UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 18, 2013 at 10:30 a.m.

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1. 12-42006-E-7 AARON GAMBOA — **AMENDED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se — **8-21-13 [105]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case ($25.00 due on September 18, 2013). The court docket reflects that on September 3, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

2. 12-36419-E-11 KFP-LODI, LLC
SAC-3 Scott A. CoBen

CONTINUED MOTION TO VALUE COLLATERAL OF SGBI, LLC
4-11-13 [165]

CONT. FROM 8-8-13, 6-6-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor-in-Possession, respondent creditor, and Office of the United States Trustee on April 11, 2013. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral 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 grant the Motion and Value the Secured Claim of the Creditor. 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 HEARINGS

Debtor and Debtor-in-Possession, KFP Lodi, LLC, Secured Creditor SGB1, LLC stipulated to continue the hearing on the Motion to Value Collateral to June 20, 2013, to attempt to resolve the matter.

The parties then stipulated to continue the hearing on the Motion to Value collateral to September 18, 2013, to attempt to resolve the matter. Dckt. 278.

SEPTEMBER 18, 2013 HEARING

The parties have filed an additional stipulation, agreeing to extend Creditor SGB1, LLC's date to file an opposition to the motion to September 9, 2013. No opposition has been filed to date. No opposition being filed, the only evidence of the value of the subject property is the declaration and exhibits filed by the Debtor.

The motion is accompanied by the declaration of Kyu Kim, managing member of KFP-LODI, LLC. The Debtor is the owner of the subject real property commonly known as 16855 South Harlan Road, Lathrop, California. The Debtor seeks to value the property at a fair market value of $2,600,000.00 as of the petition filing date.

Debtor offers the Declaration of David M. Rosenthal, a licensed real estate appraiser with 30 years' experience, who opines that the value of the property is $2,600,000.00.

The Co. Of San Joaquin Tax Collector secures a lien of $17,276.49. The first deed of trust secures a loan with a balance of approximately $1,748,251.42. SGB1, LLC's second deed of trust secures a loan with a balance of approximately $2,760,622.20. Therefore, the respondent creditor's claim secured by a junior deed of trust is under-collateralized. The creditor's secured claim is determined to be in the amount of $834,472.09. 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 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 SGB1, LLC secured by a second deed of trust recorded against the real property commonly known as 16855 South Harlan Road, Lathrop, California, is determined to be a secured claim in the amount of $834,472.09, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $2,600,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. 11-25921-E-11 HENRY/CARMEN APODACA MOTION TO COMPEL
DAC-8 Douglas A. Crowder 8-14-13 [256]

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, Debtor's Former Attorney, all creditors, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Compel Disgorgement of Attorney's 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 Motion to Compel Disgorgement of Attorney's Fees is granted. No appearance required.

Debtors-in-Possession Henry and Carmen Apodaca ("Movant") move the court to compel Sagaria Law, P.C. to disgorge attorney's fees it received for services to be provided in this bankruptcy case. Movant states that the court granted the employment of Sagaria Law, P.C. on March 30, 2011. Movant states that according to the 2016(b) Statement signed by Patrick Calhoun of Sagaria Law, the Movant paid Mr. Calhoun a retainer prior to the commencement of the case in the amount of $15,000.00 in addition to the filing fee of $1,039.00.

Movant subsequently hired Crowder Law Center on January 14, 2012, to serve as counsel for Movant as the Debtor in Possession due to differences between Movant and prior counsel, Sagaria Law. The court granted the Motion to Employ Douglas Crowder on April 6, 2012. Dckt. 127.

Movant's Chapter 11 Plan was confirmed on May 30, 2013, the deadline for filing administrative claims passed July 19, 2013.

Since this case was filed, Movant argues that Sagaria Law, P.C. has not filed any Application for Compensation in accordance with the order and is barred from collecting any attorney's fees paid to them by the Debtors as the deadline to file such claims has now passed.

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 not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Pursuant to 11 U.S.C. § 329, the court has authority to order an attorney to disgorge excessive fees. *In re Zepecki*, 258 B.R. 719 (B.A.P. 8th Cir. 2001). Section 329(b) provides that if compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive to the entity that made such payment. Compensation may be reduced if the court finds that the work done was of poor quality. *Hale v. U.S. Trustee*, 509 F.3d 1139 (9th Cir. 2007).

A review of the docket shows that the court granted employment of Sagaria Law, P.C. on March 30, 2011. Dckt. 19. According to the 2016(b) Statement signed by Patrick Calhoun of Sagaria Law, the Debtors paid Mr. Calhoun a retainer prior to the commencement of the case in the amount of $15,000.00. Dckt. 1, page 35.

The court granted the employment application of Douglas Crowder on April 6, 2012. Dckt. 127. No application for compensation has been filed by Patrick Calhoun of Sagaria Law. The court cannot determine what fees, if any, are reasonable attorneys fees for his services. Sagaria Law, P.C. has failed to respond to the motion or provide information regarding the reasonable services they provided. The court has not determined that any fees or costs should be allowed Sagaria Law, P.C. as require by 11 U.S.C. § 330. As the court is unable to determine that the compensation exceeds the reasonable value of the services provided by Sagaria Law, P.C., the court orders the return of such payment.

The Motion to Compel Disgorgement of Attorney's Fees is granted and Sagaria Law, P.C. is ordered to return $15,000.00 in attorney fees to Movant, as the Plan Administrators under the confirmed Chapter 11 Plan, on or before October 2, 2013. Counsel shall file and serve the Movant and Movant’s counsel on or before October 4, 2013, a written statement under penalty of perjury confirming payment of the fee amounts to the Plan Administrators.

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 Compel Disgorgement of Attorney's Fees 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 granted and Sagaria Law, P.C. is ordered to return $15,000.00 in attorney fees to Henry and Carmen Apodaca, as the Plan Administrators under the confirmed Chapter 11 Plan in this case, on or before September 27, 2013. October 2, 2013. Counsel shall file and serve the Movant and Movant's counsel on or before October 4, 2013, a written statement under penalty of perjury confirming payment of the fee amounts to the Plan Administrators.

4. 13-20051-E-11 CAB-3 TYRONE BARBER Cory A. Birnberg

MOTION FOR COMPENSATION FOR CORY A. BIRNBERG, DEBTOR'S ATTORNEY(S), FEES: $41,352.49, EXPENSES: $331.90
8-5-13 [107]

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

Correct Notice Was Not 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 August 14, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. However, there is an issue regarding hearing date in the Notice and declaration regarding proof of service.

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

The court's tentative decision is to grant the First Interim Application for Fees and approve $25,000.00 in first interim fees and $331.90 in first interim expenses. 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:

OVERVIEW OF BANKRUPTCY CASE

This Chapter 11 case was commenced on December 12, 2012. Cory A. Birnberg signed the Petition as counsel for the Debtor. The Schedules and

Amended Schedules have been filed and several motions to employ professionals. No substantive contested matters or adversary proceedings (value secured claim, objection to claim, relief from stay, determine lien or property rights) have been filed or prosecuted.

As discussed below, the prosecution of the basic administrative motions has not been without difficulty. This has bled over into inconsistencies in the Schedules. As an example, the Debtor in Possession sought *nunc pro tunc* approval to employ family law counsel. DCN: CAB-1. As part of the prospective employment the Debtor also requested approval of $3,000.00 he had paid to family law counsel post-petition, payment of additional pre-petition fees, and payment of a retainer.

While approving the employment of family law counsel, the court noted that representations made in connection with the motion were not consistent with information in the Schedules and Statement of Financial Affairs.

> Here, there appears to be a discrepancy in the amount the Debtor seeks and the amount required by the family law attorney to move forward in his case. Debtor states a retainer of $6,000 is required ($3,000 paid at the prior hearing and an additional retainer amount of $3,000), while Mr. Guthrie asserts that a $10,000 retainer is required for him to proceed further with the family law matters.
>
> Furthermore, Debtor states that he must pay $5,178.50 in past due bills. However, neither Debtor nor his attorney state what services this amount includes.
>
> Most importantly, Debtor does not identify the source of the payment and the retainers. On Schedule B, the Debtor stated under penalty of perjury that he had $20.00 cash on hand and $553.53 in bank accounts.
> Dckt. 28 at 2. The Debtor listed no other cash or liquid assets. On Schedule I the Debtor listed income of $5,000.00 a month, being self employed as Barber Construction. Id. at 9. The expenses he lists on Schedule J consume all but $677.50 of his income each month. Id. at 11.
>
> On the Statement of Financial Affairs the Debtor lists no income for 2013 in response to Question 1 and gross income of $2,312,026.00 in 2012. Dckt. 39 at 1. In response to Question 4, pending suits, the only action listed in *Kell Mechanical, Inc. v. Barber*, in the California Superior Court. No family law action is listed. Id. at 2.
>
> On February 8, 2013, the Debtor filed an Amended Schedule B which lists cash of $20.00 and bank accounts of $553.53. Dckt. 44. It also lists child support accounts having a value of $0.00. A Child Support asset (alimony, maintenance, support, and property settlement) is listed as having a value of $12,000. Id.

> In the latest Monthly Operating Report filed by the Debtor in Possession (for June 2013, Dckt. 100 at 4), the cash balance of receipts over disbursement is stated to be $193,790.

Civil Minutes, Dckt. 101.

This Chapter 11 case appears unique in that there is a complete lack of any activity by creditors. Possibly counsel may contend that this is because of all of the work and billings in this case. There is no evidence to support such a contention.

FEES REQUESTED

Birnberg & Associates, Counsel for the Debtors, makes a Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period December, 2012 through July 31, 2013. The order of the court approving employment of counsel was entered on February 13, 2013.

Description of Services for Which Fees Are Requested

Initial Preparation & Filing: Counsel spent $10,832.54 in this category. Counsel describe tasks performed as initial meeting with client, reviewing arbitration opinion, correspondence, filing Initial Emergency Petition, Ex parte Motion to Transfer of Venue, and drafting case management conference statement.

Bond Action and State Compensation Claim: Counsel spent $977.50 in this category. Counsel describe tasks performed as legal research regarding bond, bond cancellation, and state compensation claim, and email correspondence regarding bonds and Workers' Compensation Insurance.

Application to Employ Counsel: Counsel spent $297.50 in this category. Counsel describe tasks performed as application to Employ Counsel and review order to employ counsel.

Application to Employ Accountant: Counsel spent $3,866.08 in this category. Counsel's tasks performed included correspondence with an Accountant, the Client, and the Acting United States Trustee, and filing of an application to employ an accountant.

Application to Employ Family Law Counsel: Counsel spent $2,464.17 in this category. Counsel's tasks performed included Application to Employ Family Law Counsel, response to the United States Trustee's Objection to Employ Family Law Counsel, and filing of the Motion for Fees in Family Law bill.

General Estate Administration: Counsel spent $11,184.50 in this category. Counsel performed tasks regarding Initial Debtor's Interview, monthly operating report, and correspondence with the creditors and the client.

Children' Account: Counsel spent $1,466 in this category. Counsel performed the following tasks: reviewed Summons from IRS, had correspondence

with IRS, maintained correspondence with FTB regarding levy, support payments, refunds, and had telephone conference with the Client.

OPPOSITION

The Acting U.S. Trustee, August B. Landis ("UST"), opposes the Application for Allowance of Compensation. The UST provides the following reasons: overall value to the Debtor is inadequate, hourly rates of $425.00 is unreasonable for similar tasks in the Eastern District of California, and time charged is excessive and lacks details given that number of tasks that appear to be unnecessary, clerical in nature, lumped, vague, and unauthorized.

Additionally, UST argues that based on the progress of the case and tasks performed - filing of Debtor's 521 documents, attending a meeting at the UST's office and attending the meeting of creditors, and filing monthly operating reports ("MORs") and motions to employ professionals - the fees charged are excessive. Therefore, the UST asserts that approximately 51.22 hours resulting in $21,766.7 fees charged by the applicant are unreasonable and thus the applicant's fees should be reduced.

Issue	**Description**	**Time (hrs) (Calculated)**	**Fee charged**
Unnecessary Tasks	Work and correspondence regarding Motion to Transfer and Motion for Fees in Family Law Bill performed to correct applicant's mistake	3.65	$1,549.92
Clerical Tasks	Preparing notice of stay and appointing counsel, and filing amended certificate of service, schedule B, and operating report are clerical tasks	8.58	$3,644.70
Monthly Operating Report (MOR) Related	Preparing initial draft of operating report for the client, correspondence regarding MOR, and reviewing, amending, and filing MOR are tasks to be performed by an accountant or a bookkeeper	13.20	$5,608.50
Lumping Time Entries	Various tasks grouped into one time entry such as legal research regarding bond, telephone call to client, emailing regarding bond, telephone conference regarding workers compensation which makes is impossible to know how much time was spent per task	8.00	$3,398.58

Excessive Time Charges	Excessive time on preparing emergency bankruptcy petition, lumping and charging travel time at full hourly rate, or duplicating entries	15.90	$6,757.50
Vague Tasks Descriptions	Several correspondence and telephone conferences do not list the nature of the discussion	1.90	$807.50
Total		**51.22 hrs**	**$21,766.70**

COUNSEL'S REPLY

Taking what appears to be great umbrage at the U.S. Trustee objecting to the fee request, Counsel filed a response on September 12, 2013. Dckt. 116.

Counsel first argues that "the Debtor did not draft 109(e) and under Chapter 11 there is more reporting practice as well as motion practice." This is in response to the U.S. Trustee's comment that this case may well have been one under Chapter 13 but for the amount of creditor's claims. The point is not the debt limit, but that no plan has been filed in this case over the last nine months. The U.S. Trustee advances the argument that this appears to be a more simple Chapter 11 case, which could be promptly prosecuted. Who is responsible for drafting 11 U.S.C. § 109(e) is irrelevant.

Counsel also argues that Chapter 11 cases have extensive law and motion contested matters. That is generally true, but not in this case. Other than filing motions to employ professionals, the Debtor in Possession has been undisturbed in his prosecution of this case.

Counsel also takes exception to the U.S. Trustee objecting to counsel being paid attorneys fees for working on the Debtor in Possession's monthly operating report. First, preparing and filing the monthly operating reports are part of the fiduciary obligations of the Debtor in Possession, not counsel. Second, if the finances of the estate are so complicated that the Debtor in Possession needs assistance, then the proper level employees or contract services (such as a billing, accounting, or booking) are engaged as appropriate expense. Merely being approved as counsel to provide legal services for a debtor in possession does not equate to the attorney being able to bill as a lawyer for doing bookkeeping work for a debtor in possession.

With respect to the Schedules, Counsel states that the bankruptcy was filed to stop the recording of a judgment. Clearly, such would necessitate some post-petition work in having the schedules prepared (by the Debtor and appropriate clerical staff) and reviewed by the attorney.

Counsel also appears to be personally invested in this case, rather than professionally prosecuting the case. He argues, "It is demeaning to minimize this case to a chapter 13 case, where the Debtor has an ongoing business doing over 2 million dollars per year and operating two businesses." Does counsel believe that it is demeaning to him personally that the U.S. Trustee asserts that as Chapter 11 cases go he perceives this to be a "simple case," more akin to a Chapter 13 rather than the Enron bankruptcy? Does counsel believe that raising such a point is demeaning personally to the Debtor? The court is unsure of what relevance such asserting of "demeaning" has in this context.

With respect to the emergency filing of the present bankruptcy case, the Reply makes it appear that the "emergency" was planned in advance. The judgment being entered arose out of an arbitration. There is no contention that the arbitration or request for entry of a judgment based on the arbitration award was a surprise. Counsel does not contend that the Debtor showed up on counsel's doorstep stating that "a judgment is going to be entered against me tomorrow, what do I do?"

Counsel states that each court has different rules regarding telephone appearances and it was reasonable to charge the estate for counsel reviewing the local rules on that point. The court balances consideration of attorneys having to review or learn the rules in light of the hourly rate they charge. The higher the hourly rate the more "rules they need to know" and not have the estate pay for that part of their education.

With respect to the attorney doing the substantive work on the monthly operating report, counsel provides a very colorful discussion (sounding more personally invested than professionally articulate). His comments include the following excerpt.

> The initial report involved some teaching, on 2-10-13 based on the data received from the IDI. The Debtor never completed an operating report before, operated partly in cash and in Philippine pesos. The U.S. Trustee expects the Debtor without assistance, to just enter the bankruptcy world, and complete everything on his own. In reality this does not happen. What if the U.S. Trustee was given an hour introduction to how to build a dental office on February 6, (Debtor builds dental offices) and then told they didn't meet their deadline of January 14, and then told they were late 5 days on the construction, and that they should never have any instruction from a general contractor who presumably knows how to do the construction, and then chastised for not building it correctly. The court will see that as time went on counsel's involvement is less and less. The last two reports were completed by the Debtor himself, and only reviewed by counsel as to the information being placed in the correct place. In the very beginning, it was very difficult for the debtor to complete these reports.
>
> The U.S. Trustee basically argues that the Debtor should be thrown into the fire without any seasoning. Counsel did no clerical work, other than use a program to redact the account number and took 3 minutes. It would be

> irresponsible to file documents with the court without at least looking at them as an experienced bankruptcy attorney...

Reply 8:8-26, Dckt. 116.

This response gets to the basic issue before the court. The Debtor in Possession hires the attorney to do legal work, just as the dentist hires the contractor to do the construction. The dentist does not go to the attorney to obtain the necessary zoning and construction contract, and then the attorney takes over and runs the construction job. Neither does the contractor draft the plan, write the construction contract for the dentist, advise the dentist on his or her legal land use rights, or prepare the tax returns for the dentist accounting for all of the construction costs, deductions, and depreciation. Nor does the attorney for the Chapter 11 debtor in possession or trustee become the bookkeeper, accountant, general manager, chief of operations, head cook, and bottle washer.

PROCEDURAL ISSUES

Notice

Local Bankruptcy Rule 9014-1(d)(1) requires that all pleadings and documents filed in support and in opposition to a motion shall contain in caption the date and time of the hearing. This motion fails to provide proper notice to the Debtor and relevant parties. The August 5, 2013 Notice and the Amended August 14, 2013 Notice both list July 25, 2013 at 9:30 a.m. as the hearing date and hearing time even though the heading lists the September 18, 2013 at 10:30 a.m. as the hearing date. This Motion fails to state the accurate date of hearing.

Service

The declaration offered by Hana Robleh, person who served the Debtor and relevant parties, has irreconcilable dates. The Certificate of Service of Motion for Allowance of Attorneys Fees is executed under penalty of perjury on June 14, 2013, while the actual service of the Notice of Motion, Amended Notice of Motion, Application for Allowance of Compensation, and Declaration of Counsel was made on August 5, 2013. The Court is unable to reconcile the date for the service and the declaration of when the service was made.

DISCUSSION

Standard

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).

Task Billing Analysis

In seeking the approval of fees, the court typically requires that applicant provide a task billing analysis in which the various activities, time charged, and fees by task area is provided. These can include Administrative Work (such as applications to employ, communicating with the Clerk’s office for procedure, and the organizational activities of counsel); motions for relief from the stay; motions for sale, use or lease of property, for obtaining credit, or abandoning property; preference and avoiding adversary proceedings, other adversary proceedings; plans, disclosure statements, and confirmation; and the like. Within each of the task areas a brief description is provided and the time and fees relating to those items.

For the present Motion, applicant does not provide time charged in the task billing analysis [Exhibit B] nor the time sheets [Exhibit A]. Instead, applicant only lists the hourly rate and fees charged by the task. Additionally, the total amount of fees listed in the task billing analysis [Exhibit B] is $31,088.54, while the total amount of fees listed in the time sheets [Exhibit A] and the Motion are for $41,684.39. The court cannot reconcile the difference in the total amount of fees listed in the task billing analysis and the time sheets.

Evidence in Support of the Attorneys Fees

The applicant filed the Declaration of Counsel in Support of Application for Allowance of Fees and the following three exhibits: Time sheets (Exhibit A), Task Billing Analysis ("Exhibit B") and Letter to Debtor ("Exhibit C") in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Additionally, the applicant states in the Declaration of Counsel "all compensation and expenses will be in conformity with the Guidelines For Compensation and Expenses Reimbursement of Professionals issues by the United States Bankruptcy Court for the Northern District of California." However, the Court would like to remind the applicant that the case is filed in the Eastern District of California. Therefore, compensation and expense reimbursements of professionals will be in accordance with the guidelines in the United States Bankruptcy Court for the Eastern District of California.

Counsel is seeking to be allowed attorneys' fees of $425.00 an hour. Such an amount is not unreasonable for experience Chapter 11 counsel addressing Chapter 11 and other sophisticated legal matters for a client. Generally, attorneys with $425.00+ an hour billing rate have younger partners and associates who can address the simpler issues at a lower billing rate or the more experienced attorney can do them so quickly that the total amount billing is commensurate with a lower billing attorney who has to spend more time researching the law and rules.

In reviewing the time records, it appears to the court that counsel is billing $425.00 an hour for actually preparing documents, such as schedules, and not having clerical staff doing it. For example, on January 11, 2013 counsel charges $2,125.00 ($425 an hour) for "Finalize Schedules and File the Same." On January 11, 2013, counsel then charges $1,275.00 ($425.00 an hour) to "Finalize schedules d, e, F."

Counsel then charges $85.00 ($425.00 an hour) to "Amend Schedule E & File" and $85.00 ($425.00 an hour) to "Amend Schedule F & File."

Then, on March 4, 2013, counsel billed $411.29 to "amend schedule I & J and business schedules with client," $85.00 to "file schedule B amended," and $85.00 to "File schedule B amended." (All counsel services were billed at $425.00 an hour.)

For the legal work in just preparing the Schedules counsel has billed $4,151.29. No inkling has been given of what more than $4,000.00 of legal work was required for the preparation of just the schedules. If counsel chose to type the information in himself, rather than having work done by clerical staff (which cost is included in the $425.00 hour billing rate), such is his choice. But he cannot charge his $425.00 billing rate

for doing clerical or courier services (whether physically or electronically filing documents).

From his task billing analysis, just the preparation of the schedules, statement of financial affairs, and the petition resulted in $7,292.00 in billings. This does not include $977.00 billed for initial meeting with client, review of 37 page arbitration opinion, motion and related work for change of venue, and notice of bankruptcy stay to state court. FN.1. Nothing has been presented to the court to justify $7,292.00 of attorney billings for preparing the schedules, statement of financial affairs, and petition.

FN.1. The billings belie the contention that the filing of the bankruptcy case was caused by an unexpected emergency, at least for the Debtor. The first billing entry is for the November 26, 2012, initial meeting between counsel and the Debtor. It may be that the Debtor (possibly unilaterally or with the advise of counsel) chose to wait until not only the arbitration award was issued, but until the eve of the hearing on a motion for entry of judgment thereon to get serious about filing a bankruptcy case. The emergency, to the extent one existed, was self inflicted.

While the billings relating the Bond Action and State Compensation Claim could be better broken out for the actual time spent, in light of there being $977.50, the manner of task billing is not fatal.

For the motion to employ an accountant, $1,445.00 has been billed by counsel. An additional $1,445.00 has been billed for a fee application to pay the accountant's a flat fee for 2011 and 2012 tax returns.

Lumped in with the motion to employ and motion for accountant fees are some additional charges. These are:

Work with Debtor on Business Income for Schedules, Prepare Order for Approval of Accountant FN.2.	$678.58
Prepare Proof of service and file (clerical work)	$42.50
Amended Notice and Proof of Service	$42.50
	$763.58

FN.2.

FN.2. This shows that the high costs of preparing the schedules was even higher, with an additional $600.00 of legal fees being billed to the Debtor. (The court presumes that a simple order employing accountants would take no more than .2 of an hour.)

The same is true for the motion to employ special family law counsel. Counsel has billed $2,464.17 for what should have been a routine motion.

Counsel then has a "task" which is "General Estate Administration." This category is generally quite limited, commonly routine motions to employ counsel and other professionals and some general legal matters assisting the trustee or debtor in possession in fulfilling their duties. Here counsel has billed $11,184.50. Included as "General Estate Administration" are (1) preparation of documents and preparation for Initial Debtor Exam with the U.S. Trustee, (2) information for and review of monthly operating reports ($3,860), and (3) review of local rules for phone appearance ($1,x27.50).

When all of the tasks in the task billing are added up, they total to $31,088.54. Counsel is seeking the allowance of $41,352.49 in fees and $331.90 in costs. That means there are more than $10,000.00 in billings for which fees are sought which relate to no tasks which counsel can explain to the court.

Counsel's Experience as it Relates to Billing Rate

The Motion states that counsel's billing rate is $425.00 an hour and that it comports with the community standards for attorneys with similar backgrounds and qualifications. The Motion does not set forth counsel's background, legal experience, and Chapter 11 and other bankruptcy experience. In his declaration, counsel provides the following statement as to his background and experience,

> Cory Birnberg has been practicing Bankruptcy law since 1982. He interned at the U.S. Trustee's office in Bankruptcy in the Central District of California, and thereafter practiced in Los Angeles for the firm of Spector & Liebow in creditor's rights, representing American Savings & Loan, National Acceptance Corporation. Thereafter after moving to the Bay Area, Cory Birnberg continued to represent American Savings & Loan in creditor's rights until it became Washington Mutual. Birnberg has represented Debtors in chapter 11 and 7 and 13's over the last 22 years. His hourly rate is $425 per hour.

No specifics are provided, nor cases, rulings, or appellate decisions are identified. The application to employ counsel and supporting declaration do not provide any specific information in that regard. Dckt. 32, 33.

In searching the files of the Eastern District of California the court has identified the following cases in which Mr. Birnberg is an attorney.

Guy Ferrari, Inc. 05-20008 Chapter 11 Case	Filed: January 4, 2005 Dismissed: June 29, 2005	Debtor filed Motion to Dismiss May 31, 2005. The court denied the application to employ Mr. Birnberg. Order, Dckt. 42.

Stan Franklin and Katie Franklin 04-25282 Chapter 7	Filed May 21, 2004 Dismissed June 23, 2004.	The Debtors sought to dismiss this Chapter 7 case as having been filed in error (a duplicate case).
Walter Franklin and Katie R. Franklin 03-33368 Chapter 13 Case Converted to Chapter 7	Filed: December 12, 2003 Discharge: August 17, 2004.	On May 6, 2004, the Debtors elected to convert the case to one under Chapter 7.
U.S. Trustee v. Virginia Ferrari Adversary Proceeding	Filed December 21, 1994 Judgment for Trustee entered June 24, 1996.	Cory Birnberg represented Woodbine Alaska Fish Company and Guy Gerrari, Jr.
Virginia Ferrari 94-24879 Chapter 7 Case	Filed: June 20, 1994 Discharge: Denied	

The court has also reviewed the records from the Northern District of California using Pacer. That search turned up 136 cases in which Cory Birnberg is identified as counsel. Of these, nine are identified as Chapter eight cases (not counting the Tyrone Barber case filed in the Northern District and transferred to the Eastern District). These cases are from 1987, 1993, 1995, 1999, 2002, 2009, 2011, and 2012.

The 2012 case is *In re Gira Polli of Mill Valley*, Bankr. N.D. Cal. 12-31524. An order authorizing the employment of Cory Birnberg was filed by the court on June 20, 2012. No disclosure statement has been approved in the case. No motion for the interim allowance of attorneys' fees has been filed by Mr. Birnberg. (The court could not access the audio recordings maintained by that court in lien of a written transcript or ruling.)

The next most recent case is Madhavi Nettem, DDS, Inc., Bankr. N.D. Cal. 11-30911. That case was filed on March 8, 2011 and dismissed on August 24, 2011. The case was filed as a voluntary Chapter 7. Two days later the Debtor filed a motion to convert the case to one under Chapter 13. No reason is stated as to why the debtor did not file the case under Chapter 13.

On March 14, 2011 the debtor then filed an amended motion to convert the case to one under Chapter 11. The case was converted to one under Chapter 11 on April 6, 2011. The debtor in possession filed a proposed plan, a first amended plan, and a second amended plan by June 2, 2011. The debtor then successfully negotiated a repayment plan with Banc of America Protection Services, Inc., which resulted there not being a need for a Chapter 11 case.

The third most recent case is Vap Onyx International, Inc., Bankr. N.D. Cal. 09-43704. It was transferred from the Oakland Division to the San Francisco Division by order filed June 10, 2009, and assigned a new case

number of 09-31646. The Debtor moved to substantively consolidate the Oakland bankruptcy case with the San Francisco bankruptcy case of Joseph Azzolino & Marta Rita Azzolino, Bankr. N.D. Cal. 09-31150.

After the case was transferred to the San Francisco Divsion, on October 12, 2010, Cory Birnberg filed a motion to withdraw as counsel for the Debtor in Possession. Mr. Birnberg's declaration cites to (1) a lack of cooperation and communication by the clients, and (2) Debtor did not pay the previously ordered fees. The motion to withdraw was "taken off calendar" because another attorney had agreed to substitute in as counsel for the debtor in possession. The case was converted to one under Chapter 7 on March 23, 2012 with the non-opposition of the debtor in possession. The Chapter 7 Trustee filed his report of No Distribution in the case.

After the 2009 case, the next most recent is in 2002, more than a decade prior to the commencement of this case.

Of the 137 cases in the Northern District for which Cory Birnberg is identified as representing some party, 98 are Chapter 7 cases (72%). From the information available to the court, it appears that Mr. Birnberg's Chapter 11 reorganization experience is very limited. It does not appear that he has successfully confirmed a Chapter 11 Plan as counsel for the debtor in possession, chapter 11 trustee, creditors' committee, or creditor.

Mr. Birnberg has represented debtors in 21 Chapter 13 cases in the Northern District of California. A survey of these, beginning with the most recent, reveals,

In re Lois Snell 13-41849 Chapter 13	Filed: March 28, 2013 Dismissed: April 15, 2013	Cory Birnberg represented creditor seeking relief from automatic stay.
In re Kishore Kirpalani 13-30374 Chapter 13	Filed February 20, 2013	No Chapter 13 Plan has been confirmed. Original, First Amended, and Second Amended plans filed.
In re Mele Afuhaamango 12-32623 Chapter 13	Filed: September 12, 2012 Dismissed June 10, 2013	No Chapter 13 Plan confirmed. The Chapter 13 Trustee sought dismissal due to defaults in payments under the proposed plan. Debtor filed an original, first amended, and second amended Chapter 13 Plans.

In re Kay Bruno 12-31168 Chapter 13	Filed: April 16, 2012 Plan Confirmed: October 18, 2012.	The Plan provides for $416.00 a month payments for 60 months. From this counsel will be paid $3,850.00 and the Chapter 13 Trustee will be paid his fees. No provision is made for payments to any class of claims. The plan was confirmed without providing for the secured claim of Ocwen, for which the Debtor states there is a $25,000 pre-petition arrearage and ongoing loan modification discussions.
In re Malo Afuhaamango 12-30216 Chapter 13	Filed January 23, 2012 Dismissed: June 14, 2012.	Debtor was in pro se until Mr. Birnberg substituted in as counsel on March 7, 2012. The case was dismissed for the failure to propose a Chapter 13 Plan.
In re Mele Lowman 11-34507 Chapter 13	Filed December 20, 2011 Plan Confirmed: August 30, 2012	The debtor filed an original, first amended, second amended, third amended, fourth amended, and fifth amended Chapter 13 Plan.
In re Miguel and Maricela Gonzalez 11-31210 Chapter 13	Filed: March 30, 2011 Plan Confirmed: May 21, 2012	The debtor filed an original, first amended, and second amended Chapter 13 plan. The confirmed second amended plan provides for monthly plan payments of $613.00. A $113.00 monthly payment will be paid to a claim secured by a car loan, a priority claim of $27,796.75, and no payments on general unsecured claims.

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.

The applicant has not provided the Court sufficient evidence for the benefit its services has provided the estate or the progress that has been made on the case such as the status of the Chapter 11 plan. Additionally, in light of Acting U.S. Trustee's Opposition, it is not clear that all of the services performed were necessary and reasonable.

CONCLUSION

There are several fatal procedural issues with Notice, Service, and Evidence in Support of the Motion for Allowance of Fees and Expenses that the applicant needs to address. Furthermore, UST has raised substantive issues with respect to the per hour billing rate, the types of tasks performed and the fees charged and the benefit the legal services provided to the estate.

The U.S. Trustee's objections are well taken. From a review of counsel's statement of qualifications in support of the Motion and the information available from the files in this court and available from the Bankruptcy Court for the Northern District of California, it is demonstrated that counsel's experience and level of bankruptcy sophistication do not warrant the requested $425.00 an hour billing rate. A consistent factor in looking through the various files in the Northern District of California and this case is that multiple amendments of plans and schedules are required in counsel's cases. There appears to be a lot of work made in correcting prior pleadings.

Counsel has not shown that he has successfully confirmed a Chapter 11 Plan or navigated either a debtor, creditor, or trustee through a Chapter 11 case. The one Chapter 11 "victory" was the dismissal of a case because a repayment plan was worked out with the creditor. This is a victory, and one of more significant value to the client (assuming that the client can pay the modified loan) then slogging through a Chapter 11 confirmation. But a non-bankruptcy loan modification does not make counsel an experienced Chapter 11 attorney.

The sarcastic response to the Trustee's objection also manifests the lack of Chapter 11 or sophisticated reorganization experience. Counsel has successfully confirmed several Chapter 13 Plan in the past three years, none of which appear to have any legal or financial complexity. Counsel does not appear to understand the role of the Chapter 11 attorney as providing legal advice, rather than taking over the accounting, bookkeeping, and reporting roles of the Debtor in Possession.

Considering experienced bankruptcy attorneys and their billing rates in both the Eastern District of California and the Northern District of California, and attorneys who have similar limited Chapter 11 or 12 reorganization experience, counsel's reasonable hourly billing rate is $250.00 (this takes into account a higher billing rate for Bay Area attorneys). The $250.00 a hour billing rate would normally come with there being a more seasoned, senior bankruptcy attorney who is actually overseeing the case and providing guidance to the $250.00 an hour attorney in the complicated case. For the less complicated cases, the $250.00 an hour attorney could be handling the case with the assistance of clerical staff and a young associate.

From the billing statement, it appears that counsel has transported a "one-man shop" consumer practice, in which counsel sits at the computer doing clerical and legal work, to a more sophisticated Chapter 11 case. The U.S. Trustee may well be correct that notwithstanding the extra zeros after the claim amounts, this is an over-grown Chapter 13 case in which a plan could be put together by counsel. However, none has been generated so far.

From the time billed by counsel, the court has to subtract out the unreasonable amount billed. Part of this is accomplished by adjusting the hourly rate to $250.00. If counsel were allowed all of his time billed, the fees would be $24,327.50. This includes otherwise improper work done in preparing monthly operating reports for the Debtor in Possession.

The court is satisfied that adjusting the first interim fees to $24,500.00, and disallowing all amounts in excess thereof, resolves the U.S. Trustee's concerns at this time. Counsel can focus on going forward in properly maintaining his time records, reducing the lump billing, and only billing for legal services provided.

During this fee period, nothing of litigation consequence has occurred. Several employment applications have been filed. Schedules amended. Nunc pro tunc employment of special counsel has been sought. (Not having other professionals timely employed is another example of the lack of counsel's Chapter 11 reorganization experience.)

The court allows counsel $25,000.00 in first interim professional fees as counsel for the Debtor in Possession for the period November 26, 2012 through July 31, 2013, and disallows all amounts in excess thereof for that period of time.

Counsel has also requested expenses of $331.90, which the court allows. (The court allows the lexis research fees as it was used for property ownership and lien searches, something beyond the basic legal research library counsel maintains as part of his professional hourly rate.)

The court authorizes 70% of the fees, $17,500.00 and all of the allowed expenses, $331.90 to be paid counsel, first from the retainer and then any additional amount from any unencumbered monies of the estate consistent with the Bankruptcy Code.

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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Grinberg & Associates, Cory A. Birnberg lead attorney, is allowed $25,000.00 in first interim fees and $331.90 in first interim expenses pursuant to 11 U.S.C. § 331 for the period November 26, 2012 through July 31, 2013. All amounts of fees requested in excess of $25,000.00 for said period are denied.
>
> **IT IS FURTHER ORDERED** that Brinberg & Associates is authorized to be paid, first from any retainer it has for the services provided and then by the Debtor in Possession, after any retainer is exhausted, from unencumbered monies of the estate, $17,500.00 of the fees and $331,90 of the expenses allowed by this order. The interim allowance of fees is subject to final review and allowance pursuant to 11 U.S.C. § 330.

5. 13-26159-E-11 IVAN RAVLOV
SAC-15 Scott A. CoBen

CONTINUED MOTION TO VALUE COLLATERAL OF DEUTSCHE BANK NATIONAL TRUST COMPANY
7-25-13 [166]

CONT. FROM 8-8-13

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, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. 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 Value Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

AUGUST 8, 2013 HEARING

Debtor seeks to value the collateral of Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed Pass-Through Certificate, Series 2004 W-2 ("Creditor").

Debtor and Counsel for Creditor appeared at the August 8, 2013 hearing requesting a continuance. Order, Dckt. 240.

No stipulation or further documentation has been filed by either party to date. The only evidence before the court is the Declaration and Exhibits of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is $180,000.00.

The liens against this property include a Sacramento County Utilities statutory lien in the amount of $650.00, an Allied Waste Company statutory lien in the amount of $450.00, and a Citrus Heights Water District statutory lien in the amount of $100.00. Deutsche Bank National Trust Company holds a first deed of trust with a lien in the amount of $200,695.00. The value of the real property is $180,000.00. Therefore, the

respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $178,800.00. *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 Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed Pass-Through Certificate, Series 2004 W-2 secured by real property commonly known as 6035 Cheshire Way, Citrus Heights, California is determined to be a secured claim in the amount of $178,800.00, 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 $180,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

6. 13-26159-E-11 IVAN RAVLOV
SAC-16 Scott A. CoBen

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
7-25-13 [172]

CONT. FROM 8-8-13

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, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. 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 Value Collateral and determine creditor's secured claim to be $166,430.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court continued the hearing at the request of the parties, the Motion being set on the notice provided by Local Bankr. R. 9014-1(f)(2). No opposition or supplemental documents have been filed to date. The only evidence before the court is the declaration and exhibits of James A. Chaussee.

Debtors seeks to value the collateral of JPMorgan Chase Bank, N.A. Debtors are the owners of the real property commonly known as 7513 Johanne Court, Citrus Heights, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is $170,000.00.

The Debtor asserts that there are three statutory liens on the subject real property, including $3,000.00 (Sacramento County Utilities), $450.00 (Allied Waste Company), and $120.00 (Citrus Geights Water District). JPMorgan Chase Bank, N.A.'s first deed of trust secures a loan with a balance of approximately $167,688.00. Therefore, the respondent creditor's

claim secured by a lien on the vehicle's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $166,430.00. *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 JPMorgan Chase Bank, N.A. secured by a first deed of trust recorded against the real property commonly known as 7513 Johanne Court, Citrus Heights, California, is determined to be a secured claim in the amount of $166,430.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $170,000.00.

7. 13-26159-E-11 IVAN RAVLOV
SAC-17 Scott A. CoBen

CONTINUED MOTION TO VALUE COLLATERAL OF DEUTSCHE BANK NATIONAL TRUST COMPANY
7-25-13 [177]

CONT. FROM 8-8-13

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, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. 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 set the Motion for an Evidentiary Hearing. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

Debtor seeks to value the collateral of Deutsche Bank National Trust Company, as Trustee for the Indy Mac Indx Mortgage Loan Trustee 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 Under the Pooling and Servicing Agreement dated March 1, 2005. The Debtor is the owner of real property commonly known as 3490 Lewiston Road, West Sacramento, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is $360,000.00.

CREDITOR'S OPPOSITION

Creditor Deutsche Bank National Trust Company, as Trustee for the Indy Mac Indx Mortgage Loan Trustee 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 Under the Pooling and Servicing Agreement dated March 1, 2005 ("Creditor") opposes the motion on the grounds that Debtor has failed to prove the validity, priority, and extend of any senior lien. Creditor states Debtor has failed to present any evidence regarding how or why the City of West Sacramento obtained a statutory lien senior to Creditor's claim.

Creditor also argues that Debtor's appraisal report is based on an unauthenticated article and home inspection reports provided by the Debtor. Creditor stats that the appraisal report makes large adjustments to the sales price of comparable properties based on a home inspection report and an article from the Sacramento Business Journal regarding defective construction. Creditor states this is hearsay evidence and should not be admissible as evidence as to the value of the property.

Creditor also argues that the subject real property must be valued at the time of confirmation to receive the "indubitable equivalent" of its claim. Creditor states that this motion is premature as plan confirmation may not take place for several months and Debtor's Disclosure Statement has not been approved.

Creditor requests that the motion be denied, the property valued at the time of confirmation, or for the Creditor to have more time to file a proper appraisal.

CONTINUANCE

As the motion was set on Federal Rule of Bankruptcy Procedure 9014-1(f)(2), the court continued the hearing to allow Creditor to obtain an appraisal as to the value of the property.

No supplemental pleadings or an appraisal from Creditor has been filed to date.

If the parties cannot agree on the value of the subject real property, the court will set an evidentiary hearing.

The court shall issue an Evidentiary Confirmation Hearing Order setting the following dates and deadlines:

(1) Testimony and exhibits shall be presented to the court pursuant to Local Rule 9017-1. Presentation of witnesses at the hearing is required.

(2) Debtors shall lodge with the court and serve their direct testimony statements and exhibits on or before ----------.

(3) Creditor Deutsche Bank National Trust Company, as Trustee for the Indy Mac Indx Mortgage Loan Trustee 2005-AR6, Mortgage Pass-Through Certificates, Series 2005-AR6 Under the Pooling and Servicing Agreement dated March 1, 2005 shall lodge with the court and serve their direct testimony statement on or before ----------.

(4) Evidentiary objections and confirmation hearing briefs shall be filed and served on or before ----------.

(5) Oppositions to evidentiary objections shall be filed and served on or before ----------.

(6) The Evidentiary Confirmation Hearing shall be conducted at ----------.

8. 13-26159-E-11 IVAN RAVLOV
SAC-21 Scott A. CoBen

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
7-25-13 [197]

CONT. FROM 8-8-13

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, respondent creditor, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. 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 Value Collateral and determine creditor's secured claim to be $407,000.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court continued the hearing at the request of the parties, the Motion being set on the notice provided by Local Bankr. R. 9014-1(f)(2). The only evidence before the court is the declaration and exhibits of James A. Chaussee.

Debtor seeks to value the collateral of JPMorgan Chase Bank, N.A. Debtor is the owner of real property commonly known as 7716 Belle Rose Circle, Roseville, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with 24 years' experience, who opines that the value of the property is $360,000.00.

On September 13, 2013, the parties filed a Stipulation by which they agreed the Secured Claim to have a value of $407,000.00. Stipulation, Dckt. 254. The Stipulation includes other terms, including plan treatment to which the Debtor has agreed. The court does not make de facto plan orders in the guise of motions to value secured claims. The court does recognize that the agreement of this Creditor as to the value of the property and its secured claim in the amount of $407,000.00. The failure to follow through with action consistent with such representation, without good cause show,

would weigh heavily on a debtor attempting to prove that such a plan is being proposed in good faith.

The first deed of trust secures a loan with a balance of approximately $435,000.00. Therefore, the respondent creditor's claim secured by a lien on the vehicle's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $407,000.00. *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 JPMorgan Chase Bank, N.A. secured by a first deed of trust recorded against the real property commonly known as 7716 Belle Rose Circle, Roseville, California, is determined to be a secured claim in the amount of $407,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $407,000.00.

9. 10-23577-E-11 GLORIA FREEMAN
LHF-2 Pro Se

MOTION TO SET ASIDE ORDER OF THE SETTLEMENT AGREEMENT IN THE ESTATE, NOTICE OF OBJECTIONS TO PLAN AND DISCLOSURE STATEMENT, REQUEST FOR TRO AND REQUEST TO RETURN FUNDS, ET AL.
8-28-13 [1002]

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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 28, 2013. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Set Aside Order 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 that the Motion to Set Aside Order of Settlement Agreement in the Estate, Notice of Objection to Plan and Disclosure Statement and Request for TRO and to Return Funds is overruled and denied as to Gloria Freeman and denied without prejudice as to Laurence Freeman. 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 and Laurence Freeman ("Movant") move for (1) an order setting aside the Order Granting Trustee's Motion approving the Settlement Agreement in the Estate of Gloria Freeman dated July 19, 2012 between Laurence Freeman and David Flemmer, the Chapter 11 Trustee (2) Notice of Objection to the Plan of Reorganization and the Disclosure Statement (3) Request for a Temporary Restraining Order and (4) Requests that funds to Laurence Freeman be returned and (5) disgorgement of attorneys, Trustee and Accountant fees.

NOTICE

However, the Local Rules require that movants 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. Movant 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).

ATTEMPTED CONTINUANCE

Movant re-filed the Motion and all of the supporting pleadings on September 5, 2013, setting an additional hearing on October 3, 2013.

Movant also filed a "Notice of Continued Hearing," attempting to continue the hearing to October 3, 2013. Dckt. 1043. Though titled "Notice," the pleading is actually an *ex parte* motion requesting that the court continue the hearing. L.R.B.P. 9014-1(j). The court denies this *ex parte* motion requesting the court to continue the hearing, as it appears to be an attempt to confuse the court and the parties, and in light of the following discussion.

IMPROPER REQUEST FOR MULTIPLE CLAIMS FOR RELIEF

The Motion seeks several complicated types of relief, including (1) an order setting aside the Order Granting Trustee's Motion approving the Settlement Agreement in the Estate of Gloria Freeman dated July 19, 2012 between Laurence Freeman and David Flemmer, the Chapter 11 Trustee (2) Notice of Objection to the Plan of Reorganization and the Disclosure Statement (3) Request for a Temporary Restraining Order and (4) Requests that funds to Laurence Freeman be returned and (5) disgorgement of attorneys, Trustee and Accountant fees. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant have improperly attempted to join several different motions into one massive pleading.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate – proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice. The Motion is denied for this independent ground.

Additionally, much of the stated relief has already been ruled on by this court or concerns matters currently pending before this court. For instance, the properly noticed Disclosure Statement was already approved, the court overruling Debtor's objections. See Civil Minutes, Dckt. 772. The court also confirmed the Chapter 11 plan, overruling the Debtor's objections. See Civil Minutes, Dckt. 1042. The temporary restraining order appears to be an attempt to stay funds from being distributed under the confirmed plan of reorganization.

The court is currently addressing the Disgorgement of Attorney fees from attorney W. Austin Cooper and Steven Berniker. This court made a final decision regarding removing the Trustee and disgorging his fees, as well as removing the prior accountant. See Civil Minutes, Dckts. 841, 951.

The court also denied Debtor's request for a stay pending appeal. See Civil Minutes, Dckt. 1018.

The only stated relief the court has not addressed is the setting aside of the Settlement Agreement. However, the court is very concerned with this request from Mr. Freeman.

As the court explained in the Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, filed September 12, 2013, Dckt. 1044, the court is very concerned that Mr. Freeman may not be understanding the documents he is purporting to sign. The court is not willing to proceed with the requested relief until Mr. Freeman is properly represented.

Further, the court has issued its order setting a hearing as to whether a personal representative needs to be appointed pursuant to Federal Rule of Civil Procedure 25 and 17, and Federal Rule of Bankruptcy Procedure 7025, 7017, and 9014. Order, Dckt. 1044. This court is not going to alter any of Laurence Freeman's rights until it is convinced that he is mentally and physically able to participate in these proceedings and that he, or his representative, has the assistance of independent legal counsel.

SIGNATURES

Pursuant to Local Bankruptcy Rule 9004-1(c) all pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria perona, with the person signing the document typed underneath the signature. There are separate rules for documents for documents submitted electronically. See Local Bankr. R. 9004-1(c)(1). The rules states that the use of "/s/ Name" on documents constitutes the registered user's representation that an originally signed copy of the document exists and is in the user's possession at the time of filing.

Here, Gloria Freeman, Debtor, and Laurence Freeman, "Party in Interest" have filed original documents with the court using the electronic signature designation "/s/ Name." This is not proper. Failure to comply with the local rules is grounds to deny the motion. See Local Bankr. R. 9014-1(l).

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 Set Aside Order of Settlement Agreement in the Estate, Notice of Objection to Plan and Disclosure Statement and Request for TRO and to Return Funds filed by Debtor and Mr. 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 as to Gloria Freeman and denied without prejudice as to Laurence Freeman.

10. 10-23577-E-11 GLORIA FREEMAN — MOTION TO REDACT A PORTION OF THE INFORMATION
LHF-3 Pro Se — 8-28-13 [999]

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 the United States Department of Justice, the United State Attorney, and Steven Bernicker on August 28, 2013. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Redact a Portion of Information 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 that the Motion to Redact a Portion of Information is denied as to Gloria Freeman and denied without prejudice as to Laurence Freeman. 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 and Laurence Freeman ("Movant") seek to redact Exhibit A (Declaration of James Stoody Necrologist) and the Declaration of Laurence Freeman, which claim to have privileged medical information, as well as a part of the motion speaking about medical information. Movant states that this information is privileged under HIPPA.

NOTICE

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. Movant 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).

Additionally, the Notice does not provide the date of the hearing to provide proper notice to the parties of the hearing.

SERVICE

Furthermore, the Proof of Service states that the Motion and supporting pleadings were only served on the United States Department of Justice (Civil Trial Section), the United State Attorney for the Internal Revenue Service, and Steven Bernicker. No other parties in interest were served, such as the Chapter 11 Trustee, Counsel for the Chapter 11 Trustee, the United States Trustee or any creditors or parties in interest. This is insufficient.

ATTEMPTED CONTINUANCE

Movant filed a "Notice of Continued Hearing," attempting to continue the hearing to October 3, 2013. Dckt. 1043. Though titled "Notice," the pleading is actually an *ex parte* motion requesting that the court continue the hearing. L.R.B.P. 9014-1(j). The court denies this *ex parte* motion requesting the court to continue the hearing, as it appears to be an attempt to confuse the court and the parties, and in light of the following discussion.

CONSIDERATION OF MOTION

Pleading with Particularity

Even if the court were to consider the motion, Movant fails to provide sufficient information for the court to grant relief. The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

> Comes now Gloria Freeman, Debtor in these proceedings and Laurence Freeman, a Party in Interest. We are herewith making this motion to redact a portion of these files in particular the Exhibit A(Declaration of James Stoody Neurologist) and the Declaration of Laurence Freeman which contains privileged medical information as well as the part of the Motion speaking about his medical information. Under HIPPA these are privileged documents.

Dckt. 999.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that there is unstated information that should be redacted. Movant does not provide which "Exhibit A" or which "Declaration of Laurence Freeman" (in a file that is currently has 1047 docket entries) or does not state the particular information in each document that they wish to redact. The court cannot discern from the motion what information from which documents to redact.

Signatures

Pursuant to Local Bankruptcy Rule 9004-1(c) all pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria perona, with the person signing the document typed underneath the signature. There are separate rules for documents for documents submitted electronically. See Local Bankr. R. 9004-1(c)(1). The rules states that the use of "/s/ Name" on documents constitutes the registered user's representation that an originally signed copy of the document exists and is in the user's possession at the time of filing.

Here, Gloria Freeman, Debtor, and Laurence Freeman, "Party in Interest" have filed original documents with the court using the electronic signature designation "/s/ Name." This is not proper. Failure to comply with the local rules is grounds to deny the motion. See Local Bankr. R. 9014-1(l).

In light of the Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, filed September 12, 2013, Dckt. 1044, the court is very concerned that Mr. Freeman may not be understanding the documents he is purporting to sign.

Further, the court has issued its order setting a hearing as to whether a personal representative needs to be appointed pursuant to Federal Rule of Civil Procedure 25 and 17, and Federal Rule of Bankruptcy Procedure 7025, 7017, and 9014. Order, Dckt. 1044. This court is not going to alter any of Laurence Freeman's rights until it is convinced that he is mentally and physically able to participate in these proceedings and that he, or his representative, has the assistance of independent legal counsel.

Additionally, in multiple pleadings previously Gloria Freeman has discussed at length Laurence Freeman's medical condition, never seeking to have any portion of the record sealed. In pleadings drafted by Gloria Freeman and purportedly signed by Laurence Freeman, Mr. Freeman himself has discussed his medical issues without seeking to have any portion of such pleadings sealed.

The only new document is a declaration used by Gloria Freeman in a state court conservatorship proceeding which she was prosecuting against Laurence Freeman. The court in its Order setting the hearing to determine if a representative for Laurence Freeman must be appointed reviews the history of actions brought by Gloria Freeman to obtain control over the assets of Laurence Freeman. The court will not hide this declaration, and other pleadings filed in this case and the related adversary proceedings without first determining that Laurence Freeman is mentally and physically able to participate in these proceedings and that he or his court appointed representative (if such appointment is necessary) and his independent legal counsel presents such requests to the court.

Based on the foregoing, the Motion is denied.

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 Redact Information 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 as to Gloria Freeman and denied without prejudice as to Laurence Freeman.