UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 7, 2013 at 10:30 a.m.

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1. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-5 George C. Hollister
CONTINUED MOTION FOR AUTHORITY TO DISTRIBUTE COLLATERAL TO SECURED CREDITOR
9-12-13 [120]

CONT. FROM 10-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 12, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Authority to Distribute Collateral to Secured Creditor 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 without prejudice the Motion for Authority to Distribute Collateral to Secured Creditor, as the Trustee withdrew the request. 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

Michael D. McGranahan, the Chapter 7 Trustee, moves for an order to allow the Trustee to distribute monies that constitute Creditor Westamerica Bank's cash collateral to Westamerica. The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which relief is based.

A. The Trustee holds approximately $91,575.85 in an account ending in 8074 at Associated Bank.

B. The monies in Associated Acct. No. 8074 constitute Westamerica Banks cash collateral as they were Debtors pre-petition accounts receivables.

C. The Trustee has reached an agreement with Westamerica Bank to use a portion of the cash collateral for insurance premiums for equipment and general liability insurance policies commencing September 10, 2013.

D. In addition, Westamerica Bank agreed that the Trustee can hold back $7,500 in case further use of cash collateral becomes necessary to administer the estate.

Motion, Dckt. 120. This Motion is supported by the Chapter 7 Trustee's declaration. The Trustee testifies,

A. "Upon my appointment and pursuant to my trustee duties, I froze all of Debtor's bank accounts, including bank account ending in No. 7470 at Westamerica Bank ('WAB Acct No. 7470')."

B. "I transferred all of the monies in WAB Acct No. 7470 into my own account at Associated Bank ending in 8074. I estimate the balance of the account to be $91,575.85 ('Associated Acct No. 8074')."

C. "I have been informed that the proceeds in the WAB Acct No. 7470 were accounts receivables that constitute Westamerica Bank cash collateral."

Declaration, Dckt. 122.

CREDITOR AFCO ACCEPTANCE CORPORATION

Creditor AFCO Acceptance Corporation opposes the motion on the grounds that it is not being paid the premiums for insurance policies that protected the estate, estate assets, and the Bank's collateral. Creditor asks how much the premiums for the policies that will be in place; how much unencumbered cash the Trustee is holding; why the cash is unencumbered; how much does the Trustee expect to receive under the surcharge agreement; how much does the Trustee expect in administrative expenses; what evidence does not Trustee have that the funds are the Bank's cash collateral; and that the hold back language will not work.

The court denies the evidentiary objections filed by Creditor against the Chapter 7 Trustee, as they are all made on the Chapter 7 Trustee's personal knowledge. However, denying the objection does not make the testimony credible.

CREDITOR WESTAMERICA BANK'S RESPONSE

Creditor Westamerica Bank filed a response stating that their valid proof of claim notes that it applies to the funds in question - that to date no party has objected to. Westamerica Bank argues that the funds constitute proceeds from pre-petition account and that the evidence the Trustee has as to the source of funds includes a verified claim, a signed forbearance

agreement by the Debtor, a fiduciary to all creditors, confirming the point, conformed copies of financing statements, and signed written agreements.

Westamerica Bank also states that AFCO has not security interest in any of the funds that constitute the subject matter of this motion and that AFCO has not provided any legal authority (in this or any of its other motions). Westamerica Bank argues the laundry list of questions provided by AFCO do not provide a valid basis to attack the competency of the Trustee. The Trustee cannot use cash collateral without the consent of the lienholder, which it has given in this instance.

DISCUSSION

Section 363(b)(1) provides that "the trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of the business, property of the estate...."

Here, Trustee seeks Court authority to turnover monies to Westamerica. The cash constitutes property of the estate but also constitutes Westamerica's cash collateral, which it demanded turnover of the account.

In considering the Objection the court starts with AFCO. It provides the court with the following grounds and authorities challenging the Trustee's assertion that Westamerica Bank has a secured claim:

A. "Little can be said about the validity and enforceability of Westamerica Bank's alleged secured claim,..."

B. "[t]here is nothing in the record in the record that addresses [the alleged Westamerica Bank lien]."

C. "[t]he Distribution Motion makes a conclusory statement that the identified funds 'constitute Westamerica [sic] Bank cash collateral.'"

D. "The supporting declaration of the Trustee provides no additional help, stating:

1. 'I have been informed that the process in the WAB Acct NO. 7470 were accounts receivable that constitute Westamerica Bank [sic] cash collateral.'"

Opposition, Dckt. 147.

At this juncture, it appears necessary for the court to make something clear to all counsel and parties. The court expects the attorneys to present clear, supported legal arguments for their positions – not merely slop around arguments and put rhetorical questions to the court. See AFCO "Objection," pages 5-6. The court expects parties and their counsel to conduct the due diligence and investigation necessary to present arguments and positions in good faith. See Federal Rule of Bankruptcy Procedure 9011(b). The court also expects that counsel and parties will present the court with clear evidence, including declarations, which clearly show that

the witness has personal knowledge testimony to provide the court. See Fed. R. Evid. 601, 602, 701, 702. If the parties and counsel are not up to meeting these minimum requirements for appearing and practicing in federal court, the attorneys are should substitute out of the case sooner rather than later. Federal court is not the place for whining, poking, sniping, and "well I should get just because" arguments. Nor is it the place to throw up non-credible testimony hoping to either mislead the court or not get caught.

Beginning with AFCO, Westamerica Bank responds that it filed its proof of claim before AFCO filed the opposition to the Trustee's Motion. The AFCO Opposition was filed on September 26, 2013. Westamerica Bank has filed four proofs of claim.

A. Proof of Claim No. 6, filed on August 20, 2013. This proof of claim provides the following information.

1. Claim is for $198,603.66.

2. It is unsecured.

B. Proof of Claim No. 35-1, filed on September 25, 2013. This proof of claim provides the following information.

1. Claim is for $977,790.09.

2. It is secured by "All assets inc accounts & equipment."

3. Attached to the proof of claim are the following documents.

a. Commercial Security Agreement, County Bank as Secured Party, for which describes the collateral as "All Inventory, Chattel Paper, Accounts, Equipment, and General Intangibles," plus the common proceeds, replacements, insurance, related items and records additional language.

b. Forbearance and Security Agreement and Release, Westamerica Bank, as lender. This references assets of County Bank having been assigned to Westamerica Bank, including the claims that are the subject matter of the forbearance agreement.

c. UCC Financing Continuation Statement, electronic filing date of February 28, 2008, County Bank secured party.

d. UCC Financing Statement filed August 21, 2003, with description of collateral consistent with Security Agreement, County Bank secured party.

e. UCC Financing Statement, electronic filing date January 26, 2007, identifying specific leased equipment. County Bank identified as secured party.

C. Proof of Claim No. 36-1, filed on September 25, 2013. This proof of claim provides the following information.

1. Claim is for $299,838.83

2. Unsecured.

D. Proof of Claim No. 43, filed October 2, 2013.

1. Claim is for $10,000.00.

2. Unsecured.

3. Asserted as a priority claim. The box for "Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(__)" is checked, but no applicable paragraph is identified on the proof of claim.

Westamerica Bank's sniping back at AFCO begins with the opening in its Reply,

> Before the Court is the Trustee's motion to distribute to Westamerica Bank its accrued pre-petition cash collateral, less a stipulated hold-back for the Trustee and funds needed to pay for insurance for all of the estate's assets pending a Court-approved auction. AFCO, as part of its strategy to run up the expenses in this case for no proper purpose, in its trilogy of legal authority-free papers, urges without evidence or authority, that the Court deny the Trustee's motion. AFCO's objection is empty and it is meritless.
>
> Westamerica Bank has a blanket lien. Its lien encompasses accounts receivable and contract rights and proceeds. Its lien is duly perfected. Westamerica Bank filed its proof of secured claim before AFCO filed its latest attack."

Response, Dckt. 173. While technically correct that Westamerica Bank got around to filing its proof of claim for its secured claim on September 25, 2013, and that is before the September 26, 2013, it is mere hours before. Westamerica Bank offers no explanation as to how AFCO was to know what would be in the Proof of Claim being filed mere hours before its opposition had to be filed. This bankruptcy case was filed on July 16, 2013. Westamerica Bank offers no explanation as to why it waited until September 25, 2013, more than two months latter, to file the proof of claim. (Which normally would not be unusual, but in the developing toxic environment in this case has led to AFCO's objection.)

In light of the Trustee's non-specific testimony and the September 25, 2013 filing of the Proof of Claim, the court continued the Motion for further briefing and hearing.

CONTINUANCE AND SUPPLEMENTAL PLEADINGS

The Trustee filed supplemental pleadings on October 24, 2013. Trustee's supplemental declaration provides that after being appointed as the Trustee in this case, he began investigating Debtor's assets and he froze all of Debtor's bank accounts, including bank account ending in No. 7470 at Westamerica Bank. Trustee transferred all of the monies in the account into his own account at Associated Bank ending in 8074. Mr. Applegate informed Trustee that the account was Debtor's general operating account until earlier this year, and funds in that account were revenue from Debtor's projects. Trustee's counsel also informed him that Westamerica Bank had a valid lien on Debtor's receivables. Based on this information, Trustee felt it was appropriate to bring this motion as part of a larger resolution of issues relating to Westamerica Bank, including a motion to sell Debtor's assets and negotiating a surcharge agreement relating to the proceeds from the sale. Dckt. 242.

Mr. Applegate also provides a declaration, stating the similar facts. Mr. Applegate states that the account was Debtor's general operating account until approximately April or May of this year and was also used as a conduit for disbursing funds to subcontractors on the Fresno Irrigation District project pursuant to an arbitration award. Mr. Applegate states the funds were held in another account at Westamerica Bank and as the subcontractors' claims were liquidated, funds from the other account would be transferred and then paid to the subcontractor. Mr. Applegate states that prior to the bankruptcy filing, $65,000.00 of the funds in the account were transferred from the other account, but were not paid to a subcontractor as a result of the filing. Mr. Applegate testifies that the balance of the funds in the account is revenue from various projects. Dckt. 244.

Trustee also filed a supplemental Memorandum of Points and Authorities Regarding Trustee's Motion for Authority to Distribute Collateral to Secured Creditor.

The Trustee states that in light of the Trustee's inability to come to an agreement with Westamerica Bank and AFCO Acceptance Corporation relating to a number of issues in this case, the Trustee no longer seeks authority to distribute the funds from the subject bank account to Westamerica Bank at this time. Dckt. 243.

The Trustee nonetheless submits the supplemental brief to address the items raised at the prior hearing. Based on a review of the UCC Report, the Westamerica Bank Loan Documents, the Financing Statements, and the UCC provisions governing liens and perfection thereof, the Trustee was satisfied that Westamerica Bank had a perfected security interest in the funds in the subject bank account and believed that it was reasonable to turn over some of the funds in this account to Westamerica Bank as part of a larger plan, upon Court approval. However, as mentioned in the introduction, given the fact that the parties have not been able to come to a resolution regarding a

surcharge agreement, the Trustee no longer wishes to pursue turnover of the funds from the subject bank account at this time. Trustee states that the parties continue to negotiate and may present the Court with another proposal in the future.

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 Authority to Distribute Collateral to Secured Creditor filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Motion is denied without prejudice, the Trustee having withdrawn the request.

2. 13-27771-E-11 ANGELA CATARATA — **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se — **10-10-13 [176]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case. The court docket reflects that on October 17, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

3. 10-23577-E-11 GLORIA FREEMAN — **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**
Pro Se — **9-12-13 [1044]**

Final Ruling: Pursuant to the Order Continuing Hearing on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel and for Placer County Adult Protective Services to Provide Information Concerning Possible Independent Representatives for Legal Proceedings, the hearing on this matter is continued to **1:30 p.m.** on **December 4, 2013.** See Dckt. 1209. No appearance required at the November 7, 2013 hearing.

4. 10-23577-E-11 GLORIA FREEMAN — **MOTION FOR COMPENSATION BY FLEMMER ASSOCIATES, LLP, ACCOUNTANT(S), FEES: $5,912.50, EXPENSES: $0.00**
WFH-37 **Pro Se** — **10-10-13 [1119]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Chapter 11 Trustee, all creditors, and Office of the United States Trustee on October 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to continue the Final Application for Fees to 1:30 p.m. on December 4, 2013. 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

David D. Flemmer, Trustee for the Estate, makes a Final Request for the Allowance of Fees and Expenses for Flemmer Associates, LLP, as accountants to the Trustee in this case. The period for which the fees are requested is for the period June 14, 2012 through August 7, 2013. The order of the court approving employment of counsel was entered on February 4, 2011.

Description of Services for Which Fees Are Requested

Tax Preparing 2010: Accountant spent 5.25 hours in this category for total fees of $1,443.75. Accountant describes tasks performed as preparing 2010 tax.

Tax Preparing 2011: Accountant spent 5.25 hours in this category for total fees of $1,443.75. Accountant describes tasks performed as preparing 2011 tax.

IRS Correspondence and Research: Accountant spent 1.4 hours in this category for total fees of $385. Accountant describes tasks performed as writing a letter to IRS regarding Debtor's overdue taxes as a result of trust fund liabilities and the refund that has been applied to the overdue taxes. Accountant research trust fund penalties and responded to the IRS.

Correspondence with Debtor: Accountant spent 3.55 hours in this category for total fees of $976.25. Accountant describes tasks performed as communicating wit the Debtor to obtain information necessary to file tax returns.

Fee Application: Accountant spent .5 hours in this category for total fees of $137.50. Accountant describes tasks performed as preparing fee application.

OPPOSITION BY DEBTOR

Debtor filed two oppositions to the Motion for Compensation (Dckt. 1158, 1183), which essentially raise the same three issues.

First, Debtor contends that Movant and Accountants are not disinterested parties due to conflicts with Parasec and MCLEZ, a competitor of Ulrich, Nash and Gump. Debtor contends that the Trustee and Lynn Conner admit to the conflicts of interest and that they did not disclose the conflict in their application. The Debtor provides several arguments as to the disinterestedness of the Trustee, rather than the accountants hired by the Trustee. This court will address these contentions below.

Second, Debtor contends that the Trustee took $300,000.00 from Mr. Freeman while he was not competent. First and foremost, these allegations are against the Trustee, not the accountants for the trustee, for which this application pertains. Additionally, the court is currently addressing the competency of Laurence Freeman in ongoing Status Conferences. In these proceedings, the court has clearly laid out its concerns in potential abuse by Gloria Freeman.

On September 12, 2013, the court issued an Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel. Order, Dckt. 1044. The court made the following observations in issuing the order:

> 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.
>
> In the Gloria v. Laurence Adversary, Gloria Freeman, as Debtor in Possession, stated under penalty of perjury (in the verified complaint and declarations) and alleged in pleadings W. Austin Cooper presented to the court (subject to Federal Rule of Bankruptcy Procedure 9011) that Laurence Freeman lacked the mental capacity to grant a power of attorney, operate his business, and handle his finances, and was subject to undue influence by other persons due to having suffered from a series of strokes. Further, that due to the strokes and lack of mental capacity, Laurence Freeman lacked the capacity to understand his business and financial affairs.
>
> Gloria Freeman contended that property which Laurence Freeman asserted was his separate property was actually community property in which Gloria Freeman had an interest. Gloria Freeman contended that all of such property was property of the Gloria Freeman bankruptcy estate and subject to the control of Gloria Freeman as the Debtor in Possession. 11 U.S.C. § 541(a)(2). In her declaration seeking a preliminary injunction Gloria Freeman's testimony under penalty of perjury includes: (1) The business Ulrich, Nash & Gump was started with $20,000.00 that she provided to Laurence Freeman; (2) real property was donated by Laurence Freeman to a church, which Gloria Freeman did not consent to (asserted to be community property); (3) Laurence Freeman became incapacitated in 2010 after a series of strokes; (4) Laurence Freeman was not able to perform the business functions in the operation of Ulrich, Nash & Gump (allowing professional certifications to lapse); (5) Laurence Freeman lacked the mental capacity to execute powers of attorney; (6) in 2010 Gloria Freeman sought to be appointed as the conservator for Laurence Freeman due to his lack of mental capacity; and (7) Laurence Freeman failed to pay the business insurance premiums. Through the preliminary injunction Gloria Freeman sought to have this court put her in control of Ulrich, Nash & Gump. Declaration, 10-2536 Dckt. 18.

Dckt. 1044. The court identified the following significant legal and ethical concerns with the conduct of Gloria Freeman and her attorney, W. Austin Cooper.

1. While representing Gloria Freeman, as the debtor in possession (fiduciary to the bankruptcy estate prior to a successor trustee being appointed), W. Austin Cooper and Gloria Freeman asserted that Laurence Freeman, was mentally incompetent. These contentions continued until Gloria Freeman was removed as Debtor in Possession. W. Austin Cooper, as counsel for Gloria Freeman, then met with Laurence Freeman outside the presence of his counsel in the Gloria v. Laurence Adversary. From Mr. Cooper's office, Laurence Freeman terminated his independent counsel in the adversary proceeding.

2. After receiving Laurence Freeman's call, stated to have been made from W. Austin Cooper's office, George C. Hollister filed a motion to withdraw as counsel for Laurence Freemen the Gloria v. Laurence Adversary. Mr. Hollister filed a Motion and Declaration that are raised concerns that Mr. Freeman was being manipulated by the Debtor and/or her legal counsel, Austin Cooper.

3. Subsequently, W. Austin Cooper attempted to represent Laurence Freeman in an adversary proceeding in this court to sue the Chapter 11 Trustee who is the successor to Gloria Freeman, the former Debtor in Possession. This lawsuit relates to the adversary proceeding which W. Austin Cooper, as the attorney Gloria Freeman, as debtor in possession, sued Laurence Freeman claiming that he was incompetent and that his separate property was community property which was part of the Gloria Freeman bankruptcy estate. This adversary proceeding filed by Mr. Cooper for Laurence Freeman is *Freeman v. Flemmer*, Adversary Proceeding 13-02027 ("*Laurence v. Successor Trustee*").

4. W. Austin Cooper is defending claims by the Chapter 11 Trustee in this bankruptcy case and the Chapter 11 Trustee in the Staff USA bankruptcy case (Bankr. E.D. Cal. 11-48050) to recover monies he was paid by Staff USA for work done post-petition for the Debtor in Possession. These payments were made from Staff USA prior to the commencement of its Chapter 11 case and while Gloria Freeman was in control of that company. W. Austin Cooper has not been authorized by the court (and he did not apply) pursuant to 11 U.S.C. § 327 to be counsel for either the Debtor in Possession in this case or the Debtor in Possession in the Staff USA case.

5. Gloria Freeman has and does assert that Laurence Freeman is not mentally competent to handle his business, financial, or legal affairs. Troubling is how the assertions that Laurence Freeman is subject to undue influence became a non-concern once W. Austin Cooper began appearing as Laurence Freeman's attorney and now that Gloria Freeman is preparing pleadings for Laurence Freeman to sign which are being filed in this court. At that point the Gloria Freeman (who was no longer the Debtor in Possession) and W. Austin Cooper became "allied" with Laurence Freeman, claiming that he clearly was competent and that he could make an informed decision for W. Austin Cooper to represent him.

6. Now, in the pleading prepared by Gloria Freeman, she and Laurence Freeman assert that Laurence Freeman is not and was not mentally competent and that the Settlement Agreement he entered into with the Trustee, while represented by independent legal counsel (David Schultz, not W. Austin Cooper) should be set aside.

7. Recently, Laurence Freeman has been signing pleadings prepared by Gloria Freeman. In these pleadings, Mr. Freeman purportedly asserts that (1) in 2010 a doctor certified that he was incompetent due to a stroke; (2) Ulrich, Nash & Gump had funds (or was) property of the Gloria Freeman bankruptcy estate; (3) Laurence Freeman continued to be incompetent during this Chapter 11 case; (4) Gloria Freeman was aware of Laurence Freeman's incompetency during the bankruptcy case; (5) the settlement agreement with the Trustee in the Gloria Freeman estate by which specific property was acknowledged as Laurence Freeman's separate property and the community property claims of Gloria Freeman should be rescinded; and (6) Laurence Freeman has been the victim of elder abuse.

8. A detailed declaration recounting his mental incapacity and how he was unfairly taken advantage of (as was previously alleged by Gloria Freeman in the adversary proceeding she commenced against Laurence Freeman claiming that his separate property assets were community property and part of the Gloria Freeman bankruptcy case) purporting to be the testimony of Laurence Freeman has been filed.

9. Taken on its face, Laurence Freeman admits that he is disabled, unable to represent his legal and business interests, has been the victim of elder abuse, and could not effectively engage or utilize counsel in the proceedings before this court. The court recognizes that substantial portions of Laurence Freeman's "testimony" are the arguments and contentions previously stated by Gloria Freeman in her battles with the Chapter 11 Trustee over his attempts to obtain control of, maintain, and liquidate property of the Gloria Freeman bankruptcy estate.

10. These contentions as to Laurence Freeman's lack of business, financial, legal, and mental competency continue, are most recently stated in the Gloria Freeman and Laurence Freeman Motion to Disgorge Fees, Dckt. 1031.

Id. Based on the foregoing, the court does not find Gloria Freeman's contentions that the Trustee (which this application does not concern) "took $300,000.00 from Mr. Freeman while he was not competent" credible. The court notes that Mr. Freeman does not appear to have an interest in this bankruptcy estate.

Third, Debtor argues the Trustee did not file tax returns for the estate. Again, these allegations are against the Trustee, not the accountants for the trustee, for which this applications pertains. Flemmer Associates contends that it did file the bankruptcy estate's From 1041 for 2010 and 2011 and attempted to gather information necessary to prepare the 2012 tax return. However, Flemmer Associates asserts that Debtor has been

uncooperative, created the problem for which she complains, and then had to hire new accountants to finalize the 2012 tax returns.

These issue has been raised and overruled by this court on several occasions. The Motion to Convert, filed by Debtor and heard June 6, 2013, Debtor argued that the Trustee engaged in gross mismanagement by failing to file tax returns. Civil Minutes, Dckt. 741. Chapter 11 Trustee stated that Debtor refers to mismanagement that Debtor herself conducted. Notably, Debtor alleged that Chapter 11 Trustee engaged in mismanagement throughout the case when Chapter 11 Trustee was not appointed until January of 2012. The court found that Debtor did not provide sufficient evidence to demonstrate cause for conversion. *Id.* Debtor made vague allegations and references to documents that had not been filed and provided no evidence, other than her declaration, to warrant the requested relief. *Id.* The court also noted that much of the difficulties in this case have been caused by the strategies imposed by Gloria Freeman and her counsel, originally as Debtor in Possession and as Debtor. This included her litigation against her husband and then when she allied with him after being deposed with the appointment of the Chapter 11 Trustee. The attempt to convert or dismiss this case was merely thinly veiled trustee shopping, hoping that she could get rid of the current Trustee. *Id.*

Similarly, the Motion to Remove Trustee filed by Debtor and heard on June 6, 2013, Debtor argued that the Trustee was disinterested and failed to file tax returns. The court continued the hearing to July 11, 2013, and denied the Debtor's request based on the lack of evidence showing the Trustee alleged conflict results in the Trustee's interest being adverse to the estate and on the lack of evidence supporting Debtor's contentions. Civil Minutes, Dckt. 841.

Additionally, the Motion to Remove Flemmer & Associates, initially heard on August 8, 2013, Debtor argued that Flemmer & Associates should be removed, their fees disgorged and to appoint Julie Heath. Civil Minutes, Dckt. 943. The court noted that the motion did not address the authority for the Debtor to seek an order mandating the Trustee to hire a specific professional and that the only evidence in support of the motion was the Declaration of Julie Heath, which did not state what basis she has for joining the motion to have the court order to her be employed by the Chapter 11 trustee. The court found it did not have the requisite evidence to remove the CPA for the Trustee or disgorge any fees. *Id.* The court continued the hearing but the Debtor later withdrew the motion. Dckt. 908.

Furthermore, the Motion to Stay Pending Appeal filed by the Debtor and heard on August 29, 2013, Debtor re-hashed the same arguments from the Motion to Remove the Trustee in an attempt to stay all bankruptcy proceedings. Civil Minutes, Dckt. 1018. The court found that the only evidence presented in support of the motion, the declaration filed by Gloria Freeman, was not persuasive. *Id.* The court also found that,

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

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

Id. The Debtors arguments now are a further litigation tactic as her bankruptcy case comes to a close.

Debtor then filed a Motion to Set Aside Order of Settlement Agreement in the Estate, Notice of Objection to Plan and Disclosure Statement and Request for TRO and to Return Funds purportedly with Laurence Freeman. The court noted its concern in the filing of this motion by Mr. Freeman, as it was conducting a Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, filed September 12, 2013, Dckt. 1044, and that Mr. Freeman may not be understanding the documents he is purporting to sign. Civil Minutes, Dckt. 1059. The court was not willing to proceed with the requested relief until Mr. Freeman was properly represented. *Id.*

As depicted above, Gloria Freeman has filed cases out of district, attempted to dismiss or convert this case and remove the trustee in several attempts to Trustee and forum shop. Her interactions with W. Austin Cooper and Steven Berniker (former counsel) caused actions by the Trustee to disgorge fees. The court has raised several serious issues of Gloria Freeman filing Motions on behalf of her husband, Laurence Freeman (which appear to be against his interests) and other purported abuse, which the court is currently addressing in the above referenced Status Conference.

The court notes that the arguments of Gloria Freeman are simply a rehash of factual misstatements and insufficient legal arguments that have been rejected by this court numerous times before. A prime example is in Debtor's Motion to Strike, heard October 24, 2013, in which Debtor contended that Mr. David Schultz, prior counsel for Laurence Freeman, was an unlicensed attorney. This contention that Mr. Schultz has been stated by Gloria Freeman on several occasions. At the hearing on the Motion to Strike, the court noted,

> Notwithstanding having that information, Gloria Freeman continues to state that Mr. Schultz is unlicensed. A search of the State Bar of California 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.
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> FN.1. http://members.calbar.ca.gov/fal/Member/Detail/143108.
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Civil Minutes, Dckt. 1180.

The court is not persuaded by these re-hashed arguments that (1) do not pertain to the accountants, (2) that this court has already addressed in multiple motions and hearings, (3) for which no additional (or original) evidence has been provided to the court, and (4) that have no factual basis or legal merit.

Rule 9011

It is incumbent on the parties to have researched and developed not only a good faith belief that the relief they request is based on the facts and law, but to present that to the court.

Federal Rule of Bankruptcy Procedure 9011 provides that, by presenting a petition, pleading, written motion, or other paper to the court, an attorney or unrepresented party certifies that s/he has made a reasonable inquiry under the circumstances. The purpose of Rule 9011 is to deter baseless filings and avoid unnecessary judicial effort in order to make proceedings more expeditious and less costly. 10 Collier on Bankruptcy ¶ 9011.01 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Rule 9011 requires that the parties certify in good faith that they have done their due diligence and research.

Rule 9011(b) places an affirmative duty on attorneys to make a reasonable investigation of the facts before signing and submitting any pleading or motion, thereby encouraging attorneys to "'think first and file later.'" *Id*.

Rule 11 is designed to "reduce the burden on district courts by sanctioning, and hence deterring, attorneys or **unrepresented parties** who submit motions or pleadings which cannot reasonably be supported in law or in fact." *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1542 (9th Cir. Cal. 1986)(overruled based on 1993 amendments *Hanson v. Loparex, Inc.*, 2011 U.S. Dist. LEXIS 117014 (D. Minn. Oct. 11, 2011))(emphasis added).

The court notes that any pleadings that are filed with facts or law that have not been reasonably investigated before being presented to the court can and will be sanctioned to deter such actions.

The court has granted Debtor leeway in filing pleadings and responses in this case. However, Debtor should be aware that Rule 9011 applies to attorneys and self-represented parties alike and the court can and will sanction parties that are not in compliance.

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 monitoring of the Ulrich, Nash & Gump including tax preparation.

Section 327(a) Disinterestedness

Section 327(a) authorizes the employment of professional persons, only if such persons do not hold or represent an interest adverse to the estate and are "disinterested persons," as that term is defined in section 101(14) of the Code. Section 101(14) defines "disinterested person" as a person that

> (A) is not a creditor, an equity security holder, or an insider;
>
> (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
>
> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

When determining whether a professional holds a disqualifying "interest materially adverse" under the definition of disinterested, courts have generally applied a factual analysis to determine whether an actual conflict of interest exists. 3 COLLIER ON BANKRUPTCY ¶ 327.04[2][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) Some courts have been willing to go further and find a potential conflict or appearance of impropriety as disqualifying. *See Dye v. Brown*, 530 F.3d 832, 838 (9th Cir. 2008) (in context of section 324, examining totality of circumstances, trustee's past relationship with insider created potential for materially adverse effect on estate and appearance of conflict of interest).

The U.S. Bankruptcy Appellate Panel for the Ninth Circuit agrees that a court should apply a totality-of-circumstances analysis in

determining lack of disinterestedness under § 101(14)(C). *Dye v. Brown (In re AFI Holding, Inc.)*, 355 B.R. 139, 152 (B.A.P. 9th Cir. 2006). The court does not subscribe to a rigid application of factors, however, but views them as aids for the court's discretionary review. *Id.*

Section 101(14)(C) has been described as a "catch-all clause" and appears broad enough to include anyone who in the slightest degree might have some interest or relationship that would color the independent and impartial attitude required by the Code. COLLIER, supra at 327.04[2][a]. Examples of such materially adverse interests include:

-- a prepetition claim against the debtor;

-- representation of a shareholder;

-- representation of an adversary;

-- representation of certain investors of the debtors; and

-- performance of services for an entity whose subsidiary is a member of the creditors' committee.

Id.

A professional failing to comply with the requirements of the Code or Bankruptcy Rules may forfeit the right to compensation. *Lamie v. United States Tr.*, 540 U.S. 526, 538-39 (2004). The services for which compensation is requested should be performed pursuant to appropriate authority under the Code and in accordance with an order of the court. 3 COLLIER ON BANKRUPTCY ¶ 327.03[c] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Until proper disclosure has been made, it is premature to award fees because employment is a prerequisite to compensation and until there is proper disclosure it cannot be known whether the professional was validly employed. *See First Interstate Bank of Nevada v. CIC Inv. Corp. (In re CIC Inv. Corp.)*, 175 B.R. 52, 55-56 (9th Cir. BAP 1994)(§ 327(a) "clearly states that the court cannot approve the employment of a person who is not disinterested" and "bankruptcy courts cannot use equitable principles to disregard unambiguous statutory language"). Thus, professionals must disclose all connections with the debtor, no matter how irrelevant or trivial those connections seem. *Mehdipour v. Marcus & Millichap (In re Mehdipour)*, 202 B.R. 474, 480 (B.A.P. 9th Cir. 1996)

However, the bankruptcy court has discretion to excuse a failure to disclose. *CIC Inv. Corp.*, 175 B.R. at 54. Once the bankruptcy court acquaints itself with the true facts, it "has considerable discretion in determining to allow all, part or none of the fees and expenses of a properly employed professional." *Movitz v. Baker (In re Triple Star Welding, Inc.)*, 324 B.R. 778, 789 (B.A.P. 9th Cir. 2005). *See also Film Ventures Int'l Inc.*, 75 B.R. 250, 253 (B.A.P. 9th Cir. Cal. 1987) ("[T]he trial court is in the best position to resolve disputes over legal fees."). If the bankruptcy court finds no need to take remedial measures, it appropriately can do so in the exercise of its discretion. *CIC Inv. Corp.*, 175 B.R. at 54 (*citing Film Ventures Int'l, Inc.*, 75 B.R. at 253).

Evidence of Disinterestedness

The Debtor offers no evidence in support of this Motion. The issue of the Accountant's disinterestedness has been raised in her opposition as mere argument. Dckts. 1158, 1183.

However, the parties do not have any significant dispute as to the under lying facts. The evidence before the court on the issue of disinterestedness and adverse interests are the declarations filed by the Trustee and Flemmer and Associates, accountants for Trustee. Declaration of David Flemmer, Dckt. 1122; Declaration of Lynn Conner, Exhibit D, Dckt. 1121.

Flemmer Associates is a partnership owned 51% by David D. Flemmer, and 49% by Paracorp, Incorporated, dba Parasec ("Parasec"). Conner Declaration ¶ 3. Debtor argues Parasec was a business in competition with UNG, a business that the Trustee was asserting (based on the adversary proceeding commenced by Gloria Freeman, as debtor in possession). Counsel for Trustee contends that Parasec is not a legal education business but bills itself as a 35 year old company offering legal support services in the form of document filing and retrieval for attorneys and business entities nationwide. *See also* Conner Declaration ¶ 2.

Accountant admits that for a short period of time, commencing after September 2010 and terminating recently, Parasec had entered into an agreement in which MCLEZ, an unrelated company providing continuing legal education products. Conner Declaration ¶ 5. Accountant contends that the agreement between Parasec and MCLEZ was a minor marketing agreement giving MCLEZ access to Parasec's customers, and generated $1,112.97 over a span of two and one half years. Conner Declaration ¶ 6.

Accountant states that Flemmer Associates, L.P. does not own Parasec, or any part of Parasec, but is an employee-owned company. Flemmer Declaration ¶ 4. Mr. Flemmer states that his involvement with UNG lasted from January 2011 to May 2011 when Larry Freeman locked him and Flemmer Associates out of the business. Flemmer states that Mr. Freeman has exclusive control over the operation of the business and he merely had oversight over the financial accounting functions of the business. Flemmer Declaration ¶ 8.

Conner testifies that in January 2011 she was requested to assist in this bankruptcy case. Conner Declaration ¶ 7. Conner states she disclosed the fact that she wrote and presented CLE seminars on a pro bono basis and that Mr. Freeman was uncomfortable with her providing insights so the two agreed to keep the relationship strictly to accounting. *Id.* at ¶ 8. Conner states she did not take any proprietary or confidential information from UNG during the four months that she was allowed to assist in the accounting functions of UNG. *Id.* at ¶ 8, 11.

The following undisputed facts relating to this motion are the following:

1. Parasec is one of the partners of Flemmer & Associates, holding a 49% interest;

2. Flemmer & Associates oversaw the financial accounting of UNG (then a part of the bankruptcy estate of Gloria Freeman);

3. Parasec entered into an agreement in which MCLEZ, an unrelated company providing continuing legal education products, would market to Parasec's customers through their website;

4. Parasec generated $1,112.97 over a span of two and one half years from the agreement;

5. Lynn Conner, Chairman of the Board of Paracorp, assisted in this bankruptcy case by providing accounting services to UNG.

There are three different definitions of disinterested person under section 101(14). First, Flemmer Associates is not a creditor, an equity security holder or an insider of the Debtor, Gloria Freeman. 11 U.S.C. § 101(14)(A). If the Debtor is an individual, an insider is (i)a relative of or a general partner of the debtor; (ii) a partnership in which the debtor is a general partner, (iii) general partner of the debtor; or (iv) corporation of which the debtor is a director, officer or person in control. 11 U.S.C. § 101(31)(A). Flemmer Associates is not any of the above to Debtor Gloria Freeman. Second, Flemmer Associates is not a director, officer, or employee of the Debtor. 11 U.S.C. § 101(14)(B).

The third definition of disinterested person is provided in § 101(14)(C) which states, in relevant part, that a "disinterested person" means a person that:

> does not have an interest materially adverse to the interest of the estate or of any class of creditors . . . by reason of any direct or indirect relationship to, connection with, or interest in, the debtor . . . or for any other reason.

The term "adverse interest" is not defined in the Bankruptcy Code, but the reported cases have defined what it means to hold an adverse interest as follows: (1) to possess or assert any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate. *In re Perry, 194 B.R. 875, 878-79 (Bankr. E.D. Cal. 1996) citing Bank Brussels Lambert v. Coan (In re AroChem Corp.)*, 176 F.3d 610, 623 (2d Cir. 1999); *Kravit, Gass & Weber, S.C. v. Michel (In re Crivello)*, 134 F.3d 831, 835 (7th Cir. 1998); *Electro-Wire Prods., Inc. v. Sirote & Permutt (In re Prince)*, 40 F.3d 356, 361 (11th Cir. 1994); *In re Roberts*, 46 B.R. 815, 826-27 (Bankr. D. Utah 1985), *aff'd in relevant part*, 75 B.R. 402 (D. Utah 1987).

Examples of such materially adverse interests include, a prepetition claim against the debtor (*Sholer v. Bank of Albuquerque (In re Gallegos)*, 68 B.R. 584 (Bankr. D.N.M. 1986)); representation of a shareholder (*In re Temp-Way Corp.*, 95 B.R. 343 (E.D. Pa. 1989), *In re Git-N-Go, Inc.*, 321 B.R. 54 (Bankr. N.D. Okla. 2004), *In re Carrousel Motels, Inc.*, 97 B.R. 898

(Bankr. S.D. Ohio 1989), *In re Hoffman*, 53 B.R. 564 (Bankr. W.D. Ark. 1985)); representation of an adversary (*In re Johore Inv. Co.*, 49 B.R. 710 (Bankr. D. Haw. 1985)); representation of certain investors of the debtors (*In re Envirodyne Indus.*, 150 B.R. 1008 (Bankr. N.D. Il. 1993)); and performance of services for an entity whose subsidiary is a member of the creditors' committee (*In re Hub Business Forms, Inc.*, 146 B.R. 315 (Bankr. D. Mass. 1992)).

The ultimate question is if Flemmer Associates has an interest materially adverse to the interest of the estate by reason of any direct or indirect relationship to or connection with Gloria Freeman, the Chapter 11 Debtor. This can be separated into three issues.

First, does Flemmer Associates posses or assert an economic interest that would lessen the value of the bankruptcy estate? The bankruptcy estate consists of the assets of the individual Chapter 11 Debtor, which in this case includes a community interest in a non-debtor entity, UNG. The chapter 11 Trustee does not run a company that an individual debtor owns an interest in, but must administer assets owned by the Debtor. UNG is not the Debtor, but a separate and distinct entity. Nor is UNG a creditor of the estate. It appears that providing accounting services to an asset of the estate would not lessen the value to the overall estate. The parties have agreed that Accountant did not harm the business or take proprietary information. Therefore, Flemmer Associates does not possess or assert an economic interest that would lessen the value of Gloria Freeman's estate.

As to the issue of Lynn Conner, Chairman of the Board of Paracorp, and also member of Flemmer Associates providing accounting services to UNG, the court applies the same rationale. Does this connection lessen the value of the bankruptcy estate? Again, the services provided are undisputedly harmless. It is not disputed that Lynn Conner did not have access to proprietary information, as Mr. Freeman did not allow her to take or possess any information regarding their clients. Lynn Conner testifies that the services provided were strictly accounting related in her capacity as an employee of Flemmer Associates.

Second, does Flemmer Associates possess or assert an interest that would create an actual or potential dispute in which the estate is a rival claimant? The parties agree that no actual dispute exists. Flemmer Associates does not "possess or assert" an interest in Gloria Freeman, UNG, or MCLEZ. A partner holding a 49% interest of Flemmer Associates, Parasec, may hold an interest to UNG, through its contract with a competing business, MCLEZ, but UNG is not the Debtor and Parasec is not the accounting Firm. The Debtor is Gloria Freeman, who held a disputed community property interest in UNG and the accounting firm is Flemmer Associates. Thus, the estate of Gloria Freeman, would not appear to potentially be a rival claimant to any interest asserted by Flemmer Associates. If UNG was the Debtor, the analysis would be much different, as it would be if Parasec was the accounting firm. The circumstances here are too attenuated when the Debtor is the individual Gloria Freeman and the accountant is the partnership Flemmer Associates.

As to the issue of Lynn Conner, Chairman of the Board of Paracorp, and also member of Flemmer Associates providing accounting services to UNG,

the court finds that no actual dispute arose. Does this interest create a potential dispute in which the estate is a rival claimant? Flemmer Associates having an employee that is also on the board of Paracorp, as a separate and distinct corporation, does not appear to create a dispute in the estate of Gloria Freeman. The contention is that Lynn Conner could have, if provided access, stolen "private information" from UNG in her capacity as accountant with Flemmer Associates, does not amount to there being a disqualifying interest.

UNG is a non-debtor entity, in which the estate (at that time) asserted it had a community property interest (this was hotly contested at the time by Laurence Freeman). Parasec, a entity with an interest in Flemmer Associates, is not an accounting firm nor does competing business with UNG. Parasec's contract with MCLEZ was for advertizing purposes only in which Parasec generated $1,112.97 over a span of two and one half years. This demonstrates the attenuated relationship and the lack of any interest in the success or failure of MCLEZ.

There is no evidence that MCLEZ had any control over Parasec or vice versa. There is not sufficient evidence before the court that a potential dispute exists between the estate of Gloria Freeman and an accountant at Flemmer Associates providing limited accounting services to a non-debtor entity.

Third, does Flemmer Associates possess a predisposition under circumstances that render a bias against the estate of Gloria Freeman? Gloria Freeman's interest in UNG is part of the bankruptcy estate. Flemmer Associates has a partner (holding a 49% interest), Parasec that has a contract with a known Competitor, MCLEZ. MCLEZ was allowed to advertize their products on Parasec's website. There is no indication that this contract would interfere with the accounting firm, Flemmer Associates, or their interactions with the services they provide to bankruptcy estates. Again, if UNG was the actual entity in bankruptcy, the court would be more inclined to find a potential for bias against them, but the facts here are Gloria Freeman, the individual is the debtor in the instant case. Further, Parasec is not the accounting firm providing services, rather Flemmer Associates is the accounting firm. The court finds these circumstances do not create a bias against the estate.

The issue of Lynn Conner, Chairman of the Board of Paracorp, and also member of Flemmer Associates providing accounting services to UNG does not create bias against the estate of Gloria Freeman. Again, the services provided did not harm the non-debtor entity. Again, the fear asserted is that Lynn Conner could have stolen "private information," if given access to it, from UNG in her capacity as accountant with Flemmer Associates. She could have then imparted that "private information" to MCLEZ, an asserted competitor of UNG. The bias against the estate would be that Gloria Freeman's community property interest in UNG would be lessened because the competitor would have some sort of advantage in the business and UNG would lose profit. There are too many "ifs" in this scenario. The key is that Flemmer Associates did not have a direct adverse interest against the estate of Gloria Freeman, which contained an interest in the non-debtor entity UNG.

The court has also considered whether this relationship even creates an appearance of impropriety. The court concludes that it does not. When the actual facts are known, Parasec has no economic connection with the success or failure of MCLEZ. The business transactions were minimal, quite possibly dropping below the radar for all but the lowest level of employees at Parasec.

Additionally, when this revelation was presented to the court, Trustee, and Accountant, the Trustee and Accountant agreed to terminate the employment. On the one hand, Gloria Freeman could argue that they had been caught with their hand in the cookie jar and scurried away. Alternatively, and the facts bear this out, it could well be that once identifying this issue, the Accountant and Trustee determined that to avoid any argument over the appearance of impropriety the proper course of action was to obtain replacement counsel.

This objection of Gloria Freeman must be considered in context of her actions in this case. Since the Trustee was appointed, every step of the way Gloria Freeman, with the assistance of her former attorney W. Austin Cooper, challenged and attempted to depose the Chapter 11 Trustee, counsel for the Chapter 11 Trustee and accountants. This objection has the character of another device used to delay, harass, and derail the Chapter 11 Trustee in attempting to prosecute this Chapter 11 case.

Based on a review of the evidence before the court, the case law on adverse interests, and the arguments of the parties, the court is not persuaded that the attenuated connections are sufficient under the totality of the circumstances to warrant denial of fees for the accountants.

FEES ALLOWED

The hourly rates for the fees billed in this case are $275.00/hour for accountant for 21.5 hours. The court finds that the hourly rates reasonable and that accountant effectively used appropriate skill and rates for the services provided.

Total interim professional fees for Accountant are allowed pursuant to 11 U.S.C. § 331, which are subject to final review pursuant to 11 U.S.C. § 330, in the amount of $5,912.50. The court commonly authorizes the payment of 50% of the fees on an interim basis. However, due to the complexity of the case, the court authorizes the Plan Administrator to pay 60% of the allowed fees, which is $3,547.50, from the available funds of the Estate as permitted by any stipulation or order authorizing the use of cash collateral or from unencumbered funds in a manner consistent with the order of distribution in this Chapter 11 case.

Accountant is allowed, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Accountant’s Fees	$5,912.50

For a total final allowance of $5,912.50 in Accountant’s Fees in this case.

Debtor filed a Notice of Unavailability on October 30, 2013. The court will award the above stated fees and continue the hearing to final hearing on 1:30 p.m. on December 4, 2013. Because of the modest amount of fees, the court will not make an interim award.

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 the hearing on the Motion for Final Allowance of Compensation for Flemmer Associates, LLP is continued to 1:30 p.m. on December 4, 2013.

5. 10-23577-E-11 WFH-41 | **GLORIA FREEMAN** **Pro Se** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEE'S ATTORNEY(S), FEES: $102,450.00, EXPENSES: $1,458.54** **10-10-13 [1126]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, all creditors, and Office of the United States Trustee on October 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to continue the Fourth and Final Application for Fees to 1:30 p.m. on December 4, 2013, and to allows on an interim basis and authorizes payment of $61,470.00 of the fees and $1,458.54 . 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

Wilke, Fleury, Hoffelt, Gould & Birney ("Wilke Fleury"), counsel to Chapter 11 Trustee for the Estate, makes a Fourth and Final Request for the Allowance of Fees and Expenses. The period for which the fees are requested is for the period April 19, 2013 through September 23, 2013. The order of the court approving employment of counsel was entered on February 4, 2011.

Description of Services for Which Fees Are Requested

Asset Analysis and Recovery: Counsel spent 14.9 hours in this category for total fees of $5,799.00. Counsel describes tasks performed as filing an order to show cause directed at Steven Berniker and W. Austin Cooper. Additionally, Counsel prepared a motion for approval of the agreement reached between two Trustees and Mr. Bernicker.

Case Administration: Counsel spent 88.5 hours in this category for total fees of $32,562.00. Counsel describes tasks performed as responding to 495 pleadings filed by Debtor and attending hearings on various motions such as a motion to convert or dismiss the case. Additionally, Counsel reviewed monthly operating reports and conferred with creditors and the Office of the United States Trustee.

Exemptions: Counsel spent 34.2 hours in this category for total fees of $13,326.00. Counsel describes tasks performed as evaluating and objecting to Schedule C filed by the Debtor with three separate amendments.

Fee/Employment Applications: Counsel spent 20.9 hours in this category for total fees of $8,037.00. Counsel describes tasks performed as preparing its third and fourth interim fee applications and prosecuting its third interim fee application. Counsel also prepared and filed an application to retain Gonzales & Sisto and fee application for Flemmer Associates, LLP.

Freeman II & Counsel Withdrawal: Counsel spent 37.2 hours in this category for total fees of $13,902.00. Counsel describes tasks performed as representing the Trustee in Freman v. Flemmer, Adv. Pro. No. 13-2027. Counsel filed a motion to compel defendant's counsel to withdraw, prepared for and responded to discovery, and corresponded with Defendant's potential attorney.

Other Contested Matters: Counsel spent 8.3 hours in this category for total fees of $3,237.00. Counsel describes tasks performed as preparing an opposition brief for the Bankruptcy Appellate Panel on whether or not bankruptcy court's order denying Debtor's motion to remove the Chapter 11 Trustee is interlocutory and whether leave should be granted to allow Debtor to appeal the order.

Plan and Disclosure Statement: Counsel spent 88.5 hours in this category for total fees of $32,562.00. Counsel describes tasks performed as filing a plan and a disclosure statement, obtaining approval of the

disclosure statement, and obtaining confirmation of the plan over the objection of the Debtor.

Relief from Stay: Counsel spent .9 hours in this category for total fees of $351.00. Counsel describes tasks performed as reviewing and filing a non-opposition to a motion for relief from stay.

OPPOSITION BY DEBTOR

Debtor filed two oppositions to the Motion for Compensation (Dckt. 1155, 1186), which essentially raise the same issues. Debtor opposes the Motion for Compensation for the following reasons.

First, Debtor alleges the Trustee stole her mailbox and laptop and was purposefully sending notices to the wrong address. First, the Debtor does not make clear how Counsel was involved with this alleged conduct. Second, Debtor does not provide any evidence in support of these conclusory contentions. Furthermore, this allegation, as well as several similar vague allegations and references for which no evidence has been provided to the court, has been addressed by this court at the hearing on the Motion to Convert, Civil Minutes, Dckt. 741.

Second, Debtor claims that the Trustee failed to disclose that he is being sued in *Freeman v. Flemmer* (Case No. 13-2027) by Laurence Freeman for his failure to honor a "settlement agreement" that was approved by the court in July 11, 2012. Debtor also raises the argument that the Trustee did not file tax returns for the estate that have not been filed. Again, these allegations are against the Trustee, not the Counsel for the trustee, for which this applications pertains.

These issues have also been raised and overruled by this court on several occasions. The Motion to Convert, filed by Debtor and heard June 6, 2013, Debtor argued that the Trustee engaged in gross mismanagement by failing to file tax returns. Civil Minutes, Dckt. 741. Chapter 11 Trustee stated that Debtor refers to mismanagement that Debtor herself conducted. Notably, Debtor alleged that Chapter 11 Trustee engaged in mismanagement throughout the case when Chapter 11 Trustee was not appointed until January of 2012. The court found that Debtor did not provide sufficient evidence to demonstrate cause for conversion. *Id.* Debtor made vague allegations and references to documents that had not been filed and provided no evidence, other than her declaration, to warrant the requested relief. *Id.* The court also noted that much of the difficulties in this case have been caused by the strategies imposed by Gloria Freeman and her counsel, originally as Debtor in Possession and as Debtor. This included her litigation against her husband and then when she allied with him after being deposed with the appointment of the Chapter 11 Trustee. The attempt to convert or dismiss this case was merely thinly veiled trustee shopping, hoping that she could get rid of the current Trustee. *Id.*

Similarly, the Motion to Remove Trustee filed by Debtor and heard on June 6, 2013, Debtor argued that the Trustee was disinterested and failed to file tax returns. The court continued the hearing to July 11, 2013, and denied the Debtor's request based on the lack of evidence showing the Trustee alleged conflict results in the Trustee's interest being adverse to

the estate and on the lack of evidence supporting Debtor's contentions. Civil Minutes, Dckt. 841.

Additionally, the Motion to Remove Flemmer & Associates, initially heard on August 8, 2013, Debtor argued that Flemmer & Associates should be removed, their fees disgorged and to appoint Julie Heath. Civil Minutes, Dckt. 943. The court noted that the motion did not address the authority for the Debtor to seek an order mandating the Trustee to hire a specific professional and that the only evidence in support of the motion was the Declaration of Julie Heath, which did not state what basis she has for joining the motion to have the court order to her be employed by the Chapter 11 trustee. The court found it did not have the requisite evidence to remove the CPA for the Trustee or disgorge any fees. *Id.* The court continued the hearing but the Debtor later withdrew the motion. Dckt. 908.

Furthermore, the Motion to Stay Pending Appeal filed by the Debtor and heard on August 29, 2013, Debtor re-hashed the same arguments from the Motion to Remove the Trustee in an attempt to stay all bankruptcy proceedings. Civil Minutes, Dckt. 1018. The court found that the only evidence presented in support of the motion, the declaration filed by Gloria Freeman, was not persuasive. *Id.* The court also found that,

> the Debtor is attempting to use this one instance in which an asset that Laurence Freeman asserted was his separate asset and in which the Debtor had no interest as the reason to bring the bankruptcy case to a halt. She seeks to stop the Trustee from objecting to her claim of exemption. She seeks to stop the Trustee from attempting to confirm a Plan. She seeks to have the Trustee stop in his efforts to recover monies received by W. Austin Cooper for representing the Debtor in Possession when he was not approved to so represent the Debtor in Possession and which monies were transferred from a related entity that the Debtor controlled, with the monies being paid shortly before the Debtor had the related entity commence its own Chapter 11 case (for which a trustee has been appointed). W. Austin Cooper was the attorney for the related entity, controlled by the Debtor, during the period in which it was Debtor in Possession.

Id. The Debtors arguments now are a further litigation tactic as her bankruptcy case comes to a close.

Much of the same contentions were argued in the Motion to Remove Wilke Fleury, heard July 25, 2013, Dckt. 880. The court found that the Debtor had not provided any evidence or explanation of her conclusory statements against Mr. Egan or Wilke Fleury and "the Debtor provides broad allegations and witnesses who provide the court with their conclusions, not evidence of specific events and circumstances." Dckt. 880. The court also stated that Debtor wished to remove Counsel because they are "not doing her bidding in this case." *Id.*

Fourth, Debtor also contends that Movant and the Trustee are not disinterested parties due to conflicts with Parasec MCLEZ, a competitor of

Ulrich, Nash and Gump. These arguments appear to related not to Counsel for the Trustee, but a potential conflict with the Trustee and his accountants. Nevertheless, the court will address these contentions below.

Fifth, Debtor also asserts that the Trustee has filed irrelevant motions related to Staff USA Inc., and interfered with Estate of Staff USA, Plazaria, Premium Access and Sunfair. Additionally, Debtor asserts that the Trustee should not have filed Chapter 11 plan and disclosure, instead this case will be better served through Chapter 7 liquidation. Again, these allegations are against the Trustee, not the Counsel for the trustee, for which this applications pertains. Furthermore, these re-hashed allegations have already been addressed by this court.

The court addressed these same contentions at the hearing on the Motion to Remove Wilke Fleury. The court stated,

> Debtor alleges several other acts by the Trustee's attorney, including that the attorney hastily rushed to file a Chapter 11 plan and disclosure statement and included a provision for the disabled debtor to pay $250,000, which Debtor argues is unfair and biased. Debtor further claims the Attorney's fees and reports are inaccurate and he is continuing to "milk the estate." However, no evidence has been presented to the court regarding any of these accusations. The testimony provided does not explain how these actions, if true violate the Bankruptcy Code. How does hastily rushing to file a Chapter 11 Plan and disclosure statement a biased act by the Trustee's attorney? How is the $250,000 provision in the "settlement agreement" unfair and biased? How are the attorney fees inaccurate? How are the attorney reports (whatever those may be) inaccurate? How is the attorney "milking the estate"? What injury or damage has the attorney inflicted on the estate? The Debtor has not provided any evidence or explanation of her conclusory statements against Mr. Egan and Wilke Fleury.

Civil Minutes, Dckt. 880.

The court also noted at the hearing on the Motion to Convert, that

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

> Freeman. This is similar to the judge shopping that Gloria Freeman and her counsel engaged in when they filed the Staff USA bankruptcy case in the Northern District of California. That case was transferred to the Eastern District of California, the judge in the Northern District of California concluding that it was improperly filed in that District.

Civil Minutes, Dckt. 741.

The court also noted in the Motion for Third Interim Compensation for Wilke Fleury, that

> The Debtor is correct, there are significant legal fees in this case. This has appears to have occurred for a number of reasons. First, there has been significant litigation in this case and the related Adversary Proceedings. That litigation centers around the pre- and post-petition conduct of the Debtor, counsel for her as Debtor in Possession, and Lawrence. This has also been caused because of the many related entities and disputes which arose in connection with those case. These disputes include the interests of the Debtor's brother and sister in law and the claims of the Trustee in the Staff U.S.A, Inc. case that monies from that business were paid to bankruptcy counsel and family law counsel of the Debtor in Possession.
>
> In reviewing all of the litigation, contentions made by Lawrence Freeman, positions advanced by the Debtor and counsel while as Debtor in Possession and now as Debtor, the asserted conflicts of interest by the Debtor against her attorney, and the attorney who represented the estate while the Debtor served as Debtor in Possession now representing Lawrence Freeman against the estate, the court is convinced that a significant amount of these legal expenses are the Debtor's own doing. These have arisen not because of mistake or inadvertence, but the intentional conduct and strategy of the Debtor and her attorney representing the estate when she was Debtor in Possession and now attempting to represent Lawrence Freeman against the Chapter 11 Trustee.

Civil Minutes, Dckt. 823.

The court notes that 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. 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 over 1200 docket entries. This rivals the 1184 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 her prior counsel, W. Austin Cooper.

Gloria Freeman has displayed litigation tactics that necessitated the Trustee to file several motions, responses and replies. 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.

It appears much of the "irrelevant motions" and "interference" was caused by Gloria Freeman herself, not Counsel for the Trustee.

Sixth, Debtor asserts that Counsel has "continued to discriminate against the disabled steal their funds, deny them their rights, and are continuing to violate the ADA and ADAA in this courthouse through their unscrupulous actions." Dckt. 1155, 9:17-19. Debtor does not cite to specific portions of the ADA or ADAA that Counsel has allegedly violated, any specific disabilities or any specific acts by Counsel that would be considered discrimination. Nor does debtor provide any evidence in support of these conclusions.

The court also addressed this contention at the Motion to Remove Wilke Fleury and found,

> The present motion and declarations do not provide any specifics about any disabilities for the Debtor or Mr. Freeman, or how Mr. Freeman has gone from disabled and incompetent when sued by the estate, to not disabled and competent when the Debtor was removed as debtor in possession for cause, to once again disabled and incompetent when the Debtor wants to have Mr. Freeman disavow the settlement in Adversary Proceeding 10-2536.

Civil Minutes, Dckt. 880. The court concluded that the protestations of the Debtor is that Counsel does not trust them. This is not sufficient to find that Counsel engaged in any discriminatory conduct.

Seventh, with respect to the attorneys' fees itself, Debtor argues that billing is grouped and time was not kept in periods of one-tenths of an hour. She also argues that the time entries lack sufficient detail, the summary sheet does not include the total hours billed, total amount billing for each person, and total compensation received to date.

As to the specific issues related to the attorneys' fees, Movant does not block bill. Dckt. 1129, Exhibit B. Movant provides sufficient detail for each entry and it is recorded in increments of one-tenth of an hour. Dckt. 1129, Exhibit B. Movant provides names of the individuals providing legal services, number of hours and billed for each professional, and total amount billed. Dckt. 1129, Exhibit B, pages 21-22.

Each motion is not viewed in isolation; rather the court determines the issues and the parties credibility based on the entirety of the case. Here, Gloria Freeman is essentially a pot calling the kettle black in asserting that the Trustee, his accountants and Counsel have conflicts. As depicted above, Gloria Freeman has filed cases out of district, attempted to dismiss or convert this case and remove the trustee in several attempts to

Trustee and forum shop. Her interactions with W. Austin Cooper and Steven Berniker (former counsel) caused actions by the Trustee to disgorge fees. The court has raised several serious issues of Gloria Freeman filing Motions on behalf of her husband, Laurence Freeman (which appear to be against his interests) and other purported abuse, which the court is currently addressing in the above referenced Status Conference.

The court notes that the arguments of Gloria Freeman are simply a rehash of factual misstatements and insufficient legal arguments that have been rejected by this court numerous times before. A prime example is in Debtor's Motion to Strike, heard October 24, 2013, in which Debtor contended that Mr. David Schultz, prior counsel for Laurence Freeman, was an unlicensed attorney. This contention that Mr. Schultz has been stated by Gloria Freeman on several occasions. At the hearing on the Motion to Strike, the court noted,

> Notwithstanding having that information, Gloria Freeman continues to state that Mr. Schultz is unlicensed. A search of the State Bar of Californias 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 Freemans argument and representations to this court.
> ---
> FN.1. http://members.calbar.ca.gov/fal/Member/Detail/143108.
> ---

Civil Minutes, Dckt. 1180.

The court is not persuaded by these re-hashed arguments that (1) do not pertain to Counsel, (2) that this court has already addressed in multiple motions and hearings, (3) for which no additional (or original) evidence has been provided to the court, and (4) that have no factual basis or legal merit.

Rule 9011

It is incumbent on the parties to have researched and developed not only a good faith belief that the relief they request is based on the facts and law, but to present that to the court.

Federal Rule of Bankruptcy Procedure 9011 provides that, by presenting a petition, pleading, written motion, or other paper to the court, an attorney or unrepresented party certifies that s/he has made a reasonable inquiry under the circumstances. The purpose of Rule 9011 is to deter baseless filings and avoid unnecessary judicial effort in order to make proceedings more expeditious and less costly. 10 Collier on Bankruptcy

¶ 9011.01 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Rule 9011 requires that the parties certify in good faith that they have done their due diligence and research.

Rule 9011(b) places an affirmative duty on attorneys to make a reasonable investigation of the facts before signing and submitting any pleading or motion, thereby encouraging attorneys to "'think first and file later.'" *Id*.

Rule 11 is designed to "reduce the burden on district courts by sanctioning, and hence deterring, attorneys or **unrepresented parties** who submit motions or pleadings which cannot reasonably be supported in law or in fact." *Golden Eagle Distrib. Corp. v. Burroughs Corp*., 801 F.2d 1531, 1542 (9th Cir. Cal. 1986)(overruled based on 1993 amendments *Hanson v. Loparex, Inc*., 2011 U.S. Dist. LEXIS 117014 (D. Minn. Oct. 11, 2011))(emphasis added).

The court notes that any pleadings that are filed with facts or law that have not been reasonably investigated before being presented to the court can and will be sanctioned to deter such actions.

The court has granted Debtor leeway in filing pleadings and responses in this case. However, Debtor should be aware that Rule 9011 applies to attorneys and self-represented parties alike and the court can and will sanction parties that are not in compliance.

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 advice and counsel to Chapter 11 Trustee, investigation of Debtor's assets and liabilities, and litigation and settlement against Larry Freeman related to Ameriprise fund, Moss Lane Property, and Ulrich Nash & Gump.

Section 327(a) Disinterestedness

Section 327(a) authorizes the employment of professional persons, only if such persons do not hold or represent an interest adverse to the estate and are "disinterested persons," as that term is defined in section

101(14) of the Code. Section 101(14) defines "disinterested person" as a person that

> (A) is not a creditor, an equity security holder, or an insider;
>
> (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
>
> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

When determining whether a professional holds a disqualifying "interest materially adverse" under the definition of disinterested, courts have generally applied a factual analysis to determine whether an actual conflict of interest exists. 3 COLLIER ON BANKRUPTCY ¶ 327.04[2][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) Some courts have been willing to go further and find a potential conflict or appearance of impropriety as disqualifying. *See Dye v. Brown*, 530 F.3d 832, 838 (9th Cir. 2008) (in context of section 324, examining totality of circumstances, trustee's past relationship with insider created potential for materially adverse effect on estate and appearance of conflict of interest).

The U.S. Bankruptcy Appellate Panel for the Ninth Circuit agrees that a court should apply a totality-of-circumstances analysis in determining lack of disinterestedness under § 101(14)(C). *Dye v. Brown (In re AFI Holding, Inc.)*, 355 B.R. 139, 152 (B.A.P. 9th Cir. 2006). The court does not subscribe to a rigid application of factors, however, but views them as aids for the court's discretionary review. *Id.*

Section 101(14)(C) has been described as a "catch-all clause" and appears broad enough to include anyone who in the slightest degree might have some interest or relationship that would color the independent and impartial attitude required by the Code. COLLIER, supra at 327.04[2][a]. Examples of such materially adverse interests include:

> -- a prepetition claim against the debtor;
>
> -- representation of a shareholder;
>
> -- representation of an adversary;
>
> -- representation of certain investors of the debtors; and
>
> -- performance of services for an entity whose subsidiary is a member of the creditors' committee.

Id. The Court of Appeals for the Second Circuit held that the distinction between the "interest adverse" and "disinterested" prongs of section 327(a) is that the former forbids persons who represent interests adverse to the

estate from also being employed by the trustee under section 327(a); in contrast, the latter focuses on the interest held by, that is personal to, the professional and does not forbid persons who represent, rather than have or hold, interests adverse to creditors or equity security holders from also representing the estate. *Bank Brussels Lambert v. Coan (In re AroChem Corp.)*, 176 F.3d 610 (2d. Cir. 1999).

A professional failing to comply with the requirements of the Code or Bankruptcy Rules may forfeit the right to compensation. *Lamie v. United States Tr.*, 540 U.S. 526, 538-39 (2004). The services for which compensation is requested should be performed pursuant to appropriate authority under the Code and in accordance with an order of the court. 3 COLLIER ON BANKRUPTCY ¶ 327.03[c] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Evidence of Disinterestedness

The Debtor offers no evidence in support of her opposition to this Motion. No declaration is attached to the opposition. Debtor filed an "Exhibit List" consisting of a list of 85 documents. However, none of these documents are (1) attached to the exhibit list or appear anywhere on the docket; (2) are properly authenticated; or (3) are organized in a manner where the court is able to determine which exhibits support individual factual allegations set forth in the opposition. The issue of the Counsel's disinterestedness has been raised in her opposition as mere argument. Dckts. 1155, 1186.

The only evidence before the court on the issue of disinterestedness and adverse interests is the declaration filed by the Daniel Egan of Wilke Fleury. Declaration of Daniel Egan, Dckt. 1128.

The court distills two different allegations of disinterestedness by Counsel from the opposition filed by Debtor.

First, Debtor contends that Counsel has a conflict because Flemmer Associates and Trustee have a conflict with the allegedly competing business Paracorp with Ulrich Nash & Gump (Laurence Freeman's separate property business). The Debtor does not make clear how Mr. Egan or Wilke Fleury are involved with this entity. Furthermore, there is no evidence that Counsel or Wilke Fleury has any interest in Paracorp, Flemmer Associates, LLP or Ulrich Nash & Gump. The allegations set forth by Debtor appear to lump the Trustee, his Counsel and his accountants into one entity. The court addressed this same contention at the hearing on the Motion to Remove Wilke Fleury on July 25, 2013. Dckt. 880. There is no evidence that Counsel has any adverse interest to the estate on this basis.

Second, the contention that Counsel has a conflict with Bank of America does not have merit. The court also addressed this at the hearing on the Motion to Remove Wilke Fleury on July 25, 2013, stating,

> Debtor states that Mr. Egan admitted to representing Bank of America and that the relationship has created numerous conflicts because Mr. Egan and Wilke Fleury are "in alliance" with Bank of America. However, Debtor has not clarified what conflicts have been created through the

> previously disclosed relationship between the parties, how Bank of America is involved in the present case, and what harm or injury has occurred through the alleged conflict.

Civil Minutes, Dckt. 880. Debtor has not since refined her arguments against Counsel or more importantly, provided any evidence in support of her contentions that Counsel is disinterested because of any connection with Bank of America.

The court is not persuaded with Debtor's allegations and the evidence is insufficient under the totality of the circumstances to warrant denial of fees for Counsel.

Debtor provides no supporting evidence in support of her opposition to this motion and simply rehashes factual allegations that have been refuted by this court. Most of the arguments are arguments toward Mr. Flemmer as Trustee, not any alleged conflicts with Counsel. The court does not find merit in Debtor's arguments.

CONDUCT OF DEBTOR AND DEBTOR'S COUNSEL

The court takes very seriously the duties of representatives of bankruptcy estates, whether they be trustees, debtors in possession, or Chapter 13 debtors (the "estate fiduciary"), and the professionals hired to representative the estate fiduciary. This case has beset with issues relating to the conduct of representatives of fiduciaries and some of the parties. As is chronicled above and through the various rulings of this court, the Debtor and her counsel have engaged in a campaign to delay, hinder, and derail the prosecution of this Chapter 11 case and the related Chapter 11 (recently converted to Chapter 7) case for Staff USA, Inc., Bankr. ED Cal. 11-48050. Though she and her counsel, W. Austin Cooper, commenced the voluntary Chapter 11 cases for Gloria Freeman and Staff USA, Inc., the conduct of the Debtors in Possession were sufficient cause for the appointment of Chapter 11 Trustees.

As demonstrated by the present objections, Gloria Freeman's oppositions and attacks are based largely on unsupported allegations and contentions. As the present case has developed, these contentions and allegations change, fitting whatever is Gloria Freeman's current agenda. The various orders and Civil Minutes in this case which address this conduct of Gloria Freeman and W. Austin Cooper include the following: (1) Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, Dckt. 1044; (2) Civil Minutes, Motion for Stay Pending Appeal, Dckt. 1018, Dckt. 1018; (3) Civil Minutes, Debtor's Motion to Convert Case, Dckt. 1016; (4) Civil Minutes, Debtor's Motion to Disgorge Fees From Flemmer and Associates and have Julie Heath appointed as accountant for the Chapter 11 Trustee, Dckt. 943; (5) Civil Minutes, Debtor's Motion to Remove Counsel for Chapter 11 Trustee, Dckt. 880; (6) Civil Minutes, Debtor's Motion to Remove Chapter 11 Trustee, Dckt. 841; (7) Civil Minutes, Motion for Compensation by Counsel for Chapter 11 Trustee, Dckt. 823; (8) Civil Minutes, Order to Show Cause Regarding Fees Paid to W. Austin Cooper, Dckt. 747; (9)Civil Minutes, Debtor's Motion to Compel Abandonment of Staff USA, Inc. stock, Dckt. 334;

and (10) Civil Minutes, Laurence Freeman Motion to Dismiss or Convert Case, Dckt.

VOICES OF CREDITORS

Interestingly, while Gloria Freeman has been beating the drum to get the Chapter 11 Trustee, counsel for the Chapter 11 Trustee, and the accountant for the Chapter 11 Trustee out of the case, no creditors have stepped forward to support her efforts. While the inaction of creditors does not determine whether a professional is disinterested or whether the requested fees are proper, it is an indication that Gloria Freeman's protestations as to counsel are not grounds in fact or good faith. Rather, it highlights that these recurring attacks by Gloria Freeman are a rear-guard attempted battle of attrition to obtain opponents which Gloria Freeman hopes are less knowledgeable, less professional, less inclined to fulfill their duties to the estate. Her efforts have been unsuccessful, but costly to the estate. However, that cost is not borne by Gloria Freeman, but by her creditors.

A survey of the proofs of claim file indicates that the unsecured claims are in excess of $3,000,000. A portion of this unsecured debt arises from guaranties give by Gloria Freeman for related entities for which she also commenced bankruptcy cases. Those various cases have either been converted to Chapter 7 or dismissed after the creditor foreclosed on the collateral which secured the debt guarantied by Gloria Freeman. On Schedule F Gloria Freeman listed $5,036,939.00 of general unsecured claims which were not disputed, contingent, or unliquidated. Dckt. 10 at 19-20. On Schedule E Gloria Freeman listed unknown tax claims. *Id.* at 18.

With creditors holding general unsecured claims such as Bank of America, N.A., Wells Fargo Bank, N.A., Capital One, Citi Bank, US Small Business Administration, and Union Bank, N.A., it cannot be said that these creditors are unsophisticated simpletons who don't understand what a trustee and counsel for trustee must do in a case. Further, they have been repeatedly provided notice of Gloria Freeman's arguments and allegations. But none rise up supporting Gloria Freeman.

FEES ALLOWED

The hourly rates for the fees billed in this case is $390/hour for 248.9 hours for Counsel Egan and $330/hour for 16.3 hours for Counsel Lewis. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided.

Total final professional fees for Counsel are allowed pursuant to 11 U.S.C. § 330, and interim fees pursuant to 11 U.S.C. § 331, which are subject to final review pursuant to 11 U.S.C. § 330. The court allows on an interim basis fees in the amount of amount of $102,450.00. The court continues the final approval of the fees to the continued hearing date pursuant to the request of Gloria Freeman. Due to the complexity of the case, the court authorizes the Plan Administrator to pay 75% of the allowed fees, which is $90,337.50, from the available funds of the Estate as permitted by the confirmed Chapter 11 Plan in this case.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of $1,458.54 for copies and postage. The total costs in the amount of $1,458.54 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, and the Trustee is authorized to pay, the following amounts as compensation as a professional in this case:

Attorneys' Fees	$90,337.50
Costs and Expenses	$1,458.54

Debtor filed a Notice of Unavailability on October 30, 2013. The court will award the above stated fees and continue the hearing for final approval of fees to 1:30 p.m. on December 4, 2013.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for 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 Wilke, Fleury, Hoffelt, Gould & Birney ("Wilke Fleury") is allowed the following fees and expenses as a professional of the Estate:
>
> Wilke, Fleury, Hoffelt, Gould & Birney ("Wilke Fleury"), Counsel for the Chapter 11 Trustee for the Estate
>
> Applicant's Fees Allowed in the amount of $102,450.00
>
> Applicants Expenses Allowed in the amount of $1,458.54,
>
> **IT IS FURTHER ORDERED** that this is a interim allowance of fees and the plan administrator is authorized to pay $90,337.50 of the allowed fees and $1,458.54 of the allowed expenses from funds of the Estate as permitted by the confirmed Chapter 11 Plan in this case
>
> **IT IS FURTHER ORDERED** that the hearing on the Motion for Final Approval of Compensation for Counsel to the Chapter 11 Trustee is continued to 1:30 p.m. on December 4, 2013.

6. 12-34689-E-7 ALLEN HASSAN ORDER TO SHOW CAUSE
BHS-3 Pro Se 9-4-13 [206]

CONT. FROM 8-29-13, 7-25-13, 6-20-13

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

No Tentative Ruling: The court's tentative decision is to xxxx the Order to Show Cause.

JUNE 20, 2013 HEARING

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

CHAPTER 7 TRUSTEE'S NOTICE

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

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

DISCUSSION

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

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

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

Chapter 7 Trustee stated that on April 26, 2013 the court issued an order compelling Debtor to appear on May 21, 2013 at 4:30 p.m. for the continued meeting of creditors and that Debtor shall produce documents to

Chapter 7 Trustee on or before May 10, 2013. Chapter 7 Trustee states the order was served on Debtor by Counsel for Trustee and the court clerk on April 29, 2013. Chapter 7 Trustee stated the cover letter on the order indicated that noncompliance would result in sanctions and seizure by the U.S. Marshal Service. Chapter 7 Trustee stated Debtor did not appear and did not produce documents.

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

Background

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

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

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

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

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

This conduct of the Debtor is highly disturbing. The Debtor is not a least sophisticated consumer, but is a highly educated man, holding both a license to practice law and a license to practice medicine. While in the Chapter 11 case, the Debtor, serving as Debtor in Possession, repeatedly assured the court that he had substantial accounts receivable to be generated from the cases he was working on in his law practice.

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

Court judge may order further punitive sanctions which go well beyond corrective incarceration and monetary sanctions.

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

FAILURE TO COMPLY WITH ORDER OF THE COURT

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

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

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

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

JULY 25, 2013 HEARING

IMPOSITION OF SANCTIONS PURSUANT TO JUNE 25, 2013 ORDER

In its June 25, 2013 Order, the court gave notice that if Allen C. Hassan failed to produce the documents as ordered (having failed to comply with the prior order of the court to produce such documents) or appear at

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

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

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

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

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

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

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

2. Three different dates after August 29, 2013, and before September 15, 2013, and times (during weekday business hours between 9:00 a.m. and 2:30 p.m.) for conducting the First Meeting of Creditors in this case.

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

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

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

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

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

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

AUGUST 29, 2013 HEARING

As of the August 29, 2013 hearing, nothing had been filed on the docket by Debtor Allen C. Hassan. He did not appear at the hearing and has not complied with the court's order to produce the documents. Allen C. Hassen has demonstrated through his lack of compliance with the simple order of the court to produce documents that the prior monetary sanctions and the further $5,000.00 in sanctions are not sufficient for him to correct his conduct. Allen C. Hassan could easily have avoided the court imposing $5,000.00 in corrective sanctions by providing the documents and appearing for the First Meeting of Creditors in his case. By not doing so, Allen C. Hassan is stating that he would rather pay $5,000.00 than complying with the order of the court.

Therefore, the court imposed an additional corrective sanction of $5,000.00, which shall be paid by Allen C. Hassen to the Clerk of the United States Bankruptcy Court for the Eastern District of California for deposit in the Treasury of the United States.

The Clerk of the Court not having the resources on staff to enforce the collection of sanctions, the court has authorized the Chapter 7 Trustee to collect said obligations. However, as the corrective sanction amounts grow (Allen C. Hassan demonstrating that the lower amounts do not have the proper corrective effect), the cost and burden on the Chapter 7 Trustee grow. Possibly, Allen C. Hassan believes that a Chapter 7 Trustee cannot effectively, knowledgeable, or cost-effectively collect the sanction amounts. It is necessary and proper to allow the trustee to hire such collection professionals and services as are appropriate.

It is necessary and proper for the court to authorize the Chapter 7 Trustee to engage the service of a collection agency, collection attorney, or other debt collection service ("Collection Service Provider") for the collection of any and all sanctions or other monetary amounts ordered by this court (whether in prior, the present, or future orders in this case) to be paid by Allen C. Hassan to the Trustee or the Clerk of the Court in this case. The Collection Service Provided may be granted a contingent fee percentage of the monies collected or such other compensation formula which the Trustee determines in the exercise of reasonable business judgment. The Trustee shall obtain prior court approval of the employment of the Collection Service Provider Debt Collector and the compensation that the Collection Service Provider is to be paid.

The obligations of Allen C. Hassan to pay sanctions or other amounts as ordered by the court which may be assigned for collection are not "obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes;" (15 U.S.C. § 1692a) or "for property, services or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes" (Cal. Civil 1788.2(d),(e),(f). These obligations are sanctions issue by this court for the failure to comply with the orders of this court and the obligations of Allen C. Hassan arising under the Bankruptcy Code and Federal Rule of Bankruptcy Procedure.

The court also ordered Allen C. Hassan to communicate in writing to Barry H. Spitzer, counsel for the Chapter 7 Trustee, on or before September 14, 2013, and propose:

1. Three different dates, prior to September 27, 2013, and times (during weekday business hours between 9:00 a.m. 4:00 p.m.) for the production of the documents specified in this Order, to be produced at the office of counsel for the Chapter 7 Trustee, and

2. Three different dates after October 11, 2013, and before October 25, and times (during weekday business hours between 9:00 a.m. and 2:30 p.m.) for conducting the First Meeting of Creditors in this case.

The court also ordered Allen C. Hassan to appear and produce the documents specified in Addendum A to the Order, to Barry H. Spitzer, Esq., counsel for the Chapter 7 Trustee, at the date prior to September 27, 2013, set by Allen C. Hassan and Barry H. Spitzer, such production to be made at the Law Office of Barry H. Spitzer, 980 9th Street, Suite 380, Sacramento, California.

The court also ordered a further hearing at 10:30 a.m. on November 7, 2013, to determine if Allen C. Hassan has complied with this Order in communicating dates for the production of documents and the First Meeting of Creditors, and produced the documents. If Allen C. Hassan has failed to comply with everything required of him in this Order, he shall show cause at the November 7, 2013 hearing as to why the court should not order the further corrective sanctions as set forth below in this Order. Responses to

this Order and to Show Cause by Allen C. Hassan, the Chapter 7 Trustee, and the U.S. Trustee shall be filed and served on or before October 31, 2013.

The court ordered that if Allen C. Hassan fails to comply with the order or any part thereof,

(1) the court shall issue a further corrective sanction of $10,000.00, to be paid to the Clerk of the court, and an award of attorneys' fees and costs and the Chapter 7 Trustee's fees (computed on actual time expended), to be paid to the bankruptcy estate, caused by Allen C. Hassan's failure to comply with this order to be paid by Allen C. Hassan;

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

(3) Certify Allen C. Hassan's failure to comply with the orders of this court to the United States District Court for the Eastern District of California for the suspension of his admission to practice law in said District for a period of not less than one year;

(3) such further sanctions and relief, including having Allen C. Hassan taken into custody by the United States Marshal to be presented in court for such future hearing and First Meeting of Creditors as ordered by the court.

NOVEMBER 7, 2013 HEARING

On October 29, 2013, Trustee filed a Report to Court on Compliance with Order for Allen C. Hassan to Produce Books and Records of the Estate and Schedule and Appear at the Continued First Meeting Of Creditors. The Trustee states that Debtor has not complied with any portion of the Court's September 4, 2013 Order. Trustee or his counsel have not been in contact with the Debtor.

No documents appear on the docket from Mr. Hassan to date.

7. 12-20992-E-7 MARK/JACQUELINE ROBLYER MOTION TO COMPEL ABANDONMENT
PLC-10 PETER CIANCHETTA 10-11-13 [106]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter Trustee, respondent creditor, and Office of the United States Trustee on October 11, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

Here, the property commonly known as 9445 Ringe Circle Elk Grove, California, is impaired by two trust deeds in favor of Creditors GreenTree and Bank of America securing loans with balances of $263,650.98 and $80,128.38 respectively. Debtors contend that the value of said real property is $180,000.00.

Since the debt secured by the property exceeds the value of the property, and the negative financial consequences of the Estate retaining the property, the court determines that the property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the real property identified as 9445 Ringe Circle Elk Grove, California on Schedule A by the Debtors is abandoned to Mark Rodney Roblyer and Jacqueline Leclair Roblyer, the Debtors by this order, with no further act of the Trustee required.

8. 12-30992-E-11 MACHELLE HOLLOWAY — MOTION TO USE CASH COLLATERAL
RAS-7 Scott D. Schwartz — 10-23-13 [200]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on October 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on 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 Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property

commonly known as 3707 N. California Street, Stockton, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period November 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through October 31, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently $1,865 per month and the value of the Real Property was determined by stipulation with Indymac/Onewest Bank to be $119,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through October 31, 2013 are summarized below:

Item	Amount
Rents collected	$30,980.00
Insurance	$1,071.00
Property taxes	$1,780.00
Monthly payments to OneWest Bank	$18,185.00
Total Payments	$21,036.00

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to OneWest Bank at $909.00 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through October 31, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

However, the Debtor-in-Possession does not provide a budget with the necessary expenses for the use of cash collateral moving forward. Without a proposed budget, the court is unable to grant the motion to use cash collateral in relation to the subject property. Further, Debtor-in-Possession does not state whether the proposed adequate protection payment to creditor is adequate to protect the creditor's interests.

In reviewing the Claims Register in this case, the court notes that during the period September 11, 2012 and October 9, 2012, secured claims were filed by various creditors. Copies of standard form deeds of trust are attached to the proofs of claim. Some may include an assignment of rents, such as Proof of Claim No. 14-1 for JPMorgan Chase Bank (Rider to Deed of Trust). For others, an assignment of rents is not as clear, such as for Proof of Claim No. 16 filed by Wells Fargo Bank, N.A.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the motion to use cash collateral is denied without prejudice.

9. 12-30992-E-11 MACHELLE HOLLOWAY — MOTION TO USE CASH COLLATERAL
RAS-8 Scott D. Schwartz — 10-23-13 [204]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on October 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on 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 Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 4535-4541-4547 Flint Avenue, Salida, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period November 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through October 31, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently $3,180 per month and the value of the Real Property was determined by stipulation with Wells Fargo Bank, N.A. to be $204,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through October 31, 2013 are summarized below:

Item	Amount
Rents collected	$54,060
Insurance	$2,431
Property taxes	$5,661
Utilities	$2,295
Building Maintenance and Repair	$2,159
Monthly payments to Wells Fargo Bank, N.A	$24,673
Total Payments	$37,219

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Wells Fargo Bank, N.A at $1,127 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through October 31, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984).

However, the Debtor-in-Possession does not provide a budget with the necessary expenses for the use of cash collateral moving forward. Without a proposed budget, the court is unable to grant the motion to use cash collateral in relation to the subject property. Further, Debtor-in-

Possession does not state whether the proposed adequate protection payment to creditor is adequate to protect the creditor's interests.

In reviewing the Claims Register in this case, the court notes that during the period September 11, 2012 and October 9, 2012, secured claims were filed by various creditors. Copies of standard form deeds of trust are attached to the proofs of claim. Some may include an assignment of rents, such as Proof of Claim No. 14-1 for JPMorgan Chase Bank (Rider to Deed of Trust). For others, an assignment of rents is not as clear, such as for Proof of Claim No. 16 filed by Wells Fargo Bank, N.A.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the motion to use cash collateral is denied without prejudice.

10. 12-30992-E-11 MACHELLE HOLLOWAY **MOTION TO USE CASH COLLATERAL**
RAS-9 Scott D. Schwartz **10-23-13 [208]**

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on October 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on 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 Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 2890 E. Huntington Blvd #159, Fresno, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period November 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through October 31, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently $895 per month and the value of the Real Property is $105,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through October 31, 2013 are summarized below:

Item	Amount
Rents collected	$15,215.00
Insurance	$340.00
Property taxes	$1,972.00
Home Owner's Association Dues	$4,845.00
Payments to Chase Bank, N.A.	$14,365.00
Total Payments	$21,522.00

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Chase Bank, N.A. at $845.00 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through October 30, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984).

However, the Debtor-in-Possession does not provide a budget with the necessary expenses for the use of cash collateral moving forward. Without a proposed budget, the court is unable to grant the motion to use cash collateral in relation to the subject property. Further, Debtor-in-Possession does not state whether the proposed adequate protection payment to creditor is adequate to protect the creditor's interests.

In reviewing the Claims Register in this case, the court notes that during the period September 11, 2012 and October 9, 2012, secured claims were filed by various creditors. Copies of standard form deeds of trust are attached to the proofs of claim. Some may include an assignment of rents, such as Proof of Claim No. 14-1 for JPMorgan Chase Bank (Rider to Deed of Trust). For others, an assignment of rents is not as clear, such as for Proof of Claim No. 16 filed by Wells Fargo Bank, N.A.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the motion to use cash collateral is denied without prejudice.

11. 12-30992-E-11 MACHELLE HOLLOWAY — MOTION TO USE CASH COLLATERAL
RAS-10 Scott D. Schwartz — 10-23-13 [212]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on October 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on 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 Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate

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

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 3212 Ingalls Street, San Francisco, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period November 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through October 31, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently $2,800 per month and Debtor-in-Possession values the Real Property at approximately $375,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through October 31, 2013 are summarized below:

Item	Amount
Rents collected	$44,800
Insurance	$1,280
Property taxes	$768
Building Maintenance and Repair	$1,700
Payments to Wells Fargo Bank	$40,016

Total Payments	$43,764

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Wells Fargo Bank, N.A at $2,501 per month, up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through September 30, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984).

However, the Debtor-in-Possession does not provide a budget with the necessary expenses for the use of cash collateral moving forward. Without a proposed budget, the court is unable to grant the motion to use cash collateral in relation to the subject property. Further, Debtor-in-Possession does not state whether the proposed adequate protection payment to creditor is adequate to protect the creditor's interests.

In reviewing the Claims Register in this case, the court notes that during the period September 11, 2012 and October 9, 2012, secured claims were filed by various creditors. Copies of standard form deeds of trust are attached to the proofs of claim. Some may include an assignment of rents, such as Proof of Claim No. 14-1 for JPMorgan Chase Bank (Rider to Deed of Trust). For others, an assignment of rents is not as clear, such as for Proof of Claim No. 16 filed by Wells Fargo Bank, N.A.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the motion to use cash collateral is denied without prejudice.

12. 12-30992-E-11 MACHELLE HOLLOWAY MOTION TO USE CASH COLLATERAL
RAS-11 Scott D. Schwartz 10-23-13 [217]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on October 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on 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 Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 3428 Ladd Tract Ct, Stockton, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period November 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through October 31, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently $1,150 per month and Debtor-in-Possession values the Real Property at approximately $90,500. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts

she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through October 31, 2013 are summarized below:

Item	Amount
Rents collected	$19,550
Insurance	$782
Property taxes	$1,972
Monthly payments to Seterus, Inc.	$9,775
Total Payments	$12,529

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Seterus, Inc. Servicing Agent for Federal National Mortgage Association (Fannie Mae) at $575 per month up through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through October 31, 2013.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984).

However, the Debtor-in-Possession does not provide a budget with the necessary expenses for the use of cash collateral moving forward. Without a proposed budget, the court is unable to grant the motion to use cash collateral in relation to the subject property. Further, Debtor-in-Possession does not state whether the proposed adequate protection payment to creditor is adequate to protect the creditor's interests.

In reviewing the Claims Register in this case, the court notes that during the period September 11, 2012 and October 9, 2012, secured claims were filed by various creditors. Copies of standard form deeds of trust are attached to the proofs of claim. Some may include an assignment of rents, such as Proof of Claim No. 14-1 for JPMorgan Chase Bank (Rider to Deed of Trust). For others, an assignment of rents is not as clear, such as for Proof of Claim No. 16 filed by Wells Fargo Bank, N.A.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the motion to use cash collateral is denied without prejudice.

13. 12-30992-E-11 MACHELLE HOLLOWAY — MOTION TO USE CASH COLLATERAL
RAS-12 Scott D. Schwartz — 10-23-13 [221]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, and Office of the United States Trustee on October 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Authorize Use of Cash Collateral was properly set for hearing on 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 Authorize Use of Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling

becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor-in-Possession seeks an order authorizing the use of cash collateral consisting of rents collected from tenants at her property commonly known as 2120 Quaker Ridge Court, Stockton, California, to pay expenses incurred in connection with the real property and to make monthly adequate protection payments to the lenders holding claims secured by the real property.

The Debtor-in-Possession requests such authority for the period November 1, 2013 through March 31, 2014 and also request retroactive authority for the period June 8, 2012 through October 31, 2013.

Debtor-in-Possession states the gross rent due from the tenants is currently $1,150 per month and Debtor-in-Possession values the Real Property at approximately $85,000. Ms. Holloway testifies she has managed the subject real property and collects rent from the tenants each month, manages maintenance and upkeep, communicates as necessary with the tenants and pays ongoing expenses related to the property, including monthly payments to the lender holding loans secured by the property. Debtor-in-Possession asserts she has reported the activity for all bank accounts in her Monthly Operating Reports filed with this court.

Debtor-in-Possession testifies that she has paid expenses associated with the subject real property since the petition date, from rents collected from tenants at the real property, without express consent of the Secured Creditor or pursuant to an order of this court. Debtor-in-Possession states she was under the mistaken belief that there was no assignment of rents provision in her loan contract requiring adequate protection. When the Debtor became aware of the rents provision and requirement for such agreement or court order, she brought this motion promptly.

Debtor-in-Possession testifies the actual rental receipts, and actual payments made by the Debtor-in-Possession from those receipts, including the semi-annual property tax installment due in December 2012 and April 2013 from the Petition Date through October 31, 2013 are summarized below:

Item	Amount
Rents collected	$17,250
Insurance	$780
Property taxes	$1,740
Monthly payments to Bank of America, N.A.	$12,460
Total Payments	$14,980

Debtor-in-Possession wishes to obtain authorization to make adequate protection payments to Bank of America, N.A. at $674.00 per month, up

through March 31, 2014, and wishes to obtain retroactive authorization regarding the payments made up through October 31, 2013.

OPPOSITION

Wells Fargo Bank, N.A., f/k/a Wells Fargo Bank Minnesota, N.A., as Trustee for the Certifcateholders of Banc of America Alternative Loan Trust 2003-6, Mortgage Pass-Through Certificates, Series 2003-6 ("Creditor") opposes the motion on the grounds that while the motion includes a summarized accounting of the unauthorized use of cash collateral during the pendency of this case, it does not include a monthly budget for the proposed use of cash collateral through March 31, 2014. Creditor requests that the Debtor provide a budget of anticipated monthly expenses.

Creditor also contends that the accounting indicates that payments were made for real property taxes and insurance even though Creditor's Proof of Claim contains an escrow analysis evidencing the existence of a lender maintained escrow account for the payment of property taxes and insurance. Creditor states that pursuant to that escrow account, Creditor has advanced funds post-petition for the maintenance of real property taxes and insurance. Creditor requests that the Debtor specify whether she intends to maintain taxes and insurance for the subject real property directly to the appropriate taxing authority and insurance carrier or through Creditor's escrow account.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtor-in-Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. See In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984).

However, the Debtor-in-Possession does not provide a budget with the necessary expenses for the use of cash collateral moving forward. Without a proposed budget, the court is unable to grant the motion to use cash collateral in relation to the subject property. Further, Debtor-in-Possession does not state whether the proposed adequate protection payment to creditor is adequate to protect the creditor's interests.

In reviewing the Claims Register in this case, the court notes that during the period September 11, 2012 and October 9, 2012, secured claims were filed by various creditors. Copies of standard form deeds of trust are attached to the proofs of claim. Some may include an assignment of rents, such as Proof of Claim No. 14-1 for JPMorgan Chase Bank (Rider to Deed of Trust). For others, an assignment of rents is not as clear, such as for Proof of Claim No. 16 filed by Wells Fargo Bank, N.A.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion to use cash collateral is denied without prejudice.