustee states that the tax refund assets were not acknowledged until after the Trustee had discovered their existence. Debtor and Larry Freeman split the proceeds without disclosure to the Trustee or the court. Trustee also testifies that Debtor has now disclosed a American United Life Insurance policy, without explanation. Additionally, Debtor attempts to exempt interest in assets transferred to Larry Freeman pursuant to the settlement agreement in Adversary Proceeding No. 11-2629. Trustee states this delay in exemption will prejudice Mr. Freeman, the creditors receiving the proceeds in the pending plan. The court finds the Trustee's arguments persuasive and his testimony credible.

Through the facts and circumstances of this case, including non-disclosure (and in this case, subsequent disclosure and removal) of assets from Debtor's reckless disregard for the truth of the information furnished in the five different Schedule Cs filed in this case, the court finds Debtor intentionally concealed information. The court finds Debtor acted in bad faith in claiming the above exemptions.

22. 10-23577-E-11 GLORIA FREEMAN
WFH-38 Pro Se

MOTION TO EMPLOY GONZALES & SISTO, LLP AS ACCOUNTANT(S)
8-15-13 [969]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

Chapter 11 Trustee, David Flemmer, seeks to employ Gonzales & Sisto, LLP to provide tax accounting and return preparation services, pursuant to Bankruptcy Code Section 327. Trustee states he initially retained Flmmer Associates, LP to provide accounting and tax services, but withdrew from retention by Trustee in July 2013. Trustee states Debtor has raised certain ambiguous issues with the prior tax returns and the 2012 tax returns need to be completed. Trustee also states that the Chapter 11 estate holds interests in other entities, and the tax reports in those entities may impact the Chapter 11 estate.

Trustee states that is disinterested and does not hold or represent an interest adverse to the Chapter 11 estate. Gene Gonzales, certified public accountant, provides a declaration in support of the motion, testifying that his firm is disinterested and does not hold or represent an interest adverse to the Chapter 11 estate. Dckt. 971.

DISCUSSION

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including accountants, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or

debtor in possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Taking into account all of the relevant factors in connection with the employment of accountant, considering the declaration demonstrating that accountant does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Gonzales & Sisto, LLP to provide tax accounting and return preparation services.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 11 Trustee is authorized to employ Gonzales & Sisto, LLP to provide tax accounting and return preparation services.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by accountant in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

23. 10-23577-E-11 GLORIA FREEMAN
WFH-39 Pro Se

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JON TESAR AND STEVEN BERNIKER
8-8-13 [915]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 22 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

David Flemmer, Chapter 11 Trustee, moves the court for approval of a compromise with Jon Tesar, as trustee of the related bankruptcy case of Staff USA, Inc., Case No. 11-48050-E-11, and Steven H. Berniker, Esq. Trustee seeks approval of a written settlement agreement under which Tesar would receive and retain a total of $3,500 from Berniker to satisfy all claims of Trustee and Trustee Tesar against Berniker for recovery of payments made to Berniker. The agreement includes a general release of claims and Trustee Flemmer would receive no part of the $3,500.00.

The following are the material terms of the settlement agreement:

A. Berniker is to pay the sum of $2,000.00 to Trustee Tesar of Staff USA, Inc., which is to be held in his counsel's client trust account pending the court's ruling on this motion;
B. Berniker is to pay Trustee Tesar of Staff USA, Inc., another $1,500.00 within sixty days of court approval of this agreement;
C. Upon receipt of the total of $3,500.00, Berniker is deemed to be released from all claims of Trustee Tesar and Trustee

Flemmer, including claims for recovery of the payments made prior to the filing, and Berniker is deemed to have released all claims against both the estate of Staff USA, Inc. and the Freeman estate.

D. The order approving the agreement is to represent a judgment against Berniker in the amount of $3,500.00; and

E. The agreement is subject to court approval.

The Trustee argues that the terms of the agreement are fair and equitable and merits approval by the court.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Here, the Trustee argues that the four factors have been met.

Probability of Success

The Trustee argues that the outcome of the litigation is unclear and that this element weighs in favor of settlement. Trustee argues Berniker admitted to receipt of payments from the Debtor and Freeman after Freeman filed her Chapter 11 petition, he did not obtain court approval of his employment and that the Trustee is likely to disgorge fees. However, he states that Berniker could approve his employment retroactively, and this would prevent recovery of the fees and for an administrative expense claim in favor of Trustee.

Difficulties in Collection

The Trustee states that Berniker's current financial is poor and collection of any judgment would be difficult and subject to delays. Trustee argues this factor weighs in favor of settlment.

Expense, Inconvenience and Delay of Continued Litigation

The Trustee argues that litigation would result in significant costs, and Debtor's estate has limited funds to finance such litigation.

Paramount Interest of Creditors

The Trustee argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

At the hearing, the court shall announce the proposed settlement and request any other parties interested in making an offer to the Trustee for the claims or interests in the property to state their offers in open court.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compromise filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compromise Controversy against David Flemmer, Chapter 11 Trustee, Jon Tesar, as trustee of the related bankruptcy case of Staff USA, Inc., Case No. 11-48050-E-11, and Steven H. Berniker, Esq. is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the motion on August 8, 2013(Docket Number 918).

24. 12-28879-E-11 ANNETTE HORNSBY
SK-2 Sunita Kapoor

CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
5-15-13 [115]

CONT. FROM 7-25-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, respondent creditor on May 16th, 2013. By the court's calculation, 70 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Claim of Wells Fargo Bank, N.A. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Creditor having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Value Claim of Wells Fargo Bank, N.A. and the collateral is valued at $212,000.00. No appearance required.

PRIOR HEARING

Debtor seeks to value the collateral of Wells Fargo Bank, N.A. FN.1. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 324 Moonraker Drive, Vallejo, California. The Debtor seeks to value the property at a fair market value of $189,152.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. The pleading title motion is a combined motion and points and authorities. The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. However, in the instant case, the pleadings in question are not a complicated treasure hunt of combined Mothorities. Dckt. 119. Counsel would be wise not to include "Memorandum of Points and Authorities" in the Motion.

However, the declaration provided by Debtor states that she provides her testimony under penalty of perjury based only on "the best of my

knowledge, information and belief." Dckt. 117. In substance, Debtor is stating "I hope the information is true and correct, and though I don't' know, I'm informed by someone else and believe (because it lets me win) that what I've said above is true and correct."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Stating that the information is true and correct, only to the extent that I actually know or believe it to be true, is not substantially in compliance with this section.

CREDITOR'S OPPOSITION

Creditor Wells Fargo Bank, N.A. opposes Debtors' valuation and states that the value of the subject property is $235,000.00. Dckt. 126. Creditor states that they are working to get an appraisal of the property, but has not provided the court with such an appraisal.

Additionally, Creditors argue that the Debtor's valuation of the property was not in fact their opinion, but a valuation provided via Zillow.com, and thus improper hearsay.

As Movant has failed to provide the court with competent evidence of the obligation and Movant's interests. As such, the motion is denied without prejudice. FN.2.

FN.2. Given that the proper form of the declaration is, and has long been specified by statute, and is one of the simplest things which counsel can do, there is no basis for continuing the hearing to allow the preparation of a new declaration. Movant can start over, finding a witness who can testify based on personal knowledge.

Wells Fargo Bank, N.A. is also correct that Ms. Hornsby appears to have no personal opinion as to value, but is merely repeating what she has read on the internet (zillow.com). Merely reading something on the internet does (1) not make it true and (2) does not constitute an exception to the hearsay rule. Fed. R. Evid. 801-803.

CONTINUANCE

The court continued the Motion to Value to afford the Debtor an opportunity to file a supplemental declaration and communicate with counsel for Wells Fargo Bank, N.A.

STIPULATION

The Debtor filed a supplemental declaration of Debtor, which satisfies the court. Additionally, the parties filed a stipulation on August 15, 2013, stipulating the value of the subject real property at $212,000.00.

Wells Fargo Bank, N.A. first deed of trust secures a loan with a balance of approximately $420,000.00. Therefore, the respondent creditor's claim secured by a lien on the real property is under-collateralized. The creditor's secured claim is determined to be in the amount of $212,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A.

secured by the real property commonly known as 324 Moonraker Drive, Vallejo, California is determined to be a secured claim in the amount of $212,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is $212,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

25. 12-34689-E-7 ALLEN HASSAN ORDER TO SHOW CAUSE
BHS-3 Pro Se 7-30-13 [195]

CONT. FROM 7-25-13, 6-20-13

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor, Barry Spitzer, and the United States Trustee on June 25, 2013. 30 days notice of the hearing was provided.

Tentative Ruling: The court's tentative decision is to xxxx the Order to Show Cause.

JUNE 20, 2013 HEARING

On June 25, 2013, the court issued this Order to Show Cause for Debtor, Allan Hassan to appear to show cause why the court should not issue corrective sanctions in the amount of $500.00 and the additional amount of the costs and expenses, including the billable time of the Trustee and counsel for the Trustee, caused by Debtor's failure to comply with and the Trustee having to seek the further judicial enforcement of the April 26, 2013 Order.

CHAPTER 7 TRUSTEE'S NOTICE

The Chapter 7 Trustee, Douglas, M. Whatley, filed a Notice of Failure to Comply with Court Order on July 10, 2013, in connection with Docket Control Number BHS-3, which states that Debtor Allen Hassan did not produce documents as required on July 9, 2013. Dckt. 182.

Debtor was also ordered to appear for examination on July 25, 2013. Dckt. 178.

DISCUSSION

Prior Motion to Compel Attendance of Debtor at First Meeting of Creditors And Produce Documents

Chapter 7 Trustee stated the instant case was converted from Chapter 11 to Chapter 7 on November 29, 2012 and that Debtor is a California licensed attorney who has filed previous bankruptcies and has been "highly uncooperative."

Chapter 7 Trustee stated that on April 25, 2013 he was advised that Debtor, acting as president and CEO, filed skeletal bankruptcy petitions for an entity named Pleasant Grove Foundation. See case numbers 12-41824 and 13-24848. Chapter 7 Trustee stated both cases were dismissed due to failure to file documents.

Chapter 7 Trustee stated that on April 26, 2013 the court issued an order compelling Debtor to appear on May 21, 2013 at 4:30 p.m. for the continued meeting of creditors and that Debtor shall produce documents to Chapter 7 Trustee on or before May 10, 2013. Chapter 7 Trustee states the order was served on Debtor by Counsel for Trustee and the court clerk on April 29, 2013. Chapter 7 Trustee stated the cover letter on the order indicated that noncompliance would result in sanctions and seizure by the U.S. Marshal Service. Chapter 7 Trustee stated Debtor did not appear and did not produce documents.

Chapter 7 Trustee stated that the instant case appears to be an asset case as Chapter 7 Trustee can recover non-exempt assets.

Background

At the December 5, 2012 status conference the U.S. Trustee advised the court that a motion to dismiss would be filed. The court expressed concern pertaining to Debtor and Debtor in Possession's ability to prosecute the instant case and noted that while Debtor is an attorney he is not an experienced bankruptcy attorney. (Dckt. 44). While Debtor may not be an experience bankruptcy attorney, he is still an individual with a background as an attorney and medical doctor. Debtor fully understands his obligation to appear in court and produce formally requested documents. As a result, Debtor's noncompliance can only be interpreted as willful and intentional.

In bringing the motion to compel the Chapter 7 Trustee cited to Federal Rules of Bankruptcy Procedure 2005(a) and 4002 in support of his motion.

Pursuant to Federal Rule of Bankruptcy Procedure 2005(a) the court may issue to the marshal or some other officer authorized by law, an order directing the officer to bring the debtor before the court where the debtor has willfully disobeyed a subpoena or order to attend for examination.

Federal Rule of Bankruptcy Procedure 4002 provides the duties of a debtor, which include submitting to an examination at the times ordered by the court and providing certain documentation at the meeting of creditors.

Here, Debtor has failed to comply with Federal Rule of Bankruptcy Procedure 4002 as Debtor did not comply with the April 26th order. Debtor did not appear at the May 21st hearing and did not submit documents requested in the April 26th order.

This conduct of the Debtor is highly disturbing. The Debtor is not a least sophisticated consumer, but is a highly educated man, holding both a license to practice law and a license to practice medicine. While in the Chapter 11 case, the Debtor, serving as Debtor in Possession, repeatedly

assured the court that he had substantial accounts receivable to be generated from the cases he was working on in his law practice.

As a highly educated doctor and lawyer, the Debtor knows that subpoenas and orders of the court are not mere technicalities which he can ignore as serves his whims or interests. The federal and state judicial system are premised upon order of the court being complied with by the parties. Upon failure to do so, corrective sanctions, including incarceration, may be ordered by a bankruptcy judge. Additional, a District Court judge may order further punitive sanctions which go well beyond corrective incarceration and monetary sanctions.

It is necessary and proper for this court to issue the requested order to show cause. The court ordered that the Allen Hassan, the Debtor, to appear and produce the documents specified in Addendum A to the Order to Barry Spitzer, Esq., counsel for the Chapter 7 Trustee, at 11:00 a.m. on July 9, 2013, as and any other persons in attendance at the Law Office of Barry H. Spitzer, 980 9th Street, Suite 380, Sacramento, California. Further, that Allen Hassan, the Debtor, appear for examination at 2:30 p.m. on July 25, 2013, at Room 7C, on the 7th floor of the United States Courthouse, 501 I Street, Sacramento, California for examination under oath by the Chapter 7 Trustee, U.S. Trustee, and Creditors. The court further ordered that if the Debtor fails to appear, it shall issue a monetary corrective sanction in the amount of $2,000.00, report the corrective sanction and failure to comply with this order to the California State Bar and the United States District Court for the Eastern District of California, order the production and examination continued to a later date, and order the U.S. Marshal to take the Debtor into custody and produce him for the continued hearing date.

FAILURE TO COMPLY WITH ORDER OF THE COURT

The Trustee filed his Notice of the Debtor's Failure to Comply with the order of this court to produce documents on July 9, 2013. It further provides notice that the Debtor was afforded seven days to file an ex parte motion from the date of default for relief from the order (in the event that a medical or other emergency intervened to preclude compliance).

The Debtor was ordered to file written opposition to this Order to Show Cause at least fourteen (14) days before the date of this hearing. Debtor has filed to file written opposition to date. No responsive pleadings have been filed by the Debtor.

The court cannot and will not allow a party to willfully ignore the obligations of a debtor and flaunt orders of the federal court. Having provided notice of this hearing and the possible corrective sanctions, and the Debtor having elected to not comply, the court sustains the Order to Show Cause and orders Allan Hassan shall pay corrective sanctions in the amount of $500.00. In addition, the court orders Allen Hassan to pay $------ to the Chapter 7 Trustee for the legal costs and expenses to the estate arising from Mr. Hassan's failure to comply with the prior discovery or the order of this court to produce documents on July 9, 2013.

The court shall certify this violation of the court's order to the United States District Court for the Eastern District of California.

JULY 25, 2013 HEARING

IMPOSITION OF SANCTIONS PURSUANT TO JUNE 25, 2013 ORDER

In its June 25, 2013 Order, the court gave notice that if Allen C. Hassan failed to produce the documents as ordered (having failed to comply with the prior order of the court to produce such documents) or appear at the July 25, 2013 First Meeting of Creditors, the court would impose a $2,000.00 corrective sanction. The court completed the hearing on the Order to Show Cause (DCN: RHS-1) on the afternoon of July 25, 2013, at which Allen C. Hassan did not appear. Counsel for the Chapter 7 Trustee appeared and notified the court on the record that Allen C. Hassan failed to appear at the July 25, 2013 continued First Meeting of Creditors as ordered by the court (DCN: BHS-3). Counsel for the U.S. Trustee also appeared at the July 25, 2013 continued hearing on the Order to Show Cause.

Allen C. Hassan has failed to offer any explanation or reason for failure to comply with the order of this court. Allen C. Hassan has been afforded the opportunity to avoid the imposition of the corrective sanctions by complying with the June 25, 2013 Order of the court, or if compliance was impossible, seeking relief from the June 25, 2013 Order. Allen C. Hassan has chosen to do neither. The court orders that Allen C. Hassan pay to the Clerk of the Court, $2,000.00 in corrective sanctions. The court ordered and authorized the Chapter 7 Trustee to enforce this order and collect the $2,000.00 in corrective sanctions, and to pay such amount to the Clerk of the Court.

ORDER FOR FURTHER PROCEEDINGS, PRODUCTION OF DOCUMENTS, AND ATTENDANCE AT FIRST MEETING OF CREDITORS

The court issued a further Order to Produce Documents, Attend First Meeting of Creditors, and Show Cause why further corrective sanctions should not be ordered if Allen C. Hassan fails to comply with this Order to produce the documents and attend the First Meeting of Creditors as previously ordered by the court.

The court also stated it may further issue an order for the United States Marshal to take Allen C. Hassan into custody and produce him in court for his First Meeting of Creditors.

Allen C. Hassan was ordered to communicate in writing to counsel for the Chapter 7 Trustee on or before **August 8, 2013**, and propose:

1. Three different dates, prior to August 22, 2013, and times (during weekday business hours between 9:00 a.m. 4:00 p.m.) for the production of the documents specified in the prior Order, to be produced at the office of counsel for the Chapter 7 Trustee, and

2. Three different dates after August 29, 2013, and before September 15, 2013, and times (during weekday business hours

between 9:00 a.m. and 2:30 p.m.) for conducting the First Meeting of Creditors in this case.

Further, on or before **August 22, 2013,** Allen C. Hassan was ordered file with the court a status report of the dates proposed and date selected for the production of documents, the dates proposed and the date selected for the continued First Meeting of Creditors.

ORDER FOR FURTHER CORRECTIVE SANCTIONS IF ALLEN C. HASSAN FAILS TO COMPLY WITH THIS ORDER OF THE COURT

The court ordered a further hearing at **10:30 a.m. on August 29, 2013,** to determine whether Allen C. Hassan has complied with the order to propose the dates for production of documents and First Meeting of Creditors, and whether the documents have been produced. Allen C. Hassan was ordered to show cause why the court should not impose further corrective sanctions if he has not complied with this order. Any response to the Order to Show Cause shall be filed and served on or before **August 22, 2013.**

If the corrective sanction of $2,000.00 now ordered by the court, which Allen C. Hassan could have avoided being imposed by complying with the court's prior orders or seeking relief if a bona fide reason existed for the failure to comply, is not a sufficient corrective sanction for Allen C. Hassan to comply with orders of the court, then,

(1) the court shall issue a further corrective sanction of $5,000.00 and an award of attorneys' fees and costs and the Chapter 7 Trustee's fees (computed on actual time expended) caused by Allen C. Hassan's failure to comply with this order; and

(2) issue an order for production of documents and to attend the First Meeting of Creditors at a further date certain; set a higher corrective sanction amount; and afford Allen C. Hassan the opportunity to comply with the orders of the court and avoid the imposition of further corrective sanctions.

AUGUST 29, 2013 HEARING

To date, nothing has been filed on the docket by Debtor Allen C. Hassan.

At the hearing xxxx