UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 19, 2015 at 10:00 a.m.

---

1. 09-42310-A-12 ERIC ANTHEUNISSE — MOTION FOR ENTRY OF DISCHARGE
SAC-7 — 9-15-15 [239]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the chapter 12 trustee, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion for entry of a chapter 12 discharge will be granted.

11 U.S.C. § 1228(a) provides that:

"Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title."

This case was filed on October 14, 2009. The court confirmed the debtor's chapter 12 plan on April 15, 2010. Docket 127. The debtor does not have any domestic support obligations.

First, the trustee filed a final report on July 21, 2015 and the report was approved on August 31, 2015. Dockets 234 and 236. The trustee's report demonstrates that the debtor has made the payments required by the plan and

that the trustee has made the payments to creditors required by the plan. Dockets 127 & 234. The requirement imposed by 11 U.S.C. § 1228(a) that the debtor receive a discharge only after completion of all payments under the plan has been satisfied.

Second, the debtor has filed a certificate in connection with this motion that the debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a); Docket 241 at 1. No objection has been filed to that certificate and the time to file an objection has expired.

Finally, by service of this motion, the debtor has given all creditors notice that 11 U.S.C. § 522(q)(1) is not applicable, and that there is no pending proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind specified in section 522(q)(1)(B). Docket 241 at 2. No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1228(f).

2. 15-27225-A-11 GS1 MOTORS INC. STATUS CONFERENCE
9-14-15 [1]

Tentative Ruling: None.

3. 15-27225-A-11 GS1 MOTORS INC. MOTION TO
RJ-1 EMPLOY
9-28-15 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor in possession, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, 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 offer 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 motion will be granted.

The debtor requests authority to employ Richard Jare as bankruptcy counsel for the estate. Mr. Jare's compensation will be based on an hourly fee arrangement. Mr. Jare will assist the debtor with the administration of the chapter 11 estate, including, without limitation, advising the debtor about rights and obligations; representing the debtor at hearings; negotiating with creditors; assisting with the preparation, filing and prosecution of motions, reports, statements, and chapter 11 plan, as necessary to the administration of the estate.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11

U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Mr. Jare is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

4. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
FWP-17 — 9-21-15 [376]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The chapter 11 trustee's counsel, Felderstein Fitzgerald Willoughby & Pascuzzi, L.L.P., has filed a second interim motion for approval of compensation. The requested compensation consists of $106,527.50 in fees and $2,371.54 in expenses, for a total of $108,899.04. This motion covers the period from April 1, 2015 through August 31, 2015. The court approved the movant's employment as the chapter 11 trustee's attorney on January 5, 2015. In performing services, the movant charged hourly rates of $195, $350, $405, $495.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation:

(1) assisting the trustee with analysis of estate assets and claims against the estate,

(2) communicating with the trustee, the United States Trustee and the debtor's counsel about various issues,

(3) monitoring the related BR Enterprises bankruptcy case,

(4) addressing issues pertaining to the marketing and sale of estate assets,

(5) analyzing avoidance claims,

(6) negotiating and obtaining court approval of an incentive agreement with

David Cretaro regarding his assistance with the sale of estate real property,

(7) requesting further use of cash collateral,

(8) analyzing secured claims and related issues, and communicating with secured creditors,

(9) analyzing leases on properties to be sold,

(10) negotiating and preparing an assumption and assignment agreement,

(11) drafting tenant estoppel certificates,

(12) obtaining court approval of assumption and assignment agreement,

(13) researching general partner stay and assets issues,

(14) analyzing issues pertaining to a pending state court action by a secured creditor and a writ of attachment against general partner's assets,

(15) preparing and prosecuting a motion to compel the filing of schedules by the general partners,

(16) negotiating and monitoring two stay relief motions by a secured creditor, continued from time to time,

(17) preparing and prosecuting a motion to sell,

(18) negotiating with creditors over plan treatment of their claims,

(19) assisting the trustee with the preparation of operating reports, cash collateral reports and status reports,

(20) preparing for and attending various court hearings, conferences, meetings, etc., and

(21) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

5.	15-20034-A-11 ET-2	C & N LANDSCAPE MAINTENANCE, INC.	MOTION TO EMPLOY 9-25-15 [74]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 offer 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 motion will be granted.

The debtor in possession requests approval to employ Coldwell Banker Commercial Valley Brokers as a business broker for the estate. Coldwell will assist the estate with listing and selling the debtor's business. The proposed compensation for Coldwell will be an 8% commission.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee."

This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a).

11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. Coldwell is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

6.	13-34541-A-11 UST-1	6056 SYCAMORE TERRACE L.L.C.	MOTION TO CONVERT OR DISMISS CASE 8-12-15 [315]

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The U.S. Trustee moves for conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), arguing the failure to timely file operating reports and seeming inability to confirm a plan. In the alternative, the movant seeks dismissal of the case.

11 U.S.C. § 1112(b)(1) provides that "on 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 section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter . . . ." 11 U.S.C. § 1112(b)(4)(A), (F).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144

(B.A.P. 1st Cir. 2012).

The debtor filed its April, May and June operating reports late. It did not file the reports until August 7. Dockets 310, 311, 312.

While the debtor's opposition mentions having filed the reports, the debtor fails to explain why they were not filed timely. As such, the debtor's failure to file reports timely is unexcused. See U.S.C. § 1112(b)(4)(F). This is independent cause for the conversion or dismissal of the case under section 1112(b).

Further, this case has been pending for nearly two years. It was filed on November 14, 2013. Nevertheless, the debtor has been slow to file a plan and disclosure statement, much less confirm a plan. Despite the court denying plan confirmation in March 2015, the debtor did not file another plan until September 22, 2015. That is, one was proposed after this motion was filed by the U.S. Trustee. Dockets 324 & 325.

Even though the debtor's most recent plan seems to be predicated on the debtor prevailing in its adversary proceedings against Faran Honardoost and Mahboob Tehrnanian (a.k.a. Bozorgzad), those adversary proceedings were filed quite late in the prosecution of this case. To the extent the proceedings were crucial to the prosecution of the case, the debtor has been slow to file and prosecute the proceedings.

The adversary proceeding against Faran Honardoost (Adv. Proc. No. 14-2322) was not filed until November 19, 2014, over a year after this case was filed. The adversary proceeding against Mahboob Tehrnanian (Adv. Proc. No. 15-2070) was not filed until April 7, 2015, approximately 17 months after this case was filed.

Moreover, the adversary proceedings were not filed until after the debtor had conducted unnecessary and protracted litigation involving the claims held by Faran Honardoost and Mahboob Tehrnanian.

For instance, before filing the adversary proceeding against Faran Honardoost, the debtor litigated two valuation motions involving Honardoost's claim and litigated an opposition to plan confirmation by Faran Honardoost. Dockets 29, 118, 227. Similarly, before instituting the adversary proceeding against Mahboob Tehrnanian, the debtor litigated an opposition to plan confirmation by Mahboob Tehrnanian and an objection to the claim of Mahboob Tehrnanian. Dockets 219 & 264.

There was no discernable planning before the case was filed and for more than a year after it was filed concerning the allowance and treatment of the claims of Faran Honardoost and Mahboob Tehrnanian. In fact, the court recalls the debtor's counsel admitting, approximately one year into this case, of not having known about the claim held by Mahboob Tehrnanian.

Given the foregoing, the fault for the slow pace of this case lies solely with the debtor.

And, the unnecessary two-year pendency of this case has been prejudicial to creditors, especially secured creditors whose claims were stripped down or stripped off, such as Mountain Counties Plumbing, Inc. Dockets 274 & 275. This is another cause under section 1112(b) for conversion or dismissal of the case.

As the debtor is holding $40,000 from a settlement with tenants occupying its real property, and the debtor has scheduled $26,800 in unsecured claims, including $800 owed to the California Franchise Tax Board (Docket 1, Schedule E) and $26,000 owed on account of a judgment obtained by Mountain Counties Plumbing, Inc. (Docket 250, Amended Schedule F), conversion to chapter 7 is in the best interest of those creditors.

The motion will be granted and the case will be converted to chapter 7.

7. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C. CAH-4
15-2070
6056 SYCAMORE TERRACE LLC V. BOZORGZAD

MOTION FOR ENTRY OF DEFAULT JUDGMENT
9-21-15 [28]

Tentative Ruling: The motion will be granted.

The plaintiff, 6056 Sycamore Terrace L.L.C., the debtor in the underlying bankruptcy case, seeks the entry of a default judgment against the defendant, Mahboob Bozorgzad, avoiding under 11 U.S.C. § 544(a)(3) the defendant's deed of trust encumbering the plaintiff's sole real property, granted to the defendant before the petition date in connection with the marital dissolution of the defendant and the plaintiff's principal, Hossein Bozorgzad.

The plaintiff also seeks declaratory relief that the defendant holds no claim against the plaintiff's underlying bankruptcy estate and that the defendant is not a creditor within the meaning of 11 U.S.C. § 101(10).

The defendant filed a proof of claim on November 7, 2014 for $1,398,300, $1,106,000 of which is secured by the plaintiff's real property. Case No. 13-34541, POC 6. The $292,300 remainder of the claim is classified as a general unsecured claim.

In approximately October 2007, the defendant acquired a deed of trust against the plaintiff's sole real property, which was owned at the time by Mr. Bozorgzad. The deed secured the claim reflected in the secured portion of proof of claim no. 6, owed by Mr. Bozorgzad under the terms of the couple's marital settlement agreement.

The defendant never recorded the deed of trust. In approximately April 2012, Mr. Bozorgzad formed the plaintiff and transferred the real property to the plaintiff. On November 14, 2013, the plaintiff filed the underlying chapter 11 case. As of the petition date, the defendant still had not recorded the deed.

The plaintiff/debtor instituted this adversary proceeding against the defendant on April 7, 2015. The defendant's default was entered on May 21, 2015. Docket 9.

Fed. R. Civ. P. 55(b)(2) provides that:

"A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any federal statutory right to a jury trial — when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;
(B) determine the amount of damages;
(C) establish the truth of any allegation by evidence; or
(D) investigate any other matter."

The factors courts consider in determining whether to enter a default judgment include: (i) the possibility of prejudice to the plaintiff, (ii) the merits of the plaintiff's substantive claim, (iii) the sufficiency of the complaint, (iv) the amount at stake, (v) the possibility of a dispute over material facts, (vi) whether the default was due to excusable neglect, and (vii) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Valley Oak Credit Union v. Villegas (In re Villegas), 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991).

The relief sought by the plaintiff in its complaint is pursuant to 11 U.S.C. § 544(a)(3), which provides that:

"(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--
"(1) . . .

"(2) . . . or

"(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists."

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to avoid transfers under 11 U.S.C. § 544.

The plaintiff has the authority to exercise the trustee's powers under section 544(a), as the plaintiff is a debtor in possession in the estate of the underlying bankruptcy case. As such, the plaintiff has "as of the commencement of the case . . . the rights and powers of . . . a bona fide purchaser of real property . . . from the debtor." See 11 U.S.C. § 544(a)(3).

The plaintiff "obtain[ed] the status of a bona fide purchaser" as of the November 14, 2013 petition date, and "perfected such transfer [from the debtor]" as of the November 14, 2013 petition date. The defendant's deed of trust in the property was unperfected as of the November 14, 2013 petition date because the deed was not recorded as of that date. The court has no evidence that the deed was ever recorded by the defendant. Due to the plaintiff's bona fide purchaser status, the plaintiff's interest in the property is perfected and it is superior to the defendant's interest in the property.

Accordingly, the court will avoid the transfer evidenced by the granting of the deed to the defendant. The court will also declare that the defendant has no claim secured by the plaintiff's real property, as it pertains to the deed in question.

The defendant has no other claims against the plaintiff's estate in the

underlying bankruptcy case. This adversary proceeding avoids the defendant's only claim secured by the plaintiff's sole real property. The only other claim of the defendant against the plaintiff's estate, a general unsecured claim for $292,300, was disallowed by the court in connection with an objection to a claim filed by the plaintiff in the underlying bankruptcy case. Case 13-34541, Docket 276. No other relief will be awarded. The motion will be granted.

The plaintiff shall lodge an order granting this motion, as well as a judgment consistent with this ruling.

8.	15-27743-A-7 RWF-1	ANTONIO TORRES AND LINDA MAYORGA	MOTION TO WITHDRAW AS ATTORNEY O.S.T. 10-6-15 [22]

Tentative Ruling: The motion will be granted.

Attorney Robert Fong asks for permission to withdraw as counsel for the debtors because, while he prepared and signed the petition documents filed in the case, he did not file the case. After the debtors failed to pay Mr. Fong's agreed compensation, they filed the petition documents he had prepared with the court themselves. He did not authorize them to file the petition documents.

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"*(A) In General.*

"*(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.*

"*(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable*

laws and rules.

"*(B) Mandatory Withdrawal.*

"*A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:*

"*(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or*

"*(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or*

"*(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.*

"*(C) Permissive Withdrawal.*

"*If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:*

"*(1) The client*
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) <u>by other conduct renders it unreasonably difficult for the member to carry out the employment effectively</u>, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) <u>breaches an agreement or obligation to the member as to expenses or fees</u>.

"*(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or*

"*(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or*

"*(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or*

"*(5) The client knowingly and freely assents to termination of the employment; or*

"*(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.*"

This case was filed on October 1, 2015. Although the movant's signature is on many of the petition documents filed in this case, as counsel for the debtors, the movant has produced evidence that the petition documents were filed without his knowledge and authority. Docket 16. The debtors failed to pay the movant's agreed compensation for preparing the petition documents and for representing them in bankruptcy, thus breaching their compensation and retention agreement with the movant. Also, the movant has been unable to establish communication with the debtors. They have been non-responsive to his telephone calls. Docket 16 at 2. As such, the movant has been unable to carry out his duties as counsel for the debtors.

This is cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d) & (f). The court will permit the movant's withdrawal from this case. The motion will be granted.

9.	15-21575-A-11	BR ENTERPRISES, A	OBJECTION TO
	DL-1	CALIFORNIA PARTNERSHIP	CLAIM
	VS. ANTONIO RODRIGUEZ, III		9-3-15 [156]

Tentative Ruling: The objection will be dismissed.

Secured creditor, Redding Bank of Commerce, objects to the $125,000 general unsecured claim of Antonio Rodriguez, III, the debtor's managing partner, arguing that the claim has been invented because the bank has seen no payment of interest on the claim, in the 2009 through 2012 tax returns the debtor has shared with the bank over the years. The claim was incurred in 2006.

Mr. Rodriguez, III, and the debtor oppose the objection.

The court is not convinced that the bank has standing to bring this objection.

A plaintiff must meet both the constitutional and prudential requirements of standing. Bennett v. Spear, 520 U.S. 154, 162 (1997). To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

The court is unpersuaded of the bank's actual or threatened injury due to allowance of Mr. Rodriguez, III's claim.

The bank asserts that the debtor has impaired Mr. Rodriguez, III's claim, as part of a scheme to engineer a cramdown on the secured claims, including the bank's secured claims.

The subject $125,000 claim is the largest in the plan's general unsecured class 6. The only other claims in that class are the $277.34 claim of Southern California Edison Company and the $667.28 claim of VESTRA Resources, Inc. Docket 165 at 31.

But, plan acceptance by Mr. Rodriguez, III's claim would not satisfy section 1129(a)(10) because that provision specifically excludes "acceptance of the

plan by any insider." Mr. Rodriguez, III is an insider under section 101(31)(C)(i) and/or (v), as general partner and/or person in control of the debtor. Thus, even though the claim is impaired, plan acceptance by the claim will not satisfy section 1129(a)(10).

Mr. Rodriguez, III's claim will not be much help in a cramdown scenario either for the same reason - Mr. Rodriguez, III's status of an insider. His claim will not count toward a consenting impaired class acceptance, which is required even under a cramdown. See 11 U.S.C. § 1129(b)(1) (requiring compliance with section 1129(a)(10)). The court is perplexed as to how the debtor is using Mr. Rodriguez, III's claim to engineer a cramdown on the bank's claims. The objection is scarce on detail as to this point.

Additionally, the bank has another remedy to ensure that the debtor is not using an insider claim to engineer a cramdown on secured creditors, namely, the requirement that the plan be proposed in good faith. See 11 U.S.C. § 1129(a)(3). Basing a cramdown of secured claims solely on an insider's claim raises issues of the debtor's good faith in proposing the plan.

The court further notes that, while the claims in class 6 are impaired - including Mr. Rodriguez, III's claim, the claims in class 1 (Redding Bank's two claims secured by real property), class 2 (Central Valley Community Bank's claim secured by real property) and class 3 (Joe and Lavonne Curto Family Trust's claim secured by real property), are also impaired. Hence, plan acceptance by Mr. Rodriguez, III's claim will not be required for satisfaction of section 1129(a)(10), even if Mr. Rodriguez, III was not an insider. The impaired class 2 claim, for example, can vote to accept the plan, satisfying section 1129(a)(10). Satisfaction of section 1129(a)(10) then may not hinge on plan acceptance by Mr. Rodriguez, III's claim.

As such, even if Mr. Rodriguez, III was not an insider, the court cannot ascertain at this moment that the bank satisfies the injury in fact element of standing. This issue will not be ripe for adjudication until the votes on plan confirmation are cast.

Finally, even resolving the merits of the subject objection, the court is not persuaded that Mr. Rodriguez, III's claim was invented or lacks merit.

"Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is 'deemed allowed,' the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, *the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim*. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Holm at 623; In re Allegheny International, Inc., 954

F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Although Mr. Rodriguez, III did not file a formal proof of claim, his claim was listed in Schedule F and was thus deemed filed under 11 U.S.C. § 1111(a), which provides that "[a] proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(a)(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated." The claim was not scheduled as disputed, contingent or unliquidated.

The bank's evidence of absence of payments on the claim - and thus impliedly non-existence of the claim - consists of unreported interest payments on account of the claim, on the debtor's 2009 through 2012 tax returns. The bank complains that:

- no interest payments were reported on account of the claim on Line 15 of Form 1065 of the debtor's 2009 return,

- no interest payments were reported on account of the claim on Line 15 of the debtor's 2009 return,

- no interest payments were reported on account of the claim on Line 15 of the debtor's 2010 return,

- no interest payments were reported on account of the claim on Line 19 of Schedule L of the debtor's 2011 return, and

- no interest payments were reported on account of the claim on Line 19 of Schedule L of the debtor's 2012 return.

However, the record contains evidence of a legitimate debt underlying the claim, including the original promissory note dated October 2, 2006, the $400,000 check issued by Mr. Rodriguez, III on October 2, 2006 to make the loan, the re-written note reflecting an updated balance of $193,250 as of October 1, 2010, a calculation sheet reflecting payments made on the claim from July 2009 through 2014, and the debtor's 1099 statements reflecting 2009 through 2014 interest payments on the claim. Docket 174, Exs. A, B, C, D, E.

Moreover, the bank knew of Mr. Rodriguez, III's claim and of the debtor's payments on that claim, as financial statements for the debtor, Mr. Rodriguez, III and Mr. Rodriguez, Jr. were regularly furnished to the bank. Docket 175, Ex. F and G. This begs the question of why the bank did not at the least submit with this objection the financial statements in its possession for the debtor, Mr. Rodriguez, III and Mr. Rodriguez, Jr., reflecting the claim?

At the worst, the bank's evidence indicates that the debtor may have misreported on its federal tax returns its interest payments on account of Mr. Rodriguez, III's claim.

Mr. Rodriguez, III and the debtor have refuted the objection's circumstantial evidence challenging the claim and Mr. Rodriguez, III has established the claim. Accordingly, even if the court overlooked the standing issue, the objection would be overruled on the merits.