UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 17, 2015 at 10:30 a.m.

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1. 15-90301-E-7 ROBERT ERWIN — MOTION FOR COMPENSATION FOR
GRF-2 Martha Lynn Passalaqua — GARY R. FARRAR, CHAPTER 7 TRUSTEE
11-17-15 [94]

DISCHARGED: 8/4/15

Final Ruling: No appearance at the December 17, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on November 17, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Gary R. Farrar, the Chapter 7 Trustee ("Applicant") for Robert Lee Erwin the Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period March 30, 2015 through November 17, 2015. Applicant requests a reduced fee and cost in the amount of $10,079.27.

STATUTORY BASIS FOR PROFESSIONAL FEES

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run

up a [professional fees and expenses] 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, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] 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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The Applicant, as the Trustee, reviewed the proposed sale of the Client's residence, determining whether the valuation of the residence was fair and whether the offers were beneficial. The Applicant also investigated the tax liability of the sale of the residence. The Applicant employed a broker to list and sell the residence. The Applicant sought court approval to sell the residence when he received a sufficient offer that would benefit the estates and creditors. The Applicant also prepared the various compensation motions. Following the sale of the residence, the Applicant then sough to sell equity in assets of the Debtor to the Debtor for the benefit of the estate.

The unsecured creditors will receive dividends of 92%, or a total of $18,736.86, after payment of administrative and priority claims, and Debtor's exemptions. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

> In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first $5,00 or less, 10% on any amount in excess of $5,000 but not in excess of $50,000, 5% on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of $1,000,000, upon all moneys disbursed or turned over in the case by th trustee to parties in interest, excluding the debtor, but including holders of secured claims.

FEES AND COSTS & EXPENSES REQUESTED

Applicant seeks to be paid a single sum of $10,079.27 for its fees and expenses incurred for the Client.

FEES AND COSTS & EXPENSES ALLOWED

Using the 11 U.S.C. § 326 trustee fee cap formula,

25% of first $5,000.00	$1,250.00
10% of next $45,000.00	$4,500.00
5% of next $147,246.00	$7,362.30
Calculated Maximum Total Compensation Permitted for Trustee	$13,112.30

This represents the Maximum Trustee Fees in a case that works its way through conclusion. Here, the Applicant is only seeking $10,079.27 (which includes expenses of $79.27). This is only 76.9% of the maximum allowable fees.

As discussed supra, the Applicant has performed for the benefit of the estate, namely selling and retaining equity for the estate for the benefit of the creditors. The Applicant, as the fiduciary of the estate, made determinations as to potential liabilities in the sale and insured the administration of the case through analysis of assets and ensuring necessary motions are filed.

In light of the instant request being less than the maximum allowed under 11 U.S.C. § 326 and the Applicant having provided real and actual services to the benefit of the estate, the Motion is granted.

First and Final Fees and Costs in the amount of $10,079.27 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the following amounts as compensation to this professional in this case:

Fees, Costs, and Expenses $10,079.27

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an 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 Gary R. Farrar (“Applicant”), Trustee for the Chapter 7 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 Gary R. Farrar is allowed the

following fees and expenses as a professional of the Estate:

Gary R. Farrar, Professional Employed by Chapter 7 Debtor

Fees and Expenses in the amount of $10,079.27

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

2. 15-91006-E-7 BENAY LOPEZ MOTION TO COMPEL ABANDONMENT
TOG-1 Thomas O. Gillis 12-3-15 [16]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 3, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion to Abandon Property is granted.

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).

The Motion filed by Benay Lopez ("Debtor") requests the court to order the Trustee to abandon property commonly known as:

1. 1999 Dodge Pickup

a. Valued at $1,357.00
b. Exemption $1,357.00 under California Code of Civil Procedure § 703.140(b)(2) and (5)

2. a business entitled “Lopez AG Services”

a. Valued at $500.00
b. Exempted $500.00 under California Code of Civil Procedure § 703.150(b)(5)

3. miscellaneous equipment and supplies (listed as “Tools of the Trade” on Schedules B and C)

a. Valued at $1,000.00
b. Exempted $1,000.00 under California Code of Civil Procedure § 703.140(b)(6)

(the “Property”). This Property has been exempted by the Debtor in each assets full value, as indicated supra. The Declaration of Benay Lopez has been filed in support of the motion and values the Property to be $2,857.00.

The court finds that the debt secured by the Property exceeds the value of the Property, and that there are negative financial consequences to 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.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Benay Lopez (“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 Property identified as:
>
> 1. 1999 Dodge Pickup,
>
> 2. A business entitled “Lopez AG Services,”
>
> 3. Miscellaneous equipment and supplies (listed as “Tools of the Trade” on Schedules B and C)
>
> and listed on Schedule B by Debtor is abandoned to Benay Lopez by this order, with no further act of the Trustee required.

3. 11-94410-E-7 SAWTANTRA/ARUNA CHOPRA CONTINUED MOTION TO EXTEND TIME
HSM-31 Robert M. Yaspan 12-12-14 [1161]

CONTINUED: 12/3/15

Final Ruling: No appearance at the December 17, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Time to File Objections to Debtors' Claims of Exemptions is dismissed without prejudice (request to dismiss, Dckt. 1443).

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion for Order Extending Time to File Objections to the Debtors' Claims of Exemptions. Dckt. 1161.

The current deadline to file objections to the Debtors' claims of exemptions is presently set for December 15, 2014. Dckt. 1092, Notice of Conversion to Chapter 7, Meeting of Creditors, and Deadlines. The Trustee requests that the deadline for the Trustee to object to the Debtors' claims of exemptions be extended until February 16, 2015. The Motion to Extend the deadline was filed on December 12, 2014.

The Trustee argues that cause exists because, prior to the conversion of the case to Chapter 7, the Debtors filed a number of schedule amendments. The Debtors' most recent Schedule B, filed September 20, 2013, lists the following assets:

Sawtantra Chopra MD, Inc., Profit Sharing Plan Assets in the Profit Sharing Plan including the following: Chase Acct# ending in 7539 - $463,755 Wells Fargo Investment Account - Approximate value of $1 million Note & Deed of Trust in favor of Sawtantra Chopra MD, Inc., Profit Sharing Plan as Beneficiary, Onkar Inc., as Trustor secured by properties with the following APNs 033-044-099, 033-044-010, 033-044-012, 033-044-013, 033-044-014, and 033-044-019 - The face value of this note is $350,000, but Debtor is not sure of the actual value of the note due because Debtor is not sure how much equity exists in these properties. Other Notes - See Attached.	H	$1,813,755.00

In the Debtors most recent Schedule C, filed September 20, 2013, the Debtors claimed the retirement plans as exempt in their entirety pursuant to 11 U.S.C. § 522(b)(3)(C).

Prior and subsequent to the Meeting of Creditors, the Trustee and his counsel have requested current account statements for the retirement plans and original documentation related to the loans scheduled as assets of this estate, including those purportedly in the retirement plans, but non have been provided. By email dated November 6, 2014, Debtors' counsel informed the Trustee that the Debtors do not have the originals of the promissory notes although they are still looking for them. Dckt. 1165, Exhibit C.

At the Meeting of Creditors, held November 13, 2014, the Trustee requested on the record that the Debtors provide the Trustee with a current account statement for the Debtors' retirement assets. The Debtors have not provided him with the requested statements. The only documents the Trustee states the Debtors have provided in response to the Trustee's request are tax returns for their pension plan for the years 2001-2012.

Additionally at the Meeting of Creditors, the Trustee questioned the Debtors concerning the carious deeds of trust, for which the Debtors and/or the Sawtantra Chopra MD Profit Sharing Plan were scheduled as beneficiaries the Debtors' responses did not satisfy the Trustee's inquiry into the process and reasons by which one or more deeds of trust, of which Joint-Debtor Aruna Chopra, individually, was the original beneficiary, came to be included in the Debtors' retirement plans.

Trustee states that on November 18, 2014, Trustee's counsel reiterated to Debtors' counsel the Trustee's request for current account statement for the Debtors' retirement plans and discussed issues related to the notes/deeds of trust purportedly in the plans. Trustee's counsel followed up the call with an email to Debtors' counsel. By email on November 21, 2014, Trustee's counsel followed up with a more detailed email to Debtors' counsel, reiterating the Trustee's request again. Trustee states that no current account statement has been provided to the Trustee or Trustee's counsel.

Obtaining a precise accounting of the retirement plans, their balance, and information concerning exactly what assets are currently contained in the plans, and how those assets came to be in the plans, is important to the Trustee's evaluation of the Debtors' claims of exemptions.

DEBTORS' OPPOSITION

The Debtors filed an opposition to the instant Motion on January 29, 2015. Dckt. 1187. The Debtors state that the Motion should be denied because it: (1)it fails to establish cause to grant relief; (2) the Trustee is guilty of laches; and (3) granting the Motion would significantly impair Debtors' Sixth Amendment right to representation. The Debtors make the following arguments:

1. The time frame for objection to Debtors' exemptions has expired under applicable Ninth Circuit law. Under *In re Smith*, 235 F.3d 472 (9th Cir. 2000), 11 U.S.C. § 348 "preserve[s] actions already taken in the case before conversion. . . section 348(a) establishes the general rule that, in a converted case, the dates of filing, the commencement of the case, and the order for relief remain unchanged." Id. at 477. In short, the Debtors argue that once the time frame for objecting to an exemption has expired, the exempt property revests in the debtor and is no longer subject to objection. In this case, the Debtors state that the time to object to Debtors' claim of objection expired in April 2014.

2. The recent changes to Fed. R. Bankr. P. 1019 cannot change the substantive law on the issue. The Debtors argue that 28 U.S.C. § 2075 sets forth the rule making power of the court and the limitations thereon, making the Bankruptcy Court rules procedural and not creating substantive rights. The 2010 amendment to Fed. R. Bankr. P. 1019 that added section (2)(B) cannot affect this case since it attempts to change the substantive law of the Ninth Circuit. The provision purports to create a new time period for filing objections to exemptions after a conversion. However, since the Smith court established the law on this issue in the ninth Circuit and ruled that the exempt property vested in the debtor and that there was no provision in the Bankruptcy Code that could bring the exempt property back into an estate after conversion. The Bankruptcy Rules cannot create substantive rights that are not provided under the Bankruptcy Code. As such, the Trustee cannot rely on Fed. R. Bankr. P. 1019 to bring this Motion and the Motion should be denied.

3. The Motion fails to establish cause for the requested relief. Even if the motion were timely, the Trustee has failed to establish the requisite "cause" under Fed. R. Bankr. P. 4003. Although Rule 4003 does not provide any clarification regarding the meaning of cause, it should be presumed that cause means good cause not just any excuse. As the Bankruptcy Court are courts of equity, the issue of good cause should be determined by balancing the respective benefits and burdens of parties along with other equitable considerations including the principles of laches. The time period to object to the exemptions has been extended at least five times for a total time period of almost three years. The Trustee has been a party to the last four of the extension. The Trustee entirely fails to adequately explain why it has taken almost two years to determine whether to object to the exemptions, why he has not been able to make the decision at this time, and why he should be entitled to more time to do

so. The Debtors contend that the Motion fails to provide any specificity regarding the information the Trustee is looking for and what issues, if any, he has with the exemptions. The Debtors argue that an extension of time is extremely prejudicial to Debtors because they are under criminal prosecution and need access to exempt assets to fund their defense. Debtors have been unable to use the funds to pay their criminal attorneys and will soon be deprived of representation in their cases which implicates their Sixth Amendment rights.

4. The motion should be denied because it will significantly impair Debtors' Sixth Amendment Rights. The Trustee has sent letters that have effectively frozen the accounts. Debtors have been unable to use the funds to pay for their criminal attorneys. The trustee is interfering with Debtors' Sixth Amendment right to representation and any extension of time to file the objections will further impair Debtors' constitutional rights. In the present case, the Trustee has sent letters to the investment managers for Debtors' profit sharing plan, effectively freezing the accounts in violation of the Debtors' Sixth Amendment rights. See *United States v. Stein*, 541 F.3d 130, 154 (2d Cir. 2008).

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1197.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1208.

On March 23, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1222.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1295.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt 1302.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1318.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

ORDER CONTINUING THE HEARING

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1346.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

ORDER CONTINUING THE HEARING

On August 27, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1375.

On August 31, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on October 22, 2015.

ORDER CONTINUING THE HEARING

On October 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1390.

On October 20, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on December 3, 2015.

ORDER CONTINUING THE HEARING

On November 25, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1432.

On November 29, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on December 17, 2015.

NOTICE OF WITHDRAWAL

On December 7, 2015, the Trustee filed a Notice of Withdrawal of the instant Motion. Dckt. 1443. The Trustee states that this withdrawal is consistent with the agreement reached between the Trustee and Debtors which has been approved by the court. Dckt. 1425.

APPLICABLE LAW

Fed. R. Bankr. P. 1019 states in relevant part:

> When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:...
>
> (2) New filing periods
>
> ....
>
> (B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:
>
> (I) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or
>
> (ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

Fed. R. Bankr. P. 1019

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

DISCUSSION

The Trustee having filed a “Withdrawal of Motion” for the pending Motion to Extend Time, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Extend, and good cause appearing, the court dismisses without prejudice the Trustee's Motion to Extend.

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.
>
> A Motion to Extend having been filed by the Trustee, the Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Extend the Bankruptcy

Case is dismissed without prejudice.

4. 11-94410-E-7 SAWTANTRA/ARUNA CHOPRA
HSM-32 Robert M. Yaspan

CONTINUED MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
12-23-14 [1167]

CONTINUED: 12/3/15

Final Ruling: No appearance at the December 17, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is dismissed without prejudice(request to dismiss, Dckt. 1444).

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion to Extend Deadline to File a Complain Objecting to Discharge of the Debtor on December 23, 2014. Dckt. 1167.

The Trustee states that the deadline to file a complaint objecting to the discharge of the Debtors is set for December 29, 2014. The Trustee requests that the deadline for the Trustee to file a complaint objecting to the discharge of the Debtors be extended until February 27, 2015.

The Trustee argues that cause exists because this is an extraordinarily

complex case, involving many assets, and intense disputes between the Debtors and creditors regarding allegations of pre-petition criminal wrongdoing. This case was pending for some time in a Chapter 11 to provide the Debtors an opportunity to confirm a plan based around the Dale Road Project. The efforts to reorganized failed and all the estate's real property assets were abandoned except a single Dale Road Parcel and an office building in Modesto. The case was converted to a Chapter 7 and the Trustee is attempting to administer the estate's remaining assets.

The Trustee states that he has been diligent in his investigation of the Debtors' financial affairs. An undisclosed issue which arose in the Debtors' disclosure statement filed prior to the conversion of the case was a $310,000.00 loan from the Debtors' adult son and daughter-in-law which was discovered at the Meeting of Creditors. The Trustee requires additional time to consider the responses of the Debtors concerning this loan and whether additional investigation is needed. Furthermore, the Debtors stated that they would file amended schedule of creditors who were not previously listed.

The Trustee is also awaiting records of the current account statement for the Debtors' retirement assets as well as information concerning various notes and deeds of trusts, which the Debtors have not yet provided. The Trustee states that he expects the Debtors will provide this information voluntarily or the Trustee will make additional motions for the production of such information.

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1200.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1211.

On March 22, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1223.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1298.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt. 1303.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1322.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

ORDER CONTINUING THE HEARING

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1350.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

ORDER CONTINUING THE HEARING

On August 27, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1378.

On August 31, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on October 22, 2015.

ORDER CONTINUING THE HEARING

On October 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1393.

On October 20, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on December 3, 2015.

ORDER CONTINUING THE HEARING

On November 25, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1435.

On November 29, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on December 17, 2015.

NOTICE OF WITHDRAWAL

On December 7, 2015, the Trustee filed a Notice of Withdrawal of the instant Motion. Dckt. 1444. The Trustee states that this withdrawal is

consistent with the agreement reached between the Trustee and Debtors which has been approved by the court. Dckt. 1425.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

DISCUSSION

The Trustee having filed a “Withdrawal of Motion” for the pending Motion to Extend Time, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Extend, and good cause appearing, the court dismisses without prejudice the Trustee's Motion to Extend.

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.
>
> A Motion to Extend having been filed by the Trustee, the Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Extend is dismissed without prejudice.

5. 15-90711-E-7 JAIME LEE
MDM-1 Thomas O. Gillis

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
11-16-15 [17]

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

Oral argument 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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 16, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor 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 defaults of the non-responding parties and other parties in interest are entered.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is granted.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion to Extend Tim to File Objection to Discharge on November 16, 2015. Dckt. 17. The Trustee asserts that the Debtor has failed to turnover certain assets and information. The bar date for objecting to discharge is currently set for November 16, 2015. The Motion (which is governed by Fed. R. Bank. P. 9013) must state with particularity the grounds upon which the relief is based. Here, the only thing alleged is that the Trustee has requested "turnover of certain assets and information," to which Debtor has not complied. The court has no idea of the scope and magnitude of such "assets and information."

The Trustee's declaration states that the Trustee learned of a potential preferential payment to the Debtor's landlord. Dckt. 19. The Trustee requested that the Debtor amended the Statement of Affairs and for the

landlord's address to be provided at the First Meeting of Creditors. The Trustee states that on September 23, 2015, the Debtor amended Statement of Financial Affairs. On October 22, 2015, the Trustee states that he sent a preference demand letter to the landlord. The letter was returned to the Trustee as undeliverable. The Trustee sent an email to Debtor's counsel requesting a more current address and a further amendment. The Trustee states that he has yet to receive a response.

DEBTOR'S RESPONSE

The Debtor filed a response on December 3, 2015. Dckt. 25. The Debtor states that on November 16, 2015, Debtor amended the Statement of Financial Affairs to reflect the current address of the Debtor' landlord. Debtor states that he also sent a separate email to the Trustee identifying the landlord's new address.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

DISCUSSION

Here, the Trustee has provided sufficient cause to extend the deadline to file an objection to the discharge of the Debtor. The Debtor admits that he had failed to provide the Trustee in email or in the Statement of Financial Affairs a current address for the landlord. As stated in the Trustee's Motion, the bar date for filing an objection to discharge was November 16, 2015.

The Debtor's response is insufficient to overcome the cause shown by the Trustee. The Debtor states that it was on November 16, 2015 that the Debtor provided the most updated information. This is the same date as the bar date for filing an objection. With the Trustee just recently receiving the information necessary to determine if there was a preferential transfer and to determine the amount, there would have been insufficient time for the Trustee to contact the landlord and to file an objection before the bar date due to the Debtor's failure to provide the information correctly previously.

Therefore, the Motion is granted for cause. The deadline to filed an Objection to Discharge is extended to February 12, 2016.

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 Extend Deadline to File a Complaint Objecting to Discharge of the Debtor 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 Motion is granted and the deadline to file an Objection to Discharge is extended to February 12, 2016.

6.	**15-90811-E-7**	**ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS**	**MOTION TO DISMISS CASE**
	DHL-1	**Peter G. Macaluso**	**12-3-15 [61]**

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 3, 2015. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

The Motion to Convert the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion to Dismiss the Chapter 7 Bankruptcy Case is denied without prejudice.

This Motion to Dismiss the Chapter 7 bankruptcy case of Assn., Gold Strike Heights Homeowners ("Debtor") has been filed by Don Lee ("Creditor") on December 3, 2015. 61.

The Creditor states the following in the Motion as grounds for the dismissal:

> DON LEE, in his capacity as a creditor in this bankruptcy proceeding, both secured and unsecured, hereby moves this Court for an order of this Court dismissing the Bankruptcy Petition filed by Debtor GOLD STRIKE HEIGHTS HOMEOWNERS ASSOCIATION on August 20, 2015, for cause under Bankruptcy Code Section 707(a) on the grounds that there is substantial evidence that the filing of the Debtor's Petition was improper in the first instance because it provided no benefit to the Debtor and the surrounding circumstances of the filing demonstrates that there was misconduct sufficient to constitute "cause" under Section 707(a) to warrant dismissal to this time.

Dckt. 61.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on December 8, 2015. Dckt. 71. The Debtor states that the Creditor has failed to establish cause for dismissal under 11 U.S.C. § 707(a). The Debtor argues that the Creditor has failed to show unreasonable delay, nonpayment of fees or charges, or Debtor failed to provide all necessary documents.

Additionally, the Debtor argues that the Motion actually state grounds for why the case should not be dismissed. The Debtor's case provides relief from further litigation concerning alleged unlawful foreclosure on 31 properties. Additionally, the Debtor states that the Debtor has amended the schedules to include the "common area" asset. This may provide an asset which could be sold for the benefit of creditors after determining the liquidation value of such asset.

The Debtor concludes by stating that if, after the conclusion of all the litigation commencing in 2010, the Debtor has funds to pay all claims, then the Chapter 7 case will be successful.

CHAPTER 7 TRUSTEE RESPONSE

Though the Certificate of Service (Dckt. 67) attests to service on the Chapter 7 Trustee, no opposition or other response has been filed by the Trustee. This may have occurred due to the notice for the hearing not having been properly provided.

APPLICABLE LAW

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

For purposes of the instant Motion, 11 U.S.C. § 707(a) states:

> (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--
>
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
>
> (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
>
> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

DISCUSSION

Failure to Provide Sufficient Notice

The Creditor has failed to provide sufficient notice to necessary parties. The Creditor's Proof of Service indicates that only 14 days notice was provided to the parties for the instant Motion. Pursuant to Fed. R. Bankr. P. 2002(a)(4), a minimum of 21 days' notice is required. Therefore, the Motion is denied without prejudice.

Failure to Comply with Fed. R. Bankr. P. 9013

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that there are some non-specific details that the case was not filed in good faith. This is not sufficient.

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

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the

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

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

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

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

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

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

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

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

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

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

Through the Creditor's failure to comply with Fed. R. Bankr. P. 9013, the Creditor failed to provide cause to dismiss the case. As the court has noted previously, the parties to this bankruptcy case, and the carryover from the state court litigation and the political infighting at the homeowners association has the hallmarks of an acrimonious divorce. The Federal Rule of Civil Procedure, Federal Rule of Bankruptcy Procedure, and Local Bankruptcy Rules exist to create a proper form and structure to federal court litigation. This is necessary in even the most professionally handled cases. It is exponentially important when the personal animosity of the parties hangs heavy in the air.

The Debtor's Opposition is really to just give this Chapter 7 relief from litigation in state court. Debtor further contends that only after an independent review by the Trustee of the possible assets of the estate, will the Trustee and court be able to determine whether there will be assets to distribute to creditors.

The spotlight is on the Chapter 7 Trustee. Taken as a whole, Debtor's information provided under penalty of perjury is that at the end of the day it does not appear that there is net equity in any assets for the Debtor. Rather, it is merely a question of how these assets will be distributed to creditors. Amended Summary of Schedules, Amended Schedule A, Amended Schedule B, Amended Schedule D. Dckt. 33; Schedule F, Dckt. 1.

The Debtor's response provides information as to the benefit the Chapter 7 case and the potential benefit to the creditors.

Cause does not exist to dismiss this case pursuant to 11 U.S.C. § 707(a).

The motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Creditor Don Lee 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 Dismiss is denied without prejudice.

7.	**14-90015-E-7 HCS-3**	**AMERICAN DAIRY EQUIPMENT INC. Steven S. Altman**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S) 11-18-15 [36]**

Final Ruling: No appearance at the December 17, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 18, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Herum, Crabtree, Suntag, the Attorney ("Applicant") for Irma C. Edmonds the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 13, 2014 through November 18, 2015. The order of the court approving employment of Applicant was entered on January 22, 2014 and June 30, 2014, Dckt. 10 and 22. Applicant requests the reduced fees and costs in the amount of $2,750.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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 for 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 services provided 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 [professional fees and expenses] 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, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] 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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including providing legal advice to Client on strategies with case administration and how to recover certain property of the estate. The Applicant prepared employment applications, compensation applications, collected **accounts receivable, and drafted a service agreement for a debt collector. The estate has $6,700.00 of unencumbered monies to be administered as of the filing of the application.** The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 6.5 hours in this category. Applicant assisted Client with general case administration, preparing employment applications and compensation applications.

Collection of Accounts Recievable: Applicant spent 12.8 hours in this category. Applicant, at the request of Client, reviewed documents regarding $122,639.00 of accounts receivable listed on Schedule B of the Debtor. The Applicant contacted JNR Adjustment Company, Inc. to discuss the accounts. The Applicant, at the direction of the Client, executed a service agreement for the collection of debt which resulted in the collection of $4,397.27 for the estate.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana Suntag, Esq.	3.6	$325.00	$1,170.00
Loris Bakken, Esq	2.8	$295.00	$826.00
Wendy Locke, Esq.	19.3	$225.00	$4,342.50
Audrey Dutra, Paralegal	4.8	$90.00	$432.00

	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$6,770.50 FN.1.

FN.1. The court notes that these are based on the raw times on the Applicant's time sheet, which includes times that were "no-charge". The Applicant in the future should provide for an itemization for each attorney on the hours spent.

Costs and Expenses

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$101.22
Copying	$0.10	$66.60
Total Costs Requested in Application		$167.82

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $2,750.00 for its fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of $2,750.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees, Costs, and Expenses $2,750.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an 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

Herum, Crabtree, Suntag ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Herum, Crabtree, Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum, Crabtree, Suntag, Professional Employed by Trustee

Fees and Expenses in the amount of $2,750.00

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

8.	**14-90015-E-7 HCS-4**	**AMERICAN DAIRY EQUIPMENT INC. Steven S. Altman**	**MOTION FOR COMPENSATION FOR JNR ADJUSTMENT COMPANY, INC., OTHER PROFESSIONAL(S) 11-18-15 [42]**

Final Ruling: No appearance at the December 17, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 18, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

JNR Adjustment Company, Inc., the Debt Collector ("Applicant") for Irma C. Edmonds the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The order of the court approving employment of Applicant was entered on July 30, 2014, Dckt. 26. Applicant requests fees in the amount of $1,319.18.

STATUTORY BASIS FOR PROFESSIONAL FEES

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] 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, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] 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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including recovering accounts receivable for the benefit of the estate in the amount of $4,397.27. The Applicant successfully recovered assets of the estate through mailing notices, telephoning debtors, internet searches, and asset searches.

The estate has $6,700.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the collection of accounts receivable. The applicant was able to recover $4,397.27. Pursuant to the employment agreement, Applicant was to receive 30% of the accounts receivable collected. Here, that equals $1,319.18.

FEES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client to be reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $1,319.18 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Trustee from the available funds of the Estate in a manner consistent with the order of distribution in the Chapter 7 case

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

Fees $1,319.18

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an 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 JNR Adjustment Company, Inc. (“Applicant”), Debt Collector for

the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that JNR Adjustment Company, Inc. is allowed the following fees and expenses as a professional of the Estate:

JNR Adjustment Company, Inc., Professional Employed by Trustee

Fees in the amount of $1,319.18

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

9. 14-91565-E-11 RICHARD SINCLAIR
Pro Se

ORDER FOR INITIAL HEARING FOR DETERMINATION OF LEGAL COMPETENCY AND APPOINTMENT, IF NECESSARY, OF LEGAL REPRESENEATIVE AND REQUEST FOR INFORMATION FROM STANISLAUS COUNTY AND UPINDER K. BASI, MD
11-13-15 [307]

Tentative Ruling: 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 Order for Initial Hearing for Determination of Legal Competency and Appointment of Legal Representative and Request for Information from Stanislaus County and Upinder K. Basi, MD is discharged.

On November 13, 2015, the court issued the instant Order for Initial Hearing for Determination of Legal Competency and Appointment of Legal Representative and Request for Information from Stanislaus County and Upinder K. Basi, MD, Dckt. 307. In the order, the court ordered the following:

> **IT IS ORDERED** that the initial hearing for determination of legal competency is set for hearing on December 17, 2015, at 10:30 a.m. in the United States Courthouse, 1200 I Street, Second Floor, Modesto, California.
>
> **IT IS FURTHER ORDERED** that the court refers to the Stanislaus County Department of Adult Protective Services for investigation, review, report, and recommendation the issue of the federal legal competency of Richard C. Sinclair, the individual debtor in this bankruptcy case.
>
> The court requests that the investigation, review, report and recommendations include the following:
>
> A. Whether Richard C. Sinclair is legal competency, as that term is defined for federal judicial proceedings, to continue to participate as a party in this bankruptcy case and any related federal court proceedings, either in representing himself in pro se or if represented by independent, licensed attorney.

B. If Richard C. Sinclair is not legally competent be a party in these federal court proceedings, whether representing himself in pro se or being represented by an independent, licensed attorney, whether such legal incompetency is for a limited, identified duration of time or for an period of time which cannot be stated with any reasonable certainty.

C. If Richard C. Sinclair or Richard Sinclair is not legally competent be a party in these federal court proceedings, whether representing himself in pro se or being represented by an independent, licensed attorney, to recommend to the court an independent person, persons, agencies, or entities which can properly fulfill the roles and duties of a personal representative of the court as provided by Federal Rule of Civil Procedure 25(b).

IT IS FURTHER ORDERED that the court requests that Stanislaus County Department of Adult Protective Service file with the court a Status Report of the anticipated reasonable time to conduct the investigation, prepare a report, and recommendations (if there is a determination that Richard C. Sinclair is not legally competent) on or before December 10, 2015.

The court has continued the Chapter 11 Status Conference in this bankruptcy case to 10:30 a.m. on December 17, 2015.

IT IF FURTHER ORDERED that the court requests that Upinder K. Basi, MD, identified by Richard Sinclair as his doctor treating him for the current condition asserted to cause the legal competency impairment, provide the court with her medical opinion with respect to the court considering Mr. Sinclair's legal capacity at this time, prognosis, and other matters she deems medically appropriate for the court to consider in connection with a determination of Richard Sinclair's legal competency.

BACKGROUND

Richard Carroll Sinclair ("Richard Sinclair"), the Debtor and Chapter 11 Debtor-in-Possession, in pro se, commenced this voluntary Chapter 11 case on November 24, 2014. On July 28, 2015, Debtor-in-Possession filed a "Status - 2004 Examinations and Court Order" stating that Debtor-in-Possession "totaled his car on July 11, 2015 suffering a concussion which also required 17 staples in his head." Dckt. 220. The Status Report stated further that due to the alleged concussion, the Debtor-in-Possession lost a total of four weeks which led to his failure at complying with the court order as to the 2004 Examination and production of documents. Debtor-in-Possession requested to "be given an additional 30 days until August 31, 2015 to complete his recovery and inspection for records requested." Id.

Since this initial disclosure of the car accident, the Debtor-in-Possession has represented in multiple pleadings and at hearings that

he is currently not legally competent and unable to participate in the proceedings. The court discusses in detail infra the representations made by Debtor-in-Possession as to his incompetency to date.

CONDUCT IN ADVERSARY PROCEEDINGS AND BANKRUPTCY CASE

The court has identified significant legal and ethical concerns with the conduct of Debtor-in-Possession and his ability to competently participate in the bankruptcy case. These include the following conduct and actions by Debtor-in-Possession.

Debtor-in-Possession's Response to
Notice of Noncompliance with Statutory Duties
of Debtor and Requirements of United States Trustee

On July 23, 2015, the United States Trustee filed a Notice of Noncompliance with Statutory Duties of Debtor and Requirements of United States Trustee, noticing parties that the Debtor-in-Possession is delinquent in filing Monthly Operating Reports and delinquent in paying his Quarterly Fees. Dckt. 215.

On August 3, 2015, the Debtor-in-Possession filed a Response to the United States Trustees' Notice. Dckt. 222. The Debtor-in-Possession states:

> On July 11, 2015, Debtor in Possession was in a car accident, totaled his car, suffered a concussion, and received at least 17 staples to his head which were not removed until Friday July 24, 2015. The concussion is healing but return to work will be limited until August 11, 2015. Complete recover is anticipated.

Id. The Response is dated July 30, 2015. For a signature it is possible that the initials "RS" are written, but they are illegible.

On August 11, 2015, Debtor-in-Possession filed an additional Response to the Notice. Dckt. 230. The Response is a verbatim copy of the initial Response, with no additional information provided. The only difference is that the signature is the full name of the Debtor-in-Possession. The date on the Document filed August 11, 2015, is July 30, 2015, as was the initial Response.

Debtor-in-Possession's Ex Parte Application
for Continuance of All Matters Due to Attorney
Disability for All Matters

On August 25, 2015, Richard Sinclair filed an Ex Parte Application for Continuance of All Matters Due to Attorney Disability for All Matters. Dckt. 232.

The Clerk of the Court brought to the court's attention these documents which were filed in this bankruptcy case on August 25, 2015. No certificate of service for this document has been filed, and the record shows that no other persons have been served with this document. Previously in this case, due to the failure of the Richard Sinclair (who was an active licensed attorney at the time) and counsel for a group of creditors to comply with the basic pleading

requirements of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules, the court has issued an "Order to Comply With Requirements For Preparation and Filing of Documents in the Eastern District of California." Dckt. 190. FN.1. These rules include requesting relief by motion or application when specifically provided for by the Federal Rules of Bankruptcy Procedure (Bankruptcy Rule 9013) and such relief is not required to be sought by Adversary Proceeding (Bankruptcy Rule 7001). Further, the motion, points and authorities, each declaration, and the exhibits (which may be in one exhibit document) are filed as separate documents. Local Bankruptcy Rule ("L.B.R.") 9004-1 and the Revised Guidelines for Preparation of Documents.

FN.1. The California State Bar has issued an Order of Involuntary Inactive Enrollment and reports that the Debtor is ineligible to practice law effective August 27, 2015. http://members.calbar.ca.gov/fal/Member/Detail/68238.

The document filed on August 25, 2015, is titled "Declaration of Richard C. Sinclair Re: Disability....Memorandum of Points and Authorities." The title does not indicate that any relief is requested.

The first page of the filing appears to be Richard Sinclair's declaration, states:

> 1. RICHARD C. SINCLAIR will soon be competent to testify as to all maters stated herein and can testify to same if called upon to do so.
>
> 2. Attached as Exhibit A is a Memorial Hospital Record for July 11, 2015. On this date, RICHARD C. SINCLAIR totaled one of his vehicles and suffered a probable strake ad [sic] substantial concussion. RICHARD C. SINCLAIR required hospital care to stitch a laceration to his head and had at least seventeen staples(17) to held the head wound closed. The report says that RICHARD C SINCLAIR did not lose consciousness, but RICHARD C. SINCLAIR lost consciousness for about 2 hours on the side of the road.
>
> 3. RICHARD C. SINCLAIR suffered the inability to put thoughts together due to the concussion. RICHARD C. SINCLAIR also suffered some memory loss. All of that is slowly being restored but will take until at least August 31, 2015 until his faculties have restored itself enough such that he can consistently work to respond to motions and court requirements.
>
> 4. I apologize for the delay, but being attorney of record and a participant makes RICHARD C. SINCLAIR, an essential element. I also apologize for the delay in filing this Notice, but the Concussion prevented me from thinking that I had to get a NOTICE OF DISABILITY on file.

Id.

LEGAL COMPETENCY ISSUES

These statement indicates that Richard Sinclair is not and was not currently competent to provide testimony in this case after the July 2015 incident (whether caused by a stroke or an accident at that time). The reason for this currently stated impairment was set forth in further paragraphs of the declaration portion of the Document filed on August 25, 2015 (Dckt. 190). This raised for the court the issue of whether a determination of competency needs to be made and if the appointment of a personal representative pursuant to Federal Rules of Civil Procedure 25 is required. From these filings, the court discerns the following:

a. That Mr. Sinclair was in a major automobile accident, has suffered a stroke, and a substantial concussion.

b. Medical treatment for the injuries from the accident have included Mr. Sinclair receiving stitches for a laceration to his head and at least seventeen staples to how the head wound closed.

c. Mr. Sinclair believes that the accident caused him to lose consciousness for about two hours.

d. Due to the concussion, Mr. Sinclair has suffered an inability to put his thoughts together.

e. Mr. Sinclair has also suffered some memory loss.

f. Though the accident has cause significant injuries and a possible stroke, Mr. Sinclair states "All of [the impaired faculties] is slowly being restored but will take until at least August 31, 2015 until his faculties have restored itself enough such that he can consistently work to respond to motions and court requirements." This August 31, 2015 projected "restored" date is just six days after the Document was filed and fifty days after the accident and injuries being incurred.

Document, pp. 1-2; Dckt. 232.

The next three pages of the Document are titled "Points and Authorities." Id., pp. 3-5. The subheading is titled "Ex Parte Application For Continuance of All Matters Due to Attorney Disability For All Matters." Id., p. 3. The Points and Authorities then cites the court to the California Rules of Court, not the Federal Rules of Civil Procedure or the Local Bankruptcy Rules of Court. No indication is made as to how the state court rules are applicable in Federal Court.

Pages six through twelve of the Document are unauthenticated exhibits. These pages are on Sutter Health Letterhead and titled "After Care Instructions." Beginning on page 7, there is a section titled "Concussion and Brain Injury," in which general information is provided about such injuries.

On August 31, 2015, the court issued an order denying the ex parte request. Dckt. 233. The court also set a Status Conference to consider the legal competency of Richard Sinclair for October 1, 2015. The text of the court's order is set forth in Appendix A to this Order.

Richard Sinclair's Request for Notice of Disability and Delay of All Time Frames and Actions

On September 8, 2015, Richard Sinclair filed an additional Request for Notice of Disability of All Time Frames and Actions. Dckt. 244. Once again, Richard Sinclair requested a continuance of all matters, this time requesting until October 1, 2015. In addition to again failing to comply with the basic document requirements under the Local Bankruptcy Rules in this District, the Points and Authorities portion of the document only cites to California law and California Rules of Court. The only case law cited is from the state courts. Neither federal rules nor federal case law as apply in federal court is cited.

These documents filed by Mr. Sinclair follow shortly after Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association filed a motion to have Mr. Sinclair held in contempt for failure to comply with the Rule 2004 subpoenas. ("Contempt Motion") Dckt. 238.

Richard Sinclair's response in the September 8, 2015 filing once again states:

> 1. RICHARD C. SINCLAIR will soon be competent to testify as to all matters stated herein and will be able to testify to same if called upon to do so.

Richard Sinclair asserts that the further continuance is necessary because the injury to his head now has a "puss filled infection in [his] head where the staples and slice to my brain was." Dckt. 244. Richard Sinclair reiterates that he is "still suffering the inability to put thoughts together due to the concussion and subsequent infection." Id.

The Points and Authorities provided appear to be identical to Richard Sinclair's prior request for continuances.

The unauthenticated exhibit provided by Richard Sinclair is a form from Debtor-in-Possession's doctor, Upinder K. Basi, MD, which states:

> **SINCLAIR, RICHARD**
>
> **Please Excuse** _____
>
> From work/school due to illness for the following dates:
>
> 8/31/15-9/30/15
>
> May return on 10/1/15 with/without restrictions.

Exhibit A, Dckt. 244. The form is digitally signed by Dr. Basi. A copy of this document is attached to this Order as Appendix C.

Creditor's Motion for Contempt

California Equity Management Group, Inc. and Fox Hollow of Turlock Owner's Association ("Creditor") filed a Motion for Contempt on September 8, 2015. Dckt. 245. Creditor alleges that Debtor-in-Possession, the trustee of the Richard Sinclair Trust ("Sinclair Trust"), KCM, LLC, Sun one, LC, Dustykay,

LLC, Golden Hills Camp, LLC (collectively the "LLC Witnesses"), and Kathryn Machado, PhD ("Machado") have violated certain requirements, described below. Machado is alleged to be the Trustee for the Sinclair Trust and the agent for service of process for the LC Witnesses. Id., ¶ 3.

Creditor provided a thorough review of the case history as the basis for their motion for contempt. In summation, Creditor alleges that Debtor-in-Possession, Machado as Trustee and agent for service, the Sinclair Trust, and the LLC Witnesses violated several discovery requirements, including disregarding various requests in the Federal Rules of Bankruptcy Procedure 2004 examination subpoenas and disobeying this court's orders to produce testimony or documentation. Dckts. 173, 177, 200, 202 (orders relating to Richard Sinclair); Dckts. 175, 179, 192, 200, 202 (orders relating to Sinclair Trust and LLC Witnesses).

Based on the background provided, Creditor requested that the court issue an order that compels the Sinclair Trust and the LLC Witnesses to conduct a reasonable and diligent search for, and to produce, all responsive documents within their possession, custody, or control, that respond to certain listed subpoena requests. Creditor also requested the court to issue an order for Debtor-in Possession to produce the one-half inch of unsigned documents and billing statements identified in a status report on May 30, 2015, and to conduct a reasonable and diligent search for, and produce, all responsive documents in his possession, custody, or control in response to listed subpoena request. Creditor requested these various documents be provided to counsel for Creditor by October 15, 2015, with a statement under oath by each that a reasonable and diligent search was conducted. In the event contemnors fail to fully and timely comply, Creditor requested the court to sanction each at $200.00 daily until complete compliance in made. Dckt. 245, ¶ 22.

In addition to the above, Creditor sought to have Debtor-in-Possession and Machado, as Trustee of the Sinclair Trust and as a designated representative of the LLC Witnesses, to appear and resume their individual 2004 examinations.

On September 16, 2015, Mr. Sinclair filed a document identifying himself as an "attorney at law" (though no longer holding an active license to practice law). Dckt. 250. This document is signed by Mr. Sinclair, stating that Mr. Sinclair does not oppose the Contempt Motion. While signed by Mr. Sinclair, the document makes statements attributed to not just to Mr. Sinclair, but a third-party, "Richard Sinclair and I have another tub to deliver when we appear on the 1st of October." It also makes reference to "we" in several locations.

The non-opposition filed by Mr. Sinclair is in the same form, style, and formatting as other pleadings that Mr. Sinclair has filed for himself and while serving as the attorney for Dr. Machado prior to Mr. Sinclair being placed on involuntary inactive status.

An almost identical document, for which Richard Sinclair is listed in the upper left hand corner as the person preparing the document, was also filed on September 16, 2015. Dckt 249. This document is signed by Kathryn Machado and states a non-opposition to the Contempt Motion, and contains the following identical language to Mr. Sinclair's non-opposition:

> Richard Sinclair and I have another tub to deliver when we Appear on the 1st of October. The court reporter delivered to Greg Durbin, my original documents attached to the deposition, which I would like returned.

Non-Opposition, p. 2: unnumbered lines 3-5. The balance of the non-opposition of Dr. Machado is almost identical with the following exceptions:

> 1. A statement that Dr. Machado will be filing a substitution of attorney "shortly" for Iain MacDonald to substitute in as her attorney. (As of the court's October 28, 2015 review of the docket in this case, no substitution has been filed.)
>
> 2. Dr. Machado "was never sent the deposition to proof by the Court Reporter." (Richard Sinclair does not state he did not receive a copy of his 2004 Examination or a copy of the 2004 Examination of Dr. Machado in his non-opposition.)

The court initially heard the Motion for Contempt on October 1, 2015. At the hearing, Richard Sinclair had explained that he believes he had a stroke, which caused his car to go into a ditch. He further believed that by the end of October he could be able to participate in the bankruptcy case and adversary proceedings. However, the only medical information provided by a doctor is the statement that "Mr. Sinclair should be able to return to work/school August 31, 2015." The court addressed with Mr. Sinclair the need for the court to be satisfied that he is legally competent, or to appoint a personal representative. The court requested that Mr. Sinclair's doctor provide a professional opinion declaration concerning Mr. Sinclair's condition and legal competency (as a represented party or as pro se party).

The court continued the hearing to 10:30 a.m. on October 22, 2015. Dckt. 261.

Richard Sinclair's Notice of Further Disability

On October 20, 2015, Richard Sinclair filed a Notice of Further Disability. Dckt. 281. Again, Richard Sinclair failed to comply with the basic document requirements under the Local Bankruptcy Rules in this District. Richard Sinclair states that Richard Sinclair has made an appointment with Dr. Basi and went to see her on October 1, 2015 (the same day as the hearing on the Motion for Contempt and Status Conference). Richard Sinclair states that Dr. Basi said that an MRI would be necessary and an appointment with a neurologist to write a full report that the court ordered Richard Sinclair provide. Richard Sinclair states that Dr. Basi extended his disability until November 30, 2015.

Richard Sinclair then goes on to discuss Dr. Machado's granddaughter who allegedly suffered a concussion. It appears to the court that Richard Sinclair was attempting to draw a medical analogy with his grandniece's injury, rather than having a doctor provide professional, medical opinions.

Attached as Exhibits are unauthenticated studies on the effects of Residual Brain Trauma after concussions. Additionally, attached as an exhibit is a letter from Dr. Basi that states:

> My patient Richard Sinclair has been having some neurological problems. We are in the process of schedule him an appointment with the neurologist. He will be off work until November 30th 2015. Further recommendations will depend on the neurologist. If you have any questions you can contact me at the number above.

Exhibit A, Dckt. 281, a copy of which is attached to this Order as Appendix D. Richard Sinclair does not provide any declaration of Dr. Basi under penalty of perjury as to this diagnosis nor provides the court with a report, which the court ordered Richard Sinclair to provide to authenticate his alleged injury.

October 22, 2015 Hearing

On October 22, 2015, the court held hearings on the Order on Notice of Disability (Dckt. 251), Status Conferences, Motion for Contempt (Dckt. 245), and Motion for Continuance of all Matters (Dckt. 244).

At the October 22, 2015 Hearing, Richard Sinclair again requested that the hearings be continued due to his medical condition. Upon review of the pleadings he filed, the court expressed concern over the failure of his doctor to provide any substantive, credible information. Presumably, a doctor who has previously been expressing her medical opinion that Richard Sinclair could not attend "work/school" or "work" for specified time periods had conducted reasonable and necessary medical tests to render such opinions. The court is concerned that these summary form letters provided on the doctor's letterhead merely work to postpone the prosecution of this case, consistent with a time line that Richard Sinclair and Dr. Machado originally argued for when Richard Sinclair was representing Dr. Machado and the various entities.

This perception of a delay strategy is heightened by Dr. Machado failing for two months to obtain counsel for the various entities she purports to be the trustee, member, or officer. These entities, to the extent they actually exist, continue to go unrepresented. As of the court's review of the docket for this case on October 28, 2015, the counsel who appeared at the October 22, 2015 hearing has not promptly filed a substitution of attorney, especially in light of the concerns of the court concerning the lack of diligence in obtaining replacement legal representation by Dr. Machado.

DEBTOR-IN-POSSESSION'S NOTICE OF CONTINUED DISABILITY

On December 2, 2015, the Debtor-in-Possession filed a "Notice of Continued Disability Until January 31, 2016 from July 11, 2015 Traumatic Brain Injury and Declaration of Richard C. Sinclair and Doctor's Notice." Dckt. 312.

First, the court notes that the Notice does not comply with Local Bankr. R. 9014-1. The Notice does not separate the Notice from the declarations which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

Looking at the Notice itself, the Notice once again reiterates the facts of the alleged car accident. The Debtor-in-Possession attaches another "letter" from Dr. Basi which is substantially the same as the previous "letter" and states that the Debtor-in-Possession "will be off work till January 31st." Dckt. 312.

The Notice states that:

> Due to my disability, I will not be attending any hearings or filing any responses or motions.

Id.

DEBTOR-IN-POSSESSION'S STATUS REPORT

The Debtor-in-Possession filed a status report on December 2, 2015. Dckt. 311.

First, the court notes that the report does not comply with Local Bankr. R. 9014-1. The report does not separate the report from the declarations from the evidence which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

The Debtor-in-Possession discusses two letters that were "uncovered" when the Debtor-in-Possession was preparing documents for the Rule 2004 examination. The two letters are allegedly gift letters to Debtor-in-Possession's children and ex-wife, giving the Debtor-in-Possession's interest in Sinclair Ranch to his ex-wife and children. These letters are allegedly dated January 31, 1996 and December 24, 2001.

The Debtor-in-Possession argues that these "letters" evidence that he does not have any interest in the Ranch and that they are not part of the estate.

DEBTOR-IN-POSSESSION RESPONSE TO INTERROGATORIES

On December 7, 2015, the Debtor-in-Possession filed his response to the interrogatories sent by the Creditor regarding the alleged accident. The response states the following:

> I am in receipt of your INTERROGATORIES AND PRODUCTION OF DOCUMENTS RE DISABILITY. I repeat what I have previously told you. I will put it in capital letters so you can see it better. I AM DISABLED.
>
> The Doctor has repeated that I am still disabled. Therefore, I will not be responding to these interrogatories and production of documents about my disability, until after the disability time period ends. My thought processes are interrupted and I am not going to respond until they have turned. Judge Sargis acknowledged the disability. Please stop sending me things to do while I am disabled. . . .

CREDITOR'S STATUS REPORT

The Creditor filed a report on December 10, 2015. Dckt. 321. The report begins with a restatement of the Debtor-in-Possession's representations since the alleged accident. The Creditor states that they have served interrogatories and document requests on the Debtor-in-Possession as to the alleged incident. The Creditor states that the Debtor-in-Possession refused to respond. The Creditor states that they served subpoenas duces tecum to Waterford Tow Service

and the California Highway Patrol and the return date of January 6, 2016.

As to the Federal RICO action, the Creditor states that the remaining defendants have had their defaults entered. The Debtor-in-Possession is one of the defaulted defendants. The federal court issued an order setting a status conference for January 11, 2016, with the purpose of the hearing being to determine how to proceed and to schedule a damages prove up trial.

DISCUSSION

The ability of the court to order Mr. Sinclair to produce documents is dependant on the court (1) determining that Mr. Sinclair is legally competent to continue in pro se as the Debtor and Debtor in Possession, (2) determining that Mr. Sinclair sufficiently competent to continue as the Debtor and Debtor in Possession with the assistance of legal and other professionals, (3) determining that Mr. Sinclair is legally competent to continue as the Debtor in pro se or with the assistance of legal and other professionals, but not continue as Debtor in Possession; and (4) determining that Mr. Sinclair is not legally competent appoint a personal representative to act in his place as a debtor, and (a) have the personal representative fulfill Debtor's duties as the debtor in possession, (b) appoint a Chapter 11 trustee, or (c) convert the case to one under Chapter 7.

Mr. Sinclair has twice stated under penalty of perjury that since his automobile accident on July 11, 2015 that he is not mentally able to participate in this case as the debtor or as the debtor in possession. However, these statements are suspect because they are made at a time Mr. Sinclair states he is unable to fulfill the obligations of a party in this case and the fiduciary obligations as the Debtor in Possession to the impairment. For the court to order a party who has stated that he is not legally competent to do something is only inviting even more litigation between these parties.

The court has previously served along with the Order setting the hearing a discussion of the federal law relating to determine legal competency for a party to participate in federal legal proceeds. Further, the court addresses the obligation of the court to appoint a personal representative to take the place of the legally incompetent person as provided in Federal Rule of Bankruptcy Procedure 25(b). The court provided this for the convenience of all persons and for clarity in defining the issues before the court.

Along with the Debtor-in-Possession throughout this case has been Dr. Katherine Machado, the Debtor-in-Possession’s sister who is the trustee of the Sinclair Trust. Throughout the instant case, the Debtor-in-Possession has repeatedly attempted to represent both himself, as the fiduciary of the bankruptcy estate, and Dr. Machado, in her various representative capacity. However, as noted by Movant, the Debtor-in-Possession was disbarred from practicing law on August 27, 2015. Additionally, as the fiduciary of the estate and with there being allegations of avoidable transfers into the Trust, the court repeatedly informed the Debtor-in-Possession and Dr. Machado of the necessity for Dr. Machado, both individually and as a representative, to retain counsel. It was not until November 2015 that Dr. Machado retained counsel.

Dr. Machado is a well-educated and intelligent woman. She has appeared before the court numerous times throughout the case and has shown not only a knowledge of the various assets of the case but also a legitimate concern over

her brother and the various assets. All the while the Debtor-in-Possession has been asserting his disability and incompetency, Dr. Machado has not attempted to be appointed as the Debtor-in-Possession's personal representative in either the instant case or in state court. If the disability is as perverse as the Debtor-in-Possession has repeatedly represented to the court, though unauthenticated in doctor reports, Dr. Machado would most have certainly attempted to protect her brother's interest and her own in not only the Trust but also the Sinclair Ranch. The failure of Dr. Machado to seek personal representation for the Debtor-in-Possession during his alleged incompetency further evidences that the Debtor-in-Possession is not in fact disabled or incompetent.

Though professing an inability to participate, Mr. Sinclair continues to file extensive documents. He continues to argue and reargue issues. The District Court recently addressed contentions of incapacity by Mr. Sinclair regarding litigation in that court. *Sinclair et al v. Fox Hollow, et al*, E.D. Cal. No 03-05439. That litigation has been pending more for almost fifteen years. In denying Mr. Sinclair's motion for a new trial, the District Court judge recounted the contentions of incapacity and inability to participate in legal proceedings before the District Court and other courts.

> While Richard Sinclair might not initially have been able to respond to the discovery requests due to health issues, he has been given multiple opportunities over a period of years to comply with the discovery orders. Instead, Defendants (and Richard Sinclair in particular) have flouted the orders of the various District Judges and Magistrate Judges assigned to this case. Monetary sanctions were imposed and had no effect. Defendants were specifically warned that terminating sanctions would be imposed for continued violation before that sanction was imposed.
>
> Richard Sinclair's failure to follow court orders is not limited to this court. California State Bar Court Judge Pat McElroy held a five day trial and found Richard Sinclair guilty of four charges of professional misconduct having to do with several cases including this one; Judge McElroy ordered Richard Sinclair put on involuntary inactive status with a recommendation for disbarment. Relevant to Richard Sinclair's claims that Plaintiffs took advantage of his medical issues to engineer his violation of discovery orders, Judge McElroy stated
>
> > '[Richard Sinclair] asserted that beginning in 2008 he had four major skeletal surgeries and had to re-learn how to walk on various occasions. While respondent presented evidence of his medical history, including his four surgeries, his last two surgeries were on March 11, 2011, and September 27, 2011, well before the present misconduct. The note from the doctor as to the September 27, 2011 surgery states that respondent should not engage in work for ten days.... Daniel Durbin, an attorney for Katakis, gave reliable testimony in the present matter

> that during the period of August 2010 through June 2011, respondent filed 22 complaints, amended complaints, cross complaints, answers, or petitions; filed 44 disclosure motions or applications, notices of appeal or removal, and appellate briefs; opposed 25 motions or applications; made at least 27 court appearances; and conducted a 5-day jury trial. As proof of the 5-day jury trial, Durbin presented court records. On the other hand, respondent claims to have no memory of a jury trial in April 2011.'
>
> State Bar Court of California San Francisco Hearing Department, In the Matter of Richard Carroll Sinclair Member No. 68238, Case No 13-O-10657-PEM, July 28, 2015 Order, pages 28-29, publically available at http://members.calbar.ca.gov/courtDocs/13-O-10657-2.pdf. Richard Sinclair's surgeries took place 2008-2011; as outlined above, his refusal to follow court orders took place after that time. Indeed, Richard Sinclair asserts "I have been disabled from December 2008 (during the trial of [State Court Action] in which Andrew Katakis' defense of Unclean Hands was successful) through 2013." Doc. 1089, at 26. On March 31, 2014, this court gave Richard Sinclair a final chance to provide the contested discovery. Doc. 1014. By Richard Sinclair's own version of facts, he was no longer disabled at that time.

Sinclair et al v. Fox Hollow, et al; E.D. Cal. No 03-05439, p.7:12-28, 8:1-12.

Though months have passed for Mr. Sinclair's doctors to provide credible, competent medical opinions as to Mr. Sinclair's legal competency, no such credible testimony has been provided. The court has served the orders requiring such testimony on the doctors themselves so that they personally would know what was at stake, not merely reply on Mr. Sinclair to communicate with them. The response from the doctors has been lacking.

The original excuse from a doctor was the "excuse from school or work" form note from Doctor Upinder K. Basi. Exhibit A, Dckt. 244. In this form note, Dr. Basi stated her medical opinion that Mr. Sinclair may return to "school or work" on October 1, 2015. Dr. Basi did not even complete the part of the note to designate whether the return to "school or work" was "with/without restrictions."

Though professing incapacity, Mr. Sinclair filed a responsive pleading in which he addressed facts and allegations (favorable to his position) to oppose his creditor opponents. Response, Dckt. 222, filed August 3, 2015. He then filed another pleading on August 25, 2015, asserting an inability to comply with court orders. Declaration and Memorandum of Points and Authorities, Dckt. 232. On September 8, 2015, Mr. Sinclair filed a Declaration, Request for Delay, Memorandum of Points and Authorities, asserting his position why the case should not proceed due to his incapacity. Dckt. 244.

On September 16, 2015, documents prepared by Mr. Sinclair were filed

for himself and Dr. Machado opposing the motion to have each held in contempt for failing to comply with the court's prior orders. Dckts. 249, 250.

On October 20, 2015, Mr. Sinclair files an additional Declaration, and Status Report, asserting an incapacity to proceed. Dckt. 281. Rather than a credible, competent declaration of a medical opinion, Dr. Basi again provided what appears to be a two sentence form excuse note. After more than three months, the best information and assistance to the court which Dr. Basi could provide is the statement, "My patient Richard Sinclair has been having some neurological problems." *Id.* p. 5. She further states that Mr. Sinclair "will be off work" until November 30, 2015. None of this information is provided under penalty of perjury.

On December 2, 2015, Mr. Sinclair filed yet another pleading advocating his position. In this Status Report Mr. Sinclair states that he has been searching his files to prepare for Rule 2004 examinations (not asserting an incapacity) and recalls events from twenty years earlier which he asserts tip the bankruptcy case in his favor. Dckt. 311. Further, he now produces a declaration by his son which is dated November 4, 2015. Again, this declaration purports to tip the case in his favor. Finally, Mr. Sinclair attached purported copies of letters from twenty years earlier which, again, tip the case in his favor.

On December 9, 2015, Mr. Sinclair filed another extensive pleading in which he argues the legal and factual events covering the past twenty-six years, advocating his case against his creditors. Dckt. 318. He asserts and analyzes complex factual and legal concepts, again asserting that this will tip the case in his favor.

It has been demonstrated that Mr. Sinclair does not suffer from a disability or capacity impairment. Rather, as in his other cases, while professing an impairment he is litigating the case. The court notes that just prior to the "impairment," Mr. Sinclair was advocating that discovery be put on hold until the end of the summer. Due to the "impairment," such discovery has effectively been put on hold until December 2015.

During this time he has litigated the case with his sister, Dr. Machado. The court has to believe that if the impairment existed, Dr. Machado would have acted to insure that her brother received the necessary medical and legal assistance. Instead, Dr. Machado (who is the principal of entities which received what may be fraudulent conveyances) has benefitted from the "impairment delay," without taking any overt action to assist her brother.

Though Mr. Sinclair asserts that an accident occurred to which law enforcement responded, no law enforcement report has been provided. In earlier proceedings, when creditor's counsel used the information about the accident provided by Mr. Sinclair, the law enforcement agency had no record of any such accident report. Though the court noted that rather than merely questioning the accuracy of creditor's counsel's statement, Debtor and Dr. Machado could easily get a copy and have it filed with the court, no such accident report has been filed by either.

The court has reported this situation to the County of Stanislaus, so that adult protective services or other agency could act consistent with their duties to the public. No action has been taken by the County.

The court concludes that Richard Sinclair, the Debtor, has the requisite legal capacity to participate as a party in this bankruptcy case and the related proceedings, and do so as a pro se party.

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 for Initial Hearing for Determination of Legal Competency and Appointment of Legal Representative and Request for Information from Stanislaus County and Upinder K. Basi, MD ("Order re Legal Competency") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Order re Legal Competency is discharge, the court having determined that Richard Sinclair has the requisite legal competency to proceed as a party in this action and to appear in pro se.

10. 14-91565-E-11 RICHARD SINCLAIR — **CONTINUED HEARING RE: ORDER ON NOTICE OF DISABILITY**
Pro Se — **9-24-15 [251]**

CONTINUED: 10/22/15

Tentative Ruling: 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 Order on Notice of Disability is discharge.

On September 24, 2015, the court issued the instant Order on Notice of Disability. Dckt. 251. In the order, the court ordered the following:

> Therefore, upon review of the second statement on not being legally competent (at least temporarily) due to the July 2015 auto accident filed by Mr. Sinclair (Dckt. 244), documents which appear to have been prepared by Mr. Sinclair for Dr. Machado in this case after Mr. Sinclair's law license was placed in involuntary inactive status, Dr. Machado and Mr. Sinclair stating that they have been in contempt of court, Dr. Machado failing to substitute counsel (for herself personally and in her capacity as trustee and managing member of entities ordered to produce documents) to respond to the Contempt Motion, and good cause appearing;
>
> **IT IS ORDERED** that the hearing on the issues concerning the legal capacity of Mr. Sinclair and ability of Kathryn Machado to participate individually and as the representative of other entities in light of Mr. Sinclair not being allowed to practice law, and the effect of Mr. Sinclair and Kathryn Machado having each stated that they are in contempt of court, shall be conducted at 2:00 p.m. on October 1, 2015, in conjunction with the Status Conference in this case and the Contempt Motion.

BACKGROUND

On August 31, 2015, this court issued an order denying the request of Richard Sinclair, the Chapter 11 Debtor and Debtor in Possession ("Mr. Sinclair"), to stay all matters until September 15, 2015. Order, Dckt. 233. That order included a brief survey of this case, the parties, and the pleading deficiencies. The court denied the request for the stay in light of there (1) being no hearings pending prior to September 15, 2015, (2) Mr. Sinclair stating that the disability was expected to abate August 31, 2015, and (3) the upcoming hearings would be conducted in conjunction with the Status Conference in this

bankruptcy case, at which time the court would conduct a preliminary consideration of Mr. Sinclair's legal capacity to proceed without the appointment of a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 1016, 7025, and 9014.

On September 8, 2015, Mr. Sinclair filed the document titled "Declaration of Richard C. Sinclair, Request For Notice of Disability and Delay of All Time Frames and Actions, Memorandum of Points and Authorities, Status Report." Dckt. 244. In addition to again failing to comply with the basic document requirements under the Local Bankruptcy Rules in this District, the Points and Authorities portion of the document only cites to California law and California Rules of Court. The only case law cited is from the state courts. Neither federal rules nor federal case law as apply in federal court is cited.

These documents filed by Mr. Sinclair follow shortly after Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association filed a motion to have Mr. Sinclair held in contempt for failure to comply with the Rule 2004 subpoenas. ("Contempt Motion") Dckt. 238.

As discussed in a separate Order to Appear, Kathryn Machado, PhD, who, individually and as the managing member or trustee of KMC LLC, Sun-One, LLC, Gold Hills, Chinese Camp, LLC, and Richard C. Sinclair Family Trust, was formerly represented by Mr. Sinclair until the California State Bar placed Mr. Sinclair on Involuntary Inactive status. Dckt. 235. The court issued the Order to Appear for Dr. Machado in light of Mr. Sinclair being placed on involuntary inactive status by the State Bar and his inability to practice law or represent other persons (individual or entities) in legal proceedings.

On September 16, 2015, Mr. Sinclair filed a document identifying himself as an "attorney at law." Dckt. 250. This document is signed by Mr. Sinclair, stating that Mr. Sinclair does not oppose the Contempt Motion. While signed by Mr. Sinclair, the document makes statements attributed to not just to Mr. Sinclair, but a third-party, "Richard Sinclair and I have another tub to deliver when we appear on the 1st of October." It also makes reference to "we" in several locations.

The non-opposition filed by Mr. Sinclair is in the same form, style, and formatting as other pleadings that Mr. Sinclair has filed for himself and while serving as the attorney for Dr. Machado prior to Mr. Sinclair being placed on involuntary inactive status.

An almost identical document, for which Richard Sinclair is listed in the upper left hand corner as the person preparing the document, was also filed on September 16, 2015. Dckt 249. This document is signed by Kathryn Machado and states a non-opposition to the Contempt Motion, and contains the following identical language to Mr. Sinclair's non-opposition:

> Richard Sinclair and I have another tub to deliver when we Appear on the 1st of October. The court reporter delivered to Greg Durbin, my original documents attached to the deposition, which I would like returned.

Non-Opposition, p. 2: unnumbered lines 3-5. The balance of the non-opposition of Dr. Machado is almost identical with the following exceptions:

1. A statement that Dr. Machado will be filing a substitution of attorney "shortly" for Iain MacDonald to substitute in as her attorney. (As of the court's September 24, 2015 review of the docket in this case, no substitution has been filed.)

2. Dr. Machado "was never sent the deposition to proof by the Court Reporter." (Richard Sinclair does not state he did not receive a copy of his 2004 Examination or a copy of the 2004 Examination of Dr. Machado in his non-opposition.)

Mr. Sinclair has been a licensed attorney for several decades in California and has represented to the court on several occasions his experience, success, and abilities as an attorney. Presumably, he understands the significance of his not being allowed to practice law in California.

From reviewing the two non-oppositions in which Mr. Sinclair and Dr. Machado admit that "we were in contempt of court...," it appears all-but-obvious that Mr. Sinclair has continued to prepare pleadings for Dr. Machado, a third-party, to be filed in this case.

ADDITIONAL INFORMATION FROM OCTOBER 1, 2015 PROCEEDING

At the Status Conference, Richard Sinclair and explained that he believes he had a stroke, which caused his car to go into a ditch. He further believes that by the end of October he could be able to participate in the bankruptcy case and adversary proceedings. However, the only medical information provided by a doctor is the "Mr. Sinclair should be able to return to work/school August 31, 2015. The court addressed with Mr. Sinclair the need for the court to be satisfied that he is legally competent, or to appoint a personal representative. The court requested that Mr. Sinclair's doctor provide a professional opinion declaration concerning Mr. Sinclair's condition and legal competency (as a represented party or as pro se party).

SUPPLEMENTAL ORDER

On October 9, 2015, the court issued a supplemental order. Dckt. 275. The Order stated the following:

> **IT IS ORDERED** that for the 2:00 p.m. October 22, 2015 Status Conference in this bankruptcy case, the court requests that Upinder K. Basi, M.D., the person identified as signing a form stating that Richard Sinclair should be excused from "work/school due to illness" provide a written declaration under penalty of perjury providing the court with the nature, scope, and projected duration of the "illness." Further, in light of Richard Sinclair identifying it as something which constitutes a legal incapacity for which these proceedings should be stayed, at least temporarily, the court requests that Dr. Basi also provide his professional opinion and medical diagnosis of: (1) the legal competency of Mr. Sinclair to proceed in this bankruptcy case, both as a party and a pro se party representing himself; (2) the basis for determining that he should be excuses from work or school activities until September 30, 2015; (3) any concerns, limitations, or inabilities of Mr. Sinclair to proceed as a party or in

representing himself in these legal proceedings; (4) and any other factors, limitations, conditions, or matters which Dr. Basi believes the court should consider in determining how these judicial proceedings will be conducted, Mr. Sinclair's ability to participate as a party, the need of the court to appoint a personal representative in the place of Mr. Sinclair, and Mr. Sinclair being able to represent himself.

The Order does not compel Upinder K. Basi, M.D. to provide any declaration or other testimony, but is a request for the doctor to provide information which would be of great assistance in the court addressing the competency issues raised by Mr. Sinclair, Dr. Basi's patient.

IT IS FURTHER ORDERED that Dr. Basi's declaration shall be filed under seal, not to be disclosed to any party or the public except upon further order of this court. The declaration shall be filed by Dr. Basi personally, or a member of Dr. Basi's staff, in paper form at the United States Bankruptcy Court for the Eastern District of California (Modesto Division), Suite 4 (2nd Floor), Modesto, California.

The Clerk of the Court shall file the declaration under seal, with it not being available to any party or the public either in electronic or paper form except upon further order of the court.

IT IS FURTHER ORDERED that the declaration of Dr. Basi, if any, shall be filed on or before October 20, 2015. A copy of the declaration shall be provided by Dr. Basi directly to Richard Sinclair, Dr. Basi's patient, on or before October 20, 2015.

REPORT OF CREDITORS CALIFORNIA EQUITY MANAGEMENT GROUP, INC., FOX HOLLOW OF TURLOCK OWNERS' ASSOCIATION AND ANDREW KATAKIS

On October 15, 2015, Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Creditors") filed a Report. Dckt. 278. The Report states that following the October 1, 2015 status conference, Creditors' counsel telephoned the records department for the Stanislaus County Sheriff's Department to obtain the report of Mr. Sinclair's alleged accident on July 11, 2015. According to counsel, the Sheriff's Department informed Creditors' counsel that they had no record of the incident.

The Creditors provide a copy of a follow up letter Creditors' counsel sent to the Sheriff's Department to confirm that no such record of the incident exists. Dckt. 278, Exhibit A. The Creditors provide the response received by the Sheriff's Department which states:

> A NAME SEARCH AS OF 10/15/15 FAILS TO REVEAL ANY RECORD
> SHERIFF'S OFFICE, MODESTO, CA

Dckt. 278, Exhibit B. There is a signature underneath the stamped language. The cover letter from the Sheriff's Department states that it was sent From the "Stanislaus County Sheriff's Dept. Records," and the Sender was "Trish S." Id.

PRIOR HEARING

The court conducted a preliminary review of Mr. Sinclair's statement that he has been rendered legally incompetent to proceed, at least temporarily, in this case at the October 1, 2015 at 2:00 p.m. hearing.

The court continued the hearing to 10:30 a.m. on October 22, 2015. Dckt. 265.

OCTOBER 22, 2015 HEARING

At the hearing, little new information was provided to the court. Based on the multiple statements by Richard Sinclair under penalty of perjury and the documents identified by Mr. Sinclair as letters from his doctor stating that Mr. Sinclair should be excused from "work" or "school" due to unidentified illness, the court determines that Mr. Sinclair has admitted that he is not legally competent and able to fulfill the obligations as the debtor in possession.

Therefore, the court determined that it is necessary to appoint a trustee in this case. The U.S. Trustee requested that time be afforded for that office to review further and file a motion for the appointment of a trustee or to convert the case. Due to lack of reported assets, the possible fraudulent conveyances, and the litigious nature of the Debtor and main protagonist creditor (See Order and Decision of the Hon. Anthony Ishii in *Fox Hollow of Turlock Owners Association v. Mauctrst, LLC*, EDC D.C. 03-5439, Dckt. 1184), the U.S. Trustee's Office believed it may be necessary for the case to be converted to Chapter 7 and the U.S. Trustee serve as the trustee in this case.

DEBTOR-IN-POSSESSION'S NOTICE OF CONTINUED DISABILITY

On December 2, 2015, the Debtor-in-Possession filed a "Notice of Continued Disability Until January 31, 2016 from July 11, 2015 Traumatic Brain Injury and Declaration of Richard C. Sinclair and Doctor's Notice." Dckt. 312.

First, the court notes that the Notice does not comply with Local Bankr. R. 9014-1. The Notice does not separate the Notice from the declarations which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

Looking at the Notice itself, the Notice once again reiterates the facts of the alleged car accident. The Debtor-in-Possession attaches another "letter" from Dr. Basi which is substantially the same as the previous "letter" and states that the Debtor-in-Possession "will be off work till January 31st." Dckt. 312.

The Notice states that:

> Due to my disability, I will not be attending any hearings or filing any responses or motions.

Id.

DEBTOR-IN-POSSESSION'S STATUS REPORT

The Debtor-in-Possession filed a status report on December 2, 2015. Dckt. 311.

First, the court notes that the report does not comply with Local Bankr. R. 9014-1. The report does not separate the report from the declarations from the evidence which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

The Debtor-in-Possession discusses two letters that were "uncovered" when the Debtor-in-Possession was preparing documents for the Rule 2004 examination. The two letters are allegedly gift letters to Debtor-in-Possession's children and ex-wife, giving the Debtor-in-Possession's interest in Sinclair Ranch to his ex-wife and children. These letters are allegedly dated January 31, 1996 and December 24, 2001.

The Debtor-in-Possession argues that these "letters" evidence that he does not have any interest in the Ranch and that they are not part of the estate.

DEBTOR-IN-POSSESSION RESPONSE TO INTERROGATORIES

On December 7, 2015, the Debtor-in-Possession filed his response to the interrogatories sent by the Creditor regarding the alleged accident. The response states the following:

> I am in receipt of your INTERROGATORIES AND PRODUCTION OF DOCUMENTS RE DISABILITY. I repeat what I have previously told you. I will put it in capital letters so you can see it better. I AM DISABLED.
>
> The Doctor has repeated that I am still disabled. Therefore, I will not be responding to these interrogatories and production of documents about my disability, until after the disability time period ends. My thought processes are interrupted and I am not going to respond until they have turned. Judge Sargis acknowledged the disability. Please stop sending me things to do while I am disabled. . . .

CREDITOR'S STATUS REPORT

The Creditor filed a report on December 10, 2015. Dckt. 321. The report begins with a restatement of the Debtor-in-Possession's representations since the alleged accident. The Creditor states that they have served interrogatories and document requests on the Debtor-in-Possession as to the alleged incident. The Creditor states that the Debtor-in-Possession refused to respond. The Creditor states that they served subpoenas duces tecum to Waterford Tow Service and the California Highway Patrol and the return date of January 6, 2016.

As to the Federal RICO action, the Creditor states that the remaining defendants have had their defaults entered. The Debtor-in-Possession is one of the defaulted defendants. The federal court issued an order setting a status conference for January 11, 2016, with the purpose of the hearing being to determine how to proceed and to schedule a damages prove up trial.

DISCUSSION

The US Trustee filed a Motion to Convert on October 26, 2015. On December 17, 2015, the court granted the Motion and converted the case to one under Chapter 7.

The court has made extensive findings in connection with the court's own Order for Initial Hearing for Determination of Legal Competency and Appointment of Legal Representative and Request for Information from Stanislaus County and Upinder K. Basi, MD. DCN: ("Order re Legal Competency"). Order, Dckt. 307; Civil Minutes for December 17, 2015 hearing. The court has concluded that Richard Sinclair has the requisite legal capacity to be a party in this bankruptcy case and related proceedings, and participate in pro se.

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 on Notice of Disability 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 on Notice of Disability is discharged.

11. 14-91565-E-11 HAR-6 RICHARD SINCLAIR Pro Se

CONTINUED AMENDED MOTION FOR CONTEMPT
9-8-15 [245]

CONTINUED: 10/22/15

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

Oral argument 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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Creditors, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Amended Motion for Contempt 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 defaults of the non-responding parties and other parties in interest are entered.

The Amended Motion for Contempt is set for hearing at 10:30 a.m. on January 14, 2016. Opposition to be filed and served on or before January 4, 2016, and Replies, if any, filed and served on or before January 8, 2016.

California Equity Management Group, Inc. and Fox Hollow of Turlock Owner's Association ("Creditor") filed this Motion for Contempt on September 8, 2015. Dckt. 245. Creditor alleges that Richard Sinclair ("Debtor"), the trustee of the Richard Sinclair Trust ("Sinclair Trust"), KCM, LLC, Sun one, LC, Dustykay, LLC, Golden Hills Camp, LLC (collectively the "LLC Witnesses"), and Kathryn Machado, PhD (Machado) have violated certain requirements, described below. Machado is alleged to be the Trustee for the Sinclair Trust and the agent for service of process for the LC Witnesses. Dckt. 245 ¶ 3.

Creditor provide a thorough review of the case history as the basis for their motion for contempt. In summation, Creditor alleges that Debtor, Machado as Trustee and agent for service, the Sinclair Trust, and the LLC Witnesses

violated several discovery requirements, including disregarding various requests in the Federal Rules of Bankruptcy Procedure 2004 examination subpoenas and disobeying this court's orders to produce testimony or documentation. Dckt. 173, 177, 200, 202 (orders relating to Richard Sinclair); Dckt. 175, 179, 192, 200, 202 (orders relating to Sinclair Trust and LLC Witnesses).

Based on the background provided, Creditor requests that the court issue an order that compels the Sinclair Trust and the LLC Witnesses to conduct a reasonable and diligent search for, and to produce, all responsive documents within their possession, custody, or control, that respond to certain listed subpoena requests. Creditor also requests this court to issue an order for Debtor to produce the one-half inch of unsigned documents and billing statements identified in a status report on May 30, 2015, and to conduct a reasonable and diligent search for, and produce, all responsive documents in his possession, custody, or control in response to listed subpoena request. Creditor requests these various documents be provided to counsel for Creditor by October 15, 2015, with a statement under oath by each that a reasonable and diligent search was conducted. In the event contemnors fail to fully and timely comply, Creditor requests the court to sanction each at $200 daily until complete compliance in made. Dckt. 245 ¶ 22.

In addition to the above, Creditor seeks to have Debtor and Machado, as Trustee of the Sinclair Trust and as a designated representative of the LLC Witnesses, to appear and resume their individual 2004 examinations.

DEBTOR AND MACHADO'S NONOPPOSITION

On September 16, 2015, Mr. Sinclair filed a document identifying himself as an "attorney at law." Dckt. 250. This document is signed by Mr. Sinclair, stating that Mr. Sinclair does not oppose the Contempt Motion. While signed by Mr. Sinclair, the document makes statements attributed to not just to Mr. Sinclair, but a third-party, "Richard Sinclair and I have another tub to deliver when we appear on the 1st of October." It also makes reference to "we" in several locations.

The non-opposition filed by Mr. Sinclair is in the same form, style, and formatting as other pleadings that Mr. Sinclair has filed for himself and while serving as the attorney for Dr. Machado prior to Mr. Sinclair being placed on involuntary inactive status.

An almost identical document, for which Richard Sinclair is listed in the upper left hand corner as the person preparing the document, was also filed on September 16, 2015. Dckt 249. This document is signed by Kathryn Machado and states a non-opposition to the Contempt Motion, and contains the following identical language to Mr. Sinclair's non-opposition:

> Richard Sinclair and I have another tub to deliver when we Appear on the 1st of October. The court reporter delivered to Greg Durbin, my original documents attached to the deposition, which I would like returned.

Non-Opposition, p. 2: unnumbered lines 3-5. The balance of the non-opposition of Dr. Machado is almost identical with the following exceptions:

1. A statement that Dr. Machado will be filing a substitution of attorney "shortly" for Iain MacDonald to substitute in as her attorney. (As of the court's September 24, 2015 review of the docket in this case, no substitution has been filed.)

2. Dr. Machado "was never sent the deposition to proof by the Court Reporter." (Richard Sinclair does not state he did not receive a copy of his 2004 Examination or a copy of the 2004 Examination of Dr. Machado in his non-opposition.)

CREDITOR'S REPLY

On September 24, 2015, the Creditor filed a reply. Dckt. 254. Appearing to restate points in the original Motion, the Creditor restates that it has shown that the parties are in contempt of the court order for production and that Debtor's "disability" does not excuse their contempt.

Furthermore, the Creditor seeks that each of the contemnors should be required to state under oath at the hearing that he or she:

1. Has made a reasonable and diligent search for all of the documents requested int eh subpoena;

2. Has completed such search; and

3. Is producing all of the responsive documents.

Lastly, the Creditor requests that the court order new dates for the resumption and conclusion of the 2004 examinations.

APPLICABLE LAW

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

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

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

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

OCTOBER 1, 2015 HEARING

At the hearing, Richard Sinclair and explained that he believes he had a stroke, which caused his car to go into a ditch. He further believes that by the end of October he could be able to participate in the bankruptcy case and adversary proceedings. However, the only medical information provided by a doctor is the "Mr. Sinclair should be able to return to work/school August 31, 2015. The court addressed with Mr. Sinclair the need for the court to be satisfied that he is legally competent, or to appoint a personal representative. The court requested that Mr. Sinclair's doctor provide a professional opinion declaration concerning Mr. Sinclair's condition and legal competency (as a represented party or as pro se party).

The court also addressed with Dr. Machado the failure to substitute in as counsel for Dr. Machado and the entities for which she is the managing member, trustee, or representative. At the hearing Dr. Machado represented, several times, that she had retained as counsel for herself and the entities Ian Macdonald. Additionally, that she did not know why he was not at the hearing, since he had been so employed. The court requested that the court's staff call Mr. Macdonald's office during the hearing to determine if he was on his way to court or was unaware of the hearing. The staff reported that he was not at the office.

The court then stated that it would issue an order for Mr. Macdonald to appear the next week in the Sacramento courtroom to address Dr. Machado's representations that Mr. Macdonald was the attorney for the doctor and the entities. Dr. Machado stated that she was available to appear. Then the court noted that if it was an inaccurate statement that Mr. Macdonald had been engaged as counsel and the court wasted Mr. Macdonald's time by bringing him to Sacramento based on Dr. Machado's representations, then the court would sanction Dr. Machado and the entities for the loss of Mr. Macdonald's time. Estimating Mr. Macdonald to have at least a $400 an hour billing rate and the hearing exhausting at least six hours of time, the sanctions could be between $2,500 and $3,000.

At that point Dr. Machado stated that while she had signed the engagement letter, she had not sent Mr. Macdonald the $10,000 retainer which was required as a condition of employment. Rather, Dr. Machado stated that she proposed that Mr. Macdonald commence the representation and that a retainer would be funded out of some future escrow. She then conceded that Mr. Macdonald had not yet been employed as counsel.

Dr. Machado then represented to the court that she would engage counsel, even if it was less expensive counsel. The court noted to Dr. Machado that Mr. Sinclair has a very distinctive writing and advocacy style. If the court were to see a newer attorney signing pleadings, but they were written in the same style and legal content as Mr. Sinclair's pleadings, then the court

would be concerned that the new attorney was merely lending his or her bar license to Mr. Sinclair to engage in the unlicensed practice of law. The court expressed concern that it could appear from the file that Dr. Machado was already promoting the unlicensed practice of law by having Mr. Sinclair draft pleadings for and provide legal advise to Dr. Machado and the entities, which Dr. Machado would then sign purportedly in *pro se*.

The court continued the hearing to 10:30 a.m. on October 22, 2015. Dckt. 261.

REPORT OF CREDITORS CALIFORNIA EQUITY MANAGEMENT GROUP, INC., FOX HOLLOW OF TURLOCK OWNERS' ASSOCIATION AND ANDREW KATAKIS

On October 15, 2015, Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Creditors") filed a Report. Dckt. 278. The Report states that following the October 1, 2015 status conference, Creditors' counsel telephoned the records department for the Stanislaus County Sheriff's Department to obtain the report of Mr. Sinclair's alleged accident on July 11, 2015. According to counsel, the Sheriff's Department informed Creditors' counsel that they had no record of the incident.

The Creditors provide a copy of a follow up letter Creditors' counsel sent to the Sheriff's Department to confirm that no such record of the incident exists. Dckt. 278, Exhibit A. The Creditors provide the response received by the Sheriff's Department which states:

> A NAME SEARCH AS OF 10/15/15 FAILS TO REVEAL ANY RECORD
> SHERIFF'S OFFICE, MODESTO, CA

Dckt. 278, Exhibit B. There is a signature underneath the stamped language. The cover letter from the Sheriff's Department states that it was sent From the "Stanislaus County Sheriff's Dept. Records," and the Sender was "Trish S." Id.

OCTOBER 22, 2015 HEARING

At the hearing, it was represented that Richard Sinclair had turned over documents purported in response to the subpoenas for himself, Dr. Machado individually, and for Dr. Machado as the trustee, managing member, or officer of the Richard Sinclair Trust, and the managing members or representative of KCM, LLC; Sun One, LLC; Dustykay, LLC; and Golden Hills Camp, LLC. Since being disbarred as an attorney in August 2015, Richard Sinclair has not been the attorney for Dr. Machado individually and as the trustee, managing member, or officer for the Richard Sinclair Trust, and the managing members or representative of KCM, LLC; Sun One, LLC; Dustykay, LLC; and Golden Hills Camp, LLC.

Issues of who has been in possession of the documents and the efforts of Dr. Machado, individually and as the trustee, managing member, or officer to comply with the subpoena may be addressed at the 2004 examinations. The court did not allow the parties to engage in ad hoc discussions of this issue in open court.

The court continued the instant Motion as it relates to Debtor-in-Possession to 10:30 a.m. on December 17, 2015. Dckt. 298. The court also dismissed the Motion without prejudice as to Dr. Machado individually, and for

Dr. Machado as the trustee, managing member, or officer of the Richard Sinclair Trust, and the managing members or representative of KCM, LLC; Sun One, LLC; Dustykay, LLC; and Golden Hills Camp, LLC.

DEBTOR-IN-POSSESSION'S NOTICE OF CONTINUED DISABILITY

On December 2, 2015, the Debtor-in-Possession filed a "Notice of Continued Disability Until January 31, 2016 from July 11, 2015 Traumatic Brain Injury and Declaration of Richard C. Sinclair and Doctor's Notice." Dckt. 312.

First, the court notes that the Notice does not comply with Local Bankr. R. 9014-1. The Notice does not separate the Notice from the declarations which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

Looking at the Notice itself, the Notice once again reiterates the facts of the alleged car accident. The Debtor-in-Possession attaches another "letter" from Dr. Basi which is substantially the same as the previous "letter" and states that the Debtor-in-Possession "will be off work till January 31st." Dckt. 312.

The Notice states that:

> Due to my disability, I will not be attending any hearings or filing any responses or motions.

Id.

DEBTOR-IN-POSSESSION'S STATUS REPORT

The Debtor-in-Possession filed a status report on December 2, 2015. Dckt. 311.

First, the court notes that the report does not comply with Local Bankr. R. 9014-1. The report does not separate the report from the declarations from the evidence which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

The Debtor-in-Possession discusses two letters that were "uncovered" when the Debtor-in-Possession was preparing documents for the Rule 2004 examination. The two letters are allegedly gift letters to Debtor-in-Possession's children and ex-wife, giving the Debtor-in-Possession's interest in Sinclair Ranch to his ex-wife and children. These letters are allegedly dated January 31, 1996 and December 24, 2001.

The Debtor-in-Possession argues that these "letters" evidence that he does not have any interest in the Ranch and that they are not part of the estate.

DEBTOR-IN-POSSESSION RESPONSE TO INTERROGATORIES

On December 7, 2015, the Debtor-in-Possession filed his response to the interrogatories sent by the Creditor regarding the alleged accident. The response states the following:

> I am in receipt of your INTERROGATORIES AND PRODUCTION OF DOCUMENTS RE DISABILITY. I repeat what I have previously told you. I will put it in capital letters so you can see it better. I AM DISABLED.
>
> The Doctor has repeated that I am still disabled. Therefore, I will not be responding to these interrogatories and production of documents about my disability, until after the disability time period ends. My thought processes are interrupted and I am not going to respond until they have turned. Judge Sargis acknowledged the disability. Please stop sending me things to do while I am disabled. . . .

CREDITOR'S STATUS REPORT

The Creditor filed a report on December 10, 2015. Dckt. 321. The report begins with a restatement of the Debtor-in-Possession's representations since the alleged accident. The Creditor states that they have served interrogatories and document requests on the Debtor-in-Possession as to the alleged incident. The Creditor states that the Debtor-in-Possession refused to respond. The Creditor states that they served subpoenas duces tecum to Waterford Tow Service and the California Highway Patrol and the return date of January 6, 2016.

As to the Federal RICO action, the Creditor states that the remaining defendants have had their defaults entered. The Debtor-in-Possession is one of the defaulted defendants. The federal court issued an order setting a status conference for January 11, 2016, with the purpose of the hearing being to determine how to proceed and to schedule a damages prove up trial.

DISCUSSION

The ability of the court to order Mr. Sinclair to produce documents is dependant on the court(1) determining that Mr. Sinclair is legally competent to continue in *pro se* as the Debtor and Debtor in Possession, (2) determining that Mr. Sinclair sufficiently competent to continue as the Debtor and Debtor in Possession with the assistance of legal and other professionals, (3) determining that Mr. Sinclair is legally competent to continue as the Debtor in pro se or with the assistance of legal and other professionals, but not continue as Debtor in Possession; and (4) determining that Mr. Sinclair is not legally competent appoint a personal representative to act in his place as a debtor, and (a) have the personal representative fulfill Debtor's duties as the debtor in possession, (b) appoint a Chapter 11 trustee, or (c) convert the case to one under Chapter 7.

Mr. Sinclair has thrice stated under penalty of perjury that since his automobile accident in July 2015 that he is not mentally able to participate in this case as the debtor or as the debtor in possession. However, these statements are suspect because they are made at a time Mr. Sinclair states he is unable to fulfill the obligations of a party in this case and the fiduciary obligations as the Debtor in Possession to the impairment. For the court to order a party who has stated that he is not legally competent to do something is only inviting even more litigation between these parties.

On December 17, 2015, the court concluded that Richard Sinclair has the requisite legal capacity to participate as a party in this bankruptcy case and

related proceedings, and to so in pro se if he so chooses.

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 Contempt filed by Creditors 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 Amended Motion for Contempt shall be conducted at 10:30 a.m. on January 14, 2016. Opposition to be filed and served on or before January 4, 2016, and Replies, if any, filed and served on or before January 8, 2016.

12. 14-91565-E-11 RICHARD SINCLAIR **MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE**
UST-2 Pro Se **10-26-15 [291]**

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

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 26, 2015. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted and the case is converted to one under Chapter 7.

This Motion to Convert or Dismiss the Chapter 11 bankruptcy case of Richard Carroll Sinclair, "Debtor" has been filed by United States Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.:

1. The Debtor-in-Possession has ceased to properly prosecute the bankruptcy case

a. Failed to file required monthly operating reports

b. Failed to pay required quarterly fees

2. Debtor-in-Possession appears to be incurring losses while having no reasonable likelihood of rehabilitation.

The Movant provides a brief history of the substantial case history. In relevant part for the instant Motion, the Movant argues that the Debtor-in-Possession has suggested throughout the case that there are additional assets that were not properly listed on the Debtor-in-Possession's schedules. See, e.g. Dckt. 44. The Movant argues the Creditor filed a motion for a 2004 examination of the Debtor-in-Possession, the various companies, and Dr. Machado. Debtor-in-Possession failed to comply with the order. The Creditor filed a Motion for Contempt. Dckt 245.

The Movant argues the following as examples of the Debtor-in-Possession not properly prosecuting the case:

1. No monthly operating report has been filed since the January 2015 operating report was filed on February 19, 2015 which, on the Statement of Cash Receipts and Disbursements, reported cash of $1.00 after cumulative receivables and Social Security income of $9,633.00 were reduced by disbursements of $9,632.00. Dckt. 101. No explanation is provided as where the $2,013.00 cash listed on Schedule B went. The reported disbursements do not include payments for his scheduled leasehold interest nor spousal and child support payments that Debtor-in-Possession admits to in his Plan.

2. Though required by 28 U.S.C. § 1930(a)(6), no quarterly fee has been paid from the inception of the case.

3. Debtor has not filed a disclosure statement and has not otherwise pursued confirmation of the Plan filed December 16, 2014.

The Movant continues to argue that the Debtor-in-Possession has continued to "drag on" the case by citing an alleged car accident which caused him to be self-diagnosed "disabled." The Movant cites that the Debtor-in-Possession has only provided short and nonspecific notes from Dr. Basi as justification for his disability.

The Movant concludes that after reviewing the reported claims either in a proof of claim or schedule, seven creditors hold a currently allowed general unsecured claim of $750,000.00 or more, pursuant to Fed. R. Bankr. P. 3003(c)(2). These seven creditors' claims total $11,987,864.00 and represent 99% of all general unsecured claims. Additionally, of these seven, the Movant asserts that the three CEMG/Fox Hollow Creditors represent 60% of general unsecured amounts and Stanely Flake represents 20% of general unsecured amounts. These four creditors have also filed adversary complaints against Debtor-in-Possession to deem their claims non-dischargeable.

CREDITOR'S "JOINDER"

California Equity Management Group, Inc. and Fox Hollow of Turlock Owners' Association "Creditor") filed the instant "joinder" on December 3, 2015. Dckt. 313. The Creditor states that they do not oppose the conversion of the instant case to one under Chapter 7. The Creditor do, however, oppose dismissal.

The Creditor asserts that there are fraudulent conveyances that a Chapter 7 Trustee may be able to seek to be avoided and turned over to the estate. The Creditor provides the following partial list of transactions:

1. Debtor-in-Possession's Trust: The Debtor-in-Possession created a revocable trust on June 25, 2015. The Trust was allegedly made "irrevocable" on September 15, 2008, within seven years of the following date. The Creditor asserts that if the Trustee is able to avoid the transfer, all assets in the Trust would become assets of the estate.

2. Undivided half interest in two homes. On November 25, 2009, Debtor-in-Possession transferred an undivided half interest in the Black Hawk house and the Oakview house in which he resides to the Trust. Bother were allegedly without consideration.

3. Debtor's marital settlement agreement was a fraudulent transfer. The Creditor asserts that within four years of filing the instant case, the Debtor entered into a marital settlement agreement transferring essentially all of the Debtor-in-Possession's ex-wife. Some of these assets include:

    a. Her savings account of $150,000.00

    b. Her fabric inventory with a value of $100,000.00;

    c. One-half of Debtor-in-Possession's law practice;

    d. One-half of the receivable from Sinclair Ranch with a value of the one-half of $587,000.00

    e. 40 acre Parcel C of the Sinclair Ranch with a value of $42,500.00 per acre;

    f. One-half interest in Black Hawk and Oak View.

The Creditor also argues that the only significant asset acquired by Debtor-in-Possession following the Debtor-in-Possession's Chapter 7 case in 1995 was the inheritance of 1/3 of the Sinclair Ranch from his parents. The Debtor-in-Possession allegedly created several different limited liability companies in which were purported to own portions of the ranch at various times.

The Debtor-in-Possession argues that he conveyed 60 acres of his portion of the Ranch to his children and 40 acres to his ex-wife leaving the Debtor-in-Possession with no ownership interest. The Debtor-in-Possession and Dr. Machado testified that neither of the limited liabilities company ever had bank accounts and most never filed tax returns. The Creditor argues that the formation and various transfers of real property to and from the limited

liability companies and the change of membership interest may be avoidable.

The Creditor also argues that the Debtor-in-Possession has been inconsistent in statement regarding the ownership of the Sinclair Ranch. The Debtor-in-Possession filed a status report on December 2, 2015 which provided "gift letters" that allegedly transferred interests to the Debtor-in-Possession's children and ex-wife. Dckt. 311. The Creditor argues that they have no record of any recorded document transferring such interest and non have been provided by the Debtor-in-Possession.

DEBTOR-IN-POSSESSION'S RESPONSE TO "JOINDER"

The Debtor-in-Possession filed a response on December 9, 2015. Dckt. 318. First, the Debtor-in-Possession's states on the front page of the response:

> RICHARD CARROLL SINCLAIR IS DISABLED UNTIL JANUARY 31, 2016 AND CANNOT PROPERLY RESPOND. I REQUEST A CONTINUANCE UNTIL THE MIDDLE OF FEBRUARY, 2016 TO GIVE ME TIME TO RESPOND ONCE I AM NOT DISABLED.

Dckt. 318. However, the Debtor-in-Possession then continues for 8-pages of "argument" even though he alleges that he cannot due to his "disability."

The majority of the Debtor-in-Possession's response is a history between the Debtor-in-Possession and the Creditor. The Debtor-in-Possession asserts legal conclusions with no basis and does not address any of the specifics of the Creditor's or Movant's argument. The Debtor-in-Possession, instead, argues over the avoidability of some of the transfers of Sinclair Ranch.

Of note, however, the Debtor-in-Possession does state:

> I do not object to conversion to a chapter 7 or Dismissal. . .

Dckt. 318, pg. 8.

CREDITOR'S REPLY

The Creditor's filed a reply to the Debtor-in-Possession's response on December 10, 2015. Dckt. 319. The Creditor states that the court previously advised them that it is not necessary to respond to superfluous arguments made by Debtor-in-Possession. Rather, the Creditor states:

> [The Creditor] note that they have previously submitted to this Court detailed examples with supporting evidence of Mr. Sinclair not only making the same unsupported assertions, but also taking the same positions [that he again takes in his Response] that are precluded by determinations made in other actions between he parties. (E.g., Docket #102, 6:10-12:7; Docket #103; and Docket #104, Exs A through H.)

Dckt. 319. The Creditor also attaches a copy of Judge Ishii's order denying Debtor-in-Possession's motion for new trial in the consolidated federal action.

RULING

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

Cause exists to convert this case to one under Chapter 7 pursuant to 11 U.S.C. § 1112(b).

As noted by all the parties in their pleadings, this has been an unusual and hefty factual case. There has been nearly two-decades of litigation between the Debtor-in-Possession and the Creditor and have shifted their litigation war to the bankruptcy courts.

The case was filed on November 24, 2014. Since that time, there have been Motions to Dismiss, Applications for Rule 2004 Examinations, Motions for Contempt, Order for Initial Hearing for Determination of Debtor-in-Possession's Competency, etc. There have been thousands of pleadings filed between all the parties, requiring the parties to mine through a plethora of dense factual matters and written jabs at each other.

This is not the court's first interaction with a Motion to Dismiss in the instant case. The court on March 2, 2015 denied the Creditor's Motion to Convert, finding that at that time, the Creditor was better served keeping the Debtor-in-Possession in a Chapter 11, as a fiduciary, and using Fed. R. Bankr. P. 2004 to examine the Debtor-in-Possession and the related personas and corporations for possible additional assets. Dckt. 113.

The court also denied the Debtor-in-Possession's Motion to dismiss the case, finding that the Debtor-in-Possession had not made a showing for cause to dismiss the case. Dckt. 132.

However, after over a year of this case pending with no Disclosure Statement being filed, no plan being confirmed, and no monthly operating reports being filed, the time has come for the court to determine if cause exists to convert the case to one under Chapter 7.

First, the court addresses the Debtor-in-Possession's repeated

representation that he is unable to participate in the instant case due to his alleged "disability." The Debtor-in-Possession has asserted since July that he was involved in a car accident in which he has no recollection of which has caused him neurological and memory loss and that requires the court to continue all hearings and matters in the instant case. The Debtor-in-Possession reiterates this point in the first line on his response. However, as the Debtor-in-Possession has continually done since the beginning of his alleged disability, filed eight additional pages of argument, even though he is apparently unable to do so. The court is not convinced that an individual, who is suffering a disability, would be able to continually appear and respond to matters in the case. The Debtor-in-Possession is in essence presenting his own evidence of his competency through his continued filing of substantive responsive pleadings while claiming disability.

Along with the Debtor-in-Possession throughout this case has been Dr. Katherine Machado, the Debtor-in-Possession's sister who is the trustee of the Sinclair Trust. Throughout the instant case, the Debtor-in-Possession has repeatedly attempted to represent both himself, as the fiduciary of the bankruptcy estate, and Dr. Machado, in her various representative capacity. However, as noted by Movant, the Debtor-in-Possession was disbarred from practicing law on August 27, 2015. Additionally, as the fiduciary of the estate and with there being allegations of avoidable transfers into the Trust, the court repeatedly informed the Debtor-in-Possession and Dr. Machado of the necessity for Dr. Machado, both individually and as a representative, to retain counsel. It was not until November 2015 that Dr. Machado retained counsel.

Dr. Machado is a well-educated and intelligent woman. She has appeared before the court numerous times throughout the case and has shown not only a knowledge of the various assets of the case but also a legitimate concern over her brother and the various assets. All the while the Debtor-in-Possession has been asserting his disability and incompetency, Dr. Machado has not attempted to be appointed as the Debtor-in-Possession's personal representative in either the instant case or in state court. If the disability is as perverse as the Debtor-in-Possession has repeatedly represented to the court, though unauthenticated in doctor reports, Dr. Machado would most have certainly attempted to protect her brother's interest and her own in not only the Trust but also the Sinclair Ranch. The failure of Dr. Machado to seek personal representation for the Debtor-in-Possession during his alleged incompetency further evidences that the Debtor-in-Possession is not in fact disabled or incompetent.

Other courts have similarly realized the Debtor-in-Possession's reputation for failing to follow and comply with court orders and rules. For instance, in the federal consolidated action, Judge Iishi, in the Order Re: Motion fo New Trial stated:

> Throughout the long history of this case, multiple judges have sanctioned Defendants (Richard Sinclair in particular) for failure to follow rules and court orders.

Case No. 1:03-CV-5439 AWI SAB, Dckt. 1083. This court has had to issue a separate order to force the Debtor-in-Possession to comply with the Local Bankruptcy Rules and Federal Rules of Bankruptcy Procedure. Dckt. 190. However, as evidenced in the instant responsive pleading by Debtor-in-Possession, the Debtor-in-Possession has not complied with the Local Bankruptcy Rules, namely

providing evidence and properly formatting. See Local Bankr. R. 9014-1. This explicit failure to comply with a court order is an independent ground to convert the case for cause. 11 U.S.C. § 1112(a)(4)(E).

These underlying issues just further support the court converting this case to one under Chapter 7. It is apparent that the Debtor-in-Possession is not prosecuting this case. Instead, it is clear that the Debtor-in-Possession is using the Chapter 11 to further delay the resolution of the multiple decades of litigation. The court has addressed on multiple occasions the need of the Debtor-in-Possession to recognize his role not as an individual but as a fiduciary of the estate for the benefit of the creditors. However, the Debtor-in-Possession has made it clear that his interests have been focused on himself. This is evidenced by the Debtor-in-Possession failing to do even the most basic requirements for a Chapter 11 debtor-in-possession such as filing monthly status reports and paying required fees.

The Debtor-in-Possession has failed to file monthly reports since January 2015. The Debtor-in-Possession has failed to pay the quarterly fees required by 28 U.S.C. § 1930(a)(6). Pursuant to 11 U.S.C. § 1112, these alone are reasons to convert the case for cause. 11 U.S.C. § 1112(a)(4)(F) and (K).

Additionally, the Debtor-in-Possession has failed to file any Disclosure Statement and has failed to confirm a plan. The Debtor-in-Possession filed a plan on December 16, 2015. Dckt. 44. Since that time, the Debtor-in-Possession has failed to file any motion to confirm the plan. Even before that, the Debtor-in-Possession has not filed a Disclosure Statement as required. The Debtor-in-Possession's failure to file a Disclosure Statement or to confirm a plan are additional grounds to convert the case for cause to one under Chapter 7. 11 U.S.C. § 1112(a)(4)(J).

In short, the court had afforded the Debtor-in-Possession the opportunity to act as the fiduciary of the bankruptcy estate and to comply with the requirements of such a role. The court on numerous occasions has warned Debtor-in-Possession of what is required of him and each time the Debtor-in-Possession has ignored such warning.

Taking into consideration the factually dense nature of the case, the potential of avoidable transfers of assets, and the need for a third party fiduciary to review the case and potential assets for liquidation, cause exists to convert the instant case to one under Chapter 7.

The motion is granted and the case is dismissed/converted to a case under Chapter 7.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert or Dismiss the Chapter 11 case filed by the Unites States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is converted to one under Chapter 7 of Title 11, United States Code.

13. 14-91565-E-11 RICHARD SINCLAIR — **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**
Pro Se — **11-24-14 [1]**

CONTINUED: 10/22/15

Debtor's Atty: Pro Se

The Status Conference is xxxxxxxxxxxxxxxxxxxxxx.

Notes:

Continued from 10/22/15 to be heard in conjunction with other matters on the calendar.

[UST-2] Motion for Conversion or Dismissal of Case filed 10/26/15 [Dckt 291], set for hearing 12/17/15 at 10:30 a.m.

Order for Initial Hearing for Determination of Legal Competency and Appointment, if Necessary, of Legal Representative and Request for Information from Stanislaus County and Upinder K. Basi, MD filed 11/13/15 [Dckt 307], set for hearing 12/17/15 at 10:30 a.m.

Substitution of Attorney [Kathryn C. Machado] filed 12/2/15 [Dckt 309]

Status Report filed 12/2/15 [Dckt 311]

Notice of Continued Disability Until January 31, 2016 from July 11, 2015 Traumatic Brain Injury and Declaration of Richard C. Sinclair and Doctor's Notice filed 12/2/15 [Dckt 312]

14. 15-90976-E-7 NIGH/MELVA LAWHON MOTION TO COMPEL ABANDONMENT
SSA-1 Gary Ray Fraley 11-24-15 [12]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 24, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion to Abandon Property is granted.

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).

The Motion filed by E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier ("Creditors") requests the court to authorize Trustee to abandon property commonly known as 3139 Beaver Court, Copperopolis, California (the "Property").

The Property is encumbered by the lien of Creditor, securing claim of $177,835.02. The Debtor has also claimed an exemption in the Property pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00. Additionally there are judgment liens and fees totaling $30,928.36. The Declaration of Gene Vallortigara has been filed in support of the motion and testifies that the value of the Property is $350,000.00.

The Creditor argues that they attempted to work out a promissory note workout agreement with the Debtor but such efforts have been unsuccessful.

The court finds that the Property secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

CHAMBERS PREPARED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by the Creditors 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 Property identified as:
>
> 1. 3139 Beaver Court, Copperopolis, California
>
> is abandoned to Night Edward Lawhon and Melva Lee Lawhon by this order, with no further act of the Trustee required.

15. 15-91093-E-7 CLEO/SHERI GILLIT MOTION TO COMPEL ABANDONMENT
TLC-1 Tamie L. Cummins 12-1-15 [9]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 30, 2015. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion to Abandon Property is granted.

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).

The Motion filed by Cleo Edward Gillit and Sheri Dawn Gillit ("Debtor") requests the court to order the Trustee to abandon property commonly known as 3608 Poinsettia Drive, Modesto, California (the "Property"). This Property is encumbered by the lien of Wells Fargo Home Mortgage, securing claim of

$252,149.00. The Debtor has also claimed an exemption in the Property pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $12,962.00. The Debtor asserts that any remaining equity would be consumed by any cost of sale. The Declaration of Cleo Edward Gillit, Jr. has been filed in support of the motion and values the Property to be $274,000.00.

The court finds that the debt secured by the Property exceeds the value of the Property, and that there are negative financial consequences to 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.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Cleo Edward Gillit and Sheri Dawn Gillit ("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 Property identified as:
>
> 1. 3608 Poinsettia Drive, Modesto, California
>
> and listed on Schedule A by Debtor is abandoned to Cleo Edward Gillit and Sheri Dawn Gillit by this order, with no further act of the Trustee required.

16. 14-91197-E-7 UST-1 | **NICOLAS PEREZ AND MARIA MOSQUEDA DEPEREZ**
Thomas O. Gillis | **MOTION FOR ASSESSMENT OF FINES AGAINST, AND FOR FORFEITURE OF FEES BY ANNA JAIMES GONZALES**
11-18-15 [195]

DISCHARGED: 3/27/15

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

Oral argument 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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Joint Debtor, Joint Debtor's Attorney, Chapter 7 Trustee, Anna Jaimes Gonzales, and Office of the United States Trustee on November 18, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Assessment of Fines Against and for Forfeiture of Fees by Anna Jaimes Gonzales 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 defaults of the non-responding parties and other parties in interest are entered.

The Motion for Assessment of Fines Against and for Forfeiture of Fees by Anna Jaimes Gonzales is granted.

The United States Trustee for the Eastern District of California filed the instant Motion for Assessment of Fines Against and Forfeiture of Fees by Anna Jaimes Gonzales on November 8, 2015. Dckt. 195.

The US Trustee argues that imposition of fine and forfeiture of fees is proper because Ms. Gonzales violated 11 U.S.C. § 110 by choosing Nicholas Perez and Maria DePerez's ("Debtor") exemptions and failing to file a declaration disclosing her pre-petition fees.

The Debtor filed the instant case on August 27, 2014. The US Trustee states that Ms. Gonzales is a petition preparer as defined in 11 U.S.C. § 110(a). Debtor Maria DePerez paid Ms. Gonzalez $1,050.00 tp prepare an

individual bankruptcy petition, which Debtor Maria DePerez chose not to file) and the instant joint bankruptcy petition.

The US Trustee states that Ms. Gonzales should be fined under 11 U.S.C. § 110(l)(1) because Ms. Gonzales gave legal advice by choosing the Schedule C exemptions. The US Trustee states that the Debtor have taken the position that they did not understand what they were signing so the clear inference is that Ms. Gonzalez chose the California Code of Civil Procedure § 703 exemptions for the Debtor.

Additionally, the US Trustee asserts that Ms. Gonzales did not file a declaration disclosing her pre-petition fees of $1,050.00 nor did she reveal her fee in the Statement of Financial Affairs (though not required under 11 U.S.C. § 110(h)(2)).

As for the forfeiture, the US Trustee argues that Ms. Gonzales should forfeit all but $250.00 of her fees because the documents prepared by Ms. Gonzales "were sloppily put together (partially handwritten), relatively short in length, and uncomplicated." Dckt. 195. The US Trustee argues that the value of the preparation services did not exceed the presumptively reasonable rate of $125.00 per petition, or a total of $250.00 for the individual and joint petitions she prepared for Debtor Maria DePerez.

BACKGROUND

On August 28, 2014, Nicolas Perez and Maria Mosqueda DePerez ("Debtors") commenced this voluntary Chapter 7 case ("Chapter 7 Case") in pro se. Dckt. 1. No attorney signed the Petition, and a non-attorney bankruptcy petition preparer, Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes and aka Anna Jaimes-Gonzales, ("Bankruptcy Petition Preparer"), is reported to have been paid $125.00 for preparing the Petition, Schedules, Statement of Financial Affairs, and supporting documents. Id. at 3, 30, 34, and 41. The Debtors provide the following information under penalty of perjury in their Petition, Schedules, and Statement of Financial Affairs:

A. They both reside at 1613 7th Street, Hughson, California ("7th Street Property"). Petition, Id. at 1.

B. Debtors own only one piece of real property, the 7th Street Property. Schedule A, Id. at 10.

C. Debtors have only one creditor with a secured claim, "Wells Fargo Mortgage," which claim is secured by the 7th Street Property. Schedule D, Id. at 15.

D. Debtor Nicolas Perez is unemployed and has $0.00 average monthly income. Schedule I, Id. at 26.

E. Debtor Maria DePerez is employed, within monthly gross income of $2,560.00. Id.

F. No other income is listed by the Debtors. Id.

G. Debtors list having $26,774.00 in income in 2013 and $25,980.00 in income in 2012. Though the bankruptcy case was filed August

27, 2014, no income information is provided for 2014. Statement of Financial Affairs ("SOFA") Question 1, Id. at 31-32.

On the Chapter 7 Statement of Current Monthly Income, Debtors state that their income for the six months prior to the commencement of the case is an annualized amount of $25,440.00. Id. at 42-44. Further, that this is less than the applicable median income of $29,685.00 for a family of three persons and the presumption of abuse does not arise. Id.

The Schedules prepared by the Bankruptcy Petition Preparer include Schedule C in which the Debtors, under penalty of perjury and subject to Federal Rule of Civil Procedure 9011, claim the following exemptions:

Asset	Statutory Basis	Amount
Cash on Hand	Cal. C.C.P. § 703.140(b)(5)	$165
Checking Account	Cal. C.C.P. § 703.140(b)(5)	$397
Household Furnishings	Cal. C.C.P. § 703.140(b)(3)	$1,950
Reading Material/Bible	Cal. C.C.P. § 703.140(b)(3)	$100
Clothing/Shoes etc.	Cal. C.C.P. § 703.140(b)(3)	$1,600
Fashion Jewelry/Access.	Cal. C.C.P. § 703.140(b)(3)	$100
1998 Ford F-150	Cal. C.C.P. § 703.140(b)(5)	$2,450
2003 P.T. Cruiser	Cal. C.C.P. § 703.140(b)(5)	$1,400
Desk & Computer	Cal. C.C.P. § 703.140(b)(5)	$225
Primary Residence	Cal. C.C.P. § 703.140(b)(2)	$1
Household Misc Yard, Tools	Cal. C.C.P. § 703.140(b)(5)	$350

Dckt. 1 at 14.

After the First Meeting of Creditors, the Chapter 7 Trustee issued a Notice of Assets in this case. November 5, 2014 Docket Entry Report. On December 12, 2015, the Trustee filed a motion to employ counsel. Dckt. 15. On November 26, 2014, Modesto Irrigation District filed a Motion to Extend Deadlines for the filing of objections to discharge and to determine nondischargeability of debt. Dckt. 18. That Motion alleges that Debtor DePerez held title to real property commonly known as 4904 Ebbett Way which was transferred to a Jose Luis Moctezum on June 19, 2013, for no consideration. No disclosure of the Ebbett Way Property was made in the Schedules or the transfer disclosed on the Statement of Financial Affairs.

The Chapter 7 Trustee filed his own motion to extend the deadline to objection to discharge. Dckt. 27. The Trustee's motion further alleges that Debtor DePerez testified at the first meeting of creditors that the Ebbett Way Property had been transferred to her brother-in-law approximately fourteen months prior to the commencement of the Debtor's Chapter 7 case.

The Chapter 7 Trustee then filed two adversary proceedings to recover real property transferred by Debtors to third parties. In Adversary Proceeding 14-9030 the Chapter 7 Trustee sought to avoid the transfer of the Ebbett Way Property. On March 11, 2015, the Chapter 7 Trustee filed a notice of dismissal of the Adversary Proceeding, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9030, Dckt. 16.

In the second adversary proceeding the Chapter 7 Trustee sought to avoid the transfer by Debtors of the real property commonly known as 136 Algen Avenue." 14-9031. In this second Adversary Proceeding the Chapter 7 Trustee filed a dismissal, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9031, Dckt. 16.

The court granted the Trustee's Motion to Extend the Deadline to Object to Discharge. Order, Dckt. 56. On April 27, 2015, the Chapter 7 Trustee filed a Motion to Compel Debtors to Turnover Property of the Estate consisting of the 490 Ebbett Way Property and the 136 Algen Avenue Property. Dckt. 59.

Debtors opposed the Chapter 7 Trustee's Motion to Turnover Property of the Estate, asserting that the Chapter 7 case had been filed by mistake. Response, Dckt. 68. Debtors stated that they would be filing a motion to dismiss the Chapter 7 case. Further, Debtors argue that they filed and prosecuted the Chapter 7 case in pro se, and did not understand the requests of the Trustee, until they engaged the service of Thomas Gillis. On June 11, 2015, the court filed its order requiring Debtors to turnover both real properties and related personal property to the Trustee by June 19, 2015. Order, Dckt. 81.

On July 7, 2015, Debtor Nicholas Perez, in pro se, filed a Motion to Dismiss the bankruptcy case. Dckt. 92. It appears identical to the Motion to Dismiss that Thomas Gillis filed for Debtor Maria DePerez on June 9, 2015. Dckt. 75. In the DePerez Motion to Dismiss, it is asserted,

A. Debtors have disposable income of $248.50 a month, and asserts that this "exceeds eligibility for Chapter 7."

B. Debtors assert that over a five-year period, they would have $10,000.00 of disposable income.

C. Debtor Nicholas Perez is unemployed and uneducated (having only attended through the second grade in Mexico).

D. Co-Debtor Maria DePerez is also asserted to being uneducated, and unable to read or write English.

E. Debtors obtained a $100,000.00 life insurance payment when their son died in 2008.

F. Debtors (who are stated to be uneducated) then used the $100,000.00 to invest in two rental properties located in Modesto, California.

G. Co-Debtor was suffering from depression when the Chapter 7 Case

was filed.

H. Debtors did not know that the tenant in the Everett Street Property was growing marijuana on the property and was stealing electricity from Modesto Irrigation District.

I. When Debtors were served with a complaint filed by Modesto Irrigation District they state that they were told by an unidentified employee of the District to “file some papers” and that the employee recommended a “typing service.”

J. Debtors went to a paralegal who prepared the bankruptcy for Debtors. They further state that the documents were filed out in pen and not explained to them.

K. Debtors further assert that they did not read or understand what they were signing.

Dckt. 75.

On June 9, 2015, the declaration of Debtor Maria DePerez was filed in support of the Motion to Dismiss. Dckt. 77. In her Declaration, Ms. DePerez purports to state under penalty of perjury:

A. She is uneducated, having attended school only through the sixth grade in Mexico.

B. She is not able to read or write English.

C. The Co-Debtor Nicholas Perez is also uneducated, having attended school only through the second grade in Mexico. Further, the Co-Debtor is not employed.

D. Debtor and Co-Debtor have been “separated” for eight years.

E. Debtors used the $100,000.00 in life insurance proceeds to purchase two rental properties in Modesto, California.

F. Ms. DePerez states that she is under medical treatment for depression arising from several different sources.

G. Debtors were not aware that their tenant for the Everett Street Property was using it for illegal purposes and was stealing electricity.

H. She states that she and the Co-Debtor never reviewed the bankruptcy documents filed with the court, and did not understand them when she signed them [under penalty of perjury].

I. Finally, Ms. DePerez goes so far as to provide her personal legal conclusion that “We are not eligible for Bankruptcy.”

Declaration, Dckt. 77.

A declaration, prepared by counsel for Ms. DePerez, has also been filed by Co-Debtor Nicholas Perez. Dckt. 78. Mr. Perez states:

A. Mr. Perez is uneducated, having only attended through second grade in Mexico.

B. He is disabled and unable to work.

C. The bankruptcy petition preparer did not explain the documents and Mr. Perez did not know what he was signing.

Declaration, Dckt. 78.

This Motion to Dismiss and the testimony under penalty of perjury in the Debtors' declarations raise some very serious issues concerning the conduct of not only the Debtors, but the Bankruptcy Petition Preparer who assisted the Debtors in filing the bankruptcy case. Taken at face value, the Bankruptcy Petition Preparer has engaged in the business practices of: (1) being paid by less sophisticated consumer debtors for bankruptcy petitions and other documents to be filed with the court; (2) not having the less sophisticated consumer debtors read the documents prepared before signing them and filing them with the court; (3) not having a good faith belief that the less sophisticated consumer debtors understand what is stated in the documents or that the less sophisticated consumer debtors confirm that the information is accurate; and (4) preparing inaccurate documents for filing for with the court.

BANKRUPTCY PETITION PREPARER IN THIS CASE AND DUTIES TO DEBTORS AND COURT

The Debtors report, and the Bankruptcy Petition Preparer confirms on the documents filed in this case, that Anna Gonzales [though the printed name and signature are almost illegible on the documents filed in this case] provided the services of a bankruptcy petition preparer for the Debtors. Congress has statutorily defined a "bankruptcy petition preparer" in 11 U.S.C. § 110(a) as follows,

> (a) In this section--
>
> (1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and
>
> (2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

This statutory definition is very broad in scope, excluding only an attorney for a debtor or an employee of, and directly supervised by, that attorney for a debtor.

The bankruptcy petition preparer must sign and print the preparer's name and address on the document which was prepared for a debtor to be filed with a United States bankruptcy court or United States district court. 11 U.S.C.

§ 110(b)(1). In addition, the bankruptcy petition preparer shall provide the debtor a written notice that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice. The written notice must be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer. 11 U.S.C. § 110(b)(2).

The bankruptcy petition preparer is also required to provide an identifying number, after the preparer's signature, which identifies the individual who prepared the document. This identifying number is the Social Security account number of each individual bankruptcy petition preparer, or the officer, principal, responsible person, or partner if the bankruptcy petition preparer is not an individual. 11 U.S.C. § 110(c).

Congress created specific limitations on the services provided by, and the conduct of, a bankruptcy petition preparer.

A. A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

B. A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including, without limitation,

1. whether–

    a. to file a petition under this title; or

    b. commencing a case under chapter 7, 11, 12, or 13 is appropriate;

2. whether the debtor's debts will be discharged in a case under this title;

3. whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

4. concerning–

    a. the tax consequences of a case brought under this title; or

    b. the dischargeability of tax claims;

5. whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

6. concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

7. concerning bankruptcy procedures and rights.

11 U.S.C. § 110(e). (All of the above collectively referred to as “Prohibited Services” by the court in this Order to Appear and Order to Show Cause.) The

bankruptcy petition preparer is also prohibited from using the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term. 11 U.S.C. § 110(f).

This statute further provides that the Supreme Court by rule or the Judicial Conference of the United States by guidelines, may set the maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer is required to notify a debtor of any such maximum amount before preparing any document for filing for that debtor or accepting any fee from, or on behalf of, that debtor. 11 U.S.C. § 110(h)(1). The bankruptcy petition preparer's declaration shall include a certification that the bankruptcy petition preparer provided notification of the maximum fee set by rule or guidelines which may be charged by the bankruptcy petition preparer. In the Eastern District of California the maximum fee charged by a bankruptcy petition preparer is $125.00. *Guidelines Pertaining to Bankruptcy Petition Preparers in Eastern District of California Cases*, dated October 20, 1997, ¶ 2.

A bankruptcy petition preparer's disclosure of fees is not limited to only those fees which the bankruptcy petition preparer allocates for the preparation of documents to be filed with the court. A bankruptcy petition preparer must also file a declaration under penalty of perjury disclosing any fee received from or on behalf of a debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. 11 U.S.C. § 110(h)(2).

If a bankruptcy petition preparer charges any fee in excess of the value of any services rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition, or which is in violation of any rule or guideline, the court "shall" (not "may") disallow and order the immediate turnover of such fee, in excess of the amount permitted, to the bankruptcy trustee. 11 U.S.C. § 110(h)(3)(A). The consequences are more severe for a bankruptcy petition preparer determined by the court to have engaged in any Prohibited Services. All fees charged by such bankruptcy petition preparer engaging in Prohibited Services "may" (not "shall") be forfeited. 11 U.S.C. § 110(h)(3)(B).

A bankruptcy petition preparer who violates § 110 or commits any act that the court finds to be fraudulent, unfair, or deceptive "shall" (not "may") be ordered by the court to pay to the debtor,

A. the debtor's actual damages;

B. the greater of–

1. $ 2,000; or

2. twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

C. Reasonable attorneys' fees and costs in moving for damages under 11 U.S.C. § 110.

11 U.S.C. § 110(i)(1). If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer "shall"

(not “may”) be ordered to pay the movant the additional amount of $ 1,000.00, plus reasonable attorneys' fees and costs. 11 U.S.C. § 110(i)(2).

Congress provides in 11 U.S.C. § 110(l)(1) and (2) additional fines in an amount of not more than $500.00 which “may” (not “shall”) be imposed for each Prohibited Service at issue in this Motion. In addition, the amount of such fines “shall” (not “may”) be trebled if the court finds that a bankruptcy petition preparer,

A. advised the debtor to exclude assets or income that should have been included on applicable schedules;

B. advised the debtor to use a false Social Security account number;

C. failed to inform the debtor that the debtor was filing for relief under this title; or

D. prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

11 U.S.C. § 110(l)(1),(2). Fines imposed under § 110(l) shall be paid to the United States Trustee, who shall deposit an amount equal to such fines in the United States Trustee Fund.

The Ninth Circuit Court of Appeals addressed issues relating to bankruptcy petition preparers in *Frankfort Digital Servs. v. Kistler (In re Reynoso)*, 477 F.3d 1117 (9th Cir. 2007). Services provided by bankruptcy petition preparers are strictly limited to typing bankruptcy forms. *Id.* at 1125. Services or goods which do more than merely fill in forms with information provided by the debtor exceed the permitted activities for a bankruptcy petition preparer. In Frankfort, the Court of Appeals affirmed the determination that software provided by a bankruptcy petition preparer which chose the exemptions to be used by the debtor was similar to other goods and services provided by a bankruptcy petition preparer which made decisions for the debtor (rather than merely filing out documents with information from the debtor) that violate 11 U.S.C. § 110. This includes providing software programs to consumers which “determines” the exemptions that the consumer should elect for his or her bankruptcy schedules. There is not even a requirement that the bankruptcy petition preparer meet or interact with the consumer for the input of the information or use of the software to generate the documents for filing. *Id.* at 1123-24.

ISSUES RAISED BY DEBTORS’ TESTIMONY UNDER PENALTY OF PERJURY

Taken at face value, the testimony of the Debtors is that the Bankruptcy Petition Preparer accepted payment of $125.00 to prepare the Petition, Schedules, Statement of Financial Affairs, and related documents to commence this bankruptcy case, which the Debtors did not review, signed without reading, and had filed without knowing what information was stated therein. Further, Debtors’ testimony is that they did not understand what was in these documents, and implicitly therein, that the Bankruptcy Petition Preparer did not make any effort to have the information translated or presented in a manner for Debtors to understand.

Taken at face value, Debtors have no idea of the exemptions claimed on Schedule C prepared by the Bankruptcy Petition Preparer. The selection of exemptions is a legal decision, one which cannot be performed by a bankruptcy petition preparer.

DISCUSSION

The US Trustee is seeking fines in the amount of $500.00 ($250.00 for choosing exemptions and $250.00 for not filing a disclosure of compensation) and forfeiture of fees in the amount of $800.00 ($1,050.00 minus $250.00).

The court is equally concerned with Ms. Gonzales's violation of 11 U.S.C. § 110. First, to address the forfeiture argument, the court concurs with the US Trustee that the $1,050.00 in fees Ms. Gonzales received was excessive and was not an accurate reflection of the standard cost of such a service As noted, only $125.00 was charged by Ms. Gonzales to prepare the Debtor's first individual petition which did not end up getting filed. Ms. Gonzales then prepared a joint petition for the bankruptcy. Taking the first cost of $125.00 as the standard rate for preparing a petition, Ms. Gonzales having prepared two petitions (one of which was not filed), the court agrees with the Trustee that Ms. Gonzales is only entitled to $250.00 total in fees for the work done. Pursuant to 11 U.S.C. § 110(h)(3)(i), the court can disallow and order the immediate turnover to the trustee any fee in excess of the value of the services rendered. A review of the case history and the instant Motion, there is no evidence that Ms. Gonzales is entitled to $1,050.00 for the services rendered.

Therefore, the court finds that Ms. Gonzales has violated 11 U.S.C. § 110(h)(3)(I) by collecting fees in excess than the value of the services actually performed. The court finds that Ms. Gonzales is entitled to only $250.00 ($125.00 for each petition she prepared) in fees. The remaining $800.00 shall be turned over to the US Trustee on or before January 22, 2016.

As to the fines, the court also agrees that Ms. Gonzales has stepped outside her authority as a bankruptcy petition preparer. As discussed supra, Ms. Gonzales violated 11 U.S.C. § 110 by providing legal advice to Debtor through choosing the exemptions on Schedule C. The Debtor have testified that they did not understand what they were signing when reviewing the petition. This admission is per se evidence that it was Ms. Gonzales who chose the exemptions for the Debtor - aka Ms. Gonzales was giving improper legal advice.

Additionally, Ms. Gonzales failed to disclose her pre-petition receipt of $1,050.00. As required by 11 U.S.C. § 110(h)(2), Ms. Gonzales was to file a declaration under penalty of perjury disclosing any fees received. Ms. Gonzales did not provide such declaration. While not mandatory under 11 U.S.C. § 110, Ms. Gonzales also failed to disclose on the Statement of Financial Affairs the fees received. The failure to file the mandatory declaration coupled with the failure to disclose the fees on Statement of Financial Affairs indicates an attempt to "hide the ball."

With these two violations (the failure to provide a declaration and providing legal advice), § 110 allows the court to impose up to $500.00 per violation. However, given the facts of this case, the court agrees with the Trustee that each violation shall be fined $250.00, for a total of $500.00. Ms. Gonzales shall pay $500.00 in fines to the US Trustee on or before January 22,

2016.

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 Assessment of Fines Against and for Forfeiture of Fees by Anna Jaimes Gonzales filed by United States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted.
>
> **IT IS FURTHER ORDERED** that Anna Jaimes Gonzales shall turn over $800.00 in a cashier's check from the fees collected from the Debtor to the US Trustee on or before January 22, 2016.
>
> **IT IS FURTHER ORDERED** that Anna Jaimes Gonzales shall pay $500.00 in a cashier's check for violations of 11 U.S.C. § 110 to the US Trustee on or before January 22, 2016.

17. 15-90697-E-7 ELIZABETH ZYLSTRA **CONTINUED MOTION TO DISMISS CASE**
Pro Se **10-16-15 [54]**

CONTINUED: 11/12/15

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 22, 2015. By the court's calculation, 21 days' notice was provided.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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. At the hearing ----------.

The Motion to Dismiss is granted and the case is dismissed.

Elizabeth Zylstra ("Debtor") filed the instant Motion for Voluntary Dismissal on October 16, 2015. Dckt. 54. The Debtor failed to set the motion for hearing nor attached any notice or proof of service.

On October 20, 2015, the court issued an order setting the Motion for hearing. Dckt. 57. Specifically, the court ordered the following:

> **IT IS ORDERED** that the Debtor's Motion to Dismiss Bankruptcy Proceedings filed October 16, 2015, Docket Entry No. 54, is set for hearing on November 12, 2015, at 10:30 a.m.

in the United States Courthouse, 1200 I Street, Second Floor, Modesto, California.

At the hearing the court will consider whether it is necessary to commence proceedings to determine Debtor's ability to proceed in this case without counsel, or if the appointment of a personal representative for Debtor in this bankruptcy case is required.

BACKGROUND

The Debtor voluntarily commenced this bankruptcy case on July 17, 2015. The Trustee determined that Debtor had an undisclosed asset, consisting of the right to recover $62,500.00 pursuant to a claim the Debtor filed with the USDA Hispanic & Women Farmers and Ranchers. After the Trustee learned of the asset, Debtor filed an ex parte motion to dismiss this Chapter 7 case. Dckt. 14. In the ex parte motion, in the form of a letter written to the court, Debtor fails to disclose the $62,500.00 asset discovered by the Trustee. The court set the ex parte motion for a hearing, and the Trustee filed an Opposition. Dckt. 19.

The court denied the prior ex parte motion without prejudice. Civil Minutes, Dckt. 27. The court addresses in the ruling that a motion seeking dismissal of this case must be by a noticed motion, not done without notice to creditors.

At the hearing the court discussed with the Debtor the need to obtain legal services to protect as much of the $62,500.00 asset as possible, or being able to properly get the case dismissed. The court discussed with the Debtor contacting the County Bar Association, the McGeorge School of Law bankruptcy clinic, and meeting with local bankruptcy attorneys to obtain the necessary professional assistance so that Debtor could best protect her rights.

No attorney has substituted in as counsel for Debtor. On October 16, 2015, Debtor filed another ex parte motion (in letter form) to dismiss the bankruptcy case. This letter, while signed by the Debtor, is written in the third-person. Again, Debtor contends that she made an irrational decision, out of panic, in filing the bankruptcy case. The motion asserts that Debtor will now “negotiate” her debts with creditors.

The motion also makes reference to a therapist, Susan Cowan MFT. A letter from Ms. Cowan is attached to the motion. The letter from Ms. Cowan is addressed to the court. It is not stated under penalty of perjury. In it, Ms. Cowan states: (1) the Debtor has been seeing Ms. Cowan for more than a year; (2) Ms. Cowan states that the Debtor has been dealing with symptoms of anxiety and depression for many years, and (3) that Ms. Cowan believes that the symptoms are in relation to the Debtor’s diagnosis of Post Traumatic Stress Disorder.

Ms. Cowan’s’ letter further states that the Debtor can be “impulsive and excitable.” Further, that the Debtor “tends to make hasty decisions in regard to her circumstances without thinking of [the] consequences.” Dckt. 54 at 3.

TRUSTEE’S OPPOSITION

Irma Edmonds, the Chapter 7 Trustee, filed an opposition to the instant

Motion on October 28, 2015. Dckt. 63. The Trustee opposes the Motion on the ground that the Debtor has failed to turnover the $35,275.00 received by the Debtor through the USDA Hispanic & women Farmers and Ranchers claim. Additionally, the Trustee seeks denial of the motion because there are nonexempt proceeds to administer.

The Trustee argues that she opposes the instant Motion to Dismiss, in her capacity as representative of the estate for all creditors. The Trustee states that she is attempting to marshal and secure the turnover of nonexempt assets in the amount of $35,275.00.

Next, the Trustee argues that dismissal is improper because the Debtor has failed to comply with the order to turnover the funds which is evidence that the Debtor's case is not in good faith. Furthermore, the Trustee states that the Debtor's hasty decision to enter bankruptcy is not sufficient ground to dismiss the case.

The Trustee next asserts that the Debtor has not provided evidence on how the Debtor intends to deal with the multitude of claims, namely the arrears in mortgage payment. The Trustee asserts that the Debtor's schedules shows that there is insufficient funds to deal with the claims.

The Trustee argues that dismissal may cause dissipation of all assets and could adversely impact the unsecured claimants in this case.

The Trustee concludes by stating that the Debtor has not indicated any agreements with creditors to deal with the claims and that there are administrative fees of $5,000.00 that the Debtor did not address in her Motion.

ADDITIONAL RESPONSE OF DEBTOR

On November 6, 2015, Debtor filed a Response. Dckt. 74. In it she requests that the court grant her request and dismiss the case. She states that though she attempted to find pro bono legal services, there are none in Stanislaus County. Debtor also argues that the attorneys who she has met with tell her that she has made so many mistakes that representation will cost her more money than she has available. The court does not find this last statement persuasive.

Debtor further pleads that she has to keep her home, or she will be "homeless." Debtor says that she has one child and two young adults. Further, that Debtor is working with Ms. Cowan and is receiving help.

Debtor now believes that her home is worth $250,000, which is still less than the ($272,986.00) of debt secured by the property.

NOVEMBER 12, 2015 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on December 3, 2015. The court explicitly ordered the following:

> **IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 10:30 a.m. on December 17, 2015.
>
> **IT IS FURTHER ORDERED** that on or before December 4,

2015, Irma Edmonds, the Chapter 7 Trustee, and Steven Altman, counsel for the Chapter 7 Trustee shall file and serve their respective motions for the allowance of fees and costs reasonably relating to the services which they were required to perform in this case relating to the USDA Settlement Asset and interests claimed by the Debtor therein, which motions shall be set for hearing at 10:30 a.m. on December 17, 2015. Opposition and request for a briefing schedule may be stated orally at the hearing.

IT IS FURTHER ORDERED that Elizabeth Zylstra, the Chapter 7 Debtors, shall on or before noon on December 10, 2015, turnover to the Chapter 7 Trustee $10,000.00, which shall be deemed to be a portion fo the USDA Class Action Lawsuit Proceeds, which the Trustee shall hold and not disburse except upon further order of the court. The funds shall be paid in the form of a cashier's check, money order, or other certified funds from a financial institution and delivered to the following address:

Irma Edmonds, Trustee
c/o Steve Altman, Esq.
1127 12th Street Suite 104
Modesto, California 95354

Any monies turned over to the Chapter Trustee pursuant to this court's October 26, 2015 Order (Dckt. 61) shall be applied to the $10,000 required by this Order.

IT IS FURTHER ORDERED that if Elizabeth Zylstra, the Chapter 7 Debtor fails to turnover the $10,000.00 as provided in this Order by noon on November 19, 2015, or that the cashiers' check, money order, or other certified funds are denied payment for any reason, the could shall issue an order denying this Motion to Dismiss. The denying of the Motion to Dismiss shall be with prejudice and a final order adjudicating Debtor's right to have the case dismissed.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this Order and the Civil Minutes from the November 12, 2015 hearing on the U.S. Trustee and

Susan Cowan MFT
re: Liz Zylstra
112 E. Fairmont Ave, Ste B
Modesto, CA 95354

Ms. Cowan shall provide the court with any additional facts, grounds, or matters which she believes are reasonable and appropriate for the court to consider in connection with the Debtor's request to dismiss the case. Ms. Cowan may provide such information in writing filed with the court and served on the U.S. Trustee, counsel for the Chapter 7 Trustee, and Elizabeth Zylstra, on or before November 20, 2015; or she may present it orally at the 10:30 a.m. hearing to be conducted on

December 3, 2015.

Dckt. 102. FN.1.

FN.1. The court notes that the order excerpt is from a separate order of the court continuing the hearing to a later date than indicated in the civil minutes because of a technological issue. The only changes to the order language was pushing out the deadline dates and continued hearing date to provide parties sufficient time to review and respond.

DEBTOR'S SUPPLEMENTAL EXHIBIT

The Debtor filed an unauthenticated copy of a receipt from the Law Office of Steve Altman and a cashier's check for $10,000.00. Dckt. 110.

DISCUSSION

Ms. Cowan's' letter echos the concerns of the court. At the prior hearing, Debtor was stating that she intended to take the money and use it to cure the arrearage on her home (not pay all of her creditors). Given that there is an arrearage, the facts indicate that Debtor cannot make the current monthly payments on her mortgage. If the proceeds are used to cure the arrearage, Debtor may again quickly default and lose the house, and the $62,500.00 in monies for only a short-lived reprieve from foreclosure.

On Schedule A filed by Debtor, she states that her only real property has a value of $200,000.00 and is subject to secured claims of ($272,986.00). Dckt. 1 at 12. The negative equity in the property easily exhausts all of the $62,500.00 in proceeds, leaving Debtor with no ability to sell the property and recover the monies if she again defaults. Even with the now asserted higher value of $250,000, Debtor is still under water with the home.

On Schedule B Debtor lists no personal property assets of any significant value. The combined total value of all Debtor's personal property assets (excluding the previously undisclosed $62,500.00) is only $1,850.00. Id. at 13-25.

On Schedule D, Debtor lists the following secured claims:

a. Wells Fargo Bank, First Mortgage.....$174,128

b. Wells Fargo Bank, Second Mortgage.....$ 75,382

c. Wells Fargo Bank, Past Due.....$ 23,476

Id. at 17.

On Schedule F Debtor lists creditors having a total of $78,033.00 in general unsecured claims. Id. at 20-21. The several largest claims are: (1) $20,398.00 owed to Bank of America, (2) $15,256.00 owed to Bank of America, (3) $17,935.00 owed to Capital One, (4) $14,001.00 owed to Chase Bank, and (5) $5,344.00 owed to Chase Bank. Each of these creditors hold almost $20,000.00 in debt, an amount well worth the efforts of the banks, and their collection

agencies, to work to recover from Debtor and the $62,500.00.

Looking at Schedule I, Debtor states she is unemployed and has only $963.00 a month in income ($600.00 income from an undisclosed business and $363.00 in child support). Id. at 25. On Schedule J Debtor states that she has two children, both who live with her. Id. at 26. For Expenses, Debtor states that her monthly mortgage payment is $967.00 and she has no other expenses (such as home maintenance, taxes, insurance, food, housekeeping supplies, clothing, medical or dental, or transportation). From this information, it appears all but inevitable that monies used to "cure" the default will be quickly lost to a new foreclosure.

In her response, Debtor asserts that she will now be able to make the payments because her daughters live with her and have income of $3,713 a month. (It is not clear if this is gross income or net.) Even assuming that the Debtor has access to all of this money for the family of four persons, the reasonableness of the cash flow proposed by the Debtor appears to be as follows:

Debtor Income	$963
Heather Income	$1,250
Andrea Income	$963
Total Income	$3,176
Expenses	
Monthly Mortgage Payments	($1,014)
Taxes and Insurance (Assumed to be in Monthly Payments)	
Home Maintenance (Listed as $0 by Debtor, Estimated by Court)	($75)
Electricity and Gas (Listed at $110 by Debtor, Estimated by Court)	($250)
Water, Sewer, Garbage	($110)
Telephone/Cell/Internet	($130)
Food and Housekeeping Supplies for Family of Three Persons (Listed at $250 by Debtor, Estimated by Court)	($750)
Clothing and Laundry for Family of Three Persons (Listed at $0 by Debtor, Estimated by Court)	($75)

Personal Care Products and Services for Three Persons (Listed at $0 by Debtor, Estimated by Court)	($50)
Medical and Dental Expenses for Three Persons (Listed at $0 by Debtor, Estimated Over the Counter by Court, Assume ACA Coverage for Major Medical)	($25)
Transportation Expenses for Three Persons (Listed at $100 by Debtor, Estimated by Court)	($150)
Entertainment, Recreation, Newspapers for Three Persons (Listed at $0 by Debtor for herself and two children, Estimated by Court)	($125)
Personal Supplies, School Supplies (Estimated by Court)	($100)
	==========
Bare Bones Budget Cushion	$322

The above, assuming that all of the money for the two children and Debtor are used solely by the Debtor, the most bare bones budget is problematic.

The conduct of the Debtor, the inability to obtain counsel, and the additional information provided by Debtor with the second motion to dismiss cause, give the court pause on whether Debtor is legally able to be a party in this action, or whether the court is obligated to appoint a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025 and 9014.

If the case were dismissed and Debtor used the monies to pay the arrearage on the unsecured claim of Wells Fargo Bank, and then decided to file bankruptcy, additional complications could develop which could put most, if not all, of the $62,500.00 (which Debtor may now be able to claim at least a portion as exempt) at risk.

Though the court has grave reservations about the Debtor’s ability to proceed outside of bankruptcy, and having made it clear to Debtor that she may well be flushing away her few remaining resources making a closed minded, financially unwise decision, the court is not Debtor’s attorney or counselor.

The court had the order setting this hearing served on Susan Cowan MFT, the therapist whose letter is attached to the Motion to Dismiss. Dckt. 54. The court had the order for the November 12, 2015 hearing served on Ms. Cowan. No information written information has been provided by her. Though Ms. Cowan’s letter invites the court to call her, the court does not conduct such out of court “investigations.”

What is clear is that this bankruptcy case, and this Debtor, will not proceed except upon the exercise of judicial power through the U.S. Marshal and

the possible civil incarceration of the Debtor. That is not how this process is suppose to work.

What is equally clear is that Debtor filed bankruptcy without a clear, deliberate plan. The information provided in the Schedules is incomplete and not financially reasonable. Her decision to dismiss the case appears to be equally impulsive. Though having the concerns of the court pointed out to her, and her therapist, Debtor is bound and determined to dismiss the case and sink what assets she has in the continue "financial plan" which led to this bankruptcy case.

There are no significant creditors who have filed general unsecured claims in this case. Wells Fargo Bank, N.A. has its claim secured, though not in full. Clearly the Bank benefits from getting as much of the settlement monies as possible to bail it out from an undersecured loan. Debtor appears determined to so help out Wells Fargo Bank, N.A., quite possibly to Debtor's and her children's detriment.

The Debtor has turned over to the Trustee the $10,000.00 and the Trustee and Trustee's attorney have been reviewed and granted.

Therefore, upon the totality of the circumstances, the court will grant the Debtor's motion and dismiss the case.

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

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

18. 15-90697-E-7 ELIZABETH ZYLSTRA **CONTINUED OBJECTION TO DEBTOR'S**
SSA-2 Pro Se **CLAIM OF EXEMPTIONS**
10-13-15 [45]

CONTINUED: 12/3/15

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 12, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claim of Exemptions is overruled as moot, the case having been dismissed.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Objection to Exemptions on October 13, 2015. Dckt. 45. The Trustee objects to the Debtor's use of objections in both the originally filed Schedule C (Dckt. 17) and the amended Schedule C (Dckt. 21).

The Debtor's original Schedule C claimed the following in exemptions:

Property	Exemption Statute	Amount Exempted
Household Good	704.020	$1,500.00

IRA	704.115	$250.00

Dckt. 1.

On September 23, 2015, the Debtor amended her Schedule C and claimed the following:

Property	Exemption Statute	Amount Exempted
Household Good - Residence	703.140(b)(3)	$1,500.00
Interest in IRA-Scottrade	703.140(b)(10)(E)	$250.00
Other contingent, unliquidated claims of every nature - USDA Hispanic & women Farmers and ranchers Class Action Lawsuit Proceeds	703.140(b)(5)	$16,925.00

Dckt. 21.

The Trustee seeks to have both the amended and original Schedule C exemptions be disallowed because the Debtor has not affirmatively chosen which code section she is attempting to claim exemptions under. The Trustee states that, out of an abundance of caution, the court should disallow both sets of exemptions in their entirety and require the Debtor within ten days after the order sustaining the exemption to elect whether she will be claiming either the 703 or 704 series.

The basis of the Trustee's Objection is California Code of Civil Procedure § 703.140(a)(3), which states:

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:. . .
>
> (3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

The court continued the hearing to be considered in light of whether the

Debtor complies with the order to turnover the $10,000.00, the trustee fees and attorneys authorized to be paid, and the possible dismissal of this case on November 12, 2015. Dckt. 85. The court continued the hearing to 10:30 a.m. on December 3, 2015 to be heard in conjunction with these motions.

On November 20, 2015, due to a technical difficulty, the court issued a subsequent order continuing the Motion to Dismiss and any compensation motions to 10:30 a.m. on December 17, 2015. Dckt. 102.

In light of the interrelated nature of the motions, the court continued the instant Motion to 10:30 a.m. on December 17, 2015 to be heard in conjunction with the Motion to Dismiss and the compensation motions.

On December 17, 2015, the court granted the Debtor's Motion to Dismiss, after the Debtor had turned over the $10,000.00 of non-exempt monies from the class action suit to the Trustee.

In light of the case being dismissed, the instant Objection is overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that hearing on the Objection is overruled as moot, the case having been dismissed.

19. 15-90697-E-7 SSA-3 — ELIZABETH ZYLSTRA, Pro Se — CONTINUED MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
11-6-15 [75]

Tentative Ruling: The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is dismissed as moot, the case having been dismissed.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Motion to Extend Time to Object to Debtor's Discharge on November 6, 2015. Dckt. 75. The Trustee seeks an order to extend the deadline to file an objection to Debtor's discharge because the Debtor has failed to turnover the non-exempt funds of

$35,275.00 arising from a settlement involving the USDA Hispanic and Women Farmer and Ranchers class action lawsuit. The Trustee further asserts that the Debtor has filed multiple Motions to Dismiss which has caused delay.

The Trustee states that the deadline to object to Debtor's discharge is set for November 13, 2015. The deadline for the Debtor to turnover the non-exempt funds does not expire until November 13, 2015. The Trustee states that she needs additional time to review the turnover and investigate the Debtor's financing.

The Trustee is requesting the deadline be continued to January 30, 2016.

ORDER CONTINUING

The court previously continued the instant Motion to 10:30 a.m. on December 17, 2015. Dckt. 97.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

DISCUSSION

On December 17, 2015, the court granted the Debtor's Motion to Dismiss, after the Debtor had turned over the $10,000.00 of non-exempt monies from the class action suit to the Trustee.

In light of the case being dismissed, the instant Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor 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 Motion is dismissed as moot, the case having been dismissed

20. 15-90697-E-7 ELIZABETH ZYLSTRA MOTION TO EMPLOY PMZ REAL
SSA-4 Pro Se ESTATE AS BROKER(S)
11-6-15 [69]

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

Oral argument 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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is denied without prejudice.

Chapter 7 Trustee, Irma Edmonds, seeks to employ Broker PMZ Real Estate, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Broker to assist the Trustee in selling the property commonly known as 1062 Gettysburg Street, Turlock, California ("Property").

The Trustee argues that Broker's appointment and retention is necessary to sell and market the Property.

Bob Brazeal, an associate of PMZ Real Estate, testifies that he is representing the Trustee and the estate in the marketing and selling of the Property. Bob Brazeal testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

On December 17, 2015, the court granted the Debtor's Motion to Dismiss the case. In light of the instant case being dismissed, there is no need for the Trustee and the estate to employ the Broker.

No evidence has been provided that the Broker has begun work marketing or selling the Property. There is no pending Motion to Sell nor does the Broker's declaration indicate what expenses or costs may have been incurred.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is denied without prejudice.

21. 15-90697-E-7 SSA-5 | **ELIZABETH ZYLSTRA, Pro Se** | **MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY 11-20-15 [86]**

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*),Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2015. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing **----------**.

The Motion for Allowance of Professional Fees is granted.

Steven S. Altman, the Attorney ("Applicant") for Irma Edmonds the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 30, 2015 through December 3, 2015. The order of the court approving employment of Applicant was entered on October 13, 2015, Dckt. 53. Applicant requests fees in the amount of $5,163.00 and costs in the amount of $86.44.

STATUTORY BASIS FOR PROFESSIONAL FEES

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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 for 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 services provided 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 [professional fees and expenses] 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, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] 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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing case file, preparation of applications to employ the Trustee's attorney and broker for Trustee. The estate has $0.00 of unencumbered monies to be administered as of the filing of the application. FN.1. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FN.1. The court notes that the instant Motion was filed prior to the Debtor turning over the $10,000.00 to the Trustee's counsel.

What did come into play was a $62,500.00 settlement recovery that Debtor was entitled to which was not listed in the Schedules. Notwithstanding the pending bankruptcy case, Debtor obtained payment of the monies, did not turn them over to the Trustee, used this property of the estate for her own purposes (which included "day trading of stocks"). This necessitated the Trustee and counsel for the Trustee fulfilling their fiduciary duties to the estate to try and recover these assets.

Even if Debtor elected to use her entire wildcard exemption of $25,340 (Cal. C.C.P. § 703.140), there would remain $37,466.00 for the estate. The court does not speculate whether other assets would be available.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 8.0 hours in this category. Applicant assisted Client with review of the case, turnover of estate property, potential objection to the Debtor's exemptions, potential objection to Debtor's discharge. The applicant reviewed the court's rulings and

the Debtor's multiple Motions to Dismiss. The applicant made multiple calls to Debtor to discuss the turnover.

Efforts to Assess and Recover Property of the Estate: Applicant spent 3.3 hours in this category. Applicant reviewed the information as to the Debtor's receipt of class action discrimination suit monies of $62,500.00. The Applicant analyzed the Debtor's exemption claims and reviewed the Meeting of Creditors transcript. Applicant presented a Motion for Turnover over the non-exempt class action funds.

Claims Administration and Objection: Applicant spent 7.5 hours in this category. Applicant reviewed the Debtor's case and claimed exemptions of the Debtor. Applicant prepared an objection to Debtor's exemption and reviewed the court's tentative rulings as to the Debtor's exemptions.

Fee and Employment Applications: Applicant spent 5.4 hours in this category. Applicant prepared initial application for Applicant's appointment and the application for the Broker. The Applicant also prepared fee applications.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steve S. Altman	17.00	$300.00	$5,100.00
Dawn Darwin, Paralegal	.7	$90.00	$63.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$5,163.00 FN.1.

FN.2. The total fees, based on the hours presented by Applicant, is $7,113.00. However, the Applicant voluntarily reduced the fees charged in "Claims Administration & Objection" to $216.00. This brings the total fee request of the Applicant to $5,163.00.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $86.44 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	$0.15	$48.90
Postage		$37.54
Total Costs Requested in Application		$86.44

FEES AND COSTS & EXPENSES ALLOWED

Fees

The instant case is factually unique and unusual. As discussed by the court in the Debtor's Motion to Dismiss, the instant case was filed by the Debtor without the Debtor fully understanding and realizing the ramifications of such. This case was filed on July 17, 2015. A review of the Debtor's schedules show that the case is nearly a no-asset case, minus the class action funds received by the Debtor. As of November 19, 2015, the Debtor has complied with the court order, and turned over the $10,000.00 non-exempt monies to the Trustee. With this, it appears that the estate is actually holding $10,000.00.

The Trustee's counsel is very experienced and well respected in the Modesto legal community. The court has no questions as to the work being actually done in connection with this case and the normal hourly billing rate of counsel.

But this is not the usual case, and may well be one in which the Debtor, who at the best is legally unsophisticated and at worst may be handicapped by some mental health issues (though none of her medical provides has come to court asserting that Debtor is not legally competent), has ventured into a legal proceeding ill prepared.

While legal fees and expenses are "routine" for those who regularly participate in the legal process, they can be shocking to the uninitiated. Additionally, the concept of being paid legal fees for requesting fees, while reasonable and necessary, also can look foreign to those not familiar with these judicial proceedings.

The court adjusts the billing rate, in light of the circumstances by 25% for engagement and fee applications. The court also adjusts the billing rate by 25% for the case administration work. Thus, the total fees allowed by the court are $4,147.50.

Therefore, the First and Final Fees in the amount of $4,147.50 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include $0.15 per copy. The Eastern District only permits $0.10 per copy. Therefore, the court disallows $16.30 of the requested costs.

The First and Final Costs in the amount of $70.14 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$4,147.50
Costs and Expenses	$ 70.14

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an 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 Steven S. Altman ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven S. Altman, Professional Employed by Trustee
>
> Fees in the amount of $4,147.50
> Expenses in the amount of $70.14,
>
> **IT IS FURTHER ORDERED** that the fees in the amount of $1,016.50 costs of $16.30 are not allowed by the court.
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

22. 15-90697-E-7 ELIZABETH ZYLSTRA
SSA-6 Pro Se

MOTION FOR COMPENSATION FOR IRMA EDMONDS, CHAPTER 7 TRUSTEE
11-20-15 [92]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*),Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2015. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing **----------**.

The Motion for Allowance of Professional Fees is granted.

Irma Edmonds, the Chapter 7 Trustee ("Applicant") for Elizabeth Zylstra the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 5, 2015 through November 19, 2015. Notice of Appointment of Applicant was entered on July 17, 2015. Dckt. 2. Applicant requests fees in the amount of $4,462.50 and costs in the amount of $162.21.

STATUTORY BASIS FOR PROFESSIONAL FEES

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work

in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] 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, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] 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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration and efforts to assess property of the estate. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

> In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first $5,00 or less, 10% on any amount in excess of $5,000 but not in excess of $50,000, 5% on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of $1,000,000, upon all moneys disbursed or turned over in the case by th trustee to parties in interest, excluding the debtor, but including holders of secured claims.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 7.35 hours in this category. Applicant assisted Client with reviewing the case, communicating with Trustee's counsel and Debtor, and several telephonic appearances before this court.

Efforts to Assess and Recover Property of the Estate: Applicant spent 5.4 hours in this category. Applicant analyzed Debtor's claimed exemptions to

a USDA loan discrimination claim, prepared and filed a motion for turnover of that claim, and communicated with counsel and Debtor on that claim.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Irma Edmonds, Chapter 7 Trustee	12.75	$350.00	$4,462.50
Paralegal	0 FN.1.	$90.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$4,462.50

Exh. 1.

FN.1. Trustee's Motion and Declaration claim to waive the time spent by paralegal, but the fees time sheet does not reflect that waiver. *Compare* Dckt. 92 ¶ 9, Dckt. 95 ¶ 11, *and* Dckt. 94 Exh. 1 p. 1-2. However, the fees requested has been reduced by $193.50, which matches the amount of fees if the paralegal hours are waived. *Compare* Dckt. 92 ¶ 9, Dckt. 95 ¶ 11, *and* Dckt. 94 Exh. 1 p. 1-2. Thus, the court will treat this as a voluntary reduction in fees by Applicant.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $123.66 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	$0.10 per page, FN.2.	$25.70
Telephonic Appearances	$41.20 per hour	$82.40
Postage		$15.56
Total Costs Requested in Application		$123.66

Exh. 2.

FN.2. Applicant moves for copying charges of $0.25 per page. However, the Eastern District of California only permits reimbursement of copying costs for $0.10 per page. The court has reduced the expense accordingly.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The Trustee requests $4,462.50 in fees. The Trustee appears to request the fees computation pursuant to the 11 U.S.C. § 330 analysis, without taking into consideration the limitation of trustee's compensation pursuant to 11 U.S.C. § 326. The court's rough calculation based on a $62,500.00 asset, subject to at least a $25,034.00 exemption (Cal. C.C.P. § 703.140), the Trustee fee cap would be computed on $37,466.00. Using the 11 U.S.C. § 326 trustee fee cap formula,

25% of first $5,000.00	$1,250.00
10% of next $32,466.00	$3,246.60
Calculated Maximum Total Compensation Permitted for Trustee	$4,496.60

This represents the Maximum Trustee Fees in a case that works its way through conclusion. Though the Trustee provides a lodestar analysis for almost exactly that amount (request 103.5% of the maximum), it is premised on the Trustee having a reasonable hourly fee rate of $350.00 for the trustee duties to date. The court has not been presented with evidence, in the facts, circumstances, and issues in this case, that $350.00 is a reasonable hourly rate for such fees in this case. This Trustee has been represented by counsel in this case to handle the "legal issues," and such counsel has been allowed fees of $4,147.50.

The maximum fees of $4,496.60 are unreasonable in this case. 11 U.S.C. § 326(a), § 330(a)(1)(A). The Trustee learned of this at the First Meeting of Creditors on September 14, 2015. Declaration of Trustee, ¶¶ 2, 4. This was sixty-nine days after this case had been commenced. On September 21, 2015, the Trustee learned that the award check for the $62,500 (less withholding for taxes) had already been sent to the Debtor. *Id.*, ¶¶ 5, 6. The Trustee filed the initial motion for the turnover of the monies, prior to her employing counsel. The significant legal papers filed by Trustee after that initial motion were by counsel for the Trustee.

In light of the nature and character of the single asset, it having been identified early in the case, most of the work with respect to the legal proceedings having done by counsel for the Trustee (all proper legal work, not an attempt by the Trustee to shift trustee work to counsel and then claim trustee fees for work done by others), and the nature of the total work to be done in this case, the court computes the reasonable compensation for the Trustee to be $3,372.45.

This represents a fair "commission" percentage for the Trustee. It is equal to 75% of the total maximum compensation that would have been paid to the Trustee if the monies had been turned over. There would be at least 25% more work to do in the case in recovering the money, accounting for the money, working with the accountant (or doing it herself) in determining the estate income taxes, objecting to claims, determining the correct distributions, preparing and filing a final accounting, and then properly distributing the monies.

Costs and Expenses

The First and Final Costs in the amount of $123.66 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$3,372.45
Costs and Expenses	$123.66

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an 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 Irma Edmonds ("Applicant"), Chapter 7 Trustee for 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 Irma Edmonds is allowed the following fees and expenses as a professional of the Estate:
>
> Irma Edmonds, Professional Employed by Debtor in Possession
>
> Fees in the amount of $3,372.45, and
> Expenses in the amount of $123.66,
>
> **IT IS FURTHER ORDERED** that the additional fees of $1,090.05 and costs of $38.55 are not allowed by the court.
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

23. 15-91057-E-7 ERIC/MELISSA RAWERS
Steven B. Sievers

REAFFIRMATION AGREEMENT WITH PREMIER COMMUNITY CREDIT UNION
12-3-15 [10]

Debtors' Attorney: Steven B. Sievers

Collateral to be reaffirmed not given
Negative income of $-307.64

Amended Reaffirmation Agreement filed December 8, 2015 [Dckt. 14].

24. 15-91057-E-7 ERIC/MELISSA RAWERS
RHS-1 Steven B. Sievers

ORDER TO APPEAR AND SHOW CAUSE WHY COURT DOES NOT MAKE FINDING AND ISSUING ORDER THAT THE REAFFIRMATION AGREEMENT FILED 12/3/15 FAILS TO STATE ANY DEBT TO BE REAFFIRMED
12-4-15 [11]

No Tentative Ruling: 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 Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's attorney, Trustee, and the Office of the U.S. Trustee on December 6, 2015. The court computes that 11 days' notice has been provided.

The Order to Appear and Show Cause Why Court Does Not Make Finding and Issuing Order that the Reaffirmation Agreement Filed on December 3, 2015 Fails to State Any Debt to be Reaffirmed is xxxxxxx.

On December 4, 2015, the court issued the instant Order to Appear and Show Cause Why Court Does Not Make Finding and Issuing Order that the

Reaffirmation Agreement Filed on December 3, 2015 Fails to State Any Debt to be Reaffirmed, Dckt. 11. In the order, the court ordered the following:

> **IT IS ORDERED** that the following persons shall appear at 10:30 a.m. on December 17, 2015, NO TELEPHONIC APPEARANCES PERMITTED, in the United States Bankruptcy Court for the Eastern District of California, Modesto Division, at 1200 I Street, Second Floor, Modesto, California:
>
> A. Eric James Rawers, a debtor in this bankruptcy case, and Steven Sievers, counsel for Mr. Rawers; and
>
> B. A senior management officer of Premier Community Credit Bank and an attorney for Premier Community Credit Bank.
>
> **IT IS FURTHER ORDERED** that at the hearing the persons ordered to appear shall show cause why the court does not make findings and issue an order determining that:
>
> A. The document titled Reaffirmation Agreement filed on December 3, 2015 (Dckt. 10) is insufficient to meet the requirements of 11 U.S.C. § 524(c), (d), and (k).
>
> B. Alternatively, that if the Agreement is sufficient, then the obligation in the amount of obligation is $5,853.39 and is to be repaid at the rate of $130.10 a month for a period of forth-five months, with no interest accruing, owing, or payable on the reaffirmed debt.
>
> C. That Premier Community Credit Union should not be sanctioned $2,875.00, which amount shall be payable to Eric James Rawers, for providing to a consumer debtor and for filing with the court a reaffirmation agreement form which fails to (1) identify the underlying credit agreement, (2) disclose the interest rate of the reaffirmed debt, (3) fails to disclose the term of the repayment of the reaffirmed debt sought to be obtained against this consumer debtor.
>
> D. That Premier Community Credit Union should not be sanctioned $2,875.00, which amount shall be paid to the Clerk of the United States Bankruptcy Court for the Eastern District of California, for deposit in the Treasury of the United States, for the conduct identified in Paragraph C above and in the forgoing discussion of the facts relating to the document titled Reaffirmation Agreement filed with the court.
>
> E. That pursuant to 11 U.S.C. § 329 the court should not require Steven B. Sievers to repay Eric Rawers and Melissa Rawers, the Debtors, jointly and severally, $350.00 of the $1,300.00 fees paid Mr. Sievers as counsel for Debtors in this case, which the court

concludes is the portion of the fees relating to representation of the Debtors in connection with the incomplete document titled Reaffirmation Agreement (Dckt. 10) filed in this case.

IT IS FURTHER ORDERED that responses to the Order to Appear and Show Cause may be presented orally at the hearing (at which time the court will determine what briefing and evidence submission schedule is necessary). If written response, or amended reaffirmation agreement and supporting declarations explaining the reaffirmation and reason for the incomplete document, is filed before the hearing, such shall be filed and served on the U.S. Trustee and the Chapter 7 Trustee on or before December 14, 2015.

BACKGROUND

On November 4, 2015, a Reaffirmation Agreement was filed in this bankruptcy case. Dckt. 10. The Reaffirmation Agreement is signed by: (1) Eric Rawers, one of the Debtors in this case, and (2) Judy Strassner, identified as a Loss Prevention Officer for Premier Community Credit Union. The Reaffirmation Agreement is dated November 3, 2015, by Eric Rawers and dated December 3, 2015, by Premier Community Credit Union. The Reaffirmation Agreement is not signed by Melissa Rawers, the other Debtor in this bankruptcy case.

On the first page of the Reaffirmation Agreement no boxes are checked to indicate that (1) Part A Disclosures and Instructions, (2) Part B Reaffirmation Agreement, (3) Part C Certification by Attorney, (4) Part D Debtor's Statement in Support of Reaffirmation Agreement, or (5) Part E Motion for Approval are included as part of the filing.

Part A is included, stating that the amount of the debt to be reaffirmed is $5,853.39. However, the Annual Percentage Rate disclosures are left blank. The Reaffirmation Agreement provides for the Credit Union to be paid no interest. The final part of Part A states that the monthly payment would be $130.10 a month, commencing with the December 27, 2015 payment.

Also absent from the Reaffirmation Agreement is a description of any collateral to secure the debt to be reaffirmed. It appears that Premier Community Credit Union affirmatively states that is has no enforceable lien securing the obligation to be reaffirmed by Eric Rawers.

No provision is made for a number of payments. At $130.10 a month payments for the $5,853.39 debt, this unsecured obligation would be paid off in forty-five (45) months.

The Instructions to Debtor is included with the Reaffirmation Agreement. These Instructions include the following:

A. Complete and Sign Part D, the Debtor's State in Support of Reaffirmation.

Part B of the Reaffirmation Agreement is included, which is the reaffirmation itself. Other than the signatures by Eric Rawers and Premier

Community Credit Union, this part of the form is left blank. No credit agreement is stated as being reaffirmed. The parties to the Reaffirmation Agreement effectively represent that no credit agreement exists between Debtor Eric Rawers and Premier Community Credit Union relating to the $5,853.39 stated obligation.

Part C, the Certification by Debtor's Attorney is included. This is signed by Steven B. Sievers and dated December 3, 2015.

Part D of the Reaffirmation Agreement, the Debtor's Statement in Support is blank and unsigned by Eric Rawers. This Debtor fails to state that he believes that the Reaffirmation Agreement is in his financial interest, nor does he state that he believes that he can make the payment of $130.10 a month for the forty-five (45) months.

AMENDED REAFFIRMATION COVER SHEET

On December 8, 2015, an amended Reaffirmation Agreement was filed. Dckt. 14.

APPLICABLE LAW

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see also* 11 U.S.C. § 105(a).

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

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

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

DISCUSSION

This Reaffirmation Agreement appears to be grossly deficient, both on the part of the Credit Union and Debtor Eric Rawers, who is represented by counsel. On its face, the Reaffirmation Agreement states that there is no collateral securing this debt and that there is no interest owed as part of paying this debt.

Some of these forms may be left incomplete because the Debtor or Premier Community Credit Union cannot honestly answer them and still show that there is a proper reaffirmation. Looking at Debtors' Schedule J in this case, a monthly payment in the amount of $337.00 for one vehicle is listed. Dckt. 1 at 30. Further, Schedule J shows that after making the $337.00 monthly payment, Debtors are running a negative ($307.64) of expenses over their monthly income after taxes.

On Schedule D, Premier Community Credit Union is not listed as a creditor having a secured claim. Dckt. 1 at 18. However, this Creditor is listed on Schedule F as having a general unsecured claim (for an account opened August 19, 2014, and last active October 1, 2015) in the amount of $4,770.00.

Based on what has been filed with the court, there is no Reaffirmation Agreement and no debt has been reaffirmed. For the court to let this go unaddressed only invites Debtor and Premier Community Credit Union to engage in protracted litigation later for this court to determine what unstated agreement was the subject of a reaffirmation. The court cannot in good conscious allow such likely litigation to fester.

At the hearing, xxxxxx

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 Appear and 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 is xxxx.

25. 13-35536-E-13 GARY/AIMEE HOURCAILLOU
RTD-1 Peter G. Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-1-15 [32]

SCHOOLS FINANCIAL CREDIT UNION VS.

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion for Relief From the Automatic Stay is xxxxx.

Gary and Aimee ("Debtor") commenced this bankruptcy case on December 9, 2013. Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Jeep Wrangler, VIN ending in 1391 (the "Vehicle"). The moving party has provided the Declaration of Robin Spitzer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spitzer Declaration provides testimony that Debtor has defaulted

in post-petition payments totaling $1,091.21 through October 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $6,981.12, as stated in the Spitzer Declaration, while the value of the Vehicle is determined to be $11,610.00, as stated in Schedules B and D filed by Debtor.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on December 2, 2015. Dckt. 48. Trustee clarifies that Debtor has paid a total of $51,920.15 to date and is delinquent $8,304.70 under the confirmed plan. $2,899.22 has been disbursed regarding the 2004 Jeep Wrangler, with a remaining principal of $6,894.93. Dckt. 49.

DECEMBER 15, 2015 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on December 17, 2015 for the Debtor to provide proof of insurance.

RULING

At the hearing, xxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Schools Financial Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that xxxx

26. 13-35536-E-13 GARY/AIMEE HOURCAILLOU
RTD-2 Peter G. Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-1-15 [40]

SCHOOLS FINANCIAL CREDIT UNION VS.

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion for Relief From the Automatic Stay is xxxxx.

Gary and Aimee ("Debtor") commenced this bankruptcy case on December 9, 2013. Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Chevrolet Tahoe, VIN ending in 1399 (the "Vehicle"). The moving party has provided the Declaration of Robin Spitzer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spitzer Declaration provides testimony that Debtor has defaulted in $2,186.72 of post-petition payments past due Movant through October 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $6,981.12, as stated in the Spitzer Declaration, while the value of the Vehicle is determined to be $11,610.00, as stated in Schedules B and D filed by Debtor.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on December 2, 2015. Dckt. 51. Trustee clarifies that Debtor has paid a total of $51,920.15 to date and is delinquent $8,304.70 under the confirmed plan. $5,813.58 has been disbursed regarding the 2007 Chevrolet Tahoe, with a remaining principal of $13,877.09. Dckt. 52.

DECEMBER 15, 2015 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on December 17, 2015 for the Debtor to provide proof of insurance.

RULING

At the hearing, xxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Schools Financial Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that xxxxx