UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 24, 2013 at 10:30 a.m.

1.	**11-27845-E-11**	**IVAN/MARETTA LEE**	**MOTION TO APPROVE LOAN**
	REW-19	**Raymond E. Willis**	**MODIFICATION**
			9-9-13 [319]

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 Bank of America, N.A. and Office of the United States Trustee on September 9, 2013. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly 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 Approve the Loan Modification is granted. No appearance required.

Debtors' residence is located at 8678 Butterbrickle Court, Elk Grove, California. Bank of America, N.A. has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current $3,343.00 to $1,676.78. The modification will also reduce the interest rate from 4.75% to 2.125%.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration and exhibits filed in this matter provides much of the information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

There being no objection from other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification 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 Ivan S. Lee and Maretta P. Lee are authorized to amend the terms of their loan with Bank of America, N.A., which is secured by the real property commonly known as 8678 Butterbrickle Court, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 322, in support of the Motion.

2. 13-21878-E-7 DEF-1 THOMAS EATON David Foyil AMENDED MOTION TO COMPEL ABANDONMENT 9-30-13 [76]

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 Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2013. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

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

> Debtor moves for an order for the trustee to abandon the business entity commonly known as the Thomas E. Eaton DDS.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. The Debtor owns a business entity commonly known as Thomas W. Eaton DDS

B. The Debtors business and equipment have no value to the estate because they are fully encumbered.

C. The Trustee reserves the right to pursue collection on the accounts receivable. FN.1.

FN.1. The court does not understand the legal significance of the agreement providing for the Trustee reserving the right to pursue collection. Does this mean that the Trustee will serve as a collection agency and turn the monies over to the Debtor? Does it mean that the accounts receivable are abandoned to the Debtor, but the Trustee "reserves" some rights? Does it mean that the accounts receivable are not abandoned?

D. The basis for the motion is a stipulation agreed to by the trustee and the debtor and his attorneys of record.

The Motion to Abandon Property 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 as stipulation has been filed to abandon the Debtor's "business and equipment." This is not sufficient to establish the right to compel abandonment.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plan statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for

> "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Furthermore, the court does not have sufficient information regarding the property to be abandoned. In the Debtor's amended Motion to Compel Abandonment, the Debtor referred to the property as "business and equipment." For the court to grant this motion, the Debtor needs to specify what business assets are being abandoned. For instance, the business name, specific business accounts, office supplies, office hardware (laptop, computer, printer), and office furniture (dental chairs, industrial lights). This court will not issue vague orders.

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 Abandon Property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Abandon Property is denied without prejudice.

3. 10-23577-E-11 GLORIA FREEMAN
CAH-1 Pro Se

MOTION TO EMPLOY STEVEN H. BERNIKER AS ATTORNEY(S)
10-3-13 [1098]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

Steven H. Berniker, seeks employment as counsel for Debtor in Possession, Gloria Freeman, *Nunc Pro Tunc*, effective as of September 10, 2010 through January 7, 2012.

Mr. Berniker argues that he failed to receive prior approval because he was ignorant that he needed to file an application to be employed and was not advised so by the court. Mr. Berniker stated in his response to the Order to Show Cause to disgorge fees that he was not advised by the bankruptcy trustee that he had improperly prosecute default judgments or that he needed to request appointment under the bankruptcy code.

While the court always appreciates that counsel with little or no bankruptcy experience or knowledge may not appreciate the fiduciary role of a debtor in possession or the need to have the employment by such fiduciary approved by the court, he and his current experienced bankruptcy counsel the same excuses demonstrates a continuing lack of understanding. Specifically, in the current motion, Mr. Berniker and his current counsel quote his initial response (excuse) for failure to be properly authorized to be employed.

A. Berniker became aware that Plazeria was part of a bankruptcy estate.

B. Berniker spoke to the bankruptcy trustee (not identifying what trustee and for which of the multiple related Freeman bankruptcy estates).

C. The bankruptcy trustee advised that the bankruptcy estate would "acquiesce" to Berniker prosecuting the default judgments, if Berniker would provide such services on a contingent fee basis.

D. Berniker declined the offer to provide services on a contingent fee basis.

E. Berniker was not advised by the Trustee that Berniker had "improperly" prosecuted the default judgments.

F. Berniker was not advised that he need to request appointment under the Bankruptcy Code.

Motion For Retroactive Employment, p. 2:12-18, citing Response to Order to Show Cause, Dckt. 1098.

It is not for the court or a bankruptcy trustee in one of the multiple related cases to provide counsel with legal advice. Gloria Freeman, as the Debtor in Possession, was represented by knowledgeable, experienced bankruptcy counsel. The authorization for a debtor in possession to employ counsel is such a fundamental and universally known (for knowledgeable bankruptcy attorneys and those who conduct even a modicum of research) it is all but unfathomable how approval for the employment was not obtained by the Debtor in Possession.

Mr. Berniker further argues that his employment as counsel for Gloria Freeman, the former Debtor in Possession in this case, benefitted by his obtaining default judgments in the Plazeria bankruptcy case. He concludes that since the Gloria Freeman estate owned Plazeria, then the Gloria Freeman estate was also benefitted.

Legal Services Provided

While the services provided by Mr. Berniker may be well known to his counsel and the other parties in this case, the Motion fails to identify what services were provided and Mr. Berniker's clients. This issue was raised to the court's attention by the Gloria Freeman Bankruptcy Trustee and the Staff USA, Inc. Bankruptcy Trustee seeking to recover theretofore undisclosed fees paid to Mr. Berniker and W. Austin Cooper.

Digging through the Docket in this case (which now has 1151 docket entries, rivaling the 1155 docket entries in the Chapter 9 bankruptcy case filed by the City of Stockton), the court finds the following documents and statements by Mr. Berniker.

I. Response to Order to Show Cause, DCN WFH-32, Dckt. 587

A. Berniker never provided legal services to Staff U.S.A.

B. Berniker never provided legal services to Premium Access, Inc.

C. Berniker was not involved in Staff U.S.A.

D. Berniker is not a business law attorney and did not appreciate the "red flags" over getting paid by an entity he was not representing.

E. In April 2010, Laurence Freeman was significantly impaired by his stroke and legally incompetent (citing to the testimony of James Stoody, M.D., a neurologist).

F. The State Court found that Laurence Freeman was incompetent in April 2010.

G. Berniker was hired to represent Plazeria in an action against S&B Personal Training and for additional services to recover unpaid rents.

H. For the S&B Personal Training litigation, Berniker was hired after the case was commenced. He discovered that defendants had been improperly served. Ultimately, default judgments were obtained against four defendants for $202,059.90. (These actions were not filed in this court.)

I. Berniker subsequently became aware that Plazeria was in a bankruptcy case. His billing records show that he spoke with an attorney for the bankruptcy Trustee on January 26, 2013.

J. Berniker identifies that in September 2010 he associated in six cases as counsel. These are,

1. Gloria Freeman v. Prater
   Placer County Superior, SCV 27586

2. Laurence Freeman v. Gloria Bertacchi (Freeman)
   Placer County Superior, SDR-322345

3. Plazeria LLC v. S&B Personal Training
   Placer County Superior, SCV-0026571

4. Conservatorship of Laurence Freeman
   Placer County Superior SPR-5790

5. Laurence Freeman v. Prator
   Placer County SCV-26981

6. Rebecca Bertacchi v. Kamiak, Inc.
   Contra Costa Superior SCV C11-00898

Mr. Berniker also states that he provided multiple benefits to the bankruptcy estate through his efforts in state court to take control of UNG, by obtaining an order that limited the charitable donations by Debtor's husband, by keeping UNG solvent and operating, and by obtaining default judgments in Plazeria. This "benefit" is a two edged sword. His client, the Debtor in Possession was in this court arguing that the Debtor's husband was, and is, mentally incompetent. The conduct of the Debtor and her bankruptcy counsel, W. Austin Cooper, has been the subject of ongoing hearings in this court.

Mr. Berniker states he has received a combined total of attorney fees of $14,696.00 from Debtor and Staff USA, Inc. Counsel states he has no connection with the Debtor, creditors or any other party in interest, their respective attorneys or accountants, or the U.S. Trustee. Mr. Berniker states that he is disinterested and doe not hold or represent an interest adverse to the estate as described in 11 U.S.C. § 327(a).

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.

The court gives Mr. Berniker the benefit of the doubt, and believes that he was the innocent state court counsel who was not provided with the guidance from the Debtor in Possession and her bankruptcy counsel that authorization for the Debtor in Possession (who as the fiduciary, is a separate legal entity from the Debtor herself) to employ or continue the employment of Mr. Berniker in litigating rights and interests of the bankruptcy estate. Further, the court also considers the overall resolution of this case and neither Trustee opposing this motion.

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Steven Berniker as counsel for the Chapter 11 estate, *Nunc Pro Tunc*, effective as of September 10, 2010 through January 7, 2012. The approval of any fees is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by 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 to Employ is granted and Steven Berniker is authorized as counsel for Debtor in Possession, Gloria Freeman, *Nunc Pro Tunc*, effective as of September 10, 2010 through January 7, 2012.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

4. 11-48050-E-11 STAFF USA, INC.
MHK-5 W. Austin Cooper

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

CONT. FROM 8-29-13

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's Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 22 days' notice was provided. 21 days' notice is required.

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

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

PRIOR HEARING

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

The following are the material terms of the settlement agreement:

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

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

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

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

E. The agreement is subject to court approval.

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

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

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

Probability of Success

The Trustee argues that the outcome of the litigation is unclear and that this element weighs in favor of settlement. Trustee argues Berniker admitted to receipt of payments from the Debtor and Freeman after Freeman

filed her Chapter 11 petition, he did not obtain court approval of his employment and that the Trustee is likely to disgorge fees. However, he states that Berniker could approve his employment retroactively, and this would prevent recovery of the fees and for an administrative expense claim in favor of Trustee.

Difficulties in Collection

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

Expense, Inconvenience and Delay of Continued Litigation

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

Paramount Interest of Creditors

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

OCTOBER 24, 2013 HEARING

Mr. Berniker filed a Motion to Employ in the Gloria Freeman bankruptcy case. The court has granted that motion. Considering the totality of the circumstances, Mr. Berniker's response, and the input of the trustee in this case and the Gloria Freeman case, the court has authorized the employment of Mr. Berniker in the Gloria Freeman case for the various services provided. The court finds that the compromise as proposed is proper and the Motion to Approve Compromise is granted. This settlement resolves an unfortunate situation involving non-bankruptcy counsel was allowed by the Debtor in Possession and her counsel to provide services without the Debtor in Possession properly obtaining authorization to employ counsel. Upon reviewing the discounted fees charged by Mr. Berniker and the fees which he has already written off, no more salt needs to be rubbed into the wound of having been brought into the representation of the Debtor in Possession.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compromise filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compromise Controversy against Jon Tesar, Chapter 11 Trustee, David D.

Flemmer, as trustee of the related bankruptcy case of Gloria Freeman, Case No. 10-23577-E-11, and Steven H. Berniker, Esq. is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the motion on August 7, 2013(Docket Number 270).

5. 10-23577-E-11 GLORIA FREEMAN
WFH-39 Pro Se

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

CONT. FROM 8-29-13

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's Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 22 days' notice was provided. 21 days' notice is required.

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

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

PRIOR HEARING

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

payments made to Berniker. The agreement includes a general release of claims and Trustee Flemmer would receive no part of the $3,500.00.

The following are the material terms of the settlement agreement:

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

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

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

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

E. The agreement is subject to court approval.

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

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

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

Probability of Success

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

Difficulties in Collection

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

Expense, Inconvenience and Delay of Continued Litigation

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

Paramount Interest of Creditors

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

CONTINUED HEARING

At the hearing, the court found that Stephen Berniker has not obtained authorization from this court to be employed as counsel for the Debtor in Possession. 11 U.S.C. § 327. At a prior hearing his counsel represented that he would seek such approval *nunc pro tunc*. Furthermore, because under the Stipulation Mr. Berniker is to retain some of the monies paid for services provided to the Debtor in Possession, approval of employment is necessary.

The court continued the hearing to allow Mr. Berniker to file a motion to be approved as counsel nunc pro tunc in the Gloria Freeman case.

MOTION FOR APPROVAL OF COUNSEL

Mr. Berniker filed a Motion to Employ in the Gloria Freeman bankruptcy case. The court has granted that motion. Considering the totality of the circumstances, Mr. Berniker's response, and the input of the trustee in this case and the Gloria Freeman case, the court has authorized the employment of Mr. Berniker in the Gloria Freeman case for the various services provided. The court finds that the compromise as proposed is proper and the Motion to Approve Compromise is granted. This settlement resolves an unfortunate situation involving non-bankruptcy counsel was allowed by the Debtor in Possession and her counsel to provide services

without the Debtor in Possession properly obtaining authorization to employ counsel. Upon reviewing the discounted fees charged by Mr. Berniker and the fees which he has already written off, no more salt needs to be rubbed into the wound of having been brought into the representation of the Debtor in Possession.

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

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

6. 10-23577-E-11 GLORIA FREEMAN — CONTINUED ORDER TO SHOW CAUSE
WFH-32 Pro Se — 3-1-13 [572]

Debtor's Atty: Pro Se

Notes:

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

7. 11-48050-E-11 STAFF USA, INC.
MHK-6 W. Austin Cooper

MOTION FOR COMPENSATION FOR JONATHAN E. TESAR, CHAPTER 11 TRUSTEE(S), FEE: $21,574.40, EXPENSES: $365.00
9-25-13 [308]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on September 25, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to grant the Final Application for Fees. 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:

FEES REQUESTED

Jon Tesar, the Trustee, makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period June 1, 2012 through July 10, 2013. The order of the court approving the appointment of the Trustee was entered on June 13, 2012.

Description of Services for Which Fees Are Requested

Estate Administration: Trustee examined the PACER records and discussed the case with a staff attorney with the Office of the United States Trustee, the debtor, debtor's attorney and other creditors. Trustee selected firm Meegan, Hanschu & Kassenbrock as bankruptcy counsel and consulted with the counsel. Trustee prepared case analysis, filed Preliminary Status Report and attended various status conferences.

Estate facilities: Trustee inspected and photographed Estate facilities in Roseville, California and Rocklin, California. Trustee also

reviewed the Estate's insurance policies and notified insurance broker of Trustee's appointment to oversee the estate.

Workers' Compensation Insurance: Trustee obtained a replacement Worker's Compensation Insurance with State Fund after he discovered that it had been terminated. Trustee communicated with the California Department of Labor regarding a post-petition fine because the Debtor's policy had expired. The Trustee had appealed $33,000 fine and is awaiting an answer.

Financial records and Taxes: Trustee attempted to resolve the issues related to Debtor obtaining a new Federal Tax Identification such as in correct recording of Estate's payroll tax returns and payroll tax payments. Also, government agencies withheld payment to the Estate because they suspected improper assignment of contracts. Trustee reviewed and analyzed the Estate's financial record and determined that the Estate's balance of $1,700 was not sufficient to pay the payroll taxes that were due at the time. Trustee negotiated an agreement with US Bank for cash collateral however Debtor did not move this agreement forward. The Trustee is working with the IRS to determined the amount due in payroll taxes.

Business Operation: Trustee obtained a Bond of Trustee for $80,000 and executed Trustee's affidavit. Trustee supervised ongoing business operation including executing contracts for staffing, communication with customers, paying bills and payroll, filing payroll and income tax returns and communicating with the insurance broker and personnel management. Trustee negotiated a new lease for the business but later determined that the business was not profitable to continue and there was a delay in obtaining workers' compensation coverage.

Motion for Allowance: Trustee filed motion a motion for allowance of an administrative claim by Debtor.

OPPOSITION

Gloria Freeman (principal of Staff USA, Inc. and debtor in her related Chapter 11 case) filed an opposition to the Trustee's Motion. Her opposition (which raises elements in prior motions and oppositions she has filed in this case) asserts the following.

A. There is only $15,000.00 to pay creditors (if the court approves the surcharge stipulation with U.S. Bank, N.A.).

B. Taxes of $25,000.00 (pre and post-petition taxes) are owed to the Internal Revenue Service.

C. Fines of $33,000.00 are owed to the California Department of Labor.

D. The State of California has filed an Administrative Claim for $134,000.00.

E. Bills to the former landlord Fortune West Enterprises, Inc. (a related Gloria Freeman related entity, bankruptcy case no. 12-24741, case dismissed April 4, 2013). FN.1.

FN.1. In the Fortune West Enterprises case, the Freeman Chapter 11 Trustee entered into a Settlement with MaxiMillion Capital, LLC (the major creditor in the Fortune West bankruptcy case), Rebecca Bertacchi, Bryan Bertacchi, and the Brayn and Rebecca Family Trust. 12-247141, Exhibit A Dckt. 108. Under the Settlement, the Freeman Trustee transferred ownership of the Fortune West Enterprises, Inc. stock to MaxiMillion. The Bertacchi parties agreed to reduce their claim in the Gloria Freeman case to $100,000.00. MaxiMillion granted releases to the Gloria Freeman bankruptcy estate and the Bertacchi parties from all claims, including potential significant claims arising under personal guaranties for the Fortune West obligation to MaxiMillion.

F. Gloria Freeman believes that approving the fees requested by counsel "disenfranchises the Estate of Staff USA as these funds available of approximately $15,000.00 [are] need for the unpaid taxes, for the files by the [Department of Labor], for pre and post petition creditors and for ERISA claims that are outstanding."

Gloria Freeman has not provided any evidence as part of this opposition.

RESPONSE

The Trustee responds to Gloria Freeman's opposition by pointing out factual inaccuracies.

First, the State of California has not filed an administrative claim for $134,000. This claim represents an amount misappropriated by a former employee of the Debtor and it was paid to the Debtor pre-petition through employee's restitution. However, the Debtor has not turned over the amount to the California Correctional Health Care Services. FN.2.

FN.2. Proof of Claim No. 11-1 filed by the California Correctional Health Care services is in the amount of $134,225.10. This is filed as a general unsecured claim, with no amounts being identified as constituting a priority claim. Attached to the Proof of Claim is a letter from the Placer County District Attorney dated March 12, 2012. The letter is addressed to Ms. Gloria Freeman, Staff USA. (The Staff USA bankruptcy case was filed on March September 1, 2011.) The Proof of Claim states that it is for "Pymt of health care services for hours not provided (see att)."

The letter references a $74,466.50 cashier's check made payable to Staff USA, and at the bottom of the letter is a statement acknowledging receipt of the $74,466.50 check to Staff USA by Gloria Freeman. Since the Chapter 11 Trustee in the Staff USA case was not appointed until June, 2012, Gloria Freeman received the check in her fiduciary capacity as the Debtor in Possession. From the Court's review of the March 2012 Monthly Operating Report filed by the Debtor in Possession, the court cannot identify the $74,466.50 check being deposited into an estate bank account. (The US Bank statement for the account ending in 0141 has deposit and check detail only for the period of March 12, 2012 - March 31, 2012). This does not appear to

have been paid Staff USA pre-petition as the Trustee asserts is his understanding.

Second, the Trustee does not believe any amount is owed to the IRS. Any post-petition debt asserted by the IRS is a result of the Debtor's decision to obtain a new employer-identification number post-petition. The tax payments at issue are asserted by the Trustee to pre-date his appointment, and relate to the operation of the estate by Gloria Freeman as the Debtor in Possession. Trustee has sought determination of amounts that the IRS asserts as an administrative claim. However, IRS has repeatedly amended its Request for Payment of Administrative Expense. No motion for the allowance of an administrative expense has been filed in this case by the IRS.

Third, Trustee has appealed the $33,000 that is owed to the Department of Labor due to the lapse of the Debtor's workers' compensation insurance. The Trustee asserts that this fine relates to the operation of the bankruptcy estate by Gloria Freeman as Debtor in Possession, prior to the appointment of the Trustee. This fine by the Department of Labor has been appealed by the Trustee and he is awaiting the outcome of the appeal.

Fourth, the with respect to rent or other debts due Fortune West Enterprises, Inc., no request has been made for the payment of an administrative expense. It one is raised, then the court would properly consider and allow any such amount, which would be paid in the statutory priority established under the Bankruptcy Code.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by the Trustee are "actual," meaning that the fee application reflects time entries properly charged as legal services, the Trustee 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 professional 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. The Court of Appeals for the Ninth Circuit addressing fees of an attorney has stated that, prior to working on a matter, an attorney (as is any professional) is obligated to consider:

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

Id. at 959.

A review of the application shows that Trustee's services rendered a successful administration of the estate, including overseeing business operations, reissuing the workers' compensation insurance, and reviewing and maintaining the financial records and tax obligations. Disbursements from the Debtors' bankruptcy estate total $366,488.00 consisting of actual

disbursements of $310,491.55 as of July 11, 2013, plus the cash balance to be disbursed in the amount of $55,997.42.

This Chapter 11 case has been one far out of the norm. First, there are multiple related bankruptcy cases filed by Gloria Freeman and her attorney, W. Austin Cooper, for Ms. Freeman and the entities she controlled, including Staff USA, Inc. Trustees have been appointed in those cases, or they have been dismissed. Each has been fraught with extensive litigation, disputes, and shifting positions by Gloria Freeman. In the Gloria Freeman case alone (not including the four adversary proceedings, there are 1151 docket entries. This rivals the 1155 docket entries in the Chapter 9 municipal bankruptcy case filed by the City of Stockton).

The court notes the difficulty the Chapter 11 Trustee in this case in interacting with Gloria Freeman and counsel W. Austin Cooper. Gloria Freeman has displayed litigation tactics that necessitated the Trustee to file several motions, responses and replies. Further, the Trustee has had to respond to and consider the ethical concerns raised by the conduct of W. Austin Cooper and his representation of this estate, the estate of Debtor Gloria Freeman, and the interests of Mr. Laurence Freeman in a related adversary proceeding. The Trustee is seeking to recover from W. Austin Cooper substantial legal fees he was paid by Staff USA, Inc., shortly before it commenced this bankruptcy case, for bankruptcy work he was doing for Gloria Freeman in her Chapter 11 case while she was the Debtor in Possession. W. Austin Cooper was not authorized to be employed as counsel in either the Staff USA, Inc. case or the Gloria Freeman case, and no fees were approved by the court for him to be paid for any legal services provided Gloria Freeman, the Debtor in Possession.

STATUTORY MAXIMUM FOR TRUSTEE FEES

Trustee's fees are capped by a formula provided by 11 U.S.C. § 326, providing the trustee may not exceed 25% on the first $5,000 or less, 10% on any amount in excess of $5,000 but not in excess of $50,000, 5% on any amount in excess of $50,000 but not in excess of $1,000,000. Therefore, the Trustee is limited to a maximum fee of $21,574.40.

$366,488.00 in made and remaining monies to disburse

$ 5,000 x 25%.....$ 1,250
$45,000 x 10%.....$ 4,500
$316,488.00 x 5%.....$15,824.40

Maximum Fees.....$21,574.40

AGGREGATE FEES WHEN MULTIPLE TRUSTEES

The court notes that 11 U.S.C. § 326(c) provides that if more than one person serves as trustee in this case, the aggregate compensation of such persons for such services may not exceed the maximum compensation prescribed for a single trustee by subsection (a). Here, the Chapter 11 Trustee seeks the maximum amount of the trustee fees, when simultaneously requesting the case be converted to one under Chapter 7, requiring the appointment of a Chapter 7 Trustee.

However, when a Chapter 11 case is converted to one under Chapter 7, courts generally have concluded that the fees awarded to the trustees under the different chapters do not have to be aggregated, even when the same person serves as chapter 11 and chapter 7 trustee. 3-326 COLLIER ON BANKRUPTCY ¶ 326.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) See *In re Financial Corp. of America, 946 F.2d. 689* (9th Cir. 1991), affirming and adopting Bankruptcy Appellate Panel decision that the trial court may award up to the statutory amount to both the Chapter 11 and Chapter 7 trustees in a converted case. The trial court exercises its discretion in allowing the amounts to avoid double dipping or payment of trustee's fees which exceed the value of the services.

Administrative expenses pursuant to § 503(b) include compensation under § 330(a). When a case is converted to one under Chapter 7, 11 U.S.C. § 726(b) provides that the administrative expenses of § 503(b) incurred under Chapter 7 after conversion have priority in distribution over the administrative expenses incurred under the other Chapters. 4 COLLIER ON BANKRUPTCY ¶ 726.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) Here, the court will be converting this case to one under Chapter 7 pursuant to the motion of the Chapter 11 Trustee. Though awarded, payment of Chapter 11 administrative expenses may be delayed in the event the court may question whether reasonable cash reserves exist to pay the anticipated Chapter 7 expenses.

FEES ALLOWED

The hourly rates for the fees billed in this case for Trustee are $300.00/hour for professional services for 201.2 hours and $150.00/hour for travel on behalf of the Estate for 24.9 hours. As billed, the fees total $64,095.00, well in excess of the statutory maximum for the Chapter 11 Trustee. Applicant submits request for $21,574.40 for all the services, which is the statutory cap provided in 11 U.S.C. § 326. For the gross 226.1 hours billed, this works out to an effective hourly rate of $95.42.

The Trustee has maintained time records for his time. Exhibit A, Dckt. 36. This case involved an business, which the Trustee continued to operate after his appointment. The services provided with respect to the business are consistent with those of a Trustee (CEO oversight), and not those of an employee manager (compensation for which is outside of the trustee fees). The court finds that the hourly rates reasonable and that Trustee effectively provided the services. Total Trustee fees in the amount of $21,574.40 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The Trustee also seeks the allowance and recovery of costs and expenses in the amount of $365.00 for mileage. This expense was incurred at the rate of $.50 per mile. The total costs in the amount of $365.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The Trustee reports having $55,997.42 of cash, in addition to any amounts recovered on the surcharge of US Bank, N.A. collateral, the

remaining Stephen Berniker payments, recovery (if any) from W. Austin Cooper, and collection of any other accounts. The court authorizes the Chapter 11 Trustee to disburse $19,415.00 in fees and $365.00 in expenses. This is 90% of the fees approved for this Chapter 11 administrative expense. This leaves modest cushion in the event that there is an issue concerning administrative priority or the court having to make an adjustment in the trustee fee cap as it applies between the Chapter 11 Trustee and a Chapter 7 trustee in this case. The court also authorizes the Chapter 7 Trustee to disburse the remaining 10% at any time prior to the final distributions if he or she determines that an administrative insolvency or adjustment of the cap in this two trustee case is unlikely. Disbursement of the trustee fees is reasonable and necessary in light of the Chapter 11 Trustee having served in that capacity for 17 months and there being no interim trustee fee applications or awards during that time.

The Trustee the following amounts as compensation as a professional in this case:

Trustee's Fees	$21,574.40
Costs and Expenses	$ 365.00

For a total final allowance of $21,939.40 in Trustee's Fees and Costs in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Jon Tesar is allowed the following fees and expenses as a professional of the Estate:
>
> Jon Tesar, Trustee for the Estate
> Applicant's Fees Allowed in the amount of $21,574.40
> Applicants Expenses Allowed in the amount of $365.00,
>
> **IT IS FURTHER ORDERED** that this is the first and final allowance of fees pursuant to 11 U.S.C. § 330. The Chapter 11 Trustee is authorized to disburse $19,415.00 in fees and $365.00 for the expenses before turning the monies of the estate over to the Chapter 7 Trustee. The Chapter 7 Trustee is authorized to disburse the remaining balance of the trustee fees at any time when the Chapter 7 trustee determines that an adjustment to the fees for there being two trustees in this case or the case becoming administratively insolvent is not likely to occur.

IT IS FURTHER ORDERED that the court retains jurisdiction over this final award of fees to make such adjustments based on the fee cap for multiple trustees in this case or if the case is administratively insolvent.

8. 11-48050-E-11 STAFF USA, INC.
MHK-7 W. Austin Cooper

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU AND KASSENBROCK FOR ANTHONY ASEBEDO, TRUSTEE'S ATTORNEY(S), FEE: $40,380.00, EXPENSES: $1,135.43
9-25-13 [303]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on September 25, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to grant the Final Application for Fees. 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:

FEES REQUESTED

Meegan, Hanschu & Kassenbrock, the Counsel for the Trustee, makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period June 4, 2012 through September 30, 2013. The order of the court approving the appointment of the Trustee was entered on June 14, 2012.

Description of Services for Which Fees Are Requested

Asset Analysis and Recovery: Counsel spent 22.4 hours in this category and billed $6,720.00. Counsel reviewed and analyzed the Debtor's chapter 11 schedules and the Statement of Financial Affairs.

Asset Disposition: Counsel spent 1.2 hours in this category and billed $360.00. Counsel prepared and filed motion for abandonment of estate's interest in Acura automobile.

Avoidance Action: Counsel spent .3 hours in this category and billed $90.00.

Business Operations: Counsel spent 7.2 hours in this category and billed $2,160.00. Counsel assisted the Trustee with collection of accounts receivable and communicated with the Trustee and relevant parties regarding operational issues such as Debtor's contracts, workers' compensation insurance and Debtor's use of a separate tax identification number.

Case Administration: Counsel spent 89.0 hours in this category and billed $26,190.00. The counsel assisted the Trustee in preparing and filing Preliminary Report, made court appearances on status conferences, drafted status conference reports, drafted oppositions to two motions to convert or dismiss Chapter 11 case, negotiated settlement of claims of this Estate with attorney Stephen Berniker and filed motion for approval of such settlement, and corresponded with the Trustee regarding the administration of the Estate and the bankruptcy case.

Cash Collateral: Counsel spent 10.0 hours in this category and billed $2,910.00. The Counsel prepared and filed motion for court's approval of cash collateral stipulation with a secured lender, US Bank, N.A.

Claims Issues: Counsel spent 1.0 hours in this category and billed $300.00. Counsel prepared and file a motion for allowance of administrative claim for value of numerous payments made on the behalf of the estate as well as court appearances for recovery of payments made by the Debtor.

Employment/Fee Applications: Counsel spent 4.4 hours in this category and billed $1,320.00. Counsel prepared an filed application for Counsel's employment as the Trustee's general counsel and motion for compensation.

Other Litigation: Counsel spent .2 hours in this category and billed $60.00. Counsel responded to inquiries from various creditors.

Relief from Stay Issues: Counsel spent .9 hours in this category and billed $270.00.

OPPOSITION

Gloria Freeman (principal of Staff USA, Inc. and debtor in her related Chapter 11 case) filed an opposition to the Trustee's Motion. Her opposition (which raises elements in prior motions and oppositions she has filed in this case) asserts the following.

A. There is only $15,000.00 to pay creditors (if the court approves the surcharge stipulation with U.S. Bank, N.A.).

B. Taxes of $25,000.00 (pre and post-petition taxes) are owed to the Internal Revenue Service.

C. Fines of $33,000.00 are owed to the California Department of Labor.

D. The State of California has filed an Administrative Claim for $134,000.00.

E. Bills to the former landlord Fortune West Enterprises, Inc. (a related Gloria Freeman related entity, bankruptcy case no. 12-24741, case dismissed April 4, 2013). FN.1.

FN.1. In the Fortune West Enterprises case, the Freeman Chapter 11 Trustee entered into a Settlement with MaxiMillion Capital, LLC (the major creditor in the Fortune West bankruptcy case), Rebecca Bertacchi, Bryan Bertacchi, and the Brayn and Rebecca Family Trust. 12-247141, Exhibit A Dckt. 108. Under the Settlement, the Freeman Trustee transferred ownership of the Fortune West Enterprises, Inc. stock to MaxiMillion. The Bertacchi parties agreed to reduce their claim in the Gloria Freeman case to $100,000.00. MaxiMillion granted releases to the Gloria Freeman bankruptcy estate and the Bertacchi parties from all claims, including potential significant claims arising under personal guaranties for the Fortune West obligation to MaxiMillion.

F. Gloria Freeman believes that approving the fees requested by counsel "disenfranchises the Estate of Staff USA as these funds available of approximately $15,000.00 [are] need for the unpaid taxes, for the files by the [Department of Labor], for pre and post petition creditors and for ERISA claims that are outstanding."

Gloria Freeman has not provided any evidence as part of this opposition.

RESPONSE

The Trustee responds to Gloria Freeman's opposition by pointing out factual inaccuracies.

First, the State of California has not filed an administrative claim for $134,000. This claim represents an amount misappropriated by a former employee of the Debtor and it was paid to the Debtor pre-petition through employee's restitution. However, the Debtor has not turned over the amount to the California Correctional Health Care Services. FN.2.

FN.2. Proof of Claim No. 11-1 filed by the California Correctional Health Care services is in the amount of $134,225.10. This is filed as a general unsecured claim, with no amounts being identified as constituting a priority claim. Attached to the Proof of Claim is a letter from the Placer County District Attorney dated March 12, 2012. The letter is addressed to Ms. Gloria Freeman, Staff USA. (The Staff USA bankruptcy case was filed on

March September 1, 2011.) The Proof of Claim states that it is for "Pymt of health care services for hours not provided (see att)."

The letter references a $74,466.50 cashier's check made payable to Staff USA, and at the bottom of the letter is a statement acknowledging receipt of the $74,466.50 check to Staff USA by Gloria Freeman. Since the Chapter 11 Trustee in the Staff USA case was not appointed until June, 2012, Gloria Freeman received the check in her fiduciary capacity as the Debtor in Possession. From the Court's review of the March 2012 Monthly Operating Report filed by the Debtor in Possession, the court cannot identify the $74,466.50 check being deposited into an estate bank account. (The US Bank statement for the account ending in 0141 has deposit and check detail only for the period of March 12, 2012 - March 31, 2012). This does not appear to have been paid Staff USA pre-petition as the Trustee asserts is his understanding.

Second, the Trustee does not believe any amount is owed to the IRS. Any post-petition debt asserted by the IRS is a result of the Debtor's decision to obtain a new employer-identification number post-petition. The tax payments at issue are asserted by the Trustee to pre-date his appointment, and relate to the operation of the estate by Gloria Freeman as the Debtor in Possession. Trustee has sought determination of amounts that the IRS asserts as an administrative claim. However, IRS has repeatedly amended its Request for Payment of Administrative Expense. No motion for the allowance of an administrative expense has been filed in this case by the IRS.

Third, Trustee has appealed the $33,000 that is owed to the Department of Labor due to the lapse of the Debtor's workers' compensation insurance. The Trustee asserts that this fine relates to the operation of the bankruptcy estate by Gloria Freeman as Debtor in Possession, prior to the appointment of the Trustee. This fine by the Department of Labor has been appealed by the Trustee and he is awaiting the outcome of the appeal.

Fourth, the with respect to rent or other debts due Fortune West Enterprises, Inc., no request has been made for the payment of an administrative expense. It one is raised, then the court would properly consider and allow any such amount, which would be paid in the statutory priority established under the Bankruptcy Code.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;

> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that Counsel's services rendered a successful administration of the estate including providing counsel and advice to the Trustee in overseeing business operations, moving forward the bankruptcy case, and administering the Estate including issues related to Debtor's contracts, workers' compensation insurance, and use of a separate tax identification number.

The court notes the difficulty for Counsel for the Chapter 11 Trustee in this case in interacting with Gloria Freeman and counsel W. Austin Cooper. Gloria Freeman has displayed litigation tactics that necessitated Counsel for the Trustee to file several motions, responses and replies. Further, Counsel for the Trustee has had to respond to and consider the ethical concerns raised by the conduct of W. Austin Cooper and his representation of this estate, the estate of Debtor Gloria Freeman, and the interests of Mr. Laurence Freeman in a related adversary proceeding.

FEES ALLOWED

The hourly rates for the fees billed in this case for Trustee are $300.00/hour for 136.6 hours of legal services. The total attorneys' fees in the amount of $40,380.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of $1,135.43 for PACER fees for court's records, postage, mileage billed at $.50 per mile, parking charges, court filing charges for motion to abandon, and photocopy charges billed at $.05 per copy. This expense was incurred at the rate of $.50 per mile. However, the court notes Counsel also charged for Court Call ("CCC") in the amount of $127.00.

This court does not generally allow the recovery of court call expenses on the theory that generally counsel use the Court Call service to make themselves more competitive in a larger geographic area. For those counsel, the Court Call service is akin to having phones in the office, legal resources, a desk and chair.

The total costs in the amount of $1,008.43 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Counsel is allowed the following amounts as compensation as a professional in this case:

Attorneys' Fees	$40,380.00
Costs and Expenses	$ 1,008.43

For a total final allowance of $41,388.43 in Attorneys' Fees and Costs in this case.

While counsel does not face a "fee cap" as do the trustees, there is the question of potential administrative insolvency given that the Chapter 7 administrative expenses have a higher priority than the Chapter 11 administrative expenses. See 11 U.S.C. § 726(b), 4 COLLIER ON BANKRUPTCY ¶ 726.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) Here, the court will be converting this case to one under Chapter 7 pursuant to the motion of the Chapter 11 Trustee.

The court authorizes payment by the Chapter 11 Trustee $32,304.00 of the fees (80%) and $1,008.43 in costs. This provides a reasonable reserve in the event that there exists a priority issue due to the Chapter 7 estate being administratively insolvent. Though awarded, payment of Chapter 11 administrative expenses may be delayed in the event the court may question whether reasonable cash reserves exist to pay the anticipated Chapter 7 expenses. The Chapter 7 Trustee is authorized to disburse the remaining balance of the trustee fees at any time when the Chapter 7 trustee determines that an adjustment to the fees because the case is administratively insolvent is not likely to occur. Additionally, the court reserves the issue of whether the Chapter 7 Trustee, and only the Chapter 7 Trustee, requests an adjustment in the fees pursuant to 11 U.S.C. § 330.

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 Meegan, Hanschu & Kassenbrock is allowed the following fees and expenses as a professional of the Estate:
>
> Meegan, Hanschu & Kassenbrock, Counsel for the Trustee of the Estate
> Applicant's Fees Allowed in the amount of $40,380.00
> Applicants Expenses Allowed in the amount of $ 1,008.43,
>
> **IT IS FURTHER ORDERED** that the Application is denied as to $127.00 in expenses, with without prejudice.
>
> **IT IS FURTHER ORDERED** that this is the first and final allowance of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.
>
> **IT IS FURTHER ORDERED** that the Chapter 11 Trustee is authorized to disburse $32,304.00 in fees and $1,008.43 for

the expenses before turning the monies of the estate over to the Chapter 7 Trustee. The Chapter 7 Trustee is authorized to disburse the remaining balance of the attorneys' fees at any time when the Chapter 7 trustee determines that an adjustment to the fees for there being two trustees in this case or the case becoming administratively insolvent is not likely to occur.

IT IS FURTHER ORDERED that the court retains jurisdiction over this final award of fees to make such adjustments if the case is administratively insolvent or for a motion by the Chapter 7 Trustee to amend the amount of fees awarded pursuant to 11 U.S.C. § 330.

9. 11-48050-E-11 STAFF USA, INC.
MHK-8 W. Austin Cooper
MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
9-25-13 [315]

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 Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 25, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Convert 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 Convert is granted. No appearance required.

Jonathan E. Tesar, the Chapter 11 Trustee, seeks to convert the Debtor's case from a Chapter 11 case to a Chapter 7 case pursuant to 11 U.S.C. § 1112(b). No opposition has been filed.

The Trustee argues that he has reduced the estate's primary valuable assets to cash, which consist of accounts receivable that could be collected within a reasonable time. Trustee states he has reached an agreement with U.S. Bank, N.A., the estate's secured creditor, for disposition of the

proceeds of the receivables, with a $15,000.00 carve out for the benefit of the estate. Trustee states the scheduled receivables purportedly owed by insider entities are questionable in nature and of no value to the estate. Trustee states Debtor also scheduled various pieces of furniture, but this property had not value over and above the costs of moving and the Trustee donated it to charity.

The Trustee states the only remaining assets of the estate consist of claims against certain attorneys. These motions have been filed to recover amounts paid to these attorneys and hearings on these motions are pending. Trustee believes that the Chapter 7 Trustee, if he or she deems appropriate, can prosecute those motions for the benefit of the estate.

Trustee believes that under these circumstances, administration of the Debtor's case under Chapter 7 would be more cost effective than under Chapter 11 and because of the claims against the attorneys, dismissal is premature.

Trustee also states that he does not wish to serve as trustee in this case should it be converted to a case under Chapter 7.

DISCUSSION

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

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

Here, Debtor Staff USA, Inc. was engaged in business of contracting with state and federal government facilities for medical staffing. The estate's primary valuable assets consisted of accounts receivable from non-insiders. The Trustee determined that the business was no longer viable, collected such receivables and reached an agreement with U.S. Bank, N.A. for the disposition of the proceeds of the receivables. Trustee states the remaining assets of the estate are the claims against certain former attorneys of Gloria Freeman and her related entities in bankruptcy. Trustee has filed appropriate motions, which are currently pending before the court.

It appears that the time and expense of continuing in Chapter 11 and prosecuting a Chapter 11 plan is not in the best interest of the parties in this case. No opposition has been filed by any interested party to date. Trustee has shown proper cause to convert the case. As there are pending issues that may provide benefit to the bankruptcy estate, dismissal does not appear to be in the best interest of the parties. Therefore, the case is converted to one under Chapter 7 of Title 11, United States 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 to Convert having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

10. 11-48050-E-11 STAFF USA, INC.
PP-1 W. Austin Cooper

MOTION TO APPROVE AGREEMENT REGARDING DISPOSITION OF CASH COLLATERAL AND ACCOUNTS RECEIVABLE OF DEBTOR
9-26-13 [321]

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 Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Approve Agreement. 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:

Creditor U.S. Bank, N.A. ("Creditor") seeks the approval of an agreement with the Chapter 11 Trustee regarding the disposition of cash collateral and accounts receivable of the Debtor. Creditor states that under the agreement, the Trustee will pay $650 in fees to the U.S. Trustee from the proceeds of Creditor's cash collateral, retain $15,000.00 of the proceeds for the benefit of the Debtor's bankruptcy estate, free and clear of Creditor's security interest, turn over to Creditor the balance of the cash collateral on hand and assign all uncollected accounts receivable to U.S. Bank, N.A. (which total $40,022.42).

However, Federal Rule of Bankruptcy Procedure 4001(d)(1)(A) requires that all agreements relating to the use of cash collateral be accompanied by a copy of the agreement. The Motion makes reference to an "Agreement," but no written agreement is provided to the court. The court is not inclined to approve a settlement based on an agreement which has not been provided to the court.

The Motion makes reference to the Debtor in Possession using some of the US Bank, N.A. cash collateral (accounts receivable proceeds) without court authorization or US Bank, N.A.'s consent. The Motion states that part of the agreement is to turn over, and presumably modify the automatic stay, $40,022.42 cash to U.S. Bank, N.A. and $25,721.76 in uncollected accounts receivable. The Chapter 11 Trustee and U.S. Bank, N.A. have stipulated to

the use of cash collateral in this case, for which the court filed its order on November 11, 2012 (Dckt. 171). The court granted U.S. Bank, N.A. replacements liens in the post-petition assets of the estate which are of the same nature and type as the collateral named in the U.S. Bank, N.A. security agreement.

The court not having in front of it an agreement to approve, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Agreement Regarding Disposition of Cash Collateral and Account Receivable filed by Creditor U.S. Bank, N.A. 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 without prejudice.

11. 10-23577-E-11 GLORIA FREEMAN
Pro Se

CONTINUED STATUS CONFERENCE RE: ORDER RE: ABILITY OF LAURENCE FREEMAN TO PARTICIPATE IN BANKRUPTCY COURT PROCEEDINGS AND APPEARANCE OF INDEPENDENT COUNSEL RE: CHAPTER 11 VOLUNTARY PETITION
9-12-13 [1044]

Debtor's Atty: Pro se

Notes:

Continued from 10/3/13 [Dckt 1094] RHS-1

Clerk of the Court to transmit copies of pleadings and documents outlined in Civil Minute Order filed 10/5/13 [Dckt 1107] to Ms. Mila Freeman (Laurence Freeman's sister); Parties to serve Ms. Mila Freeman with all notices and pleadings which relate in any manner to Laurence Freeman or the rights and interests of Laurence Freeman.

Objections to the Status Report of Judge Sargis and the Hearing on the Competency of Laurence Freeman in the Estate of Gloria Freeman, Chapter 11 Case filed 10/10/13 [Dckt 1132]

Motion to Strike the Pleadings filed 10/10/13 [Dckt 1143]

OCTOBER 24, 2013 HEARING

Gloria Freeman filed a pleading titled "Objections to the Status Report of Judge Sargis and the Hearing on the Competency of Laurence Freeman in the Estate of Gloria Freeman, Chapter 11 Case." Objection (Dckt. 1132), Exhibits (Dckt. 1133), Memorandum of Points and Authorities (Dckt. 1134), and Declaration (Dckt. 1135). The court summarizes these documents as follows.

I. OBJECTION TO STATUS REPORT

A. Gloria Freeman, the Debtor, strenuously objects to the Status Report on the Chapter 11 case.

B. Gloria Freeman won a TRO trial in Placer County Superior Court 2011 case SDR-0032235, Laurence Freeman v. Gloria Freeman.

1. The state court judge dissolved a TRO and Laurence Freeman return home with Gloria Freeman, his wife.

2. It is not appropriate for this court to try the same case as was heard in the state court.

C. A conservatorship hearing was conducted in state court and Laurence Freeman was determined competent in 2010. Placer County Superior Court Case SPR 5790. This court should not retry Laurence Freeman's competency.

D. The Chapter 11 Trustee in the Gloria Freeman case refused to allow Gloria Freeman have access to Laurence Freeman's funds for medical care.

E. Gloria Freeman saved Laurence Freeman's live by taking him to three hospitals and his doctor appointments, when in 2010, Laurence Freeman had a stroke.

F. Through her business and profession, Gloria Freeman has provided care to tens of thousands of persons.

G. The federal court has no right to appoint a conservator.

II. Exhibits

A. Exhibit A, Dismissal of Gloria Bertacchi (Freeman) v. Laurence Freeman Dissolution, dated October 4, 1993.

III. Gloria Freeman Declaration

A. All allegations of the court are unfounded, without merit, and a fraud upon the court.

B. All pleadings referenced in the Declaration are unfounded, without merit and a fraud on the court — Gloria Bertacchi

(Freeman) v. Laurence Freeman Dissolution dismissal; Conservatorship of Laurence Freeman, Denied; and Freeman v. Bertacchi-Freeman, TRO dissolved in May 2011.

IV. Points and Authorities

A. Gloria Freeman argues that state law determines competency and that the state court has determined that Laurence Freeman is competent. Further, that the court has no competent, admissible evidence as to Laurence Freeman's competency.

B. Laurence Freeman's civil Due Process rights are being violated.

C. Gloria Freeman certifies that Laurence Freeman is mentally competent.

D. This court lacks jurisdiction to impose a conservatorship, citing to *Marshall v. Marshall*, 126 S.Ct. 1735 (2006).

E. The court is in league with the Chapter 11 Trustee and Chapter 11 Trustee's counsel to deprive Laurence Freeman of his rights as a disabled person.

F. The court may appoint a personal representative only when a state court makes a determination of incompetency.

G. Laurence Freeman is not a debtor and this court has no jurisdiction over him.

DISCUSSION

The "Opposition" filed by Gloria Freeman highlights the concerns of this court as to Laurence Freeman's competency to be an active party in this federal court litigation. As with her objections to the fee applications by the Chapter 11 Trustee and counsel for the Chapter 11 Trustee, Gloria Freeman appears to suffer from a selective or unclear recollection of events in this bankruptcy case and the related adversary proceedings.

First, this court must have a competent person before it to litigate and determine the respective rights and liabilities of the parties. If a party is determined to be incompetent, the court may permit the action to be continued by or against the representative of that party. Fed. R. Civ. P. 25(b). The issue of competency is made based on state law, but is made by the federal court. See *Kuelbs v. Hill*, 615 F.3d 1037 (8th Cir. 2010).

Second, this court has not and does not purport to be appointing a conservator, but determining who it must have for the rights and interests of Laurence Freeman as relates to this federal court litigation. While Gloria Freeman now argues and testifies that in 2010 Laurence Freeman was determined competent and such should bar this court from determining if Laurence Freeman is competent to be a party in this bankruptcy case and the related adversary proceedings, Gloria Freeman has testified to the contrary on multiple occasions.

It is this conduct of Gloria Freeman and her attorney, W. Austin Cooper, which has caused the court to question Laurence Freeman's ability to competently participate as a party in this federal court litigation. Steven Berniker, Gloria Freeman's state court counsel, has represented to this court that in 2010 Laurence Freeman's doctors stated that Laurence Freeman was legally incompetent. Response to Order to Show Cause, p. 5:27, 6:1-4, Dckt. 587.

Gloria Freeman has stated under penalty of perjury to this court on several occasions since commencing this Chapter 11 case that Laurence Freeman is legally incompetent and Gloria Freeman should be given control over his assets. She is incorrect in saying that there is no evidence before the court calling into question Laurence Freeman's legal competency. These include arguments and testimony purportedly by Laurence Freeman that he was and is legally not competent in these proceedings. These pleadings include the following:

A. *Gloria Freeman, Debtor in Possession v. Laurence Freeman*, Adv. 10-2536, Verified Complaint ("*Gloria v. Laurence Adversary*"), Filed August 31, 2010.

B. Compliant signed under penalty of perjury and by Gloria Freeman, Debtor in Possession counsel, W. Austin Cooper. Dckt. 1.

1. "Plaintiff [Gloria Freeman] is informed and believes and based thereon alleges that on or around April 1, 2010, Freeman [Laurence Freeman] suffered from one or more strokes and was hospitalized at Sutter Roseville Medical Center for such condition until on or around April 15, 2010. Plaintiff is informed and believes and based thereon alleges that on April 6, 2010 and again, on or around April 19, 2010, Freeman executed medical and financial powers of attorney in favor of C.M. Prater, pursuant to which C.M. Prater was granted authority to act on Freeman's behalf with respect to Freeman's medical, financial, business and legal affairs, including the business affairs of Ulrich, Nash & Gump. Plaintiff believes that at the time such powers of attorney were executed and thereafter, Freeman lacked the capacity to validly execute such documents and that C.M. Prater may have procured the execution of such documents through the exercise of undue influence over Freeman."

2. "Plaintiff is informed and believes and based thereon alleges that Freeman still lacks the capacity to understand his business and financial affairs and that C.M Prater has acted on his behalf in operating Ulrich, Nash & Gump primarily for the benefit of C.M. Prater, J.L. Prater, Baker, Alpha Omega and Church. Plaintiff is informed and believes and based thereon alleges that C.M. Prater is presently attempting to usurp control of

Ulrich, Nash & Gump and divert its revenues to himself, J.L. Prater, Alpha Omega, Baker and Church, under the color of an improper power of attorney granted to him by Freeman."

3. "Plaintiff is informed and believes and based thereon alleges that, in or around June 2010, Freeman, or C.M. Prater acting on his behalf, filed an inaccurate and potentially fraudulent insurance claim falsely claiming that certain items of property of Ulrich, Nash & Gump had been stolen and that the server of the business's online operations had been damaged."

C. Declaration of Gloria Freeman for Motion for Preliminary Injunction, Executed December 21, 2010, filed by W. Austin Cooper, Dckt. 16.

1. "On or around March 31, 2010, Mr. Freeman suffered from one or more strokes and was hospitalized at the Sutter Roseville Medical Center. Following this occurrence, I began, on April 2, 2010, to operate UNG due to the fact that he was unable operate it in his incapacitated state as well as the fact that I understood it to be an asset of my bankruptcy estate pursuant to 11 U.S.C. § 541(a)(2). I was additionally concerned because the Charles Michael Prater, the pastor of Landmark ("C.M. Prater"), had been allegedly "assisting" Mr. Freeman in the operation of the business, apparently as an independent contractor through an unincorporated business entity named Alpha Omega Consulting which is operated by him and his son, and I believed that he was using this arrangement to exercise undue influence over Mr. Freeman and procure more transfers of community property funds from Mr. Freeman without consideration either for Landmark or himself. I was very concerned that, if left alone in the business, C.M. Prater would misappropriate UNG assets or, at the very least, fail to manage it properly due to his lack of experience."

2. "While I was operating UNG, I learned that Mr. Freeman had allowed the Illinois MCLE accreditation of the business to lapse, due to non-payment of fees, despite repeated reminders from the Illinois MCLE personnel. I also found complaints regarding the quality of customer service from Mr. Freeman and C.M Prater.

3. "On April 6, 20 10, Mr. Freeman executed medical and financial powers of attorney in favor of C.M. Prater under which C.M. Prater was granted the authority to act on Mr. Freeman's behalf with respect to his medical, financial, business and legal affairs, including the business affairs of Ulrich, Nash & Gump. Mr. Freeman's family law attorney I believe that at the time these documents were executed, Mr. Freeman lacked

the capacity to execute them and that C.M. Prater had probably caused him to sign them through the exercise of undue influence. Mr. Freeman executed duplicate copies of the powers of attorney again, on or around April 19,2010."

4. "On or around December 16, 2010,1 learned that Mr. Freeman had failed to make payments on his package insurance policy and that it would be cancelled in about a week if the past due amounts were not paid. I then paid the past due amounts to keep coverage in place."

5. "Finally, I believe that Mr. Freeman's medical condition following his strokes in April 2010 hinders him from running Ulrich, Nash & Gump competently and profitably and that my bankruptcy estate will suffer from irreparable harm if the Ulrich, Nash & Gump assets are not turned over to my bankruptcy estate very soon."

D. Motion to Set Aside Settlement Agreement, Filed by Gloria Freeman and Laurence Freeman (in pro se), Dckt. 1002.

1. "On or around April I, 2010 Debtor's Spouse, Mr. Laurence Freeman, was admitted to Sutter Roseville Hospital."

2. "On or around April 6. 2010 Mr. Laurence Freeman was seen by Dr. James Stoody, MD, a Board Certified Neurologist at Sutter Roseville Medical Center, and on April 6, 2010 Dr. Stoody signed a capacity evaluation stating that Mr. Freeman was incompetent due to his April 1 stroke. (Exhibit B)."

3. "The court failed to ensure that Mr. Freeman would not be subject to undue influence, or have proper legal counsel of record to the extent authorized by the applicable Rules of Professional Conduct when he signed the Settlement Agreement on July 19, 2012 (Doc 444) and when they were fully aware that Dr. Stoody signed a capacity evaluation stating that Mr. Freeman was incompetent."

4. "Trustee's attorney Mr. Daniel Egan of Wilke, Fleury, Hoffelt Gould and Birney and the Trustee of the estate David Flemmer, of Flemmer and Associates, knew that Mr. Freeman was disabled, deemed incompetent by Dr. Stoody and was without an attorney of record since his attorney was deceased. They however continued to bombard him with Motions, Sanctions and other legal requests that he was incapable of responding to."

5. "Mr. Freeman, while in an incompetent state as declared by neurologist Dr. Stoody on April 6, 2010, gave to

Trustee David Flemmer $300,000 in a check on January 17,2011 from the estate asset business of Ulrich, Nash and Gump, and further Mr. Freeman was not apprised of his rights at any time in his incompetent state

6. "Mr. Freeman entered into a Settlement Agreement on July 19, 2012 (Doc 444) under duress, menace, fraud upon the court and undue influence exercised by and with the connivance of Trustee David Flemmer."

E. Declaration of Laurence Freeman in Support of Motion to Set Aside Settlement, Executed August 27, 2013, Dckt. 1004.

1. "On January 17,2011 Mr. Flemmer, the Trustee came into my office and took over $300,000 from my business accounts for Ulrich, Nash and Gump when I was in an incompetent as determined on April 6, 2010 by Dr. James Stoody a neurologist at Sutter Roseville Hospital."

2. "During this period February 2010 to 2011 George Hollister and Stephen Burlingham attorneys were representing me...George Hollister was paid through Stephen Burlingham who quite casually had all the checks in the business written by his secretary and then had me sign them not knowing or aware of what I was signing as I could not read or write at the time...He had me sign a durable medical and financial power of attorney while I was in the hospital and was in an incompetent state of mind in April 6,2010 and again two weeks later in April 18 2010."

3. "As part of the settlement I entered into on or about July 19, 2012, I was told by my attorney at the time David Schultz that I would be conserved and have all my rights taken away from me if I did not promptly sign the settlement agreement. Mr, Schultz took me to the back room in my office and he showed me that if I didn't sign this settlement agreement that the court was going to take away all my rights, have me conserved and I would have no more rights. So I hurriedly signed this agreement, not sure at the time what it was 1 was actually signing, but believing that it was going to free me from a conservatorship and from being locked up and having all my rights taken away."

4. "At the time of signing the agreement [July 2012] I was under duress, menace, fraud upon the court and undue influence exercised by and with the connivance of Defendant."

The court has addressed in greater detail these statements and Laurence Freeman's physical appearance and ability to respond to the court at the hearings. Order for Status Conference On Ability to Laurence Freeman, Dckt. 1044. Debtor Gloria Freeman appears to make the inconsistent

arguments that Laurence Freeman is competent to appear in this proceeding and can join with her in advancing her arguments, but that he was and is incompetent to have entered into a settlement with the Trustee.

The purpose of addressing this issue is to determine if the court has a sufficiently competent person before it have his rights altered. Though representing to the court that he was engaging an independent attorney to represent him, over several months Laurence Freeman was unable to do so. However, during this same period of time Laurence Freeman began "appearing" in pro se through pleadings with Gloria Freeman. The gist of these pleadings was that Laurence Freeman wanted to set aside the stipulation by which he had a determination that substantial assets were his separate property and not community property with Gloria Freeman. Laurence Freeman was unable to articulate any reason for the court why he sought to set aside the agreement.

At the October 3, 2013, hearing, the attorney appearing for Laurence Freeman disclosed that it was Gloria Freeman and Laurence Freeman who sought to engage him to file suit in the district court. When the court inquired of counsel of what he had done, in light of the detailed order setting the hearing concerning Laurence Freeman's legal competence, Counsel had little to offer the court. At one point, counsel offered a resolution which was intended to avoid Laurence Freeman having to see his doctor. In light of Laurence Freeman's difficulty in participating in the hearing before this court, this causes much concern as to why an independent counsel for Laurence Freeman would be concerned about getting the court to adopt a procedure which would keep Mr. Freeman from seeing his doctor. One would presume that an independent counsel for Mr. Freeman would want to know whether Laurence Freeman had the ability to give informed instructions and decisions to such counsel.

FEDERAL RULES CONCERNING COMPETENCY

As a basic requirement for a person to have his or her rights determined in federal court, that person must meet the basic requirements for legal competency. Moore's Federal Practice, Civil § 17.21, provides a good survey of the federal competency requirement.

> § 17.21 Capacity of Individual Litigant Acting on Its Own Behalf Determined by Law of Domicile
>
> [1] Domicile Tested at Time of Filing
>
> The capacity of an individual engaged in litigation to enforce its own right, not acting as a representative of another, is determined by the law of the litigant's domicile...
>
> [3] Persons Lacking Legal Capacity Must Have Adequate Representation
>
> [a] Court May Appoint Guardian

Although persons lacking legal capacity may not sue or be sued, Rule 17(c) provides that their interests may be represented in litigation in federal courts (see also § 17.10[3][c] (guardian's and guardian ad litem's real party in interest status); § 17.22 (capacity of representatives of persons lacking legal capacity)). If a minor or other incompetent person has a representative appointed by law, such as a guardian, committee, conservator, or other similar fiduciary, this representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent who has no duly appointed representative may sue by a next friend or by a guardian ad litem. If a minor or incompetent is sued and is not represented in the action, the court must appoint a guardian ad litem or make some other proper order to protect the minor or incompetent. Similarly, if a party becomes incompetent during the course of the litigation, the court must appoint a guardian ad litem or make some other proper order. The language of the rule is mandatory and requires the court to appoint a guardian ad litem or make some other provision once the court determines that the individual is incompetent. However, the rule does not place an affirmative obligation on the district court to inquire *sua sponte* into the individual's capacity unless evidence showing that the individual has been adjudged incompetent or other clear evidence of incompetence is brought to the district court's attention. Bizarre behavior alone is insufficient to trigger a mandatory inquiry into a litigant's competency.

The function of the representative or guardian ad litem is to make decisions concerning the litigation on behalf of the minor or incompetent person, and not necessarily to represent the person as an attorney. [With limited parent child exceptions.]...

If a general guardian fails or refuses to sue or defend in a particular case, or if there is a conflict of interest between the minor or incompetent person and the guardian or next friend, federal courts may appoint a guardian or attorney ad litem to protect the interest of the represented party in the case.

To determine whether an individual is considered a minor or incompetent person, Rule 17(c) must be read in conjunction with Rule 17(b). Under Rule 17(b)(1), the capacity of an individual to sue or be sued is determined by the law of the individual's domicile. Once the court applies the law of the individual's domicile and determines that the individual is underage or is otherwise incompetent, the provisions of Rule 17(c) come into play. If the minor or incompetent already has a general guardian, conservator, or like fiduciary, that representative may sue or defend on behalf of the minor or incompetent. Whether an individual or entity is the type of fiduciary that has the legal authority

> to represent the minor or incompetent person is also determined according to state law. If the minor or incompetent has no such representative, the court must appoint a guardian ad litem or make some other provision for the protection of the individual. At this stage in the process, the court is not guided by state law but rather should be guided by the protection of the individual's interests. The court is not required to follow procedures set out by state law to determine incompetency, but may follow whatever procedures are appropriate within the bounds of due process.
>
> [b] Protective Measures Implemented at Court's Discretion
>
> The directive that courts protect the interests of persons lacking legal capacity is not tantamount to a requirement that courts appoint a representative. Rather, when the court finds that a litigant lacks legal capacity, the court may either appoint a guardian *ad litem* "or issue another appropriate order ... to protect a minor or incompetent person who is unrepresented in an action." The necessity of a guardian is determined at the court's discretion. The court need only inquire whether the incompetent's interests are adequately protected.

Some of the authorities cited by Moores in the section above include the following cases.

Gibbs v. Carnival Cruise Lines, 314 F.3d 125, 134-135 (3rd. Cir. 2002).

> "While the New Jersey Court Rule is relevant to our inquiry and will be discussed further in the next section, we do not begin our analysis with this Court Rule. Instead, we must look to Federal Rule of Civil Procedure 17, which explains the capacity of a party to sue or be sued, and may therefore be used to determine how a person is appointed a "legal representative" within the meaning of § 183b(c). We apply the Federal Rules instead of the New Jersey Court Rules because state rules regarding the appointment of guardians ad litem are procedural and therefore do not apply, in the first instance, to cases brought in federal courts. See *M.S. v. Wermers*, 557 F.2d 170, 174 n.4 (8th Cir. 1977); 6A C. Wright & A. Miller, Federal Practice and Procedure § 1571, at 511-12 (1991); see generally *Hanna v. Plumer*, 380 U.S. 460, 471-72, 14 L. Ed. 2d 8, 85 S. Ct. 1136 (1965) (federal courts apply on-point Federal Rules of Civil Procedure instead of state procedural practices).

United States v. Mandycz, 447 F.3d 951, 962 (6th Cir. 2006).

> So while the commencement of a civil case does not suspend the Due Process Clause, it does alter the fairness requirements of the Clause. Whereas due process protects incompetent criminal defendants by imposing an outright

prohibition on trial, it protects incompetent civil parties by requiring the court to appoint guardians to protect their interests and by judicially ensuring that the guardians protect those interests. See Fed. R. Civ. P. 17(c) ("The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."); see also *Ferrelli v. River Manor Health Care Ctr.*, 323 F.3d 196, 203 (2d Cir. 2003) ('[T]he district judge should be aware that due process considerations attend an incompetency finding and the subsequent appointment of a guardian ad litem.'); *Salomon Smith Barney, Inc. v. Harvey*, 260 F.3d 1302, 1309 (11th Cir. 2001), vacated on other grounds, 537 U.S. 1085, 123 S. Ct. 718, 154 L. Ed. 2d 629 (2002); *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 652 (2d Cir. 1999); *Garrick v. Weaver*, 888 F.2d 687, 693 (10th Cir. 1989); *Genesco, Inc. v. Cone Mills Corp.*, 604 F.2d 281, 285 (4th Cir. 1979). Independent of the court's duty to appoint a guardian to look after his interests, Mandycz of course also is entitled to the other basic protections of due process in a civil setting. See *United States v. Kairys*, 782 F.2d 1374, 1384 (7th Cir. 1986) ('[B]ecause denaturalization is civil and equitable in nature, due process [is] satisfied by a fair trial before an impartial decisionmaker. [concluding that there is no right to jury trial for denaturalization proceeding]')."

Berrios v. N.Y. City Housing Authority, 564 F.3d 130, 134 (2nd Cir. 2009).

"A minor or incompetent person normally lacks the capacity to bring suit for himself. See, e.g., N.Y. C.P.L.R. 1201 (McKinney 1997); Fed. R. Civ. P. 17(b)(1) (capacity of an individual claim owner to sue is determined by "the law of the individual's domicile"). Rule 17(c) provides that a minor or incompetent person may be represented by a general guardian, a committee, a conservator, or a similar fiduciary, see Fed. R. Civ. P. 17(c)(1), and that

> '[a] minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem--or issue another appropriate order--to protect a minor or incompetent person who is unrepresented in an action,'

Fed. R. Civ. P. 17(c)(2) (emphasis added). Thus, as to a claim on behalf of an unrepresented minor or incompetent person, the court is not to reach the merits without appointing a suitable representative.

...

On remand, the district court should first determine whether Berrios is a suitable guardian *ad litem* for Travieso. If it

finds that he is not suitable and that it is not clear that a substantial claim could not be asserted on Travieso's behalf, the court should appoint another person to be Travieso's guardian *ad litem*. If the court either finds that Berrios is a suitable guardian or if it appoints a suitable guardian who is a non-attorney, it should not dismiss the action without affording such guardian the opportunity to retain counsel or to seek representation from a pro bono attorney or agency. If the guardian secures an attorney or is an attorney, the court should not dismiss the complaint for failure to state a claim without giving counsel an opportunity to file an amended complaint. If the guardian is not an attorney and does not obtain counsel, and if it is not clear to the court whether a substantial claim might be asserted on Travieso's behalf, the court should decide whether to appoint counsel, taking into "consider[ation] the fact that, without appointment of counsel, the case will not go forward at all," *Wenger*, 146 F.3d at 125. If counsel is not secured or appointed, the court may dismiss the complaint, but without prejudice."

Sam M. v. Carcieri, 608 F.3d 77, 85-86 (1st Cir. 2010).

Rule 17(c) of the Federal Rules of Civil Procedure governs a minor or incompetent's access to federal court. It directs that a minor or incompetent may sue in federal court through a duly appointed representative which includes a general guardian, committee, conservator, or like fiduciary. Fed. R. Civ. P. 17(c)(1). If a minor lacks a general guardian or a duly appointed representative, Rule 17(c)(2) directs the court either appoint a legal guardian or Next Friend, or issue an order to protect a minor or incompetent who is unrepresented in the federal suit. Fed. R. Civ. P. 17(c)(2).

The appointment of a Next Friend or guardian ad litem is not mandatory. Thus, where a minor or incompetent is represented by a general guardian or a duly appointed representative, a Next Friend need not be appointed. See *Developmental Disabilities Advocacy Ctr., Inc. v. Melton*, 689 F.2d 281 (1st Cir. 1982) (declining to appoint Next Friend where plaintiffs had general guardians or duly appointed guardians who opposed the federal suit); *Garrick v. Weaver*, 888 F.2d 687, 693 (10th Cir. 1989)(holding that a minor's mother lacked authority to proceed as Next Friend in federal suit where the federal court had appointed a guardian ad litem to represent the child). However, Rule 17(c) 'gives a federal court power to authorize someone other than a lawful representative to sue on behalf of an infant or incompetent person where that representative is unable, unwilling or refuses to act or has interests which conflict with those of the infant or incompetent.' *Ad Hoc Comm. of Concerned Teachers v. Greenburgh No. 11 Union Free Sch. Dist.*, 873 F.2d 25, 29 (2d Cir. 1989); *Melton*, 689 F.2d at 285 (stating that Rule 17(c) allows federal courts to

appoint a Next Friend or guardian ad litem where there is a conflict of interest between the minor and her general representative).

The minor's best interests are of paramount importance in deciding whether a Next Friend should be appointed, but the ultimate 'decision as to whether or not to appoint [a Next Friend or guardian ad litem] rests with the sound discretion of the district court and will not be disturbed unless there has been an abuse of its authority. *Melton*, 689 F.2d at 285. See also *Fernandez-Vargas v. Pfizer*, 522 F.3d 55, 66 (1st Cir. 2008)."

Garrick v. Weaver, 888 F.2d 687, (10th Cir. 1989).

Rule 17(c) flows from the general duty of the court to protect the interests of infants and incompetents in cases before the court. See *Dacanay v. Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978); *Noe v. True*, 507 F.2d 9, 11-12 (6th Cir. 1974). Garrick through her attorney requested the appointment of the guardian ad litem because her interests might be adverse to her children's interests as they were each claimants to the same finite fund. When the court determines that the interests of the infant and the infant's legal representative diverge, appointment of a guardian *ad litem* is appropriate. *Noe*, 507 F.2d at 11-12. Once appointed, the guardian *ad litem* is 'a representative of the court to act for the minor in the cause, with authority to engage counsel, file suit, and to prosecute, control and direct the litigation.' *Id.* at 12. We hold that a guardian ad litem sufficiently meets the "other fiduciary" requirement of Rule 17(c) so as to deprive Garrick of standing to represent her children in the same action for which the guardian ad litem was appointed. Garrick's standing to represent her minor children in other actions remains unaffected."

Dacannay v. Mendoza, 573 F.2d 1075, 1079 (9th Cir. 1978).

"It is an ancient precept of Anglo-American jurisprudence that infant and other incompetent parties are wards of any court called upon to measure and weigh their interests. The guardian *ad litem* is but an officer of the court. *Cole v. Superior Court*, 63 Cal. 86, 89 (1883); *Serway v. Galentine*, 75 Cal. App. 2d 86, 170 P.2d 32 (1940). While the infant sues or is defended by a guardian *ad litem* or next friend, every step in the proceeding occurs under the aegis of the court. See generally Solender, Guardian *Ad Litem*: A Valuable Representative or an Illusory Safeguard, 7 Tex.Tech.L.Rev. 619 (1976); Note, Guardians *Ad Litem*, 45 Iowa L. Rev. 376 (1960)."

Robidoux v. Rosengren, 638 F.3d 1177, (9th Cir. 2011).

"District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to safeguard the interests of litigants who are minors. Rule 17(c) provides, in relevant part, that a district court 'must appoint a guardian *ad litem*— or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.' Fed. R. Civ. P. 17(c). In the context of proposed settlements in suits involving minor plaintiffs, this special duty requires a district court to 'conduct its own inquiry to determine whether the settlement serves the best interests of the minor.' *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978); see also *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983) (holding that 'a court must independently investigate and evaluate any compromise or settlement of a minor's claims to assure itself that the minor's interests are protected, even if the settlement has been recommended or negotiated by the minor's parent or guardian *ad litem*')."

Scannavino v. Florida Department of Corrections, 242 F.R.D. 622, 664, 666-667 (M.D. Fla. 2007).

"Although under Rule 17(b) a district court determining a party's capacity must use the law of that party's domicile, the court need not adopt any procedure required by state law but must only satisfy the requirements of due process. *Cohen v. Office Depot, Inc.*, 184 F.3d 1292, 1296 (11th Cir. 1999) (explaining that "if the state law conflicts with a federal procedural rule, then the state law is procedural for *Erie/Hanna* purposes regardless of how it may be characterized for other purposes."); *Thomas*, 916 F.2d at 1035 ('[W]e reject the notion that in determining whether a person is competent to sue in federal court a federal judge must use the state's procedures for determining competency or capacity.'). In the absence of a clear test for determining a party's incapacity or incompetence under Florida law, 'a federal procedure better preserves the integrity and the interests of the federal courts.' *Id.* at 1035.

'It is a well-understood tenant of law that all persons are presumed to be competent' and that the 'burden of proof of incompetency rests with the party asserting it.' *Weeks v. Jones*, 52 F.3d 1559, 1569 (11th Cir. 1995). Because '[a] person may be competent to make some decisions but not others,' the test of a party's competency 'varies from one context to another.' *United States v. Charters*, 829 F.2d 479, 495 n.23 (4th Cir. 1987). In general, "to be considered competent an individual must be able to comprehend the nature of the particular conduct in question and to understand its quality and consequences." *Id.* (quoting B. Freedman, Competence, Marginal and Otherwise: Concepts and Ethics, 4 Int'l. J. of L. & Psychiatry 53, 56 (1981)). In

the context of federal civil litigation, the relevant inquiry is whether the litigant is 'mentally competent to understand the nature and effect of the litigation she has instituted.' *Bodnar v. Bodnar*, 441 F.2d 1103, 1104 (5th Cir. 1971); *Donnelly v. Parker*, 158 U.S. App. D.C. 335, 486 F.2d 402, 407 (D.C. Cir. 1973) (stating that Rule 17(c) may require an inquiry into the plaintiff's 'capacity to understand the meaning and effect of the litigation being prosecuted in her name').

...

The rights of an incompetent litigant in a federal civil proceeding are protected by Rule 17(c), Federal Rules of Civil Procedure, which provides that a district court "shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person." Fed. R. Civ. P. 17(c). An incompetent litigant is "not otherwise represented" under Rule 17(c) if she has no "general guardian, committee, conservator, or other like fiduciary." *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 656 (2d Cir. 1999). The parties stipulated at the competency hearing that the plaintiff lacks a general guardian and is not otherwise represented within the meaning of Rule 17(c).

The decision to appoint a "next friend" or guardian ad litem rests with the sound discretion of the district court and will be disturbed only for an abuse of discretion. *In re Kloian*, 179 Fed. Appx. 262, 265 (6th Cir. 2006) (quoting *Gardner v. Parson*, 874 F.2d 131, 140 (3d Cir. 1989)). Unlike a determination of competency, a district court's decision whether to appoint a guardian ad litem is purely procedural and wholly uninformed by state law. *Gibbs v. Carnival Cruise Lines*, 314 F.3d 125, 135-36 (3d Cir. 2002) ('A district court need not look at the state law, however, in determining what factors or procedures to use when appointing the guardian *ad litem*.'); Burke v. Smith, 252 F.3d 1260, 1264 (11th Cir. 2001) ('It is well settled that the appointment of a guardian ad litem is a procedural question controlled by Rule 17(c).').

...

Under Rule 17(c), a district court must appoint a guardian ad litem if it receives 'verifiable evidence from a mental health professional demonstrating that the party is being or has been treated for mental illness of the type that would render him or her legally incompetent.' *Ferrelli v. River Manor Health Care Ctr.*, 323 F.3d 196, 201 (2d Cir. 2003). An exhaustive review of the record, as well as the evidence adduced at the competency hearing (and other evidence properly before the court), commends the appointment of a guardian ad litem to protect the plaintiff's interests in this case. Indeed, failure to appoint a guardian ad litem undermines the plaintiff's interests and would default both

the court's obligation under Rule 17(c) and the requirements of justice."

OCTOBER 3, 2013 STATUS CONFERENCE

Craig Simmermon appeared as counsel for Laurence Freeman. In addressing the court he stated that it was Gloria Freeman and Laurence Freeman who came to meet with him concerning representing Laurence Freeman. Further, it was Gloria Freeman and Laurence Freeman who met with him concerning Laurence Freeman's rights and interests at issue.

Mr. Simmermon stated that now Laurence Freeman had decided not to try tp set aside the settlement agreement and looked to quickly resolve the disputes. However, Counsel could not address why Laurence Freeman for the past several months was filing pleadings and stating under penalty of perjury in declarations (prepared by Gloria Freeman) that he was and is incompetent, and that he wanted to set aside the settlement agreement. Counsel could not provide the court with an explanation as to what steps he had taken, in light of the order setting this hearing and the pleadings filed by Laurence Freeman in this case, to conclude that Laurence Freeman was free from improper influence and coercion. Counsel also appeared to lack an understanding or appreciation of the conduct of Gloria Freeman and her counsel, W. Austin Cooper, with respect to Laurence Freeman previously in this case (though such events are set forth in the order setting this hearing).

Mila Freeman, Laurence Freeman's sister who lives in Florida, appeared telephonically at the hearing. She actively participated in the hearing and supported Laurence Freeman obtaining current medical and mental health examination. The parties discussed whether Mila Freeman could served as the representative of Laurence Freeman (Fed. R. Civ. P. 25) by agreement of the parties, without the court making a determination of competency.

As stated at the hearing, the court is concerned that Laurence Freeman does not have the requisite mental faculties and, or may be, subject to undue influence and control by others, including Gloria Freeman. Such undue influence and control thereby working to force Laurence Freeman to make legal determinations and election which are (1) not in his interest and (2) which are not made of his own free will.

The court continues the hearing to allow Mila Freeman to communicate with Laurence Freeman and Craig Simmermon, for Craig Simmermon to conduct a reasonable investigation and determine if he has a legally competent client or if Mr. Simmermon is merely acting on the instructions of a third-party (who is communicating the instructions through Laurence Freeman), and for Mila Freeman to make her initial inquiries.

The Local Bankruptcy Rules provide for the appearance of attorneys and designation of counsel of record in this District. LBR 2017-1 and see corresponding Rule 182 of the District Court Local Rules.

Local Bankruptcy Rule 2017-1 provides, in pertinent part,

LOCAL RULE 2017-1

Attorneys - Appearances, Scope of Representation, and Withdrawal

(b) Appearance as Attorney of Record.

(1) Appearance Required. Except as permitted in Subpart (c) of this Rule, no attorney may participate in any action unless the attorney has appeared as an attorney of record. A single client may be represented by more than one attorney of record to the extent authorized by the applicable Rules of Professional Conduct.

(2) Manner of Making Appearance. Appearance as an attorney of record is made:

(A) By signing and filing an initial document;

(B) By causing the attorney's name to be listed in the upper left hand corner of the first page of the initial document;

(C) By physically appearing at a court hearing in the matter, formally stating the appearance on the record, and then signing and filing a confirmation of appearance within seven (7) days; or

(D) By filing and serving on all parties a substitution of attorneys as provided in Subpart (h) of this Rule.

...

(h) Substitution of Attorneys. An attorney who has appeared in an action may substitute another attorney and thereby withdraw from the action by submitting a substitution of attorneys that shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and the client. All substitutions of attorneys shall require the approval of the Court.

On September 16, 2013, Craig A. Simmermon (Cal. State Bar No. 258607) filed a document entitled "APPEARANCE OF COUNSEL." Dckt. 1050. This document states,

"To: The Clerk of Court and to all parties of record.

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for LAURENCE H. FREEMAN."

A certificate of service was filed by Mr. Simmermon stating that the Appearance of Counsel was served on Gloria Freeman, David D. Flemmer (Trustee), J. Russell Cunningham, Jon Tesar (Trustee), Allen C. Massey, and the Office of the U.S. Trustee. Mr. Simmermon has filed Appearances of Counsel in the Freeman v. Flemmer (13-2027) adversary proceeding, but has not filed one in the Flemmer v. Freeman (11-2629).

The court continued the hearing to October 24, 2013, at the request of the parties, that the clerk of the court transmit specified pleadings filed in this case to Mila Freeman, Laurence Freeman’s sister, and that the parties serve copies of future pleadings on Mila Freeman.

12. 10-23577-E-11 GLORIA FREEMAN **CONTINUED STATUS CONFERENCE RE:**
13-2027 Pro Se **COMPLAINT**
FREEMAN V. FLEMMER **1-29-13 [1]**

Plaintiff's Atty: Craig A. Simmermon
Defendant's Atty: Daniel L. Egan

Adv. Filed: 1/29/13
Answer: 2/27/13

Counterclaim Filed: 2/27/13
Answer to Counterclaim:
3/20/13 [Laurence Freeman]
3/27/13 [Gloria Freeman]
4/24/13 [Gloria Freeman - First Amended]

Nature of Action:
Declaratory judgment

Notes:

Continued from 9/4/13 [Dckt 57] re concern with ability of Laurence Freeman to participate.

Appearance of Counsel [for Laurence Freeman] filed 9/13/13 [Dckt 58]

13. 10-23577-E-11 GLORIA FREEMAN **CONTINUED MOTION FOR**
MHK-1 Pro Se **ADMINISTRATIVE EXPENSES**
11-30-12 [516]

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

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

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

No Tentative Ruling: The Motion for Administrative Expenses has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has continued the hearing to allow the parties in interest to consider the settlement in the context of other matters in this case and related bankruptcy cases.

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

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

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

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

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

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

Motion for Administrative Expenses by Trustee Jon Tesar

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

Background

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

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

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

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

Opposition by Trustee Flemmer

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

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

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

1.	Auction 10/Premium Access--	$791.36
2.	Gloria Freeman Personal Expenses/Life, Health and Disability Insurance-------	$41,961.02
3.	Legal Fees and Expenses----	$56,530.97
4.	Transfers for the Benefit of Larry Freeman----------	$4,509.44
	Total	$103,792.79

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

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

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

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

Trustee Flemmer states that transfers to Debtor from March 2010 through May 2012 are more fairly characterized as compensation for services rather than payment of an illegal dividend. Trustee Flemmer states that the

transfers, which are equivalent to $1,554 per month, are reasonable compensation for operating Staff. Trustee Flemmer states that if the transfers are considered compensation for services they are not "actual, necessary costs and expenses of preserving the estate." § 503(b)(1)(A). Trustee Flemmer requests that the court deny the request for administrative expenses.

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

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

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

Debtor's Opposition

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

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

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

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

Chapter 11 Trustee's Supplemental Opposition

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

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

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

Discussion

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Administrative Expenses having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that ----------.

14. 10-23577-E-11 GLORIA FREEMAN **MOTION TO STRIKE**
RHS-1 Pro Se **10-10-13 [1143]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

The court's tentative decision is to deny the Motion to Strike. 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 ("Debtor") moves to strike the document dated September 30, 2012 and filed in this court on October 2, 2013 by David Schultz, Docket Control No. RHS-1 and all the attachments thereto. This document was filed in response to the Order to Show Cause issued by this court.

BACKGROUND

Gloria Freeman, represented by W. Austin Cooper, commenced this voluntary Chapter 11 case on February 16, 2010. Gloria Freeman served as the Debtor in Possession, represented by W. Austin Cooper, until the court ordered the appointment of a Chapter 11 Trustee. Order for Appointment of a Trustee filed December 23, 2010, Dckt. 67; Order approving appointment of David Flemmer filed January 7, 2011, Dckt. 76. In the findings of fact and

conclusions of law for the motion to dismiss the case, which was filed by Laurence Freeman, the court addressed in detail the cause for the appointment of a trustee pursuant to 11 U.S.C. §§ 1112 and 1104. Civil Minutes, Dckt. 66.

While serving as the debtor in possession in this Chapter 11 bankruptcy case, Gloria Freeman, represented by W. Austin Cooper, commenced an adversary proceeding (Adv. 10-2536) against Laurence Freeman ("Gloria v. Laurence Adversary"). The complaint and other pleadings filed by Gloria Freeman as Debtor in Possession and W. Austin Cooper raised significant issues whether Laurence Freeman was and is mentally and medically physically able to participate in this bankruptcy case and related adversary proceedings.

The court issued an Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel on September 12, 2013, Dckt. 1044 ("September 12 Order"). In that Order, the court explained, in detail, the legal and ethical concerns with the conduct of Gloria Freeman and her attorney W. Austin Cooper and their interactions with Mr. Freeman. Gloria Freeman has and does assert that Laurence Freeman is not mentally competent to handle his business, financial, or legal affairs. Then this issue became a non-concern once W. Austin Cooper began appearing as Laurence Freeman's attorney and now Gloria Freeman now is preparing pleadings for Laurence Freeman to sign, claiming he is clearly competent and could make an informed decision. Mr. Freeman filed a detailed declaration recounting his mental incapacity - much of which are the arguments and contentions previously stated by Gloria Freeman in her interactions with the Chapter 11 Trustee over his attempts to obtain control of, maintain and liquidate property of the estate.

The court served the September 12 Order on several parties, including prior counsel of Laurence Freeman, David Schultz. Mr. Schultz filed a letter to the court in response to the September 12 Order. This Motion to Strike is in response to Mr. Schultz's letter.

DEBTOR'S MOTION

Strikingly absent from Debtors argument is any legal authority or legal standard from which this court can strike pleadings.

Federal Rule of Civil Procedure 12(f), as incorporated by Federal Rule of Bankruptcy Procedure 7012, provides that the court may strike from any pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act on its own or on a motion made by a party. *Id.* The letter prepared by Mr. Schultz is not a "pleading" as described in the rules. Rather, this document is a communication from an attorney regarding the subject matter summarized in the September 12 Order. This document was not considered as evidence to support any particular action, but rather provided information and context to a serious situation the court found obligated to bring the parties attention. Additionally, this letter was sent directly to the court and, as all communications are, the document was put on the docket so all interested

parties could have equal access. As the document is not a "pleading," the Federal Rule of Civil Procedure 12(f) is not applicable.

INFORMATION PROVIDED IN DOCUMENT BY FORMER ATTORNEY FOR LAURENCE FREEMAN SHOULD NOT BE REMOVED FROM THE RECORD AT THIS TIME

Even if the motion to strike rule did apply to the document, Debtor has not provided sufficient grounds under the rule in order for the court to issue an order regarding the same. No grounds of "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter" has been shown to the court.

As an initial matter, no persons shall have *ex parte* communications with the court. Though in the form of a letter, the response by Mr. Schultz was in response to the court's order setting a hearing on the question of whether Laurence Freeman was legally competent to be a party in this case and the related adversary proceedings. This communication to the court was placed on the docket, an essential part of an transparent judicial process. At the October 3, 2013 hearing the court made it clear that such document was like other statements and arguments made by any person (such as in a motion or points and authorities)– not evidence of what was alleged or asserted therein. Mr. Schultz served as counsel for Laurence Freeman in the Adversary Proceeding by which Laurence Freeman obtained a stipulation and determination that certain properties were his separate property and not community property with Gloria Freeman. As seen from various pleadings filed by Gloria Freeman, Mr. Schultz has been the subject of her attack as to the services he provided for Laurence Freeman.

Debtor makes several different arguments, none of which this court finds has any merit. The court will take each argument in turn.

First, Debtor contends that this document was incorrectly filed according to the Federal Rules of Civil Procedure (although no rule is specifically stated), did not comply with the "requirements for admission to the docket" and was improperly served. Debtor states the Judge incorrectly accepting the "pleading" and incorrectly read it into the record.

Again, this response was not a "pleading," but rather a communication from an attorney regarding the subject matter summarized in the September 12 Order. This letter was sent directly to the court and, as all communications are, the document was put on the docket so all interested parties could have equal access.

Most importantly, as stated at the September 12, 2013 hearing, the court did not consider this document as evidence, but rather information related to this bankruptcy case. The court did not make any determinations of fact or conclusions of law relying on this document and will not do so without the requisite evidence before it.

Second, Debtor argues that the information in the document was obtained through "record theft and violation of attorney client privilege." Debtor also argues that "this" may be a violation of State Bar regulations,

identity theft, and violation of HIPPA and federal privacy laws (although, again, no specific rules are stated).

The allegation that information from Mr. Schultz's letter was obtained through theft is merely an argument asserted by Gloria Freeman, unsupported by competent evidence. Further, Mr. Schultz was Laurence Freeman's attorney, and it would not be unlikely for him to have access to such documents and information. The court reiterates that this documents is not being considered as evidence and therefore the information therein is not being used in any determinations of fact or conclusions of law.

As for a violation of attorney client privilege, the court finds that any assertions of attorney client privilege would be held by the client, Mr. Laurence Freeman, not Gloria Freeman. David Schultz has come forward informing all parties, including Gloria Freeman, of concerns he has relating to his former client, Laurence Freeman. As this court has previously addressed, the court is troubled by the efforts of Gloria Freeman to remove other pleadings regarding her contentions and information she has previously disclosed concerning the legal competency of Laurence Freeman. *See*, Motion to Redact A Portion of the Information, Dckt. 999; Civil Minutes, Dckt 1061; Order, Dckt. 1067. This court has previously stated, and continues to state that information (whether evidence such as in the Gloria Freeman and Laurence Freeman declarations or various statements in motions and points and authorities by Gloria Freeman and Laurence Freeman) are not going to be removed from the files in this case and hidden from view unless and until Laurence Freeman presents such a proper request himself, or a personal representative appointed by the court, and with competent, independent legal counsel.

Furthermore, the general reference to Mr. Schultz's violation of HIPPA and other (unstated) federal privacy laws, is without support. Gloria Freeman fails to reference any specific law or regulation at issue, but merely makes a shotgun allegation. The court notes that HIPPA, which Gloria Freeman references, generally only applies to "covered entities" or health plans, health care clearinghouses, health care providers, and business associates of the forgoing, not lawyers. See 42 U.S.C. 1395; 45 C.F.R. 160.103.

Third, Debtor contends that Mr. Schultz was an "unlicensed" attorney and attempted to practice the profession of psychiatry. This contention that Mr. Schultz has been stated by Gloria Freeman on several occasions and reference to it is made by Mr. Schultz in the document at issue. Notwithstanding having that information, Gloria Freeman continues to state that Mr. Schultz is "unlicensed."

A search of the State Bar of California's website shows that David Schultz is an active member of that bar. FN.1. The Status History shows that on August 16, 2007, Mr. Schultz was suspended for failing to pay his bar member dues, but was active again one day later, August 17, 2007. Similarly, on July 3, 2012, Mr. Schultz was suspended for failing to pay his bar member dues, but again became active two days later, July 5, 2012. It does not appear that Mr. Schultz was ever "unlicensed" and has no public record of discipline. Furthermore, the total of three (3) days in which he

was "not eligible to practice law" does not appear to be material to Gloria Freeman's argument and representations to this court.

FN.1. http://members.calbar.ca.gov/fal/Member/Detail/143108.

Also, the allegations that Mr. Schultz was practicing psychiatry are not well founded. Again, as the court made clear, this document was not considered as evidence before this court. Furthermore, a medical determination by Mr. Schultz, if any appear in his letter at all, would not be considered by the court in making any determinations of fact or conclusions of law. To the extent that Mr. Schultz references third-party sources or attempts to advise the other parties as to various terms, such as "gas lighting," it is nothing more than argument.

The court finds it interesting that Gloria Freeman advances this argument as to Mr. Schultz, former counsel for Laurence Freeman. On multiple occasions Gloria Freeman has provided her testimony and arguments that (1) Laurence Freeman is not legally competent and (2) Laurence Freeman is legally competent (when he is joining in or signing pleadings prepared by Gloria Freeman). The court does not accept David Schultz comments as evidence and does not accept Gloria Freeman's conclusions as to Laurence Freeman's legal competency or lack of legal competency as competent expert opinion testimony.

Fourth, Debtor argues that she has never been convicted of any crimes, has passed background checks and that the allegations against her have been put to rest by "winning" a temporary restraining order trial in Placer County. Debtor also makes several allegations against Mr. Schultz, that he isolated his client, told him false statements and had him sign a contract under undue influence and committed "elder abuse" by giving away all of his clients money for his own selfish interests.

The court also finds this argument and testimony of limited value, if any, on the issues now before the court. Much of what is argued goes to the litigation Gloria Freeman commenced in state court to determine Laurence Freeman's competency. The issue the court is currently concerned about it Mr. Laurence Freeman's current competency to appear and file pleadings in this court. The court's concerns as to Laurence Freeman's legal competency must be addressed before further proceedings can be conducted determining and altering the rights of Laurence Freeman.

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 Strike 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.

15. 10-23577-E-11 GLORIA FREEMAN
WFH-31 Pro Se

CONTINUED STATUS CONFERENCE RE: ORDER TO SHOW CAUSE
3-1-13 [571]

Debtor's Atty: Pro Se

Notes:

Re Disgorgement of payments and fees to Austin Cooper [Dckt 571]

No Tentative Ruling.

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

October 24, 2013 Hearing

The court has continued this Status Conference because of the Notice of Unavailability and Request for Continuance filed by W. Austin Cooper in August 2013. The request was due to medical treatment Mr. Cooper was receiving. From reviewing the court's files, W. Austin Cooper appears to be back to the active practice of law, appearing in and having matters ruled on by the court. The following is a chart of some of those matters.

Bankruptcy Case	Representation by W. Austin Cooper	Date Filed	Document/Pleading
Guong Van Nguyen 13-33040	Attorey for Debtor	October 5, 2013	Chapter 13 Petition
Anh Hoang Tran 13-32627	Attorney for Debtor	September 27, 2013	Chapter 7 Petition
		October 10, 2013	Motion to Extend Time to File Schedules and Statement of Financial Affairs
Justin and Tiffany Smith **13-29842**	Attorney for Debtor	July 26, 2013	Chapter 7 Petition, Schedules, Statement of Financial Affairs
		September 4, 2013	First Meeting of Creditors Completed

Robert and Glalynn Baird 13-29471	Attorney for Debtor	July 17, 2013	Chapter 7 Petition, Schedules, Statement of Financial Affairs
		August 28, 2013	First Meeting of Creditors Completed
Kristan Hartman 13-27725	Attorney for Debtor	July 9, 2013	Motion to Convert Chapter 7 Case to Chapter 13
		July 23, 2013	Amended Chapter 7 Petition, Schedules Statement of Financial Affairs
		July 25, 2013	Substitution of W. Austin Cooper in as counsel for Chapter 7 Debtor
		August 2, 2013	Reply to Trustee's Opposition to Motion to Convert Case
		August 29, 2013	Notice of Unavailability of Counsel, Motion to Continue
		September 30, 2013	Motion to Continue Hearing, Debtor Having Sufficient Funds to Pay Creditor Claim
		October 1, 2013	Motion to Dismiss Chapter 7 Case
Coate v. Samra 13-02158	Attorney for Defendant	June 10, 2013	Answer
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
Steven Samra 13-22486	Attorney for Debtor	February 26, 2013	Chapter 12 Petition
		July 22, 2013	Motion to Confirm Plan
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
		October 8, 2013	Order Dismissing Case With Prejudice
Samra v. Ag-Seeds Unlimited 13-02011	Attorney for Plaintiff	January 9, 2013	Complaint Filed

		June 19, 2013	Motion for Summary Judgment
		August 8, 2013	Response to Counter-Motion for Summary Judgment
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
		August 21, 2013	Order Denying Motion for Summary Judgment Without Prejudice
		October 10, 2013	Order Granting Counter-Motion For Summary Judgment to Defendants
Reynoso v. Johnson 13-02003	Attorney for Plaintiff	January 3, 2013	Complaint Filed
		August 8, 2013	Civil Minutes, Claims Dismissed Against One Defendant
Wayne v. Morison 12-02438	Attorney for Plaintiff	August 13, 2012	Complaint Filed
		August 10, 2013	Notice of Unavailability of Counsel, Motion to Continue
		October 3, 2013	Order Setting Trial for November 20, 2013
Vitoon Assavarungnirund 11-49125	Attorney for Debtor	December 19, 2011	Chapter 11 Petition Filed
		June 26, 2013	Confirmation Hearing, Plan Confirmed
		September 12, 2013	Confirmation Order

16. 11-48050-E-11 STAFF USA, INC. CONTINUED ORDER TO SHOW CAUSE
MHK-4 W. Austin Cooper 7-18-13 [257]

CONT. FROM 8-29-13

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

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

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

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

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

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

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

OCTOBER 24, 2013 HEARING

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

From reviewing the court's files, W. Austin Cooper appears to be back to the active practice of law, appearing in and having matters ruled on by the court. The following is a chart of some of those matters.

Bankruptcy Case	Representation by W. Austin Cooper	Date Filed	Document/Pleading
Guong Van Nguyen 13-33040	Attorey for Debtor	October 5, 2013	Chapter 13 Petition
Anh Hoang Tran 13-32627	Attorney for Debtor	September 27, 2013	Chapter 7 Petition
		October 10, 2013	Motion to Extend Time to File Schedules and Statement of Financial Affairs
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		September 4, 2013	First Meeting of Creditors Completed
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Kristan Hartman 13-27725	Attorney for Debtor	July 9, 2013	Motion to Convert Chapter 7 Case to Chapter 13
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		July 25, 2013	Substitution of W. Austin Cooper in as counsel for Chapter 7 Debtor
		August 2, 2013	Reply to Trustee's Opposition to Motion to Convert Case
		August 29, 2013	Notice of Unavailability of Counsel, Motion to Continue
		September 30, 2013	Motion to Continue Hearing, Debtor Having Sufficient Funds to Pay Creditor Claim
		October 1, 2013	Motion to Dismiss Chapter 7 Case

Coate v. Samra 13-02158	Attorney for Defendant	June 10, 2013	Answer
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
Steven Samra 13-22486	Attorney for Debtor	February 26, 2013	Chapter 12 Petition
		July 22, 2013	Motion to Confirm Plan
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
		October 8, 2013	Order Dismissing Case With Prejudice
Samra v. Ag-Seeds Unlimited 13-02011	Attorney for Plaintiff	January 9, 2013	Complaint Filed
		June 19, 2013	Motion for Summary Judgment
		August 8, 2013	Response to Counter-Motion for Summary Judgment
		August 16, 2013	Notice of Unavailability of Counsel, Motion to Continue
		August 21, 2013	Order Denying Motion for Summary Judgment Without Prejudice
		October 10, 2013	Order Granting Counter-Motion For Summary Judgment to Defendants
Reynoso v. Johnson 13-02003	Attorney for Plaintiff	January 3, 2013	Complaint Filed
		August 8, 2013	Civil Minutes, Claims Dismissed Against One Defendant
Wayne v. Morison 12-02438	Attorney for Plaintiff	August 13, 2012	Complaint Filed
		August 10, 2013	Notice of Unavailability of Counsel, Motion to Continue

		October 3, 2013	Order Setting Trial for November 20, 2013
Vitoon Assavarungnirund 11-49125	Attorney for Debtor	December 19, 2011	Chapter 11 Petition Filed
		June 26, 2013	Confirmation Hearing, Plan Confirmed
		September 12, 2013	Confirmation Order